

MAJOR GUTHRIE ON TRUSTS.

THERE IS A REMEDY AND IT IS POINTED OUT.

A License Might be Required of All Corporations, and it Need Not be Granted if it Were Discovered that the Corporation was Violating the Law—As a Matter of Fact there are Trusts in North Carolina Existing in Open Violation of the Law—The Law in the Case—A Postscript in Which Professor Dowd's Arguments are Replied To.

To the Editor of the Charlotte Observer:

Article VIII, Sec. 1, constitution of North Carolina provides: "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases wherein the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed." Same article, Sec. 2, provides: "The term 'corporation,' as used in this article, shall be construed to include all associations and joint stock companies, having any of the powers and privileges of corporations, not possessed by individuals or partnership."

Turn now to chapter 16, vol. 1, Code of North Carolina, and read: "Section 494: How corporations may be dissolved," etc. "All corporations formed under this chapter may be dissolved by special proceedings, instituted by the company, or by any proprietor, or by any judgment creditor, whose execution issued to the county in which the corporation has its only or principal place of business, shall be returned unsatisfied, or by authority of the Attorney General in the name of the State, for the causes hereinafter mentioned, to wit: For any abuse of its powers to the injury of the public," etc.

Sec. 656: "It shall be the duty of the Attorney General to bring an action in the Superior Court of the county, as in this Code directed, to restrain by injunction, any corporation from assuming or exercising any franchise or transacting any business not allowed by its charter; to restrain any person from exercising corporate franchises not granted," etc.

Sec. 701: "This chapter, unless otherwise declared herein, or in the chapter entitled 'Railroads and Telegraphs,' shall apply to all corporations, whether created by special act of Assembly, by letters of agreement under this chapter, or by the chapter entitled 'Railroads and Telegraphs,' and this chapter and the chapter on 'Railroads and Telegraphs,' so far as the same are applicable to railroad corporations shall govern and control, anything in the special act of Assembly to the contrary notwithstanding, unless in the act of Assembly creating the corporation, the section or sections of this chapter and of the chapter entitled 'Railroad and Telegraph Companies,' intended to be repealed, shall be specially referred to by number and, as such, specially repealed."

Chap. 374, acts of 1889, entitled "An act to prohibit trusts in the State of North Carolina and to provide for the punishment of persons connected with them," ratified March 11th, 1889, defines what a trust is, and in section 3 provides: "That any persons, company or corporation who shall form or attempt to form, a trust in this State, or the agent or representative of any trust in any State or county, who shall attempt to carry on operations in this State shall be guilty of a misdemeanor and upon conviction may be fined not more than \$10,000 ten thousand dollars, or may be imprisoned not more than two years for each offence."

On page 509, Public Laws of 1893, there is a concurrent resolution of the State Senate and House of Representatives requesting our Senators and directing our Representatives in Congress to "procure the enactment by the Congress of the United States of the strongest and most efficient laws to prevent and suppress trusts and combinations which tend to depress the price of agricultural products and to increase the price of manufactured goods, and which in any way interfere with the natural and healthy laws of trade."

Sec. 589 of The Code provides: "No person offered as a witness shall be excluded by reason of his interest in the event of an action."

Now as to examination of parties:

Sec. 589 of The Code provides: "A party to an action may be examined as a witness at the instance of the adverse party, and for that purpose may be compelled in the same manner and subject to the same rules of examination as any other witness, either at the trial or conditionally, or upon commission."

Sec. 581: "The examination, instead of being had at the trial, may be had at any time before the trial at the option of the party claiming it, before a judge or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of

at least five days, unless for good cause shown the judge shall order otherwise."

Sec. 582: "The party to be examined, as in the preceding section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and fixed by the judge or clerk in like manner, and may be read by either party on the trial."

Sec. 583: "The examination of the party thus taken may be rebutted by the adverse party."

Sec. 584: "Effect of refusal to testify. If a party refuses to attend and testify, as in the four preceding sections provided, he may be punished as for a contempt, and his complaint, answer or reply may be stricken out."

Sec. 586: "A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner and subject to the same rules of examination as if he were named as a party."

(When a corporation is a party to an action, either plaintiff or defendant, who are the persons for whose "immediate benefit" the action is prosecuted or defended, who represents the corporation in interest, unless it be the officers, agents and stockholders of the corporation! But of this further on.)

