JUDGE HANFORD QUITS UNDER FIRE IN WEST

Wires Resignation to President Taft Following Sensational Testimony.

HARD WORK AS REASON

Jurist Under Investigation by Congress Says Strain Forces Retirement.

SEATTLE, Wash., July 22.—Federal Judge Cornelius H. Hanford wired his resignation from the Federal bench to President William H. Taft this morning.

The action came when the judiciary sub-committee of the House was about to begin the twenty-second day of the inquiry into the record of the accused jurist.

His resignation came as a surprise to practically every one interested in the hearing. The Judge's attorneys had no inkling of his contemplated action when they appeared at 9 o'clock in the court room. Neither had the members of the committee. Judge Hanford had considered taking such action all day Sunday and came to his decision without advice from any one, it is said.

When the committee was informed of the jurist's decision they went into executive session. For a long time they were closeted with attorneys in a room off the court chambers.

Chairman Graham then announced adjournment until 2 o'clock.

After the announcement of adjournment had been made a telegram was received from H. D. Clayton, chairman of the House Judiciary Committee, which read:

"Advise you to take no further testimony. Stop proceedings. Election." [illegible] Judge Hanford read the following statement:

"Almost constant strain under which I have worked for more than twenty-two years has taxed, but not exhausted my powers of endurance. I am not likely to have a vacation or rest, but a change of occupation will be a welcome relief. I intend to practice law in Seattle.

"In the investigation which has been conducted by a sub-committee of the House of Representatives, much testimony has been given by witnesses who know me and others who do not. I am grateful for the commendation of those who have spoken in my favor, and as for those who have maligned me I only wish to say that I would be ashamed of myself if I had not incurred the enmity of such people as they are.

"A judge is never so sure of being right as when his work has been criticised unfairly; and without boasting in view of all that has been said and may be said of and concerning myself and my work I am glad that my record is what it is."

Chairman Graham, who said the committee had been hard at work all day Sunday getting the final testimony in shape, declared that he did not believe that any fear of testimony which was to come led to the resignation.

"We had some important testimony to go into the record," said the chairman, "but it was not of such a character as to lead to the resignation out of fear for its introduction."

Judge Hanford's attorneys also stated that Judge Hanford had concluded that the strain upon himself and family was too great.

WASHINGTON, July 22.—Judge Cornelius Hanford of the Western District of Washington, in the Ninth Circuit, notified President Taft to-day that he had tendered his resignation. The formal resignation, he stated, is on the way in a letter, and the President it was announced at the White House to-night, will take no action until the document reaches his hands.

Representative Victor Berger of Wisconsin, the Socialist member of the House who introduced the resolution which was adopted, calling for an investigation of the charges against the Federal Judge looking to his impeachment by the Senate, will take no further steps. Upon learning of the Judge's action he announced that the voluntary resignation closes the case so far as he is concerned and that he will take no further proceedings.

The case as laid before the House, is now before the Judiciary Committee of that body and Representative Clayton of Alabama, chairman of that committee, stated that the resignation did not necessarily mean that the impeachment proceedings would be dropped. Any further action in Congress will probably depend upon the action of the President and upon the recommendations of the sub-committee of the Judiciary Committee which was sent to Seattle to make a preliminary examination into Judge Hanford's moral and official conduct while on the bench.

The President is expected promptly to accept the resignation, but the committeemen who have taken up the probe may not be content to allow the Judge to escape punishment at the hands of Congress.

Representative Berger and other Congressmen declared their belief that the tender of his resignation was sufficient evidence of the Judge's guilt.

Representative Berger said:

"I take Judge Hanford's resignation as an admission of guilt. But in impeaching him I was fighting corruption on the bench generally, not Hanford personally.

"The Hanford case and the Archbald case are arguments for recall of Judges. It would be a mighty good thing if a couple of dozen more Federal Judges would resign or be recalled by the people. The present system of impeachment is unsatisfactory, cumbersome and costly.

"The fact that Hanford has resigned is a confession that I had a good case against him and that my action was justified.

"I had other undisclosed evidence against him that he probably knew was coming."

It was said at both the Department of Justice and the White House that the resignation was not called for, and that there was not even an intimation that it was desired. Attorney General Wickersham, however, some time ago overruled a decision of Judge Hanford which formed the principal ground for Representative Berger's charges that he was unfit for office.

