

CHAPTER XI

THE DRIVE ON MONOPOLY

The most serious opposition that the high protectionist had met in the long campaign to ^{keep and} ~~help~~ lift the duties laid in the Civil War for revenue only, was the charge so effectively put by President Cleveland in his message of December 1886:- that the tariff was a trust-breeder. There was only too much evidence backing the charge - evidence wide open for the country to read - most convincing the Sugar Trust which able, efficient, highly scientific as was its management could never have become the monopoly it was without the help of the tricky duties it had always been able to worm into the schedules. The protectionists feared the trusts politically and economically, but they were unwilling to give up, even lower the tariffs which helped breed them. They willingly therefore gave their influence to the movement, strong from the early '80's, to lay bare their structure and devise a method for their destruction.

The trusts of the '80's were suspected quite as much because of the secrecy with which they carried on their operations as because of the elements of monopoly they were supposed to enjoy. The form of organization was unknown and therefore mistrusted. Their methods were largely secret and therefore feared. State and Federal Governments concluded by 1888 that the first step in controlling the trust, if control was necessary, was to lay bare their structure, open up their plan of operation.

New York State began investigation in February of 1888, its first subject being the Standard Oil Company. Its reason for this selection was:- "This is the original trust. Its success has been the incentive to the formation of all other trusts and combinations. It is a type of a system which spread like a disease through the commercial system of this country." (1)

1) Report on Investigation Relative to Trusts, Senate of New York State (1888)

~~was brought out - the original trust agreement, so-called. (1)~~

Later in this year, July 1888, a report was submitted to the House of Representatives of an investigation *into Trusts* that the committee ^{on} of manufacturers had been carrying on.

In submitting its report the committee informed the House that the two trusts they had examined - oil and sugar - were formed on the same plan. Corporations organized under the laws of different states and subject to the control of the states had surrendered their stock to a group of trustees named in the agreement which created the trust. In exchange for the corporation stock turned over to them these trustees had issued trust certificates.

In accepting the trust certificates the individual corporation did not lose its identity. It kept up a separate establishment, at least ostensibly, carried on an independent business. The trustees of both the sugar and the oil trust declared upon the stand that they had no other business than to receive and distribute dividends, and hold the stock of the various corporations and exercise the right of stock holders.

"This form of combination," said the report, "was obviously devised for the purpose of relieving the trusts and trustees from the charge of any breach of the conspiracy laws of the various States, or of being a combination to regulate or control the price or production of any commodity; hence they

~~1) See Chapter III of this work~~

assert that the corporations themselves, which control and regulate the price of commodities and the extent of production and have tangible property, remain with their organization intact and distinct, and not in combination with each other; that the stockholders, who owned only the stock, and by well-settled legal rules had no legal title in the property of the corporations, entered into the agreements and sold their stock in the corporations and accepted in payment trust certificates, and that the trustees receive and hold only the stock of corporations and have no legal title to any of the property of the corporations and neither buy nor sell anything nor combine with any one to fix prices or regulate production of any commodity." (1)

The resentment of certain states at this evident attempt to evade their control over corporations which they had created was like the resentment they had shown at railroads which had defied the terms of charters they had granted.

The State of New York felt so strongly about it that in 1889 she brought suit against the North River Sugar Refining Company. This was, it should be emphasized, ^{not} a suit against the Trust but against one of the members.

The upshot of the trial was that the North River Sugar Refining Company lost its charter. The court in making its decision said:-

- 1) Proceedings in Relation to Trusts, 1888. Report: Mr. Bacon from the Committee on Manufacturers. Page 3

"In this state there can be no partnerships of separate and independent corporations, whether directly or indirectly, through the medium of the trust; no substantial consolidations which avoid and disregard the statutory permissions and restraints; but that manufacturing corporations must be and remain several, as they were created, or one under the statute." (1)

"The state gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thoughts, but to the corporators, the individuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hands and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs; the punishment is theirs; and both must attend and depend upon their conduct. And when they all act collectively as an aggregate body without the least conception, and so acting reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review and not be defeated by the assumed innocence of a convenient fiction." (2)

