President Taft's Speech on "Trusts" At Detroit

By Associated Press.

Detroit, Mich., Sept. 19.—Following is the speech of President Taft on "Trusts":

President's Speech.

My Fellow Citizens:

I propose to take up the question which has occupied the attention of the American people for now twenty years, that of industrial combinations known as "Trusts." During the last year we have had two great decisions by the supreme court of the United States. They are epoch-making, and the public has not yet come to realize the effect that those decisions are certain to have. It is not that the construction which the court has put upon the act is different from that which most members of the profession, and most subordinate courts, and indeed the supreme court itself, had before indicated, as the proper construction of the statute; but it is that it is now finally settled, by two fully considered decisions in respect to two of the largest and most powerful of these combinations, what their illegality consists in, and how they are to be treated, in view of the finding that they are illegal and do violate the provisions of the so-called anti-trust or Sherman act.

Persons who do not understand the effect of these decisions and really do not understand the law have a great deal to say which is intended to lead the public to the belief that in some

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way or other the supreme court has emasculated the statute and prevented its operation against objectionable and injurious trade combinations and conspiracies. Nothing is further from the truth.

When the statute was passed in 1890 the expressions used in it to define its object and what it was proposed therein to denounce as unlawful were not new, but they were sufficiently broad and indefinite to require judicial construction to settle their meaning. Congress was dealing with a subject matter in respect to which it may be assumed that the legislators themselves were not clear as to the exact limitations of the meaning of the words in the statute they were passing. They knew there was an evil which they hoped to restrain by the enactment of this law, and they relied upon the courts in their construction of the law to dedge about its operation such restriction as would prevent the statute from being so wide in its application as to involve absurdity and the impracticable. The early decisions under the law can not be said to have been fortunate. The decision in what was known as the Sugar Trust case—the Knight case—was really a retrograde step and one which seemed to limit much the operation of the statute. It encouraged the organization of combinations which the same court has since found violate the statute. The case could not be effectively presented to the court because the record had not been properly made up, and the questions arising were treated in the opinion in such a way as to give the impression that the operation of the law would be most restricted, because of the limits of federal jurisdiction. Indeed, some law officers of the government did not hesitate to say that under this decision there was little hope of reaching the evil aimed at through federal action. It has required 20 years of litigation to make the statute clear. But now it is clear.

Explains Trust Decisions.

I shall not attempt to give it a close, lawyer-like interpretation, but I think it is not departing from the declaration of the court to say that they find any contract in restraint of trade, made for the purpose of excluding competition, controlling prices, or of maintaining a monopoly, in part or in whole, is contrary to the statute and is subject to injunction and indictment under this statute in the federal courts where it affects interstate trade.

Now, I would like to ask Mr. Bryan or any of the other publicists and jurists who have been denouncing this opinion as the surrender of the rights of the people and a usurpation of judicial power to tell the public what particular contract or restraint of interstate trade he would condemn which would not be condemned within this definition of the court. The difficulty with the literal construction of the statute is that it would denounce a great many minor or incidental restraints of trade, which made the statute ridiculous and weakened its effect and lent support to the criticisms and contemptuous treatment of the statute by those who were opposed to its passage and enforcement.

"Reasonable" Restraint.

For instance, take the instance cited by a federal circuit judge in which he said that under the literal construction of the statute which must be enforced, if there were two persons doing a wagon-express business across a state line and they united in a partnership, the union in the partnership would be a restraint of interestate trade in violation of the statute. Such a result is really a reductio ad adsurdum, and no one who was in favor of making the statute effective for the purposes for which it was passed, and had any intelligent appreciation of what the statute was intended to accomplish and what it meant, would contend for such a construction. It is true that in one of the decisions of the supreme court there was a statement made that the term "reasonable" could not be introduced into the statute because congress had not put it there, but the very same court, and the very same judge, when a case arose presenting a restraint of trade that must be condemned as unlawful if a literal meaning were to be given to the statute, said in so many words that it must be reasonably construed, and that it must not be held to include contracts that were merely incidental restraints of trade and were not made for that purpose. In one of these cases a man owned some steamboats that did an interstate business on the Ohio river. He wished to sell out. He did sell out, and in the sale of the steamboats he wished to sell the good will of the line which he had been running. Accordingly he stipulated that he would not himself engage in that business between those same points for a certain number of years. This was interstate business and his contract was in restraint of trade, but the supreme court held that it was a mere incidental restraint, i. e., incidental to the sale of the good will, and so was not within the statute. This would have been the same at common law, where from time immemorial such a restraint as this has been held to be reasonable because limited to the necessity of preserving the good will which the vender was selling, and which but for such an agreement would be worth nothing. In other words, the supreme court in this case gave a reasonable construction to the statute and eliminated from its operation the Tobacco cases, there is not one who has criticized them that can formulate a contract in restraint of trade that ought to come within the statute that does not come within it under the decision of the supreme court.

Defends Court Decision.

