

The Stanley Committee Report

Following is a special dispatch in Louisville Courier-Journal: Washington, July 22.—Representative A. O. Stanley tonight gave the correspondent of the Courier-Journal the full text of the three important bills which the democratic members of the Stanley steel committee today finally decided to recommend for enactment into law in order to remedy evils growing out of the existence of the great industrial trusts.

While the committee has based its report largely upon its investigation of the steel trust, which lasted for more than a year, it has also studied the government suits against the tobacco trust and the Standard Oil company, and several of the important provisions of the Stanley bills are aimed directly at the tobacco trust.

The democratic members of the committee met this morning and took their final vote. Their report will be unanimous except for the dissent of Representative Martin W. Littleton, of New York, from the proposal of the other four members to shift the "burden of proof" from the government to the defendant corporation in a suit under the Sherman law.

The text of none of these bills has ever been printed. The Courier-Journal has published the important sections, and the substance of each measure.

LITTLETON'S VIEWS

Mr. Littleton was authorized by the other democratic members of the committee this afternoon to file along with the report a statement of his views in favor of adhering to the practice of requiring the government or any other complainant under the Sherman law, to prove "unreasonableness" of restraint of trade. He thinks that to make the defendant prove "reasonableness," thus shifting the burden of proof, would be revolutionary as a legal proposition.

Judson C. Clements, of the interstate commerce commission, at the request of Mr. Stanley, revised the two highly important committee bills to break up the system of "interlocking directorates" and to divorce industrial corporations engaged in interstate business from transportation lines. While Mr. Clements has not given his official approval of these bills, he has written to Mr. Stanley telling him that he believes they are a long step in the direction of remedying trust evils.

STANLEY AMENDMENTS

Here are the important sections of the Stanley committee bill amending the Sherman law:

"Section 10. Any person who shall be injured in his business or property, or shall be threatened with such injury, by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may bring suit in equity in any circuit court of the United States in the district in which the defendant resides or is found, to prevent and restrain violations of this act and for other appropriate relief.

"Section 11. Whenever suit has been instituted under Section 4 of this act any person who shall be injured in his business or property, or threatened with such injury, by the defendants in said suit or any of them by reason of anything forbidden or declared to be unlawful in this act, and any state of the United States, may at any time intervene in said suit to protect his interests, or, if the intervenor be a state, the interests of the citizens of such state and any person interested or any state may after final decree in said suit petition said court for protection or redress in case of any violation of said decree, and the court shall have power to take such action as may be appropriate in the premises.

BURDEN OF PROOF

"Section 12. Whenever in any suit it shall appear that any combination was entered into, existed or exists, which was or is in restraint of trade, the burden of proof to establish the reasonableness of such restraint shall be upon the party who contends that such restraint is reasonable.

"Section 13. Whenever in any suit it shall appear that any combination was entered into, existed, or exists, which was or is in restraint of trade, such restraint shall be conclusively deemed to have been, and to have been unreasonable and in violation of the provisions of this act as to any party thereto who is carrying on any business to which such combination relates or in connection therewith:

"(a) If such person does business, directly or indirectly, under any name other than his

own or that of the partnership of which he is a member; or any corporation does business under any name other than its own corporate name; or if there be any concealment or misrepresentation as to the ownership or control of such business; or if there be any misrepresentation as to the identity of the manufacturer, producer or vendor of any article sold.

"(b) As the vendor of any article spies upon the business of any competitor or secures information concerning his business either through bribery of an agent or employe of such competitor, or if any state or federal official, or by any illegal means whatsoever secured information concerning the competitor's business.

UNLAWFUL RESTRAINT

"(c) As the vendor of any article attempts to prevent or restrain competition by supplying or offering to supply such article without charge, or at a price at or below cost of production and distribution.

"(d) As the vendor of any article with a view to preventing competition with the same fixes upon some raw or manufactured material which he controls and which is required for producing a competitive article an unreasonably high price.

"(e) As the vendor of any article attempts to prevent or restrain competition by any contract or arrangement under which he shall not sell any article in which he deals to certain persons or classes of persons, or to those doing business within certain districts or territories.

"(f) As the vendor of any article attempts to prevent or restrain competition by supplying or offering to supply to any person doing business in any particular territory articles sold by him upon terms or conditions in any respect more favorable than are accorded by him to his other customers.

"(g) As the vendor of any article attempts to prevent or restrain competition either by refusing to supply to any other person requesting the same any article sold, or by consenting to supply same only upon terms or conditions in some respects less favorable than are accorded to any other person.

"(h) As the vendor of any article attempts to prevent or restrain competition by making in the price or other terms of any such sale any discrimination based upon whether the vendee purchases from him articles of a particular quantity or aggregate price.

