

TAFS FOR TRUST LAW

Annual Message Deals With One Subject.

DEFENDS DECISIONS OF COURT

In Cases of Standard Oil and Tobacco Companies.

THINKS AMENDMENTS NEEDED

Believes Present Statutes Good as Far as They Go but Suggests Supplemental Legislation—For Federal Corporation Law.

Washington, Dec. 5.—President Taft's annual message, which was read in both houses of congress today, deals exclusively with the anti-trust statute. The full text of the message is as follows:

To the Senate and House of Representatives: 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 by 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.

The Anti-Trust Law—The Supreme Court Decisions.

In May last the Supreme court handed down decisions in the suits in equity brought by the United States to enjoin the further maintenance of the Standard Oil trust and of the American Tobacco trust, and to secure their dissolution. The decisions are epoch-making and serve to advise the business world authoritatively of the scope and operation of the anti-trust act of 1890. The decisions do not depart in any substantial way from the previous decisions of the court in construing the meaning of the act, but they clarify those important decisions by further defining the already admitted exceptions to the literal construction of the act. By the decrees, they furnish a useful precedent as to the proper method of dealing with the capital and property of illegal trusts. These decisions suggest the need and wisdom of additional or supplemental legislation to make it easier for the entire business community to square with the rule of action and legality the trade of commerce among the several states or with foreign nations," and in the second, declares guilty of a misdemeanor every person who shall monopolize or attempt to monopolize or combine or conspire with any other person to monopolize any part of the trade or commerce of the several states or with foreign nations."

No Change in the Rule of Decision—Merely in Its Form of Expression.

The statute in its first section declares to be illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations," and in the second, declares guilty of a misdemeanor every person who shall monopolize or attempt to monopolize or combine or conspire with any other person to monopolize any part of the trade or commerce of the several states or with foreign nations."

In two early cases, where the statute was invoked to enjoin a transportation agreement between interstate railroad companies, it was held that it was no defense to show that the agreement as to rates complained of was reasonable at common law, because it was said that the statute was directed against all contracts and combinations in restraint of trade whether reasonable at common law or not. It was plain from the record, however, that the contracts of trade or commerce among the several states or with foreign nations," and in the second, declares guilty of a misdemeanor every person who shall monopolize or attempt to monopolize or combine or conspire with any other person to monopolize any part of the trade or commerce of the several states or with foreign nations."

In the tobacco case, the court found that the number of defendants engaged in a successful effort to acquire complete dominion over the manufacture, sale, and distribution of tobacco in this country and abroad, and that this had been done by combinations made with a purpose and effect to stifle competition, control prices, and establish a monopoly, not only in the manufacture of tobacco, but also of tin-foil and licorice used in its manufacture and of its products of cigars, cigarettes and chewing tobacco. The case presented a far more complicated and difficult case than the Standard Oil suit for a decree which would effectuate the will of the court and end the violation of the statute. There was here no single holding company, as in the case of the Standard Oil trust. The main company was the American Tobacco company, a manufacturing, selling, and holding company. The plan adopted to destroy the combination and restore competition involved the redivision of the capital and plants of the whole trust between some of the companies constituting the trust and new companies organized for the purposes of the decree and made parties to it, and numbering, new and old, fourteen.

Situation After Readjustment.

The American Tobacco company (old) adjusted capital, \$92,000,000; the Liggett and Meyers Tobacco company (new) capital, \$7,000,000; the P. Lorillard company (new) capital, \$4,000,000; and the R. J. Reynolds Tobacco company (old) capital, \$7,525,000, are chiefly engaged in the

the statute common law distinctions, has emancipated it. This is obviously untrue. 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.

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 case of 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 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 in non-competition 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 writers engaged in business, violating the statute, have hoped that some such line could be drawn by courts; but no court of authority has ever attempted it. Certainly there is nothing in the decisions of the latest two cases which should be a dangerous theory of judicial discretion in enforcing this statute can derive the slightest sanction.

Force and Effectiveness of Statute a Matter of Growth.

We have been twenty-one years making this statute effective for the purposes for which it was enacted. The right case was discouraging and seemed to remit to the states the whole available power to attack and suppress the evils of the trusts. Slowly, however, the errors of that judgment were corrected, and only in the last three or four years has the heavy hand of the law been laid upon the great illegal combinations that have exercised such an absolute dominion over many of our industries. Criminal prosecutions have been instituted, and a number are pending, but juries have felt averse to convicting for jail sentences, and judges have been most reluctant to impose such sentences on men of respectable standing in society whose offense has been regarded as merely technical. The right case has become better understood and the committing of it to juries more of studied and deliberate defiance of the law, we can be confident that juries will convict individuals and that jail sentences will be imposed.

The Remedy in Equity by Dissolution.

In the Standard Oil case the Supreme and circuit courts found the combination to be a monopoly of the interstate business of refining, transporting, and marketing petroleum and its products, erected and maintained by the thirty-seven different corporations, the stock of which was held by a New Jersey company. It in effect commanded the dissolution of this combination, directed the transfer and pro-rata distribution by the New Jersey company of the stock held by it in the thirty-seven corporations to and among its stockholders, and the corporations and individual defendants were enjoined from conspiring or combining to restore such control, and all agreements between the subsidiary corporations tending to produce or bring about further violations of the act were enjoined.

