

WICKERSHAM SCORES ANOTHER WILSON BILL

Trade Commission Measure Takes Away Right of Privacy, He Says.

DOUBTS ITS VALIDITY

Would Establish a System of Espionage Upon All Corporate Business.

In a letter to THE SUN, George W. Wickersham, ex-Attorney-General, attacks the Trade Commission Bill, before the Senate Committee on Interstate Commerce. He says that it is not founded on the Constitution.

President Wilson has said that the purpose of the trade commission is to "smell around all the time in search of rats."

Mr. Wickersham asserts that the bill would establish an unprecedented system of espionage upon all corporate business. His letter follows:

By GEORGE W. WICKERSHAM.

It is announced from Washington that the Senate Committee on Interstate Commerce yesterday decided to send out copies of the trade commission bill to experts, and invite suggestion.

It is a wise decision, for in its present form the bill is not only of extremely doubtful constitutionality, but it proposes an unprecedented authority for general rummaging of private books and papers, without any corresponding protection to the citizen for the surrender of his right of privacy.

But it is also announced that the bill will be read in public hearings by the Senate committee.

It, therefore, becomes important that the public should clearly understand precisely what this bill proposes to accomplish, in order that intelligent criticism of its provisions should be stimulated and brought to bear on the legislators engaged in its consideration.

President Wilson has stated the purpose of the trade commission to be created under this bill as "smelling around all the time in search of rats."

Called Tentative Drafts. The bill itself was introduced into each house of Congress on the 23d instant, and in a statement given out at the same time by Senator Newlands, and printed in the Congressional Record, he characterizes the bill as "distinctly progressive," says that it was drafted in an effort to frame it in harmony with the President's views, and that, although it represents at present the best of the information furnished to the President by the House and Senate, and of the country, is invoked.

This morning it is announced that the bill will be amended to prevent disclosure of such confidential information as lists of customers and trade processes. This little slip to the scarcely awakened public sentiment respecting the bill should not prevent further inquiry into its nature.

Washington press dispatches state that the President has explained to Senators and others interested in obtaining his views as to the exact purposes he had in mind for the proposed commission, that "it is not to be an administrative body, but a public body and information body, so far as it may act independently."

No Constitutional Base. The constitutional foundation upon which has been rested the validity of legislation establishing such bodies as the Interstate Commerce Commission, the Tea Commission and the like, is this abandoned in this case. The authority of the President to engage in such bodies has been sustained in the Supreme Court upon the ground that Congress may establish and entrust to an administrative body, a general power of making inquiry into the private affairs of the citizen.

Applies to Corporations. This principle in a later case was declared by the Supreme Court to be applicable to corporations, which, in common with individual citizens, were entitled under the Fourteenth Amendment to protection against unreasonable searches and seizures.

The court said: "A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such a body. Its property cannot be taken without compensation. It can only be proceeded against by the process of law, and is protected under the Fourteenth Amendment against unlawful discrimination. Corporations, therefore, are a necessary feature of modern business activity, and their aggregated capital has become the source of nearly all great enterprises.

The existing law empowers and directs the Commissioner of Corporations, under the supervision of the Secretary of Commerce, to make investigation into the organization, conduct and management of the business of any corporation engaged in commerce among the States and with foreign nations, excepting common carriers, and to gather such information and data as will enable the President of the United States to make recommendations to Congress of legislation for the regulation of such commerce and to report such data to the President from time to time as he shall require. This information is only to be made public as the President may direct.

Transfers Broad Powers. The trade commission bill transfers to the new commission all the powers and duties now devolved on the Commissioner of Corporations, but goes much further by requiring all corporations engaged in commerce among the States or with foreign nations, excepting common carriers, from time to time to furnish to the commission such information, statements and records of their organization, business, financial condition, conduct, management and relation to other companies at such times, to such degree and extent and in such form as may be prescribed by the commission."

It further declares that the commission or its agents at all reasonable times, and without notice, may examine the accounts, minutes, books and papers of such corporations, including the records of any of their executive or other committees; that the information so obtained shall be public records, and the commission shall from time to time make

public such information in such form and to such extent as it may deem necessary. No such sweeping inquisitorial power has this ever been conferred by this Government upon any official or commission.