Judge Hanford was appointed to the bench February 25, 1890, and for several years past there have been complaints of his having been addicted to the use of liquor. Recently, however, the Judge revoked the naturalization papers of John Olssen, a native of Sweden, who was a Socialist. Judge Hanford's ruling was based on statements of Olssen that that Constitution should be amended to meet socialistic ideas, holding that Olssen was "not attached to the Constitution of the United States." Representative Berger laid the decision before the Department of Justice and it was promptly overruled.

The sub-committee of the Judiciary Committee appointed by Chairman Clayton, is headed by Representative Graham of Illinois. The committee proceeded to Seattle and began hearings about June 26.

Victor L. Berger, the Socialist Representative from Wisconsin, instituted the investigation that has resulted in the resignation of Judge Hanford. On June 7 he demanded the impeachment of Judge Hanford, charging him with "habitual drunkenness and conduct unbecoming a Federal Judge." He took this action after Judge Hanford had ruled against the socialist Olsen, against whom suit was started by the Government to cancel his certificate of naturalization on the ground of fraud. This suit was brought as a result of Olsen's testimony before a naturalization examiner that at the time he was granted his certificate, more than two years before he did not believe in the Constitution.

Another charge contained in the resolution of impeachment was that Judge Hanford had violated law and justice in issuing an injunction in the interest of the railroad and against the interests of the people of Seattle in a suit brought against the Seattle, Renton and Western Railroad.

The House Judiciary Committee gave a preliminary hearing in Washington to the charges of Mr. Berger, and at that time Attorney John H. Perry of Seattle appeared with additional charges against the accused Judge. He described him as a "judicial pervert, a moral bankrupt and a tool of corporations and special privilege." One of the new charges was that "as the agent of corrupt politicians" Judge Hanford enjoined the holding of the recall election in Seattle on March 7, 1911, when the ouster of Mayor Gill was sought.

A more serious charge was that Judge Hanford conspired with attorneys in a bankruptcy proceeding in 1905, in which the Alaska Packers Association was interested. The attorneys were alleged to have been granted fees of $140,000 by Judge Hanford and afterward to have organized with him the Hanford Irrigation and Power Company; that Hanford also set aside a judgment of $122,000 secured by a laborer against a corporation for the loss of an arm was another charge.

PERKINS CONTRIBUTED TO CAMPAIGN OF 1904

Ex-Senator Scott Says He Gave $15,000 to Aid Roosevelt in West Virginia.

WASHINGTON, July 22.—That George W. Perkins contributed to the Republican national campaign of 1904 was disclosed to-day by ex-Senator Nathan B. Scott, who was one of the executive committee under Chairman Cortelyou and in charge of the speakers' bureau. According to Senator Scott a contribution of $15,000 was handed to him by Mr. Perkins to be used in the campaign in West Virginia.

[illegible] committee that is investigating campaign expenditures in the campaigns of 1904 and 1908. Chairman Cortelyou testified a few days ago that he was not aware of any contribution that had been made by Mr. Perkins. The testimony given before the committee to-day by Mr. Scott did not contradict anything Mr. Cortelyou had said, because Mr. Scott admitted to-day that the contribution made by Mr. Perkins was delivered to him personally and sent direct to West Virginia and never passed through the hands of the National Committee.

"Perkins asked me as to the situation in my State, West Virginia," said ex-Senator Scott. "I told him there was a big fight on the Republican Gubernatorial candidate, W. M. Dawson, and that I had some doubt about his election. Perkins explained that he was a friend of Roosevelt and would regret to see West Virginia go Democratic. He thereupon gave me $15,000 to help us in West Virginia.

"How much did you contribute in 1904?" asked Chairman Clapp.

"I gave nothing to the National Committee fund," replied the ex-Senator, "but I did send $30,000 or $40,000 to West Virginia to help our campaign there."

Senator Scott recalled that John J. McCook also gave $1,000. He said so far as his knowledge went neither J. P. Morgan or Henry Havemeyer made a contribution to the campaign fund. The trusts contributed nothing, he explained, because Chairman Cortelyou issued an order that no money should be accepted from such sources.

Senator Scott explained that the campaign literature used by the committee in 1904 was furnished by the American Protective Tariff League, but that it was all paid for "in good hard cash."

The witness in reply to inquiries said he knew of no contributions made to the committee from the beet trust, Standard Oil Company or steel trust, or from any one connected with them. He reiterated that George B. Cortelyou and Cornelius N. Bliss had made it very clear to everybody connected with the committee that contributions from such sources would not be accepted.

