WICKERSHAM ON ENFORCEMENT OF THE SHERMAN ANTI-TRUST LAW

Attorney General Declares There Is No Occasion For Its Amendment.

Suggests Optional Federal Incorporation as a Means of Supplementing It.

[From an article by George W. Wickersham, attorney general of the United States, in the Century Magazine for February. Copyright, 1912, by the Century company.]

DISCONTENT with the Sherman anti-trust law and its enforcement by this administration is not nearly so widespread as is popularly supposed. It is a reasonable assumption that the majority of the people who are discontented with the Sherman law and with its enforcement are the stockholders and others interested in those corporations and combinations charged with its violation. The people who will most benefit from the enforcement of the law are the great army of consumers who have been purchasing the products of these corporations.

The purpose of the law is not to destroy industries. The real purpose of the Sherman law is to compel fair trade, to protect the average business man from injury due to unfair methods of competition. It is meant to keep the highways of commerce open to all, big and little, rich and poor, on the same terms. Therein lies its greatest ethical value.

The purpose of the Sherman act is to prevent undue combination and centralization of power, and therefore in issuing their decrees the courts have merely compelled the combinations against which they have been directed to resolve themselves into their integral parts. The property of the stockholders remains. It is as capable of production and of earning dividends as ever.

There is, of course, some genuine discontent with the Sherman law, but I suspect most of it arises not so much from any real uncertainty as to its meaning as from a realization of that meaning.

Need of a Check to Monopoly.

I think every thoughtful person will agree that the Sherman act or some equally effective statute was absolutely necessary to check the growing centralization in a very few hands of the vast industries of the United States. It was the danger of that centralization which the leaders saw in 1890, when they framed and enacted the Sherman law. Slowly, but irresistibly, the construction of the statute has been widened, until now it is demonstrated to be adequate to effect that great result.

One of the results which the Sherman law will accomplish, which must be beneficial to a large class, is to drive out the middleman where the conditions are such that the middleman is not the natural economic result of the operation of the laws of trade.

It must be remembered that in all this discussion nothing will really suit the men who have built up the great trusts and whose interests have been in the monopolization of great lines of industry but some method of continuing in the future, with greater or less immunity from interference, the same power and control which they have enjoyed in the past.

How to Eliminate Uncertainty.

In my opinion, the only effective way to eliminate all genuine uncertainty is through a federal incorporation act containing provisions adequate to meet the situation. Congress has recognized its power by asserting the right to interfere and control and to that extent to regulate the conduct of interstate commerce by declaring what contracts, combinations, monopolies, etc., shall not be entered into. I believe it is time for it to recognize its duty to provide proper vehicles for the conduct of that commerce, so as to make unnecessary the combinations it has prohibited.

In the past congress has left the whole law of association—the law of co-operation under corporate form—to the states. This has necessarily led to the holding corporation whereby the control over an industry, through comparatively small capital, can be exercised with ever widening sweep and virtually without bounds. Congress should provide for the formation of corporations, which, after all, is nothing more than to regulate the rules whereby men may associate themselves in the conduct of interestate commerce—with limited liability and with provision for the transfer of their interests in whole or in part without affecting the continued existence of the association.

Congress should provide for the creation of such bodies, should prescribe the rules under which they may transact their business and should protect them in the transaction of that business in accordance with those rules. Then and not until then will the problem be effectively solved. Such a law would remove all the scandal of corporate organization, of inflated capitalization, of deceit of the public through lack of information or dissemination of misinformation and would thus enable the business of the country to be conducted on a safe and sane basis. The federal corporation, being a creature of the federal law, would be entirely subject to federal control, and from time to time as tendencies developed which seemed to run counter to the public interests they could be checked by appropriate legislation. In the meantime they could be checked by appropriate regulation.

The Regulation of Prices.

The moment the government suffers to exist a combination of producers so great that it fixes or has the power to fix prices at will and the consumer has no share in fixing those prices effective governmental control must necessarily provide a means of correcting that price fixing by governmental interposition on the same lines that it has used in the case of the price of transportation under the interstate commerce act.

The fixing of prices by the government is the logical and inevitable outcome of the policy of recognizing some trusts as good and of attempting to discriminate between good and bad trusts. The "good trust" is the combination which, having the power to crush out all opposition, does not exercise it fully or does not exercise it so as to arouse a general popular dissatisfaction. Under the Sherman law alone no such thing can exist.

