Trust Legislation

By Congressman Henry D. Clayton, Chairman of the Committee on the Judiciary

In view of the widespread interest manifested throughout the country in the general subject of trust legislation, and particularly in the tentative bills prepared by the subcommittee of the committee on the judiciary, composed of the chairman of the full committee and Representatives Ca in and Floyd, on which public h ings are being held in connection with all other bills relating to trusts which have been introduced and referred to the committee, it will not be deemed inappropriate to give to the public a brief outline of the scope and purpose of the proposed tentative bills.

In the first place these proposed bills are tentative, both as to form and substance, but in their preparation the underlying purpose of the subcommittee was to formulate legislation that would protect the public against well-known practices and methods of great corporations which the subcommittee believes tend to promote monopolies and are, therefore, detrimental to the public interest. The president, in his message to congress on trusts and monopolies, delivered January 20, 1914, uses this language:

"We are all agreed that 'private monopoly is indefensible and intolerable' and our program is founded upon that conviction. It will be a comprehensive, but not a radical or unacceptable program, and these are its items, the changes which opinion deliberately sanctions and for which business waits:

"It waits with acquiescence, in the first place, for laws which will effectually prohibit and prevent such interlockings of the personnel of the directorates of great corporations—banks and railroads, industrial, commercial, and public service bodies—as in effect result in making those who borrow and those who lend practically one and the same, those who sell and those who buy but the same persons trading with one another under different names and in different combinations, and those who affect to compete in fact partner and masters of some whole field of business. Sufficient time should be allowed, of course, in which to effect these changes of organization without inconvenience or confusion."

The position of the president on the subject of interlocking directorates is stated with such admirable clearness, and the abuses that have grown up under that system are so manifest to every person who is reasonably informed on the subject that we feel that the recommendations of the president for legislation on this subject are fully justified by the sentiment of the entire country. As illustrative of the conditions in business, described by the president, in which those who sell and those who buy are but the same persons trading with one another, let attention be called to a transaction which was brought out in the investigation of another matter by the committee on the judiciary in a previous congress, wherein it was disclosed that a certain person who was a director in one coal company made an advantageous contract with himself as a director of another coal company, which contract was ratified by himself as a director of a railroad company, of which one of the coal companies involved was a subsidiary corporation. When asked by a member of the committee whether he thought under the circumstances there was any possible chance for him to get the worst of the bargain so far as he was personally concerned, he frankly admitted there was not. This illustration and all similar transactions show conclusively the necessity for legislation on the subject of interlocking directorates, not only in the interest of the general public but in the interest of innocent stockholders in corporations, as well as in the interest of common honesty.

The purpose of tentative bill number three, now under consideration by the judiciary committee, is to carry out the recommendations of the president in this regard and deals with directors in three classes of corporations. As to whether the bill is so worded as to meet the requirements in the particular cases to which it relates and to reach the evils intended to be reached is not material, as the bills are only tentative, and the committee is open to receive from the public and from those particularly interested from the standpoint of their own business the fullest information on the subject, in the hope that such information will be beneficial to the committee in the perfection of the legislation, so as to meet the recommendations of the administration and the general needs of the country, and that, too, without serious detriment or embarrassment to any legitimate industry or enterprise.

Section 1 of the bill prevents any person who is a director in an interstate railroad from being a director in a corporation which is engaged in manufacturing or selling railroad cars or locomotives or railroad rails or structural steel, or in mining or selling coal, or in the conduct of a bank or trust company. The contractural relations between interstate railroad companies and the corporations specified are so common and of such wide extent and variety, and the disclosures of abuses growing out of interlocking directorates of other corporations with railroad companies in the past have been so flagrant, often involving millions of dollars to the stockholders of the corporation whose interests were sacrificed, that it is deemed wise to prohibit interlocking directorates altogether between such affiliated corporations and the railroads.

It has been suggested in the hearings with considerable force that corporations other than those specified, and especially those furnishing supplies to railroads, ought to be included. And the committee stands ready to make that or any other modification, if on the final consideration of the matter, it is deemed necessary and in the public interest to do so.

Section 2 prohibits broadly interlocking directorates between federal reserve banks, national banks, banking associations, or other banks and trust companies operating under federal authority and also between federal banking institutions and state banks or trust companies. It has been urged before the committee that the provision, as drafted, is too broad and sweeping and that there ought to be some modification of it, so as to relieve the smaller banks, savings banks and trust companies from its operation. All that need be said at this time as to that criticism is that this provision is tentative, and it is the purpose of the committee to make any modification thereof which, on final consideration may be deemed necessary in the public interest. But it is confidently asserted that the object sought to be accomplished by this provision is fundamentally sound.