"My own corporation never gave a dollar to the campaign fund," said Mr. Scott. "I am a manufacturer of glass, with a plant at Wheeling, W. Va., but my corporation never gave a cent."

Mr. Scott was before the committee but a short time. The next witness will probably be George R. Sheldon, who was treasurer of the Republican National Committee in 1908. Mr. Sheldon has agreed to appear and testify Thursday.

Senator Clapp, chairman of the committee, said that with the adjournment of Congress the committee probably would suspend its work and resume after the campaign is over. It is his intention to call officers and agents of the Republican congressional committees in the campaigns of 1904 and 1908 and he will probably take steps to summon or invite representatives of the National Manufacturers Association.

From time to time a question has been raised in the newspapers as to why Senator Clapp's committee does not make some effort to unearth alleged contributions made in the Presidential campaigns this year. There have been demands to call Senator Dixon, George W. Perkins, Frank A. Munsey and other friends of Col. Roosevelt and try to elicit from them whether heavy contributions have been made to nominate and elect Mr. Roosevelt.

Senator Clapp explained to-day that the jurisdiction of his committee did not extend over the Presidential campaign this year.

APPEAL TO LA FOLLETTE MEN.

Bull Moose Call Deplores "A Clash of Personality."

MILWAUKEE, July 22.—The formal call of the Bull Moose party to the voters of Wisconsin was issued at the headquarters here, following the selection of delegates to the national progressive convention to be held at Chicago August 5. It says in part:

Associated with this movement are all the progressives of the country—outside of Wisconsin. In spite of an agreement on principles a clash of personality has cut Wisconsin off from an onward and upward movement which was born on her soil and nurtured by her legislation. To give to the voters of Wisconsin equal suffrage with the voters of other States it is essential that the parent State of the progressive movement should be represented in the National Progressive convention.

To restrict the Wisconsin progressive to a choice between a Republican reactionary with a stolen nomination and a Democratic candidate of personal purity, but questionable affiliations is not in full accord with either the theory or practice of representative government.

THROWS OUT MANDAMUS.

Kansas Supreme Court Calls Party Row Political, Not Legal.

TOPEKA, Kan., July 22.—The question whether Roosevelt or Taft Presidential electors shall go on the Republican ballot in November must be left to the voters of Kansas and not taken into the courts. The names of the Roosevelt Presidential electors remain on the primary election ballot.

The Kansas Supreme Court handed down a decision at noon to-day in the mandamus action brought by the Attorney-General at the request of Gov. Stubbs, in which the Supreme Court held that the whole matter of the Presidential electors should be left to the voters and that no legal questions were involved.

T. R. HAULS DOWN HIS "NO COMPROMISE" FLAG

"I Will Not Dictate," He Says, After Four Hours Conference With Flinn.

ONE SET OF ELECTORS

Pennsylvania Plan Left to Chicago Convention, Which May Adopt It.

OYSTER BAY, July 22.—Ex-Senator Flinn of Pittsburg came to Sagamore Hill to-day to defend the plan by which he hopes to retain control of the Pennsylvania Republican machine and to maintain on the Republican ticket the thirty electors who are expected to cast their vote for the third party nominee, and indications to-night are that his visit was not in vain.

While no definite statement was made, it is believed that the Flinn plan, which it was agreed to table for the time being, will be quietly put into effect after the convention, with the Colonel saving his face by mildly protesting to the end that his views are unchanged but that he is unwilling to dictate.

At the end of a four hour conference, which Senator Flinn declared he had very much enjoyed, he had this to say:

"I still prefer our plan because it makes it certain that all the thirty-eight votes of Pennsylvania will be cast for Roosevelt, but we will be content with running the independent ticket if the Colonel wants it. I told him we would do nothing in Pennsylvania which he didn't want. The question [illegible] the Chicago convention for ultimate decision."

On his side the Colonel said Mr. Flinn had come to confer with him over the Pennsylvania situation.

"After he talked to me," he said, "we agreed that he should go back to talk it over with the people in his State, and we would take it up again after the convention. I have merely tried to express my own views; I will not dictate."

All further efforts to secure from Col. Roosevelt his opinion as to how the Pennsylvania muddle would finally be cleared up were waved aside with a grin. Mr. Flinn proved more communicative and thus described the situation:

"The question is whether we will have joint electors who will be bound in the electoral college to support the candidate getting the highest vote or whether we will have only the straight third party ticket. My associates and myself favor the first plan. But whatever is done, a complete third party ticket will be put in the field. And I have no doubt whatever but that we will carry the State."