The interstate commerce law requires that of transportation between the States to be reasonable and non-discriminatory and, besides, that the commission has power to enforce the act and to ascertain the facts with respect to compliance or failure to comply with it, and empowers the commission for the purposes of carrying out its duties to receive reports from carriers, and to make investigations into the acts and practices of the carriers and their books and accounts; but even powers adapted to those ends are not of a general character of those sought to be conferred upon the trade commission.

Supreme Court's Views. In construing the extent of the power granted to the Interstate Commerce Commission the Supreme Court held that Congress had not by the commerce act attempted to do more than to regulate the interstate business of common carriers, and that the primary purpose for which the commission was established was to enforce the regulations which Congress had imposed; that the main purpose of the act was to regulate the interstate business of carriers, and the secondary purpose for which the commission was established was to enforce the regulations so enacted, and that these were the only purposes for which the commission might exact evidence. The court said:

"The power to require testimony is limited, as it usually is in English speaking countries at least, to the only cases where the sacrifice of privacy is necessary—those where the investigation concerns a specific breach of the law."

A proposed statute, which is avowed by its framers as having no such specific purpose, but merely to create an official body, which "will be smelling around all the time in search of rats" in American legislation. It is the business of grand juries to investigate for the purpose of determining whether or not a crime has been committed, and the power of grand juries to compel the production before them of all books and papers and the testimony of all the witnesses bearing upon the question whether or not a given crime has been committed was amply established in the case of Hale vs. Henkle (201 U. S. 43), growing out of the original investigation of the tobacco trust.

Limit to Power. Even in that case the court, while affirming the power of State and national governments over corporations to ascertain whether their franchises had been exercised with a due regard to their laws, took pains to say that it was not the business of the general government to have a general visitatorial power over State corporations, and that it did not wish to be understood as holding that a corporation is not entitled to demand unreasonable searches and seizures. The court expressed the opinion that an order for the production of books and papers might constitute an unreasonable search and seizure, within the meaning of the Fourth Amendment, and that the application of the test of reasonableness it held that the subpoena duces tecum which had been issued by the District Attorney in the case under investigation was far beyond its reasonable limits.

Commenting on this subpoena Mr. Justice Brandeis said:

"If the writ had required the production of the books, papers and documents found in the office of the MacAndrews & Forbes Company, it would scarcely be more universal in its operation or more completely put at rest the business of the company. Indeed it is difficult to say how its business could be carried on after it had been denied of this mass of material, which is not shown to be necessary in the prosecution of the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpoena."

Far Beyond Limitations. If these limitations are properly placed upon the production of books and papers upon a subpoena duces tecum, and a Grand Jury what shall be said of a bill which proposes to require all corporations of any size, wherever situated and whatever their business, that they should engage in interstate or foreign commerce (except carriers), at any time on the request of a "smelling commission" to produce or open to examination in general all their records, accounts, minutes, books or papers, and also at any time to submit itself to a formal investigation by that commission, determining whether or not it is organized or has established such relations with other individuals or corporations, or is conducting its business in whole or in part in violation of the provisions of the anti-trust law, or of any existing or future amendments to that law?

Such an examination, instead of being surrounded by the protection which the secrecy of a Grand Jury proceedings affords, would expose the corporation to the peril of having all of the documents and information furnished in pursuance of the omnibus search and seizure, in whatever form and to such extent as the commission may deem necessary. Did the President have in mind a commission of this character when in his message to Congress he said "I earnestly desire the measure of a sweeping or novel change are necessary?"

One Affirmative Function. So far as concerns any function besides that of "smelling around" in order to disclose to private affairs of all corporations that happen to engage in interstate commerce, the powers of this commission are singularly limited. It has but one affirmative function to perform, namely in case a court of equity at any stage of a litigation brought under the Sherman act shall refer to it some aspect of the litigation, and make findings of fact and recommendations to the court. It may also serve as an aid to the Department of Justice. For the rest it would be a sort of incorporated national detective agency.

An administrative commission might well be made a useful arm of Government. The suggestion which has been made in some quarters that such a commission should be empowered to examine and approve the legality of proposed contracts, consolidations or mergers is probably inadvisable, because such a conclusive approval of transactions the full effect of which could not be known at their inception; but certainly it would be reasonable to provide that where proposed contracts, combinations and consolidations or mergers are submitted by the parties to such a commission, such parties shall be exempt from criminal prosecution in respect of the same until the commission shall find such transactions to be in violation of a reasonable time a notice of such finding to cancel or terminate the objectionable agreements, etc.

