

PRESIDENT'S MESSAGE REPEALS WITH TRUST BILL

Would Have a "Trust Overseer" and O. K. for "Good" Combinations.

WASHINGTON, Dec. 5.—President Taft's message to Congress, read in both houses today, was devoted wholly to the subject of trusts and the enforcement of anti-trust laws.

The President begins by saying the message is one of several he shall send to Congress before the Christmas holidays; that the number of important subjects to be treated is too large for one. He then reviews the anti-trust law and the Supreme Court decisions in the tobacco trust cases. He says:

This message is the first of several which I shall send to Congress during the interval between the opening of its regular session and its adjournment for the Christmas holidays. The amount of information to be communicated as to the operations of the Government, the number of important subjects calling for comment by the Executive, and the transmission to Congress of exhaustive reports of special commissions, make it impossible to include in one message of a reasonable length a discussion of the topics that ought to be brought to the attention of the National Legislature at its first regular session.

It has been said that the court, by introducing into the construction of the statute common-law distinctions, has emasculated it. This is obviously true. By its judgment every contract and combination in restraint of interstate trade made with the purpose or necessary effect of controlling prices by stifling competition, or of establishing in whole or in part a monopoly of such trade, is condemned by the statute. The most extreme critics cannot instance a case that ought to be condemned under the statute which is not brought within its terms as thus construed.

Court Power Limited.

The suggestion is also made that the Supreme Court by its decision in the last two cases has committed to the court the undefined and unlimited discretion to determine whether a restraint of trade is within the terms of the statute. This is wholly untrue. A reasonable restraint of trade at common law is well understood and is clearly defined. It does not rest in the discretion of the court. It must be limited to accomplish the purpose of a lawful main contract to which, in order that it shall be enforceable at all, it must be incidental. If it exceeds the needs of that contract, it is void.

The test of reasonableness was never applied by the court at common law to contracts or combinations or conspiracies in restraint of trade whose purpose was or whose necessary effect would be to stifle competition, to control prices or establish monopolies. The courts never assumed power to say that such contracts or combinations or conspiracies might be lawful if the parties to them were only moderate in the use of the power thus secured and did not exact from the public too great and exorbitant prices. It is true that many theorists, and others engaged in business practices might be lawful if the parties to them were only moderate in the use of the power thus secured and did not exact from the public too great and exorbitant prices. It is true that many theorists, and others engaged in business practices might be lawful if the parties to them were only moderate in the use of the power thus secured and did not exact from the public too great and exorbitant prices.

She of New Companies.

Objection was made by certain independent tobacco companies that this settlement (Tobacco Trust) was unjust because it left companies with a large capital in active business, and that the settlement that would be effective to put all on an equality would be a division of the capital and plant of the trust into small units, the amount more nearly equal to that of each of the independent companies. This contention results from a misunderstanding of the anti-trust law and its purpose. It is intended thereby to prevent the accumulation of large capital in business enterprises in which such a combination can secure reduced cost of production, sale, and distribution. It is directed against such an aggregation of capital only when its purpose is that of stifling competition, enhancing or controlling prices, and establishing a monopoly. If we shall have by the decree defeated these purposes, the competition between the large units into which the capital and plant have been divided, we shall have accomplished the useful purpose of the statute.

It is not the purpose of the statute to confiscate the property and capital of the offending trusts. Methods of punishment by fine or imprisonment of the individual offenders, by fine of the corporation or by forfeiture of its goods in transportation, are provided but the proceeding in equity is a specific remedy to stop the operation of the trust by injunction and prevent the future use of the plant and capital in violation of the statute.

I venture to say that not in the history of American law has a decree more effective for such a purpose been entered by a court than that against the Tobacco Trust.

It has been assumed that the present pro rata and common ownership in all these (tobacco) companies by former stockholders of the trust would insure a continuance of the same old single control of all the companies into which the trust has by decree been disintegrated. This is erroneous and is based upon the assumed inefficiency and innocuousness of judicial injunctions. The companies are enjoined from co-operation or combination; they have different managers, directors, purchasing and sales agents. If all or many of the numerous stockholders, reaching into the thousands, attempt to secure concerted action of the com-

panies with a view to the control of the market, their number is so large that such an attempt could not well be conceived, and the prime movers and all its participants would be at once subject to contempt proceedings and imprisonment of a summary character. The immediate result of the present situation will necessarily be activity by all the companies under different managers, and then competition must follow, or there will be activity by one company and stagnation by another. Only a short time will inevitably lead to a change in ownership of the stock, as all opportunity for continued co-operation must disappear. Those critics who speak of this disintegration in trust as a mere change of garments have not given consideration to the inevitable working of the decree and understand little the personal danger of attempting to evade or set at naught the solemn injunction of a court whose object is made plain by the decree and whose inhibitions are set forth with a detail and comprehensiveness unexampled in the history of equity jurisprudence.

The effect of these two decisions has led to decrees dissolving the combination of manufacturers of electric lamps, a Southern wholesale grocers' association, an interlocking decree against the Powder Trust with directions by the Circuit Court compelling dissolution, and other combinations of a similar history, are now negotiating with the Department of Justice looking to a disintegration by decree and reorganization in accordance with law. It seems possible to bring about such reorganizations without general business disturbance.

Movement for Repeal.

But now that the anti-trust act is seen to be effective in the accomplishment of the purpose of its enactment, we are met by a cry from many different quarters for its repeal. It is said to be obstructive of business progress, to be an attempt to restore old-fashioned methods of doing business, to be impossible those useful combinations of capital and the reduction of the cost of production that are essential to continued prosperity and normal growth.