Victory over the Democrats was made doubly sure, according to Mr. Flinn, by following his idea and he cited the 750,000 votes polled for President Taft, as against the 450,000 received by Bryan.

"What is Col. Roosevelt's idea?" Mr. Flinn was asked.

"He has no fixed idea," was the response. "He prefers a straight third party ticket, but under any electoral arrangement he will beat President Taft."

As for Mr. Flinn, he has a very fixed idea, which he set forth very vigorously to the Colonel, and he departed with the air of a man who has been successful. He pointed out to the ex-President that as it now stood the Pennsylvania Republican electoral ticket included three classes: The Taft men, the out and out Roosevelt men and the Roosevelt men who were unwilling to remain upon a ticket which indorsed Taft and Sherman.

To this latter class it seemed dishonorable for them to run on a ticket which bears at its head the regular Republican nominee when it is their intention to support his opponent. They consider this in the light of a deception practised on the unsuspecting voter and they recoil from the idea. As Mr. Flinn put it:

"A very odd condition of affairs exists in Pennsylvania. There has never been a case parallel to it. I have been advised that none of our electors can be removed from the Republican ticket by process of law, and it is true that the Roosevelt forces control the Republican State committee and the unadjourned Republican convention. However, nobody wants to do anything wrong."

Mr. Flinn's happy suggestion—if the Colonel eventually withdraws his objections, as now seems likely—would seem to solve the problem.

All of the thirty electors, more or less, feel justified in remaining upon the Republican ticket if they make public announcement of the fact that their support of President Taft is only contingent upon the popular vote which he receives. And thus also Mr. Flinn is enabled to remain at the head of the Republican organization, although he is running at the same time the practically duplicate Progressive ticket which he expects to see win.

It was made clear to-day that Mr. Flinn's difficulty is almost entirely due to the Pennsylvania State law which stipulates that the name of the Presidential nominee of the national convention shall be placed at the head of the Republican ticket in that State.

If his electors insist either from principle or the force of public opinion that they will withdraw from a ticket upon which they would appear to be supporting President Taft when in reality they are not, the Pennsylvania boss would likewise have to break with the regulars and fall back upon the progressive ticket. This would mean a relinquishment of Republican control into the hands of his old enemy Senator Penrose.

The plan to retain a hold on the Republican ticket by means of the public stipulation of the real intention of the electors means everything to Mr. Flinn.

In the face of his lieutenant's predicament the Colonel's rapidly weakening opposition is based upon his extreme reluctance to wear even the appearance of sanctioning President Taft's nomination by the proposed compromise. An additional objection lies in his fear that the Democratic progressive support will be alienated by his identification with the Republican organization.

However, the general belief here is that Col. Roosevelt will not suffer these views to work to the political sacrifice of Mr. Flinn, who assures him that third party success in Pennsylvania is as good as won. The expectation is that as a result of to-day's meeting the Roosevelt men on the Republican electoral ticket will stick, and that these men will be renamed on the progressive ticket. On this ticket the Taft electors will be replaced by new Roosevelt men.

WANT WALDORF FOR GOVERNOR.

New Rochelle Friends Start Boom for Their Mayor.

NEW ROCHELLE, N. Y., July 22.—The friends of Frederick H. Waldorf, Mayor of New Rochelle, are working quietly to secure for him the Democratic nomination for Governor. Other candidates are either allied with Tammany or Senator Roosevelt's "Empire State" Democracy or the Democratic League, while he has purposely avoided taking sides. He was one of the Woodrow Wilson advocates in the New York delegation to the Baltimore convention. At Baltimore he became acquainted with the State leaders.

Mayor Waldorf has accepted an invitation to call on Gov. Wilson next Thursday. He is a former commodore of the New Rochelle Yacht Club and in the grocery business at 19 Jay street, Manhattan.

BULL MOOSE QUIT COMMITTEE.

Jefferson County Republicans Have Three Vacancies to Fill.

WATERTOWN, N. Y., July 22.—Two Republican county committeemen have already resigned and joined the Bull Moose party and the third, who has been secretary of the committee for several years, has resigned and, it is understood, will become affiliated with the new party.

Archer C. Ryder, chairman of the Jefferson county committee, has been a Roosevelt man from the start and after the nomination of President Taft announced that he was still a progressive. Some of the Taft men said they would demand his resignation.