Sec. 695 of The Code provides the manner in which special proceedings to dissolve a corporation shall be commenced and conducted.

Now, Mr. Editor, if you have carefully read and considered the foregoing citations and reference to the laws of North Carolina and have noted (as I know you have) the general drift and trend of popular sentiment on the subject of "trusts," then it must be manifest that so far as the language of the law and wishes of the people can be understood, "trusts" and combinations against freedom of trade are an abomination and a crime which the law and the people of our State have condemned in no uncertain terms. Is there a remedy? Can it be found in the laws above cited? If not, can a law be framed to meet the wrong and right it? These are the questions I will undertake to answer.

We start out with the popular belief that trusts exist; not with the difficulty confronting us that a mere belief in the existence of a fact, even though that belief be reduced to a moral certainty is not sufficient of itself, without proof by evidence, to sustain judicial proceedings either civil or criminal. Are there any trusts doing business in North Carolina contrary to the criminal law of the State and against the expressed will of the people? Nobody, claiming to be intelligent, denies it. Have laws enacted for their suppression been enforced? Nobody claims they have been. Everybody admits that such laws have been a dead letter and failures so far. Can such laws ever be enforced? That is the question which agitates the popular mind and is one that sooner or later will be answered. It is a question, too, which reaches down to the very bed rock upon which all republican government rests. The will of the people constitutionally expressed is the law of every republic.

I undertake to say that trusts can be reached by law and trusts can be by law abolished. What laws? State laws. Why not United States laws? Because United States laws cannot reach the root of the evil. What is the root of the evil? Corporations, and corporate associations in the nature of corporations, which under our own State constitution above quoted are put on the same footing with corporations. It is State legislation that has created and which continues in existence the artificial creatures called "corporations"; and it is to State legislation alone, if anywhere, that the people must look for correcting the morals, so to speak, of their own children. It is to my mind an inconsistency and a folly for States to create corporations for business purposes and then play the baby themselves by calling on the national government to put their own children under legal restraint. Here we are to day, the great sovereign State of North Carolina, that in its sovereign capacity helped to create and organize the United States, actually importuning the United States to take charge of and control our private business corporations—creatures of our own making, whose creation and continued existence depends entirely, from year to year, month to month, day to day and hour to hour upon the will of the people of the State. And yet every business corporation in this State, incorporated since the adoption of the constitution of 1868 whose charter, (which is its very life and legal right to live at all) is absolutely at the mercy of the State Legislature. The very letter and spirit of the constitutional provision first above cited was and is for the manifest purpose of avoiding all questions about vested corporate rights as against the State and to reserve ex-

pressly in the State the power to repeal all charters of corporations at will, and for cause or without cause. There is not a single private corporation in this State, chartered since 1868, whether by general laws or special act, whose charter could not be repealed by the next General Assembly as easily and with the same formalities as any other law on the statute book, and I doubt if any lawyer in the State would controvert this assertion. Every charter granted by the State since 1868 has been with express notice in the fundamental law of this provision. It is a common knowledge that nearly all, (if not entirely all) the private business corporations now existing under the laws of North Carolina were chartered since 1868, those before 1868 having been swept away during the war, except, however, a few railroads and corporations of a quasi public nature which survived the wreck of war.

But ours is not the only State constitution which has such a provision. Turn, for instance, to the constitution of the State of Michigan, which as far back as 1850, and still has, a provision almost identical with ours. It reads as follows:

Article XV.—Corporations. Sec. 1: "Corporations may be formed under the general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be altered, amended or repealed."

Now, Mr. Editor, "is the creature greater than the creator?" And especially so when the creator reserves the right to destroy the thing created.

"Shall the clay say to the potter, what does thou?" But you say it would be harsh and cruel to exercise such power. Is that so? When a man or even a woman commits murder, the State takes the life of the offender. Why? The answer is, in order that murder may not be committed. The State in that case demands the life of the offender for the protection of the lives of all her citizens. Is the life of a corporation, the mere creature of the State, so sacred that it may without compunction of conscience lay its ruthless hand on the bread and meat of the men, women and children, on whose lives the well being and existence of the State itself depends and reduce them to penury, want, and even starvation, and yet the corporation be allowed to bid defiance to criminal laws and escape punishment, because forsooth, if indicted, its officers, managers and agents will not voluntarily testify against it, and cannot be compelled in a criminal case to testify against it lest they condemn themselves and jeopardize their own liberty? It would seem not.

