

# ENFORCE THE CRIMINAL LAW

Samuel Untermyer, the well-known New York lawyer who exposed the shipbuilding trust, has given to the New York World an interview on the anti-trust law. This interview should have wide publicity. Mr. Untermyer declares that there are many trusts whose managers could be successfully prosecuted under the criminal clause of the Sherman anti-trust law. He declares that a single conviction in the criminal courts would have more beneficent effect than a lifetime of civil litigation.

While Mr. Untermyer does not mention these trusts specifically, the World says that it is plain that the steel trust and the International Mercantile Marine are open to prosecution under the criminal clause, according to the decision delivered in the merger case.

Mr. Untermyer says: "It is in its criminal aspects that the law can be made most effective. For some unexplained reason the government has never invoked the criminal provisions of the statute."

Mr. Untermyer's statements with respect to the enforcement of the criminal law are so interesting that they are reproduced in full. He says:

"The same proof that has resulted in the present findings that the merger constituted an unreasonable restraint of trade would have sustained a criminal conviction. The terror of the criminal law is the only effective restraining influence against the continuance and repetition of the defiance of this law under the innumerable disguises to which resort may be had. If the department of justice is sincere in its desire to enforce the law in good faith it can accomplish more by a single criminal prosecution in the way of dismantling existing violations and preventing new ones than by devoting a lifetime to civil action.

"The civil remedies under it can never be made effective in practice. We had a fair illustration of that in the case of the sugar trust, in which the attorney general of this state, after years of litigation, obtained an adjudication dissolving the trust as a conspiracy. Judgment was entered and a receiver appointed. What was the result? The receiver under the direction of the court and at the request of substantially all the stockholders transferred the property and business in bulk to the American Sugar Refining company.

We had then the spectacle of a great industry that had been judicially declared a criminal con-

spiracy handed over in its entirety on the order of the court to a corporation formed for the purpose. The new corporation thus derived from judicial authority its title and its right to continue perpetually to exercise the monopoly on account of which its predecessor had been condemned! What greater travesty upon the administration of justice could possibly be conceived!

"A similar result under other forms is almost certain to follow the decision in the Northern Securities case. What particular form the new monopoly will assume has not yet been determined. It requires little stretch of the imagination for lawyers to conceive methods that may be employed for the purpose, and so when the public attention is no longer riveted upon this company we shall probably witness the act that has been here condemned re-enacted in a slightly different form, and another lesson will have been taught to the people in the methods of circumventing the law!

"For these reasons I repeat that if this law has any value for the people it is in its criminal features. If the government wishes in good faith to enforce the law it will invoke its penal provisions. A single conviction, accompanied by imprisonment, will do more to teach respect for the law than all the decisions of all the courts for all time to come based only on the civil remedies that may be invoked.

"It is incredible that no effort should have been made during all these years of flagrant violation to enforce the criminal provisions if there were an honest disposition to enforce the law during the fourteen years it has been in existence."

What will be the legal effect of the decision in the Northern Securities case upon the ability of the government to enforce the law against other corporations?

"So far as concerns railroad corporations, those similarly situated will of course come within the rules there laid down. The anthracite coal carrying roads, such as the Reading road, with their ownership of coal mines, can undoubtedly be reached.

"The decision will not affect industrial corporations one way or the other unless they are engaged in interstate commerce. Under the rule laid down by the supreme court in the case of the United States vs. Knight (the sugar trust case) very few of the industrial corporations are sub-

ject to the provisions of the Sherman act. The mere ownership of factories in different states and the distribution of the product from those factories throughout the country or any foreign countries was held in that case not to constitute interstate commerce, although the ownership by a single corporation of such factories constituted a monopoly of the industry.

"Whatever difference of opinion may exist as to the logic or wisdom of that rule it remains the law applicable to these industrial corporations until the court reverses the rule. There are, however, some industrial companies that come within the definition of even that rule, and among them are a few of the largest industrial corporations yet organized. They are brought within it by the ownership of subsidiary companies engaged in transportation by land and water, some of them organized mainly for transportation purposes either between the states or with foreign countries.

"The bulk of the industrial combinations must, however, continue to be dealt with, if at all, by the laws of the several states.

"The Northern Securities decision has no application to them or to the methods of their organization, except that 'holding' companies can no longer claim that the ownership or control of subsidiary companies renders them non-amenable to the federal statute in cases in which they are actually engaged in interstate commerce. Where they are so engaged, and the combination is in effect an unreasonable restraint upon competition, they cannot escape merely by reason of the fact that their holding is indirect instead of a direct ownership.

"I do not subscribe to the modern theory of economics put forth by the ingenious promoters of these gigantic monopolies, and by such eminent champions as James C. Carter and John E. Parsons, that competition, which was once considered the life of trade, is a curse and monopoly a blessing. Believing, as I do, that it is not in the interest of the country to have the railroad systems of the country, or any great industry, controlled by a few men or cliques of men, and that competition is necessary to the healthful development of a country and its people, I am still hopeful that the criminal provisions of the federal law and of the state laws will be invoked against a few of the more vicious and flagrant of the monopolies with which the country is now burdened."

same time surrendering itself to the domination of those who meet "with sneers, jeers and open contempt" the suggestion that the laws be enforced?

It cannot be possible that the World means that the democratic party should entirely abandon its position upon the trust question, nominating for president the World's favorite candidate, Grover Cleveland, or some one in harmony with his views, and by this course obtaining support and money for campaign purposes from the trust magnates.

Surely these magnates would not be hostile to candidates who, while holding public office, met "with sneers, jeers and open contempt" all appeals that the law which the trust magnates were violating be enforced.

## Made to Get In On.

General H. H. Thomas, who recently retired from the position of the United States appraiser for the port of Chicago, has written an open letter to Secretary of the Treasury Shaw. In this letter General Thomas says:

"The republican party prides itself on its devotion to the civil service law and you have sworn to enforce that as well as other laws. Let us see the performance. In April last there occurred a vacancy in the tobacco examiner's office, which carried a salary of \$1,800. There being no eligibles to select from, you appointed Mr. Lahann for a thirty-day term at \$10 per day. You reappointed him each month until September 2, when a competitive examination was held, in which he participated and failed to pass. A half-dozen did pass and some of them well up in the nineties, and the law made it one of your duties to appoint one of the three highest, but you set aside the law and have appointed Lahann five times since. I am saying nothing against him. You have paid him \$3,000 for ten months, 20 per cent more than the appraiser receives, twice

as much as the tobacco examiner ever had, and \$1,150 per annum more than Mr. Wallace, my chief examiner—a man competent to fill any place in the customs service. If you can do this ten times, what is to hinder you from doing it a hundred times, in utter contempt of the law? What do you suppose the president would have done when he was a strenuous civil service commissioner if he had caught a wicked democrat in that kind of a predicament?"

General Thomas makes a very interesting statement, and yet it is strange that a man who has been so long identified with the republican party as General Thomas has been, and who has had excellent opportunities for learning the Roosevelt methods, would expect any demonstration of sincerity on the part of the Roosevelt administration with respect to the civil service law, or, indeed, with respect to many other far-famed policies, which, like the platform on the railway coach and the platform of the republican party are made to get in on and not made to stand on.

## Reducing the Dinner Pail.

One hundred and ninety thousand miners in the soft coal district have voted to accept a wage reduction. While they have no legal cause of action against the republican leaders they can justly complain at this reduction in the size of the dinner pail. In the face of present business conditions they were probably wise to accept a reduction rather than strike, but can they be deceived again by the prosperity argument? With shrinking stocks, decreasing dividends and falling wages the republican campaign ammunition is likely to run short.

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