The three who have resigned are Harold B. Johnson, city editor of the *Times*; William H. Butterworth, former president of the common council, and Attorney Henry M. Brown, the secretary.

STONE DECLARES ONLY FOUR STATES DOUBTFUL

Missouri Senator Names New York, Connecticut, Wisconsin and Ohio.

[illegible] communicado to-night and for the next three days at least he will live, sleep and eat with his speech of acceptance. Finding that it would be impossible for him to do the work at the Little White House he climbed into an automobile at 4 o'clock this afternoon and is now at the home of a friend near by.

The house has been turned over to him; there are no guests, there will be no interruptions until he emerges with the matter settled in his mind. It will be useless for statesmen or party leaders to journey to Sea Girt until after Friday to tell him how to win and perhaps then Ethey will be disappointed.

William F. McCombs, his family and only a few others know where the Governor is to do the work, and an outsider could not extract the information from them with a jimmy.

The Governor saw only three important visitors to-day with whom he talked politics. Congressman Robert Henry of Texas came in the early afternoon to finish the talk he began Saturday, and a little later the two Democratic Senators from Missouri, William J. Stone and James A. Reed, dropped off a Washington train and they talked until the automobile was ready to start.

It was the first meeting between the Governor and Senator Reed, who is a member of the executive committee. He is a businesslike statesman and with his colleague he jumped into practical politics at once. The Missouri men had taken a poll of the Senate on general conditions throughout the country and they reported that every Democratic Senator believes firmly that not only will the party hold all they have in the Senate this year but will come through with a majority. Their report was as gratifying to the Democratic nominee as that of Mr. Underwood at Trenton last Tuesday. After the conference was over Senator Stone said:

"We went over campaign plans, of course, reporting particularly on the situation in doubtful States. I told the Governor that I believe that he will have 230 electoral votes without counting a single doubtful State. To my mind the only doubtful States this year are New York, Connecticut, Wisconsin and Ohio."

"Yes," interrupted Senator Reed, "you must remember too that Senator Stone is a pessimist. When he says a State is doubtful a great many of us decide that there is no doubt about it whatsoever."

Senator Reed declared this was going to be a great campaign and that so far as Missouri was concerned there would be no doubt of the result. Missouri will go for Wilson. Champ Clark will do a lot of stumping in that State and in other parts of the country.

"Champ Clark speak?" exclaimed the man who nominated him. "Let me tell you, a Missouri Democrat is one of those fellows that goes to work right after the convention, and Champ Clark is a Missouri Democrat."

Senator Reed said that he had not yet attended any executive committee meetings and did not know exactly what part he would play. He was proud to have the privilege of serving in the cause and he would do whatever was asked of him.

Early in the day the Governor had a visitor in the person of Geza Kende, editor of a Hungarian paper in New York city. Mr. Kende said his readers were much interested in the Governor's views on immigration. They had read about his reference to immigrants from certain parts of Europe, particularly the phrase "the lower and meaner sort of people." The Governor went all over that on Saturday with Representative Sabath of Illinois, but he sat down at once to-day and dictated this to Mr. Kende:

"I believe in the reasonable restriction of immigration, but not in any restriction which will exclude from the country honest and industrious persons who are seeking what America has always offered, an asylum for those who seek a free field. The whole question is a very difficult one, but I think it can be solved with justice and generosity. Any one who has the least knowledge of Hungarian history must feel that stock to have proved itself for liberty and opportunity."

Mr. Kende departed very well satisfied.

Word came from Josephus Daniels to-day that he, Walter Page and William Bayard Hale are getting ready to write the Democratic text book and that the publication in this campaign will be worth while. The book will as usual give two sides from a Democratic viewpoint. It will review the Republican administration of the last four years, paying particular attention to the tariff and President Taft's attitude on the same, jump back four years earlier and do the same for President Roosevelt, who will get about as much space as the President, and then set forth the platform, Gov. Wilson's letter of acceptance and his tariff speeches before and after the nomination. There will be statistics and oratory material for all classes of spellbinders, from the heart to heart man on the corner to the welkin ringer in the town hall.

As the Governor cannot go to Trenton to-morrow Joseph P. Tumulty, his private secretary, will go and announce some appointments. The most interesting of them will be that of a District Judge in Newark. There has been a big fight about this and leaders of both parties have been besieging the Governor for weeks. He would not mention the name of the lucky man to-day.