Section 3 prohibits interlocking directorates between competing industrial corporations engaged in interstate business. The necessity for such inhibition in the law is supported on the same ground and is justified by the same reasoning which calls for a prohibition of interlocking directorates in railroad and banking corporations.

The purpose of tentative bill number one is to prevent certain discriminations in trade which have often tended to monopoly and injured the competitors of those concerns which resorted to such discriminations and unfair practices. And in addition thereto to afford to injured persons further and more effective remedies than exist under the Sherman act. This bill proposes to leave intact and unaffected by any of its provisions the full text of the Sherman law, but to supplement the same by adding thereto these additional sections to be designated as sections nine, ten, eleven, twelve and thirteen.

Section 9 prohibits discriminations in price between different purchasers of commodities in the same or different sections or communities, with the purpose or intent thereby to injure or destroy a competitor, either of the purchaser or of the seller, with a proviso which clearly defines certain exceptions. This is not a new legislative proposition, for a great number of the states have passed statutes prohibiting within their borders differences in price for such wrongful purpose. While these states statutes differ in phraseology, the general purpose intended to be accomplished by each is the same. This section, as drafted, follows generally the phraseology of the New Jersey statute dealing with the trust question passed during the administration of Governor Woodrow Wilson, and is the first of a series of statutes familiarly designated in New Jersey as "The Seven Sisters," all relating to the trust question. It may not be inappropriate to say, in this connection, that the promulgation of and securing the passage of this trust legislation by Governor Wilson had much to do with popularizing his candidacy for the presidency and in the end resulted in his nomination and election as president.

Section 10 is intended to prohibit a very common evil, prohibiting any person in interstate or foreign commerce from making a sale of goods, wares, or merchandise or fixing a price charged therefor or discounting from or rebating upon such price on the condition or understanding that the purchaser thereof shall not deal in the goods, wares, or merchandise of a competitor or competitors of the seller, and accomplishes its purpose by simply declaring that such transaction shall be deemed an attempt to monopolize within the meaning of the Sherman act and shall be punished accordingly.

The president, in his message to congress already referred to, recommended additional legislation to aid those who had been injured in their business or property by the operations of unlawful combinations acting in violation of the Sherman law. On that subject he had this to say:

"There is another matter in which imperative considerations of justice and fair play suggest thoughtful remedial action. Not only do many of the combinations effected or sought to be effected in the industrial world work an injustice upon the public in general; they also directly and seriously injure the individuals who are put out of business in one unfair way or another by the many dislodging and exterminating forces of combination. I hope that we shall agree in giving private individuals who claim to have been injured by these processes the right to found their suits for redress upon the facts and judgments proved and entered in suits by the government where the government has upon its own initiative sued the combinations complained of and won its suit, and that the statute of limitations shall be suffered to run against such litigants only from the date of the conclusion of the government's action. It is not fair that the private litigant should be obliged to set up and establish again the facts which the government has proved. He cannot afford, he has not the power to make use of such processes of inquiry as the government has command of. Thus shall individual justice be done while the processes of business are rectified and squared with the general conscience."

Section 12 of the bill provides that a final judgment or decree obtained by the government for the dissolution of any unlawful combination or corporation shall constitute as against the defendant conclusive evidence of the same facts and be conlusive as to the same issues of law in favor of any other party in any other proceeding brought under or involving any of the provisions of the Sherman act, to the full extent to which such judgment or decree would constitute in any other proceeding an estoppel between the government and such defendant in the original suit. This we think is in strict keeping with the recommendation of the president and we believe that the section is so drafted as to accomplish the purpose desired.

Section 13 provides that any person, firm, corporation, or association, threatened or injured in his business by the unlawful acts of any corporation or combination may have injunctive relief in any court of the United States having jurisdiction over the parties against threatened loss or damage by reason of a violation of any of the provisions of the Sherman act. This adds an additional remedy for persons injured in their business or threatened with injury to their business by unlawful combinations and is also in keeping with the president's recommendation above set out.

It is gratifying to state that very little adverse criticism has been made in the public hearings before the judiciary committee of the provisions incorporated in sections 12 and 13 of the proposed bill.

Tentative bill number two prepared by the subcommittee is commonly referred to as the definitions bill. It has been more severely criticised perhaps, and is the least understood of any of the proposed bills. The purpose of it generally stated is to narrow the debatable ground of the Sherman law as to criminal offenses and to make specific and clear that certain well-known practices which tend to monopoly, when entered into between two or more distinct individuals, persons, corporations, or firms, are to be deemed and held within the clear inhibitions of the Sherman law. These are set out in the following paragraphs:

"First. To create or carry out restrictions in trade or to acquire a monopoly in any interstate trade, business or commerce.

"Second. To limit or reduce the production