But apart from the constitutional power of the legislature to repeal the charters of private business corporations, is there any good reason why the Attorney General of North Carolina cannot, without further legislation, take the above provisions of law and institute special proceedings against any corporation believed to be engaged in a trust, having a charter granted under State of North Carolina laws since 1868, to have its charter dissolved? I think he has that power and authority now, and the law points out a way by which it can be done, as I will endeavor to show. The first and most prominent legal course for dissolving a charter is the one above cited, which I now repeat:

"For any abuse of its powers to the injury of the public."

Now is it not an "injury to the public" to do any act which is denounced as a crime and punishable as such?

This is too plain for argument, and it may be assumed to begin with that a "trust" is an "injury to the public." We will suppose the Attorney General begins a special proceeding in the name of the State against a trust corporation which we will call the "Watered Stock Boom Co." He alleges in his complaint upon information and belief in general terms pointed out by the act above quoted that said company has combined with other companies for the unlawful purposes described—and, in a word, belongs to a trust. The defendant, of course, comes into court and files its answer denying the allegation that it belongs to a trust, and thereby upon the pleadings the material issue is raised. The burden is on the State to prove it. Who are the witnesses? He must of necessity go into the enemy's camp to get them. He has subpoenaed the president, vice-president, (if there is one) secretary, treasurer, directors and all the stockholders whom he can get service on within this State and he summons the custodian of the corporation papers to produce them for inspection. And when called to the stand as witnesses they "all with one consent begin to make excuses," but the one which sticks in law is this answer which each, with some slight variation, makes: "I cannot testify as to the business affairs of the corporation, because to do so would criminate me." How could an

investigation of the affairs of the corporation criminate the witness if its affairs are lawfully and legitimately and without abuse of corporate powers conducted? It is the affairs of the corporation, the party to the action which are being investigated, and the witness is "a person for whose immediate benefit the action is defended," and one described in section 586 above quoted and who refuses to testify. Sections 584 and 586 taken together put the interested witness and the party to the action "subject to the same rules of examination," and that rule in section 584 is that the pleading, whether complaint or answer or reply, which is filed on the side which withholds the evidence and refuses to testify "may be stricken out," that is, of course, if the judge would exercise his power to do so on the Attorney General's motion. And a judge who meant to do right would not hesitate to grant the motion to "strike out" the defendant's answer and give a decree dissolving the corporation for want of an answer.

But if you say it requires a strained construction of the above provisions of law to reach the conclusion contended for, there is a way to remedy this defect, which is plain. Amended sections 584 and 586 so as to make them expressly applicable to sections in which a corporation is a party. Put corporations exactly on the same footing with natural citizens in actions between them. This is, I think, already to spirit and intent of the law. But anyhow it is within legislative power to make it plain beyond question.

There is still another way to reach by law (State law) not only our own State corporations, whether chartered before 1868 or since, and all other corporations wherever incorporated, which do business in our State. Apply to all alike a license tax, and not only make them pay the tax, but require as a condition precedent to granting the license that each should prove a "good moral character" like a retail liquor dealer. Require each corporation in order to get such license to prove to the satisfaction of the State Treasurer, or Secretary of State, or Attorney General, or some designated State authority that it has not since a certain day to be fixed violated the provision of the criminal law of 1889 above cited, and to do business in this State without such license shall be a misdemeanor and cause of forfeiture of its charter too, if it is a North Carolina corporation.

Make this license tax nominal in amount if you please, so as not to be oppressive on any corporation.

But you say it would be harsh and burdensome to require all the business corporations of this State (a very large majority of which do not now and never did belong to a trust) to pay such tax, even one dollar and comply with such a rigid requirement. Now is it?