The Wall Street edition of THE EVENING SUN contains all the financial news and the stock and bond quotations to the close of the market. The closing quotations, including the "bid and asked" prices, with additional news matter, are contained also in the night and final editions of THE EVENING SUN.—Adv.

STANLEY'S ANTI-TRUST BILL IS A RADICAL ONE

Continued from First Page.

instance of the Government, not even if the petitioners were a State.

Section 11 is designed to give individuals or a State the opportunity to intervene in a Government suit. The committee's report contends that such a provision will meet the obstacles to justice presented in the tobacco trust case where the independents were not allowed to intervene and hence had no right to appeal to the Supreme Court of the United States.

In regard to section 12 the Stanley committee says:

It seems clear that if it appears to the court that the defendants have combined to restrain trade they ought to have the burden of proof to show that the restraint is reasonable; that is, is consistent with the public interests. This provision is an analogy to the amendment made to the interstate commerce act in 1910 by which the burden of proof is on the carrier to show that the increased rate is reasonable. If the restraint of trade can be justified the facts showing justification must be readily available to the combination. This change in the burden of proof applies only to civil suits. It has no reference to criminal proceedings.

The committee says that under section 13 it has attempted to select various practices commonly pursued by trusts which have proved particularly oppressive and to set these up as rendering the combination conclusively unreasonable and therefore illegal.

"It seems best," says the committee, "to adopt this form of securing prohibition in order to leave intact the present Sherman law as interpreted by the Supreme Court in the Standard Oil and Tobacco cases. Practically every one of the practices specifically enumerated as being conclusively unreasonable has been viewed in one or more of the trust cases as strong evidence of illegality and has been subjected to general public condemnation."

Here are the practices, any one of which, if the Stanley committee has its way, will constitute presumptive evidence that [illegible] the combination is unreasonable:

If such person does business directly or indirectly under any name other than his own or that of the partnership of which he is a member, or any corporation does business under any name other than its own corporate name, or if there be any concealment or misrepresentation as to the ownership or control of such business, or if there be any misrepresentation as to the identity of the manufacturer, producer or vender of any article sold.

(b) As the vender of any article spies upon the business of any competitor or secures information concerning his business, either through bribery of an agent or employee of such competitor, or of any State or Federal official, or by any illegal means whatsoever secured information concerning the competitor's business.

(c) As the vender of any article attempts to prevent or restrain competition by supplying or offering to supply such article without charge or at a price at or below cost of production and distribution.

(d) As the vender of any article with a view to preventing competition with the same fixes upon some raw or manufactured material which he controls and which is required for producing a competitive article an unreasonably high price.

(e) As the vender of any article attempts to prevent or restrain competition by any contract or arrangement under which he shall not sell any article in which he deals to certain person or classes of persons or to those doing business within certain districts or territories.

(f) As the vender of any article attempts to prevent or restrain competition by supplying or offering to supply to any person doing business in any particular territory articles sold by him upon terms or conditions in any respect more favorable than are accorded by him to his other customers.

(g) As the vender of any article attempts to prevent or restrain competition either by refusing to supply to any other person requiring the same any article sold or by consenting to supply the same only upon terms or conditions in some respects less favorable than are accorded to any other person.

(h) As the vender of any article attempts to prevent or restrain competition by making in the price or other terms of any such sale, any discrimination based upon whether the vendee purchases from him articles of a particular quantity or aggregate price.

(i) As the vender of any article attempts to prevent or restrain in any manner, either directly or indirectly, any vendee from purchasing such article or any other article from some other person or using such article or any other article obtained from some other person, whether such attempt be made (first) by an agreement, express or implied, against such purchase or (second) be made by a condition in the sale against such purchase or (third) be made by imposing any restriction upon the use of the article so sold or (fourth) be made by making in the price any discrimination based upon whether the vendee purchases any article made or sold by some other persons or (fifth) be made in any manner except the ordinary solicitation of trade.

(j) As the vender of any article attempts to prevent or restrain competition by the use of any unfair or oppressive methods of competition.

The foregoing enumerations of acts, conduct, methods and devices, which it is herein declared shall each conclusively be deemed unreasonable, shall not include and shall not be construed to include or as intended to exclude any other acts, conduct, methods or devices which are or may be unreasonable.

The provisions of clause i shall not apply to the mere appointment of sole agents to sell any article.