It is said that the supreme court has read something into the statute that was not there before; that it has inserted the word "reasonable" before restraints of trade, when the same court had said that this could not be properly done, because congress had evidently not intended to include such a limiting word in the statute. This is not fair to the court. It is true that the court, in the early days of the construction of the statute, had said that it could not limit the statute in effect by excluding from its operation what was deemed reasonable at common law. But as other cases arose it found it necessary to make exceptions to the literal operation of the words "restraint of trade," and it did so by excepting what was minor, or incidental, or indirect, and including only those cases where the chief object of the contract or combination was the restraint. In doing so the court said that it must give the statute a reasonable construction and not one leading to absurd or ridiculous results. In the last two cases the court did not change the substance of the reasoning and scope of the previous decisions, but only treated the exceptions previously termed "incidental and indirect," as excluded from the operation of the statute in the light of reason, i. e., in conformity to the evil sought to be reached. Now, in what way has this injured the public weal? What combinations or arrangements can escape under this interpretation that any sensible man would wish to have condemned? Did the court not condemn the Standard Oil Co., the father of all trusts, in the history of which every form of criminal illegality was practiced? Did it not, on the other hand, condemn the Tobacco Trust, of much later origin and framed under the advice of cunning counsel for the very purposes of evading the condemnation of the statute and at the same time securing and enjoying the monopoly the framers of the statute intended to prevent and punish?

Let me renew again the invitation to any of the vociferous critics of the decision of the supreme court to use their legal imaginations and state the facts of a case not condemned within the rule of construction put upon the statute by the supreme court, but included within their construction of it, which reasonable men would think it wise or proper to make criminal.

Now, I desire to call attention to a very broad distinction that many persons have failed to draw or perceive between a reasonable construction of the statute which the supreme court has insisted upon and the introduction of the word "reasonable" in the statute so as to lead to a result by which combinations for the purpose of restraining trade with a view to controlling prices and maintaining a monopoly could be held to be reasonable and thus lawful. Until the decision of the supreme court in these last two cases there was a clearly defined hope in the minds of many business men who had reached the conclusion that it was impossible to conduct business on a free competitive basis, and that it was necessary to secure monopolistic control of prices and competition in order to make business reasonably profitable, that in some way or other the statute could be construed so as to make it apply only to unreasonable monopolies; unreasonable exclusion of competition and control of prices. They had in their minds the thought that in some way or other a standard could be set by which if those who enjoyed the monopoly and the restraint of competition and the control of prices did not abuse their power to the point of seeking from the public exorbitant profits, their arrangements could be held to be only reasonable and not within the statute or punishable by law. In my message of January 7, 1910, on the interstate commerce and anti-trust laws and federal incorporation, I used this language:

Quotes From His Message.

Many people conducting great businesses have cherished a hope and a belief that some way or other a line may be drawn between "good trusts" and "bad trusts," and that it is possible by amendment to the anti-trust law to make a distinction under which good combinations may be permitted to organize, suppress competition, control prices, and do it all legally if only they do not abuse the power by taking too great profit out of the business. They point with force to certain notorious trusts as having grown into power through criminal methods by the use of illegal rebates and plain cheating, and by various acts utterly violative of business honesty or morality, and urge the establishment of some legal line of separation by which "criminal trusts" of this kind can be punished, and they, on the other hand, be permitted under the law to carry on their business. Now the public, and especially the business public, ought to rid themselves of the idea that such a distinction is practicable or can be introduced into the statute. Certainly under the present anti-trust law no such distinction exists. It has been proposed, however, that the word "reasonable" should be made a part of the statute, and then that it should be left to the court to say what is a reasonable restraint of trade, what is a reasonable suppression of competition, what is a reasonable monopoly. I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment. It is to thrust upon the courts a burden that they have no precedents to enable them to carry, and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster.

How to Effect a Remedy.

This paragraph has been quoted and spread on the record of the senate on the motion of a senator who considered this to be at variance with the decisions of the supreme court. Instead of being at variance, it is in exact accord with those decisions.

Again, from those who have given up free competition as an economic force that ought to be encouraged or enforced, and who are utterly opposed to the spirit of the anti-trust law, we have frequently heard the question, "Well, suppose you convict those large combinations under the statute, what are you going to do about it? You can, perhaps, send some men to the penitentiary for creating these combinations which have cheapened the cost of production and given you most of your foreign trade and much of your prosperity, but what are you going to do with the capital invested, the plant, and the organization? You can confiscate it and ruin your country by a panic, but you can't divide such combinations into their component parts again, for the lines of division have disappeared into a common ownership."

The court has not met the issue and the queries presented by the doubters and the scoffers. It has vindicated the majesty of the law, has illustrated the wonderful electicity and adaptability of remedy by injunction in equity, and has at the same time manifested a due regard for the welfare of the innocent business men and the community at large, who, in a cataclysm caused by the confiscation of such enormous capital as are involved in these combinations and a suspension of the legitimate part of their business, would be buried with them in a common ruin.