In all this discussion I use the word "trust" to mean a combination so great as to amount to a potential monopoly. No absolute monopoly has grown up under the Sherman act. There always has been a small percentage of the business which was not acquired by a given combination, but a trust has within itself that power which will enable it either to become a monopoly or virtually to exercise all the control which would be inherent in a monopoly.

Optional Federal Incorporation.

There are those who believe federal incorporation should be made compulsory, a prerequisite to the transaction of interstate commerce. I do not believe that, because I think that the desired end can be achieved by making it optional. It is not easy to work a radical change in existing conditions. But the federal incorporation act should be made so attractive to legitimate industry as gradually and perhaps rapidly to attract those engaged in interstate commerce in a large way. All those who wish to combine or consolidate existing businesses which are more or less competitive, thus giving rise to questions as to the applicability of the Sherman law, would realize that federal incorporation would so greatly facilitate the legitimate conduct of that business that they would not be willing to forego its advantages.

On the other hand, the faithful and rigid enforcement of the Sherman law will soon demonstrate the folly of trying to carry on a business which is not legitimate. New enterprises would be formed under a federal incorporation law, and perhaps after a time—five or ten years possibly—the conditions might become such that congress could properly prescribe that after a given date no interstate commerce should be carried on by any corporation not organized under the federal law.

My view has always been, however, that the federal incorporation law should not be applied to small concerns; that the great machinery of the federal government which it would be necessary to establish for such purpose ought not to be directed to little concerns that can be more properly organized and carried on in their own localities, although they may engage to a certain extent in business between the states. As a rule, these small concerns do not appeal generally to the public for their capital.

The first result of the provision for such federal incorporation would be that those who are actuated by a desire to conform with the law, but who are sincerely in doubt as to its requirements, would promptly avail themselves of it. Others would rapidly follow, because the advantages of subjecting themselves to such federal control and of submitting to such supervision and publicity would include not only a practical insurance against prosecution under the Sherman law, but a stability of their securities otherwise unattainable. It is possible there would be no need for further legislation. On the other hand, congress might find it wise later to make such incorporation compulsory in the case of all corporations doing an interstate business and offering their stocks or bonds for public sale.

Law Effective as It Stands.

There is, in my judgment, no occasion to amend the Sherman law. That law is effective as it stands. To amend it would merely necessitate further judicial interpretation before it would be as clear and as enforceable as it is today and would go far to destroy the good results of twenty years of judicial interpretation. But there is a possible method of amplifying that law by addition or supplement, not by amendment. For example, it has been proposed—and the president has stated that he sees no objection to it—that the law might be supplemented by specifying some of the specific acts which have been adjudged by the courts to be embraced in the phrase "undue restraint of interstate trade" in order that merchants may have before them in codified form a clear enumeration of certain things they may not do and be thus relieved of the so called "glittering generality" of the statute. The difficulty of carrying out this suggestion will be found when the draftsman comes to write such a statute.

I am inclined to think that formulating the various kinds of unfair trade and undue restraints of trade which would properly be included in such a statute will add little new to the popular understanding of the meaning of the Sherman act, although, as the president suggests in his message, it may result in shortening the task of the prosecuting officers of the government.

But there should certainly be nothing in any additions to the statute to enable a concern whose ingenuity had devised some new and unspecified method of destroying competition to plead immunity from punishment because that particular method of restraint of trade was not made the subject of express prohibition.

Photo by American Press Association.

ATTORNEY GENERAL GEORGE W. WICKERSHAM.

AT 60 WALKS 50 MILES.

S. E. Cavin's Birthday Tramp Between Philadelphia and Wilmington.

Samuel E. Cavin of Philadelphia, lawyer and member of the Union League club, celebrated his sixtieth birthday by walking to Wilmington and return, a distance of approximately fifty miles. He left the Union League at 4 o'clock in the morning and reached Wilmington at 11:45 a. m. and arrived at the Union League again at 9:45 at night.

Mr. Cavin started the trip in a blinding snowstorm, and the snow continued all day, making the going very heavy. He declared that he attributes his splendid health to the amount of walking he does and advises all business men to follow his example and they will not be troubled with indigestion, gout or rheumatism.