JURISDICTION

"Section 19. Whenever in any proceeding under section 4 of this act any combination has been adjudged illegal under section 1 and section 2 of this act the court before which such proceedings are pending shall have jurisdiction:

"(a) To partition any property owned under any contract or by any combination mentioned in section 1 and section 2 of this act severally among the owners thereof, or groups of owners thereof, and if the owners include one or more corporations, among the several stockholders thereof if among groups of the several stockholders thereof all in proportion to their respective interests.

"(b) If sales of such property are necessary or proper, either to pay debts or incumbrances thereon, or to recreate conditions in harmony with the law, to sell such property as a whole or in parcels; and the court may forbid the said owners, and if the said owners include one or more corporations the stockholders thereof, from purchasing at such sales, and may prescribe the conditions on which any purchase may be made by any person whatsoever.

"(c) To make such restraining orders or prohibitions as may be necessary and proper to recreate conditions in harmony with the law, including prohibitions of any acts, conduct, methods or devices which are enumerated herein as indicating unreasonable restraint.

"(d) To declare void, as against the defendants or any of them any contract entered into as a part of the combination found to be in restraint of trade."

TOBACCO TRUST

In its discussion of Sections 13 and 19, which are aimed at the tobacco trust, the committee says:

"Section 13.—The purpose of this section is to select various practices commonly pursued by trusts which have proved particularly oppressive and to stipulate that when they are indulged in by a combination to restrain trade the combination shall be considered conclusively unreasonable and therefore illegal. It seemed best

to adopt this form of securing prohibition in order to leave intact the present Sherman law as interpreted by the supreme court in the Standard Oil and tobacco cases. Practically every one of the practices specifically enumerated as being conclusively unreasonable has been reviewed in one or more of the trust cases as strong evidence of its illegality, and has been subject to general public condemnation.

"(a) This clause strikes at the fake independents used by the tobacco trust with such disastrous effect to the real independents.

"(b) This section deals with the practice pursued so effectively by the Tobacco trust and Standard Oil trust of crushing independents through bribing independents' employes and otherwise illegally obtaining business secrets.

"(c) This deals with the practice of price-cutting used with such disastrous effect by the Tobacco trust and the Standard Oil trust as against particular competitors in particular districts.

"(d) This deals with the practice so effectively used by the Tobacco trust when it controlled licorice paste, and which, of course the steel trust would be in a strong position to use with respect to iron ores and its crude manufacturers.

"(e) This also deals with practice of the tobacco and other trusts of discriminating in favor of their 'loyal' customers as against those who have dared to deal with competitors.

"(f) This also deals with forms of discrimination as exercised by the tobacco trust and the Standard Oil trust which have proven so disastrous to the independents.

"(g) This is designed to meet still another form of discrimination practiced by the tobacco trust and others.

"(h) This is designed to meet practices like those used by the tobacco trust which practically destroy competition by means of skillfully devised quantity discounts. The company would ascertain what the annual purchases of a dealer were and then fix the quantity required for the discount at an amount approximately that of the total sales of the dealer."

REAL DISSOLUTION

"Section 19.—The provisions of this section are designed to make clear the power of the court to bring about a real dissolution of the trusts and to avoid such shams as the alleged disintegration in the tobacco trust and Standard Oil cases. That disintegration shows clearly how inadequate the present legal machinery as administered by the court is, although the powers were doubtless broader than the circuit judges who passed upon the tobacco case assumed.

"The tobacco trust was declared to be illegal on admitted facts. It was so declared by unanimous court. The plan of disintegration adopted divided most of the properties among three corporations, the three corporations to be owned by the same persons, in the same proportions, and necessarily controlled by the same people. The independents contended that the trust's property should be distributed among different sets of individuals, and that provision should be made so that the segments into which the trust was divided should be separately owned. The circuit judges appeared to think that they had no power to require such an absolute separation of the interests of those who formerly had been used in an unlawful combination. Clause (a) is designed to grant the power to make a complete separation, if such power does not already exist, and if it does exist to intimate that the exercise of such power—which is essential to a complete disintegration and to the restoration of competitive conditions—may appropriately be exercised.

PLAN OF ADJUSTMENT

"The circuit judges in the tobacco case also assumed apparently that unless they could secure the consent of the defendants to the plan of disintegration the court had neither authority nor power to carry out any plan of adjustment; that is, that they must secure in some form the consent of the holders in bonds and stocks of the defendant company. The court assumed that in the absence of such consent the only resource would be to sell the property at receiver's sale, and that at such sale the defendants or any other person could buy the property without restriction.

"Clause (b) is designed to make clear that the court has power on final decree to sell the property and in selling it to prescribe the conditions upon which the purchaser shall hold it, including, among other things, provision forbidding the defendants themselves, or if the de-

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