Let me illustrate my argument. If you had come to Durham a few months ago you would have seen every dog in the city wearing a muzzle. Why? Because three or four mad dogs had appeared on our streets and besides biting other dogs, they had also attacked and bitten several citizens. The lives and well being of the whole community were at stake and jeopardized. In such a crisis the city authorized passed and enforced an ordinance requiring every owner of a dog in the city to put a muzzle on his dog, in default of which, the doom of death was pronounced against the dog. And this muzzle ordinance was enforced, too, without partiality, favor or affection, against all dogs—little dogs, and dogs of every kind, size and degree, or pedigree. Was it harsh? Was it unjust? Did the public safety require it? Did it have the desired effect? Ask any citizen of Durham and you will get but one reply. Does not every good citizen have to yield some of his natural rights for the good of society? Is not the natural citizen who never committed a crime daily subjected to burdens of taxation and other inconveniences on account of bad citizens who do commit crimes? Are corporations entitled to more privileges than natural citizens? It seems to me there ought to be but one answer to such questions.

I could go on, if space allowed, and write a political essay upon this subject, and criticize many things political which have been done and many which ought to have been done and were neglected; but my purpose is not fault finding now, but to get the legal profession to thinking earnestly on the subject of the legal method to abolish trusts. If I am wrong in the above observations I want to know it, and if a better way can be devised, let it be done. The remedy, and not self glorification, is what the times demand. When law offices are besieged daily (as mine has been latterly,) with strong, able bodied, grown, white men as medics, instead of clients able to pay fees, it behooves us to begin to think on these things and necessity begins to compel us to face the situa-

tion and hunt for the remedy. Of one thing we may feel assured, that when the people came together, animated by a common patriotism and resolved in earnest to destroy "trusts" or any other like evil, the remedy will be found and the desired result will follow. "Truth crushed to the earth will rise again," and when the people in their majesty determine to right a wrong it will be righted. We may paraphrase the old prophecy in Guy Mannering and predict:

"The dark will be light
And the wrong made right,
When the people's light, and judicial might,
Shall enforce the laws
Which patriots write."

WM. A. GUTHRIE,
Durham, N. C., Jan. 10, 1894.

POSTSCRIPT.

Let me add a postscript to my article on "trusts," recently sent to you for publication. I beg to assure you and also Prof. Dowd that I did not have even a suspicion at the time I wrote my article that Prof. Dowd had written, or was writing, the article on the same subject published in your issue of last Saturday. My first information was the announcement in your paper. It was merely a coincidence that he and I were thinking on the same subject at or about the same time. You will observe that my article is in no sense a reply to his. My article seeks to point out a remedy for an evil, upon the assumption that there is an evil that should be abolished. Prof. Dowd, as I understand from his article, undertakes to combat such an assumption, and contends that trusts are not evils, at least not unmixed evils, for they have wrought some good. He will not take it unkindly, I know, if not in the spirit of mere controversy, and not for the mere sake of controversy, I should submit a few observations in opposition to his argument. I contend his argument is illogical, and for the following reasons: He admits from start to finish of his article (what he was obliged to do,) that trusts are monopolies. Now if that be true, then either trusts are wrong in principle or our republican form of government, especially our own State government, is in this particular built up on a wrong foundation. Article 1, section 31 of our State Constitution, which you and Prof. Dowd and myself and every man in North Carolina who has ever voted in North Carolina has taken a solemn oath to support, reads as follows, viz:

"Sec. 31. 'Perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.' You will find the very same provisions, in exactly the same words, in section 23 of the old Bill of Rights adopted by our patriotic ancestors on December 17th, 1776. If you concede (what you must concede) that trusts are monopolies, then we have the whole argument on this point in a nutshell and reduced absolutely to the following logical syllogism:

"All monopolies are contrary to the genius of a free State, and ought not to be allowed."
Trusts are monopolies.
Therefore trusts "ought not to be allowed."
Let some better logician than myself pick a hole in the syllogism if he can. My contention is, that either trusts are wrong or else our fundamental constitutional law is wrong. And my solemn conviction is that sooner or later one or the other must go to the wall.

Prof. Dowd says: "It (the trust) cannot be uprooted by statutes nor destroyed by invective." As to "invective," I may remark that in my opinion and sentiment no good and righteous thing ought to be destroyed by "invective," but whatever contravenes the fundamental principles of government by and for the people in their aggregate and representative capacity is in the nature of treason against the State, and must be put down or the government is a failure. If I thought Prof. Dowd's prophecy true, that trusts "cannot be uprooted by statutes," then I would indeed despair of republican form of government. But this is an assumption on his part, and the very assumption the contrary of which I endeavored to show in my own article.