Such a provision would remove from the law practically the only remaining uncertainty which troubles the mind of business men or their counsel, and would remove entirely all excuse for endeavoring to define the prohibitions of the anti-trust law by speciously declaring to be illegal particular methods and practices which have been resorted to in the past to accomplish violations of the act. To fail to give even this limited affirmative remedy deprives the bill of anything but a nuisance value to any person or interest, except in so far as the proposed commission may perform the function, which is to provide that where proposed contracts, combinations and consolidations or mergers are submitted by the parties to such a commission, such parties shall be exempt from criminal prosecution in respect of the same until the commission shall find such transactions to be in violation of a reasonable time a notice of such finding to cancel or terminate the objectionable agreements, etc.

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BANKERS DIVIDED ON STATE SUPERVISION

Morgan Representative Says Customers of His Firm Do Not Need It.

GIMBELS FAVOR PLAN

Cashier of Henry Siegel & Co. Flatly Contradicts Vogel's Testimony.

W. H. Porter of J. P. Morgan & Co. told the Senate Banking Committee, investigating private banks, yesterday that in his opinion supervision of the large banking houses in the Wall Street district was neither desirable nor desired. The class of people who keep money on deposit with J. P. Morgan & Co. and similar institutions know exactly what they are doing and do not seek to bank their savings.

Jacob Gimbel of Gimbel Bros., who conducts a private bank in connection with their department store, testified that his firm welcomed any kind of supervision at any time. Mr. Gimbel said his firm has \$550,000 on deposit and that it is so invested that the depositors can be paid off dollar for dollar at any time. None of it is lent to the mercantile establishment.

The testimony of Jacob Markel of Markel Bros. completed the testimony of private bankers. Mr. Markel's bank is not exempt from supervision under the present law and he spoke of it as a hardship.

Has Check Accounts. Mr. Gimbel was the first witness. He testified that interest is allowed on all deposits over a month in the Gimbel private bank, and it is paid semi-annually, in January and July. Depositors may pass checks and draw withdrawals by checks. "It is a regular banking business," he said.

"How do you invest your deposits?" asked Daniel P. Hays for the committee. "We invest the money in safe securities," was the answer, "and deposit the cash in the Knickerbocker-Columbia Trust Company, the Fifth Avenue Trust Company and the Franklin Bank, Philadelphia. Everything is in such shape that it is possible for us to pay every depositor one hundred cents on the dollar at any time."

Mr. Gimbel, closing, said: "I am strongly in favor of having private banks placed under the control of the State Superintendent of Banking."

Mr. Porter declared that he did not think it right to class firms like J. P. Morgan & Co. with banks which do a savings business.

Business of Morgan Firm. "We do a general banking and loan business," he said, "deal in foreign exchange, issue letters of credit and sell railroad and other bonds. We have not done much underwriting in recent years. The purchase and sale of railroad bonds is our principal business."

"There is a very large foreign clientele," Mr. Porter said, "and the books of the firm are the same as the books of any incorporated bank. The firm accepts some deposits and pays 2 per cent. on ordinary deposits and 3 per cent. on those subject to ninety days notice of withdrawal."

Mr. Porter said he could not tell how large the deposits are now. It was admitted before the Pujol committee that sometimes the deposits exceed \$100,000,000.

"What are your minimum deposits?" he was asked. "I consider that few deposits, if any, fell below \$5,000 or \$10,000. The firm could not afford to handle less than \$5,000. Firms like ours are not doing business with the class of depositors who are seeking to protect their money."

"Because a few dishonest men become private bankers should not make the real private bankers liable to legislation that would hamper the proper conduct of good business?"

"What do you mean by real bankers?" asked Mr. Hays. "I speak of firms like J. P. Morgan & Co., Kuhn, Loeb & Co., Seligman & Co., Brown Bros. and a dozen more like them."

Favors Proposed Plan. "I consider that the plan already discussed will be effective," he added, "that is, placing private bankers who pay interest on deposits less than \$1,000 under the same supervision as State banks. I do not think they should be made to comply with the same regulations, however, but they should be under the supervision of the Superintendent of Banking."

F. L. Champion, cashier of the bank of Henry Siegel & Co., said the first he knew of collateral to secure the loans of the Siegel enterprise was about three weeks before the failure, when Frank E. Vogel handed him a sealed envelope. He opened this envelope a few days later and found statements that the \$5,000 shares of Siegel Stores Corporation common were security for all the claims. This was a direct contradiction of Vogel's testimony before Judge Holt, when he declared the security had always been up.