The committee says in general in regard to its long enumeration of acts which constitute unreasonable restraint of trade:

This enumeration will serve the purpose of removing to a large extent that uncertainty in the Sherman law which was so widely complained of by business men after the decision of the Supreme Court in the Standard Oil cases declared that only combinations unreasonably in restraint of trade were prohibited. By the specifications above referred to the act makes clear what would otherwise be involved in doubt, and if this provision is enacted few will have difficulty in determining what the law prohibits them from doing.

Section 14 of the bill also is a drastic one. It holds that the mere fact that an accused corporation controls 30 per cent. of the output of its product shall be presumptive evidence in the event of a combination in restraint of trade being shown that such restraint was unreasonable. This important section reads:

Section 14. Whenever in any suit it shall appear that any combination was entered into, existed or exists which was or is in restraint of trade there shall at once arise a rebuttable presumption that such restraint was or is unreasonable if in the business in connection with which said restraint existed or exists the person engaged in such combinations controlled or controls, or is a member of any corporation or association which controlled or controls, at the time such restraint is alleged to have existed or to exist more than 30 per cent. in value of the total quantity sold in the United States, or more than 30 per cent. in value of the total quantity sold in the part of the United States to which the business of such person, corporation or association extends, of any article dealt in by such person the trade in which is affected by such restraint.

The committee in commenting on this section says that while the control of a definite proportion of the total trade should not be conclusive as to the illegality of the combination, it does seem proper to create a presumption of unreasonableness where the combination controls a large fraction of the total trade of the country.

"If a combination is so large," says the committee, "that it controls, as the steel trust does, half of the crude steel products of the country there ought to be a legal presumption that that combination is unreasonably in restraint of trade, and it seems that such a presumption ought to arise even if the amount is 30 per cent. of the total production of the country. It will always be open to the combination to overcome that presumption."

Sections 15 and 16 of the proposed new law are designed to make it easier for persons who have suffered injury from unreasonable restraints of trade to recover from the offending corporations.

Section 15 provides that when a decree has been entered against a company found guilty under the Sherman law such judgment shall constitute conclusive evidence of the same facts and be conclusive as to the same issues of law in favor of any other person in any other proceeding brought under or involving the prohibitions of this act."

The committee points out that the Standard Oil and tobacco trust acquired hundreds of millions of dollars from the public through illegal practices, involving the destruction of many independent concerns.

"Scarcely a competitor of these companies that fell a victim to these illegal practices," the committee says, "has received any compensation, although the Supreme Court unanimously held that the trusts were conducted in violation of the law. The judicial establishment of the illegality of a combination ought to be followed first, as a matter of course, by a redress to those injured and by the wrongdoer surrendering the profits illegally obtained."

The present law provides for a recovery, but few have been able to take advantage of it because they have been obliged to prove the case against the offending corporations all over again.

Section 18 of the bill provides for the temporary protection of these whose business existence is threatened through monopolization.

This section provides that whenever the court shall find in preliminary hearing that there is reason to believe that any combination has been entered into and that no adequate opportunity exists immediately to obtain a substitute for the article monopolized, the court shall have the power to issue an order to secure to the purchasers or users of such article full opportunity to secure the same on reasonable compensation to be fixed by the court. This order is to hold until some adequate substitute for the monopolized article can be provided.

This section hits particularly at the United Shoe Machinery Company, which controls the shoemaking machinery of the country.

Section 19 of the bill gives the courts broad powers to partition corporations held to be illegal under the law. This is regarded as one of the most radical sections of the bill. It reads:

Section 19—Whenever in any proceeding under section 4 of this act any combination has been adjudged illegal, the court before which such proceedings are pending shall have jurisdiction:

(a) To partition any property owned under any contract or by any combination mentioned in section 1 and section 2 of this act in severalty among the owners thereof, or groups of owners thereof, and if the owners include one or more corporations among the several stockholders thereof, or among groups of the several stockholders thereof, all in proportion to their respective interests;

(b) If sales of such property are necessary or proper, either to pay debts or incumbrances thereon, or to recreate conditions in harmony with the law, to sell such property as a whole or in parcels, and the court may forbid the said owners, and if the said owners include one or more corporations, the stockholders thereof, from purchasing at such sales, and may prescribe the conditions on which any purchase may be made by any person whatsoever;

(c) To make such restraining orders or prohibitions as may be necessary and proper to recreate conditions in harmony with the law, including prohibitions or any acts, conduct, methods or devices which are enumerated herein as indicating unreasonable restraint.