In the tobacco case, the court found that the number of defendants engaged in a successful effort to acquire complete dominion over the manufacture, sale, and distribution of tobacco in this country and abroad, and that this had been done by combinations made with a purpose and effect to stifle competition, control prices, and establish a monopoly, not only in the manufacture of tobacco, but also of tin-foil and licorice used in its manufacture and of its products of cigars, cigarettes and chewing tobacco. The case presented a far more complicated and difficult case than the Standard Oil suit for a decree which would effectuate the will of the court and end the violation of the statute. There was here no single holding company, as in the case of the Standard Oil trust. The main company was the American Tobacco company, a manufacturing, selling, and holding company. The plan adopted to destroy the combination and restore competition involved the redivision of the capital and plants of the whole trust between some of the companies constituting the trust and new companies organized for the purposes of the decree and made parties to it, and numbering, new and old, fourteen.

Unlikely to Pass.

"Can't you settle this bill today, sir?" asked the tailor of the delinquent senator.

"No, Shears; it wouldn't be parliamentary. I've merely glanced over it, you know, and I won't pass a bill until after its third reading."—Judge.

Chinese.

There is a Chinese proverb which says a monkey may occupy a throne. A monkey may also pay for a champagne dinner.

Logic.

"I can prove by inductive reasoning that an automobile manufacturer is naturally a lazy man."

Giving Them the Extras.

"The Browns are coming over to spend the evening. I want you to be very nice to them."

Attitude and Art.

Fewer people nowadays pretend to be reading when they get their pictures taken. Still, there are those who think art is wanting.—Atchison Globe.

manufacture and sale of chewing and smoking tobacco and cigars. The former one tin-foil company, is divided into two, one of \$25,000,000 capital and the other of \$400,000. The one tin-foil company is divided into three companies, one with a capital of \$15,000,000; another with a capital of \$8,000,000; and a third with a capital of \$5,000,000. The licorice companies are two, one with a capital of \$5,758,000 and another with a capital of \$2,000,000. There is, also, the British-American Tobacco company, a British corporation, doing business abroad with a capital of \$25,000,000, the Porto Rican Tobacco company with a capital of \$1,800,000, and the Corporation of United Clear Stores with a capital of \$9,000,000. Under this arrangement each of the different kinds of business will be distributed between two or more companies, with a division of the prominent brands in the same tobacco products, so as to make competition not only possible but necessary. Thus the smoking tobacco business of the country is divided so that the present independent companies have 21.39 per cent, while the American Tobacco company will have 33.08 per cent, the Liggett and Meyers 20.05 per cent, the Lorillard company 2.82 per cent, and the Reynolds company 2.66 per cent. The stock of the other thirteen companies, both preferred and common, has been assigned to the defendant American Tobacco company and has been distributed among its stockholders. All covenants restricting competition have been declared null and further performance of them has been enjoined. The preferred stock of the present companies now been given a voting power which was denied it under the old organization. The ratio of the preferred stock to the common was as 78 to 40. This constitutes a very decided change in the character of the ownership and control of each company.

In the original suit there were twenty-nine defendants who were charged with being the conspirators through whom the illegal combination acquired and exercised its unlawful dominion. Under the decrees, these defendants will hold amounts of stock in the various distribute companies ranging from 41 per cent. as a maximum to 28 1/2 per cent. as a minimum, except in the case of one small company, the Porto Rican Tobacco company, in which they will hold 45 per cent. The twenty-nine individual defendants are enjoined for three years from buying any stock except from each other, and the group is thus prevented from extending its control during that period. All parties to the suit, and all new companies who are made parties, are enjoined perpetually from in any way effecting any combination between any of the companies in violation of the statute by way of resumption of the old trust. Each of the fourteen companies is enjoined from acquiring stock in any of the others. All these companies are enjoined from having common directors or officers, or common buying or selling agents, or common offices, or lending money to each other.

Size of New Companies.

Objection was made by certain interested parties to the tobacco case that the settlement was unjust because it left companies with very 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 fractions in amount 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 not intended thereby to prevent the acquisition of large capital by new 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 controlling prices, and establishing a monopoly. If we shall have by the decree defeated these purposes and restored competition between the large units into which the capital and plant have been divided, we shall have accomplished the useful purpose of the statute.

Confiscation Not the 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, and establishment of a monopoly, or by the decree defeated these purposes and restored competition between the large units into which the capital and plant have been divided, we shall have accomplished the useful purpose of the statute.

Effectiveness of Decree.

I venture to say that not in the history of American law has a decree been so effective for such a purpose as that entered by a court that against the Tobacco trust. As Circuit Judge Noyes said in his judgment approving the decree:

"The extent to which it has been necessary to tear apart this combination and force it into new forms with the attendant burdens ought to demonstrate that the federal anti-trust statute is a drastic statute which accomplishes effective results; which so long as it stands on the statute books cannot be obeyed, and which cannot be disobeyed without incurring far-reaching penalties. And, on the other hand, the successful reconstruction of this organization should teach that the effect of enforcing the statute is not to destroy, but to reconstruct; not to demolish but to re-create in accordance with the conditions which the congress has declared shall exist

among the people of the United States."

Common-Stock Ownership.

It has been assumed that the present pro-rata and common ownership in all these 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 inefficacy and innocuousness of judicial injunctions. The companies are enjoined from cooperation or combination; they have different managers, directors, purchasing and sales agents. If all or any of the numerous stockholders, reaching into the thousands, attempt to secure concerted action of 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 inefficacy and innocuousness of judicial injunctions. The companies are enjoined from cooperation or combination; they have different managers, directors, purchasing and sales agents. 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