The court has exhibited a courage in facing the necessary results in enforcing the statute that, instead of prompting an attack on it, ought to make every American proud that we have such a tribunal. It is now enforcing its decree against the Standard Oil Co. and against the Tobacco Co., and it is making those great combinations divide themselves into actually competing parts under such provisions in the decree that an injunction shall be constantly of the old relations of a monopoly. This was an easier matter in reference to the Standard Oil Co., because it was easy to divide up the various companies that were united by the ownership of stock of all the companies in a single holding company. In the Tobacco Co. the decree could not be worked out so easily, and it will be necssary to separate the properties owned by single companies and to distribute these plants into different and differing ownerships in order to create competition between them and maintain that competition by the power of a continuing injunction against any future union, or any agreement to avoid future competition. It needed these two great decisions to teach the business public that at least not in the supreme tribunal of this country would the claim be listened to, that in this day and generation we have passed beyound the possibility of free competition as consistent with proper business growth, or that we have reached a time when only regulated monopoly and the fixing of prices by governmental authority are consistent with future progress. We did get along with competition; we can get along with it. We did get along without monopoly; we can get along without it; and the business men of this country must square themselves to that necessity. Either that, or we must proceed to state socialism and vest the government with power to run every business. The decision of the supreme court is in the highest interest of the public, and I am glad to think that business men who have been violating the trust law are now being made to see the necessity for putting their houses in order, changing their original organizations, giving up the idea that it is necessary to control markets in order to make profits, and reverting to the old principle of free competition, in which all limit upon it to prevent its being excessive must be self-imposed by the good sense of each competitor and not by any arrangement or contract between competitors or secret stipulation or wink or nod.

Effect of Decision.

The decision of the supreme court as it grows to be understood in the near future will be a signal for the voluntary breaking up all combinations in restraint of trade within the inhibition of the statute, and will, I hope, lead to a complete revulsion of feeling on the part of the business men of this country and to a clear understanding by them of the limitations that must be imposed by them upon any business combinations made by them in the future. The operation of the statute has illustfated the slowness of judicial procedure, and of this I have often made complaint; but in the settlement of issues of this importance two decades are no great length of time, and if in that period we shall have stamped out an evil which would certainly have carried us to socialism as a reaction from the vicious control of the few, the time spent, the effort, and the litigation are worth the cost. There have been times when among others I have thought that the enforcement of the law might have been facilitated had the courts visited its breach with severer punishment, but "Though the mills of the gods grind slowly, yet they grind exceeding small," and without the severity that some of us urged and would have been glad to see used, a revolution in business methods where they have heretofore been violative of the statute will be accomplished, and with least disturbance to business which is lawful.

In a special message on the subject of trusts which I sent to congress Jan. 7, 1910, I said:

"It is the duty and the purpose of the executive to direct an investigation by the department of justice, through the grand jury or otherwise, into the history, organization, and purposes of all the industrial companies with respect to which there is any reasonable ground for suspicion that they have been organized for a purpose, and are conducting business on a plan which is in violation of the anti-trust law. The work is a heavy one, but it is not beyond the power of the department of justice if sufficient funds are furnished to carry on the investigations and to pay the counsel engaged in the work."

Going After Trusts.

I wish to repeat this now, and to say further that the attorney general has instituted investigations into all the industrial companies above described, and that these are in various stages of completion.

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Under these conditions, I am entirely opposed to an amendment of the anti-trust law. It is now a valuable government asset and instrument. Tested and brought into practical and beneficial use by 20 years of litigation and construction by the highest court, why should we imperil its usefulness by experiments? The outcry sought to be raised in some quarters, followed by proposals of amendments prepared without a real understanding of the law or the court's decision, may serve the purpose of promoting unreasonable and unreasoning discontent, but certainly ought not to be considered seriously.

When an amendment is proposed, let the proponent state the defect in the statute the amendment is to remedy, and how it will effect it.

Federal Incorporation.

If the avowed purpose is to make it impossible to use reason in the construction of the statute as the supreme court did, let the mover of the amendment formulate a case of restraint of interstate trade not condemned under the supreme court's construction of the statute, which ought to be condemned. Let us avoid general expressions. Let us aboid charges of improper motives. Let us come down to concrete cases and facts and make a showing for an amendment that a lawyer and a legislator can understand and weigh, and not to be content with mere rhetoric and language useful only for declamation.

In my message of Jan. 7, 1910, I advocated the passage of a statute which shall permit the incorporation of companies engaged in interstate commerce by the federal government. I believe that a statute might be drawn to furnish the protection which would induce companies engaged chiefly in interstate trade to take on federal incorporation, and that by the supervision which might be maintained by an executive bureau of the government over their transactions it would be possible to prevent future violations of the anti-trust law by those companies on the one hand and to secure to them a freedom from constant fear of prosecution on the other. But this statute would in no way be an amendment of the anti-trust law, which has now reached a period in its history when it is really accomplishing the purpose of its framers and is enforcing a reform in the business methods of this country which will be as useful as it is widespread.

EXCUSE ME!

Drawn By M. MYER