(d) To declare void as against the defendants or any of them, any contract entered into as a part of the combination found to be in restraint of trade.

The relief granted in this section shall be, in addition to and not exclusive of other relief permitted by this act, or otherwise by law.

Commenting on this section of the bill the committee says:

The provisions of this section are designed to make clear the power of the court to bring about a real dissolution of the trusts and to avoid such shams as the alleged disintegration in the tobacco trust and Standard Oil cases. That disintegration shows clearly how inadequate the present legal machinery as administered by the court is, although the powers were doubtless broader than the Circuit Judges who passed upon the Tobacco case assumed.

The tobacco trust was declared to be illegal on admitted facts. It was so declared by unanimous court. The plan of disintegration adopted divided most of the properties among three corporations, the three corporations to be owned by the same persons in the same proportions and nearly controlled by the same people. The independents contended that the trust's property should be distributed among different sets of individuals and that provision should be made so that the segrements into which the trust was divided should be separately owned. The Circuit Judges appeared to think that they had no power to require such an absolute separation of the interests of those whose property had been used in an unlawful combination. Clause a is designed to grant the power to make a complete separation if such power does not already exist, and if it does exist to intimate that the exercise of such power—which is essential to a complete disintegration and to the restoration of competitive conditions—may appropriately be exercised.

The Circuit Judges in the Tobacco case also assumed apparently that unless they could secure the consent of the defendants to the plan of disintegration the Court had neither authority nor power to carry out any plan of adjustment; that is, that they must secure in some form the consent of the holders in bonds and stock of the defendant company. The court assumed that in the absence of such consent the only resource would be to sell the property at receiver's sale and that at such a sale the defendants or any other person could buy the property without restriction.

Clause (b) is designed to make it clear that the Court has power on final decree to sell the property, and in selling it to prescribe the conditions upon which the purchaser shall hold it, including among other things provision forbidding the defendants themselves, or if the defendants are a corporation, the stockholders thereof, from purchasing at such sale.

Clause (c) is likewise designed to expressly grant or confirm to the Court the powers which the Circuit Judges in the Tobacco case failed to recognize or declined to exercise, namely, the power to prohibit in the future on behalf of the defendants acts which would tend to prevent the restoration or maintenance of competitive conditions.

Clause (d) is designed to make clear the power in the court in a Government suit to give full relief. It frequently happens that as a part of the illegal operations of the trusts many contracts are entered into which are actually illegal. The decree on behalf of the Government would under the present law leave the legal position of those contracts unsettled. The other parties to such contracts, persons who are frequently in intent wholly innocent and have entered into the contract practically as a condition of engaging in business, ought to be able to have a judicial declaration that they are relieved from obligations of the contract; and it is also often important to the obtaining of full relief that the contracts themselves should be declared void. For instance, question arises as to the legality of the existing leases of the United Shoe Machinery Company, the leases which have been the main instrument of the monopoly. When the Government reaches a decree in the pending suit the court ought to have the power to declare that these leases are invalid. In other words that the defendants have no right to enforce them, which would put the lessees in a position of disregarding the leases if they saw fit. Clause (d) therefore expressly confers upon the court the power to declare, as against defendants themselves, that such contracts are in restraint of trade and void.

The bill also prohibits persons engaged in the manufacture of steel rails or other steel railroad equipment from becoming directors or officers of railroads. A fine of $100 a day for every day during which such person acts as a director, officer or employee of a railroad is provided, or imprisonment for such period as the court may designate, not exceeding one year, or both fine and imprisonment.

This bill is aimed, of course, at the directors of the United States Steel Corporation who are members of the governing boards of railroads.

Another bill contains the radical provision that it shall be unlawful for any person, company or corporation engaged in mining or manufacturing to own in whole or part any railroad or other transportation line engaged in interstate commerce. This bill goes further and makes it unlawful for any company or individual or corporation which owns a majority of the capital stock of any railroad or transportation company from shipping over such line any article produced by it in interstate commerce.

B. Altman & Co.

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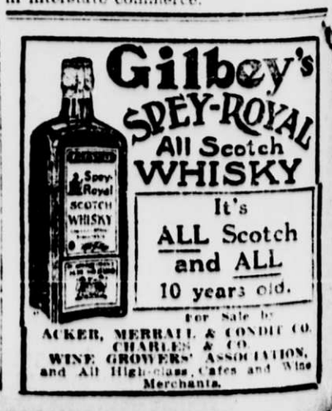
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