In the recent decisions the Supreme Court makes clear that there is nothing in the statute which condemns combinations of capital or mere business of plant organized to secure economy in production and a reduction of its cost. It is only when the purposes or necessary effects of the organization and maintenance of the combination or aggregation of immense size are the stifling of competition, actual and potential, and the enhancing of prices and establishing a monopoly, that the statute is violated. Mere size is no sin against the law. The merging of two or more business plants necessarily eliminates competition between the units thus combined, but this elimination is in contravention of the statute only when the combination is made for the purpose of stifling this particular competition in order to secure control of, and enhance, prices and create a monopoly.

The complaint is made of the statute that it is not sufficiently definite in its description of that which is forbidden to enable business men to avoid its violation. The suggestion is, that we may have a combination of two corporations, which may run on a profit basis, but subsequently the Attorney-General may conclude that it was a violation of the statute, and that which was supposed by the combinators to be innocent is violated. More size is no sin against the law. The merging of two or more business plants necessarily eliminates competition between the units thus combined, but this elimination is in contravention of the statute only when the combination is made for the purpose of stifling this particular competition in order to secure control of, and enhance, prices and create a monopoly.

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corporation to comply with their requirements so as to carry on business in a number of different states.

I renew the recommendation of the enactment of a general law providing for the voluntary formation of corporations to engage in trade and commerce among the states and with foreign nations. Every argument which was then advanced for such a law, and every explanation which was at that time offered in possible objections, have been confirmed by our experience since the enforcement of the anti-trust statute has resulted in the actual dissolution of active commercial organizations.

Repeal Laws Urged.

It is even more manifest now than it was then that the denunciation of conspiracies in restraint of trade should not and does not mean the denial of organizations large enough to be entrusted with our interstate and foreign trade. It has been made more clear now than it was then that a purely negative statute like the anti-trust law may well be supplemented by specific provisions for the building up and regulation of legitimate National foreign commerce.

The drafting of the decrees in the dissolution of the present trusts, with a view of their reorganization into legitimate corporations, has made it abundantly apparent that the courts are not provided with the administrative machinery to make the necessary inquiries preparatory to reorganization, or to pursue such inquiries, and the administration is empowered to invoke the aid of the Bureau of Corporations in determining the suitable reorganization of the disintegrated parts. The Circuit Court and the Attorney-General were greatly aided in framing the decree in the tobacco trust dissolution by an expert from the Bureau of Corporations.

For Special Bureau.

I do not set forth in detail the terms and sections of a statute which might supply the constructive legislation permitting and aiding the formation of combinations of capital into Federal corporations. They should be subject to rigid rules as to their organization and procedure, including effective publicity, and to the closest supervision as to the issue of stock and bonds by an executive bureau or commission in the Department of Commerce and Labor, to which in times of doubt they might well submit their proposed plans for future business. It must be distinctly understood that no corporation under a Federal law could not exempt the company thus formed and its incorporators and managers from prosecution under the anti-trust law for subsequent fraud or deceit, but the publicity of its procedure and the opportunity for frequent consultation with the bureau or commission in charge of the incorporation as to the legitimate purpose of its transactions would offer great security against such successful prosecutions for violations of the law as would be practical or wise.

Such a bureau or commission might well be invested also with the duty, already referred to, of aiding courts in the dissolution and re-creation of trusts within the law. It should be an executive tribunal of the dignity and power of the Controller of the Currency or of the Interstate Commerce Commission, which now exercise supervisory power over important classes of corporations under Federal regulation.

The drafting of such a Federal incorporation law would offer ample opportunity to prevent many manifest evils in corporate management today, including irresponsibility of control in the hands of the few who are not the real owners.

I recommend that the Federal charters thus to be granted shall be voluntary, at least until experience justifies mandatory provisions. The benefit to be derived from the operation of great businesses under the protection of such a charter would attract all who are anxious to keep within the lines of the law. Other large combinations that fail to meet the requirements of the Federal incorporation will not have a right to complain if their failure is ascribed to unwillingness to submit their transactions to the careful official scrutiny, competent supervision and publicity attending upon the enjoyment of such a charter.

The opportunity thus suggested for Federal incorporation, it seems to me, is suitable constructive legislation needed to facilitate the squaring of great industrial enterprises to the rule of action laid down by the anti-trust law. This statute as construed by the Supreme Court must continue to be the line of distinction for legitimate business, which may run on a profit basis, and incorporation will not have a right to complain if their failure is ascribed to unwillingness to submit their transactions to the careful official scrutiny, competent supervision and publicity attending upon the enjoyment of such a charter.

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The anti-trust act is the expression of the effort of a freedom-loving people to preserve equality of opportunity. It is the result of the confident determination of such a people to maintain their future growth by preserving uncontrolled and unrestricted the enterprise of the individual, his industry, his ingenuity, his intelligence, and his independent courage.

For 20 years or more this statute has been in force. All knew its general purpose and approved of its violators were critical over its assumed impotence. It seemed impossible of enforcement. Slowly the mills of the gods ground, and only gradually did the majesty of the law assert itself. Many of its statesmen-authors died before it became a living force, and they and others saw the evil grow which they had hoped to destroy. Now its efficacy is seen; now its power is heavy; now its object is near achievement. Now we hear the call for its repeal on the plea that it interferes with business prosperity, and we are advised in most generous terms, how by some other statute and in some other way the evil we are just stamping out can be cured if we only abandon this work of 20 years and try another experiment for another term of years.

It is said that the act has done good. Can this be said in the face of the effect of the Northern Securities decree? That decree was in no way so drastic or unbalanced in detail as either the Standard Oil decree or the Tobacco decree; but did it not stop for all time the then powerful movement toward the control of all the railroads of the country in a single hand? Such a one-man power could not have been a healthful influence in the Republic even though exercised under the general supervision of an interstate commission.

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