Champion also swore that by orders of Vogel, Henry Siegel never received a bank statement. Why this he did not know. Champion also testified that their excess deposits went to the stores.

The committee adjourned without date.

Agricultural Corporation Elects. At the annual meeting of the International Agricultural Corporation the following were elected officers of the company: President, S. B. Fleming; vice-president, Albert French; vice-president and treasurer, John J. Watson, Jr.; secretary and assistant treasurer, J. R. Floyd; assistant treasurer, R. M. Patterson, and assistant secretary, F. E. Ward.

STOLLWERCKS MUST PAY \$90,638

Son of German Chocolate Maker Wins Suit for Notes.

A jury before Supreme Court Justice Whitaker yesterday gave a verdict of \$90,638 in favor of Albert N. Stollwerck against Stollwerck Bros., the chocolate manufacturing firm of Cologne, Germany. It was alleged in the suit that the three wealthy brothers in the Stollwerck firm, Heinrich, Carl and Ludwig, tried for three years to prevent Albert N. Stollwerck, son of Heinrich, from succeeding in business here after he had left them because they refused to countenance American methods in their business.

Albert Stollwerck came here in 1904, when Stollwerck Bros. built a plant at Stamford, Conn., at a cost of \$500,000. Albert ran the business for four years, putting \$117,300 into the business. In 1908 for A. G. Williams, who had been in charge of Albert and his uncles induced him to get out.

In payment for Albert's interest the firm gave him \$75,000 in notes of \$12,500 each, agreed to pay him \$42,300 more in cash, and also to give him what appeared to be due from the audit of the books. The brothers heard that Albert was seeking to ally himself with another chocolate concern and refused to pay the \$12,500 notes which had been discounted by the Chatham National Bank.

The bank sued on two of the notes and got an attachment against all the Stollwerck slot machines in the subway and on the elevated railroad platforms, which were taking in \$2,000 a day. Then the brothers agreed to pay the notes. Later they disposed of the slot machine rights.

MRS. FOLSOM ALONE AGAIN. Woman Divorced in New York Deserts Her Husband.

SAN FRANCISCO, Jan. 29.—Mrs. Florence Bluxhorne Folsom, who was divorced by her husband, Charles Dwight Folsom, a New York lawyer, three months ago, has been living since last November at 925 Fifth street, Chico, in the northern part of the State.

Justice Gierke in the New York Supreme Court, granted Mrs. Folsom's application for a divorce after the production of a letter, written by Mrs. Folsom to her husband, in which she declared her love for another man, Nevada ranchman, who, she said, had treated her with "crushing brutality." She added that she had "suffered hell at his hands," referring to Williams.

Mrs. Folsom and Williams have now parted according to advices from Chico. Mrs. Folsom in a recent letter says, "My life is over now. I am done and ended."

"For the rest of my life I must stand in the streets of the world, looking in from the outside through the bright panes of the world's homes. I shall be a stranger, an outcast, an exile, and for what?"

"Because I too greatly desired to give, and to receive, love."

The letter continues, describing her life of the last year: "From love to hate. From plenty to starvation. From blessedness to the worst of the outside through the bright panes of the world's homes. I shall be a stranger, an outcast, an exile, and for what?"

Mrs. Folsom does not say why she and Williams parted.

TOMBS DOCTOR UNDER FIRE. Commissioner of Corrections Katherine B. Davis said yesterday that she would investigate the published story that Dr. Perry Lichtenstein, resident physician of the Tombs, had collected data that had been used in the defence of Hans Schmidt, on trial for murder, and which is said to have been kept from the District Attorney.

In the trial of Schmidt two alienists were called by the defence. They were Dr. Morris S. Gregory and Dr. Smith E. Jeffery. Both testified that in their opinion Schmidt was suffering from dementia praecox.

The case will continue to-day.

C. D. H. Kellogg Ends His Life. BRIDGEPORT, Conn., Jan. 29.—Charles D. H. Kellogg, a director and auditor of the Danbury Racing and Fair Association, committed suicide early this morning by swallowing strychnine in his office at the Drouve Metal Cornice Company where he worked as a bookkeeper. He was the son of Barzilla Kellogg, founder of the Danbury National Bank and is survived by his wife and three sons, Charles D. H. Jr., Hanford Kellogg and Stanley T. Kellogg, former champion motorcycle rider.