Skyscraper For Seattle.

Seattle, it is reported, is to emulate New York city and perhaps surpass Chicago by building a forty-two story skyscraper.

TO PARDON BRANDT

Dix Names Hand to Investigate Facts in Case.

GRAND JURY IS BUSY TOO.

Former Detective Who Reported That the Schiff Valet-Burglar Had a Criminal Record Now Admits His Report to Judge Rosalsky Was Not Based on Facts.

New York, Feb. 15.—Governor Dix has accepted Justice Gerard's suggestion that the constitution prohibits a supreme court justice from accepting any other office and has appointed ex-Judge Richard L. Hand of Essex county as special commissioner to report whether the facts justify a pardon for Folke Engel Brandt, the Schiff burglar.

Justice Gerard will delay a decision on the writ of habeas corpus in order to give the governor time to receive a report from Judge Hand. If, however, it becomes necessary Justice Gerard will sustain the writ and remand Brandt to the custody of the district attorney for trial on the indictment of burglary in the first degree.

The grand jury, assisted by District Attorney Whitman, has begun its investigation to determine whether Brandt was the victim of a conspiracy when he was sentenced to thirty years in Clinton prison by Judge Otto A. Rosalsky. In that connection it is known that Judge Rosalsky, Howard S. Gans, counsel for Mortimer L. Schiff; Mr. Schiff himself, Police Inspector William W. McLaughlin and a man named Rothschild met at the Criterion club a few days before Brandt was sentenced.

The most interesting revelations had to do with the grand jury investigations. It is now known that indictments for conspiracy are expected by District Attorney Whitman as the result of the inquiry as to what improper influences were used in getting Brandt into the penitentiary for a long term. A pardon for Brandt—and that is likely to come any day—will, of course, have no effect on the conspiracy investigation. Both the district attorney and the attorney general are determined to get all the facts and proceed against any persons the grand jury may point out.

The testimony of former Detective Lieutenant Joseph D. Woolridge before the grand jury indicated that the report which he submitted to Inspector McLaughlin and which was taken into consideration by Judge Rosalsky in sentencing Brandt was framed before Woolridge was assigned by McLaughlin to find out if Brandt had a criminal record. Woolridge testified that he got the assignment on April 1, 1907, three days before Brandt was committed to Clinton prison. But the records of the police department contained a letter from Howard S. Gans written to Inspector McLaughlin on March 30, 1907, in which Mr. Gans outlines the character of the report desired and expresses confidence that he could get a postponement of sentence from Judge Rosalsky.

It was Woolridge's testimony that brought out the announcement that indictments for conspiracy will come out of the grand jury investigations. He was asked to tell all he knew about the report that he read to Judge Rosalsky on April 4, 1907—the report that said that Brandt had been dismissed by six employers for dishonesty before he got a job with Mortimer L. Schiff. Woolridge admitted outright that, so far as he was concerned, the report was untrue.

JEFF WOULD COME BACK.

Former Champion May Decide to Fight Johnson Again.

New York, Feb. 15.—In a signed statement wired from Los Angeles James J. Jeffries intimates that he may decide to return to the ring for another battle with Jack Johnson. He doesn't say outright that he will fight again, but hints enough to create the belief that he is seriously thinking of it.

Jeff intimates that if he should happen to whip Johnson the public would regard it as a fake. Furthermore, he repeats the assertion that before the battle, so called, at Reno somebody put drugs in his teacup. In a word, Jeff appeared to be feeling the pulse of the sporting public with the idea of learning whether it will fall for another championship between the negro and himself.

OTTO H. KAHN SILENT.

Won't Say Whether He Will Live In England In the Future.

New York, Feb. 15.—Otto H. Kahn, who has been an active member of the firm of Kuhn, Loeb & Co. since 1897 and one of the twelve young men named by Thomas F. Ryan as future kings of American finance, returned from Europe on the Olympic.

Mr. Kahn and the members of his firm have refused to make any statement concerning the reports that he would give up his American connections and live in England, entering politics there.

Growth of the Farm.

We notice the jokes about farmers grow less
For the farmer himself has grown smart, as you guess,
And he grows bigger crops by a very great deal,
So he grows rather wealthy and buys a 'mobile.