I gather from the scope and substance of Prof. Dowd's article that his defence of trusts rests largely upon the fact that in some instances they have done good—public good. Grant it. I venture the assertion that there was never a murderer hung in all the criminal law in whom there was not at least one or more good traits of character, and who had not at some time or other in his life done a good act. I do not myself believe in the doctrine of total depravity as applicable to human character. Even Henry Berry Lowrie's band of outlaws, a few years ago, in Robeson county, while defying the laws of God and the State, did many good and charitable acts, such as giving away and dividing with the poor of that county goods they had taken by murder, burglary and robbery from the lawful owners thereof. Even the "thirty pieces of silver," if I may trespass on holy ground and go to the sacred Scrip-

tures for an illustration, were used for a public good: to buy a "potter's field to bury strangers in."

If trusts shall finally succeed in reducing our whole population to the condition of beggars, and tramps and them in the goodness of heart of their managers to appropriate enough "blood money" to buy the "potter's field."

But may we not hope, all prophecy sooner or later we may get back to the old constitutional landmarks of our patriotic forefathers and right these wrongs by statute laws firmly and rigidly enforced, and destroy once and out the very heart of constitutional liberty while making industrial slaves of the great masses of the people? Then through the medium of just judges and fair and impartial juries prepare in all our court houses "potter's fields" for the graves of all the trusts, and write epitaphs something like this:

"Here lie the trusts, which did some good,
But did a deal of evil;
The law took hold, but for them stood,
And sent them to the Devil!"

WM. A. GUTHRIE,
Durham, Jan. 15, 1894.

MECKLENBURG COUNTY MEETING.

Mr. Editor:—Mecklenburg County Alliance met at Back Creek. We had the best meeting that we have had in two years. Subs were more fully represented. Part of the first day was devoted to public exercises. Miss Sapp, from Concord, made a good address. She held the audience spellbound at least half an hour. [We had talks from different persons. All the discussions were to the point and we feel satisfied that we are on quite a boom in old historic Mecklenburg.]

After dinner we repaired to the Alliance hall and transacted the usual business.

I would write more but I prefer giving the pith of the meeting.

R. W. ELLIOTT, Sec.

MAKING BUTTER.

The question of how to make profitable butter is an interesting one to all of us. The Farm and Ranch has been asking people how they make butter, and one Texas lady gives her method as follows: While cream separator, box, barrel or rectangular churns, butter workers, etc., are indispensable in a modern dairy and desirable to have on the farm, if one handles a sufficient quantity of milk to warrant the outlay, there are many farmers with moderate means, with perhaps only one or two cows, who cannot afford to have them. As her husband belongs to the latter class, she can only use to best advantage such means as she can command. First, perfect cleanliness is absolutely necessary in every detail, from first to last. Wooden vessels are not fit to hold milk, and should never be used for that purpose. If you have a wooden churn, burn it, or at least quit using it and buy you a stone jar or churn. Keep your vessels clean by washing thoroughly in soap suds, then scald with clean water and dry them. When milk has soured in them, first rinse with cold or moderately warm water to remove the milk, then scald with water to which has been added a teaspoonful of soda, to remove any acid that might remain. Strain away your milk and let it remain uncovered till all the animal heat is out of it. If it is cool weather or you are blessed with a spring or any means to keep your milk cool in summer, it is better to allow it to stand 24 hours, as you cannot get to the cream in less time. Some prefer to remove the cream before the milk sours and strongly advocate churning only cream. She dips off the cream, being careful to secure as little milk as possible with it, and puts it in a stone jar and keeps in a cool place till she has a churning. Every time more cream is added it should be stirred until well mixed, so that it will ripen evenly. If in summer, keep cool as possible; if cold weather she sets it near the fire to turn or ripen, ready to churn. Turn the jar around frequently and stir occasionally, so that it may be warmed and turned evenly. When it becomes thick it is ready to churn and should be churned as once or it will become too sour, which injures the flavor of the butter and makes it harder to churn. She advocates a milk thermometer; it saves much trouble and guesswork. It is absolutely impossible to tell when your cream is too hot or cold with much certainty without it. However, long experience and close observation will enable one to have some idea about it. She begins churning very slowly at first, and if the cream foams very much, which it will do if too cold, set the churn into a pan of hot water and leave it alone for a while, except to give a turn or two occasionally, so it can warm up evenly. The Voice wishes to say that a wooden churn is all right if it is kept clean. Otherwise we endorse all that this lady has said.