HARRISON IS PICKED TO FIGHT CHURCHILL

Board of Education Insurgents Select Candidate for Presidency.

Members of the Board of Education who are opposed to the reelection of Thomas W. Churchill as president issued a statement yesterday attacking Mr. Churchill's administration. The insurgents, thirteen of whom sign the statement, will put up Robert L. Harrison, one of their number, to oppose Mr. Churchill at the election next Monday.

Those who sign the statement are: Nicholas J. Barrett, Reba C. Bamberger, Martha L. Draper, Abraham Flexner, Robert L. Harrison, Olivia Leventritt, John Martin, Alice Lee Post, Cornelius J. Sullivan, Egerton Winthrop, Jr., George W. Wingate, William G. Wilcox and John Whalen.

They charge that Mr. Churchill's administration has "entirely failed to promote a spirit of mutual consideration and harmonious cooperation throughout the school system; that it has been lacking in dignity, fairness and respect for services; and characterized by a partisan and personal spirit."

Complaint is made that Mr. Churchill believes that "a board of education the members of which are without technical training or experience should supervise and direct the details of educational policy; and that this involves a return to a reactionary system of school administration which the entire country after long and sad experience emphatically discarded."

Promotion of Teachers. "Mr. Churchill," the statement says, "reversing the policy of years has insisted upon the promotion of unqualified teachers and has 'striven to neutralize the provision of the by-laws of the board granting increased salaries to high school teachers for superior merit only by a legal change which would give such in-

creased salaries to all teachers not proven equally inefficient."

"Mr. Churchill's administration," it concludes, "has created unnecessary friction, sowed dissension and seriously impaired the efficiency and discipline of the system."

When the statement was shown to Mr. Churchill he denied that the policy with regard to promotion of teachers had been reversed by him, saying that the matter was one in which the Board of Education "had nothing to do but accept the opinion of the Corporation Council."

Churchill Denies Charge. Denying the charge that he had attempted to neutralize the "superior merit" clause, he said that a committee appointed by his predecessor to investigate the work of the board of examiners had reported that the phrase "superior merit" was too vague, and had recommended that "more thorough methods should be adopted for appraising a teacher's worth."

Legislation to clear the doubt as to the board's right to make the change was recommended," he added, "was unanimously approved by the board on February 26, 1913. There was no opposition to the bill. The Legislature passed it. The Mayor signed it, but while out giving any reason and despite the fact that there was no opposition to the bill Gov. Sulzer vetoed it. The question is still pending before the board."

Mr. Harrison, the candidate of the insurgents, is a lawyer at 61 Wall street. He is a graduate of the University of Virginia, where he taught for five years. He was also a member of the Board of Education, North Carolina. He was appointed a member of the Board of Education by Mayor Low in 1912 and was reappointed by Mayors McCall and Gaynor.

TWO ARRESTS IN BANK LOOTING. Five Now Held in Roseville Trust Company Investigation.

NEWARK, N. J., Jan. 29.—With the arrest of two more to-day five men are held in connection with the looting of the Roseville Trust Company. It is reported that more arrests will be made.

Those arrested to-day are Casper J. Maier, a sign painter of 96 Market street and Lowell H. M. Hays, of 166 Main street, Orange, a borrower and depositor. Others held are John B. Scarlett, a building contractor; Harry W. Foster, second vice-president of the trust company; and Charles Hindrich, a junior bookkeeper. All of them were released in \$5,000 bail to appear on Saturday, when they will be arraigned before Chief Justice Gunnarson.

According to reports, about fifty of the seventy-five indictments handed up by the Grand Jury are directed against Raymond E. Smith, the secretary and treasurer, who is in jail on charges of grand larceny and fraud.

Mr. Scarlett denied that he was ever interested in any business enterprise with Smith or which was backed by the Roseville Trust Company.

Special Announcement The New Addition to the Prince George Hotel 5th Ave. and 28th Street Will Be Opened Today, Friday, Jan. 30th, at 4 P. M. The Grand Foyer is one of the most beautiful public rooms in New York. There are also 200 new bedrooms, giving the hotel a capacity of 800 Rooms All With Baths This expansion has been rendered imperative by constantly overflowing patronage from all sections of the United States. GEORGE H. NEWTON, Manager

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