- 1) People vs. The North River Sugar Refining Company
121 N. Y. 582, decided in 1890 - quoted by Ripley, Wm. Z.
"Trusts, Pools and Corporations." Page 247
- 2) Idem. Page 246

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The Court ordered a receivership and the Sugar Refinery Company, uncertain what might happen to its members in other states, reorganized and for ^{sake} it announced "of protecting property and promoting the interests of its certificate holders," arranged that certificates could be placed into the Central Trust Company of New York. Nobody knew what would happen to them there. The Nation, discussing this latest manoeuvre of the Trust defined the trust certificate as an "aliquot of a mass of amalgamated stocks of certain incorporated companies whose shares are bunched together and locked up in a safe." (1)

The next step of the Sugar Trust was the incorporation of a new company under the laws of the State of New Jersey, and in January 1891 the entire business of the Sugar Refineries Company was transferred to the American Sugar Refining Company with the same amount of capital - \$50,000,000. * (2)

The American Sugar Refining Company from the very beginning adopted the policy of not making any public statements whatever. The only information they did divulge was in the required annual reports to the Massachusetts Government and these were simply balance sheets which revealed but little of their workings. According to the statements of Mr. Havemeyer, President of the Company, even stockholders were not given any information unless they demanded it as a

1) The Nation, July 31, 1890. Page 85

2) Moody John. The Truth About Trusts. Pages 61-67 - 1904
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whole. Under the new organization the business was still further unified, there being but one board of directors and one set of officers, ~~the result being still greater unification, simplification and economy in management.~~ (1)

Controlling about eight five percent of the total sugar output, the American Sugar Refining Company was able to raise prices at will. At the hearings the representative of the trust was unable to give any satisfactory reason why the price of sugar should have gone up in face of the economies claimed, except that the trust was able to regulate the price as it wished. This unification under the re-organization greatly simplified the political activities of the concern.

Court
~~control~~ It was in July 1890 that the ~~sugar~~ New York state took its charter from the North River Sugar Refining Company. A little earlier in the year, May 1890, a suit was brought against the Standard Oil Company of Ohio for violating state laws. The origin of this suit lay in one of those accidental encounters which so often shape human affairs. The Attorney General of Ohio, David K. Watson, was looking over a sheaf of new publications at a book shop in the Public Square of Columbus, Ohio. Among them was a little volume called "Trusts" by a New York lawyer, W. C. Cook. Mr. Watson bought the book and in it read for the first time the trust agreement which the Congressional Committee investigating trusts had brought out and

1) Searles, John E. Story of the Sugar Trust. Page 110

from Depew, Chauncey M. "One Hundred years of American Commerce" (1895) P. 260 Vol F

published two years before 1888. If that was a bonafide document Mr. Watson realized that the Standard Oil Company of Ohio was violating its charter and it was his duty to prosecute. He investigated the authenticity of the agreement, found it bonafide and in May (1890) filed a petition in the Ohio Supreme Court. This petition charged the company of breaking the law of the state when it transferred as it had done 34,993 shares out of its 35,000 to the trustees of the Stand^{ard} Oil Trust and allowed these *trustees* to direct its affairs, because of this relinquishment of the duties laid upon it by its charter Mr. Watson prayed that the Standard Oil Company of Illinois be "adjudged to have forfeited and surrendered its corporate rights, privileges, powers and franchises, and that it be ousted and excluded therefrom, and that it be dissolved." (1) *Ohio*

Rarely had the business world of ^{that day} the late 1880's been so shocked, the complacent political world of Ohio so outraged as by the bringing of this suit. Very significant was the general conviction that ~~there was somebody or~~ something behind Mr. Watson, that it was not to be believed that *he* Mr. Watson had done this *amazing thing as is claimed in the* ~~what might almost be called the routine~~ discharge of what he conceived to be his duty. ^{now} The only thing *Mr. Watson* ~~he~~ feared was that the Trust would deny the agreement, but it was too wise to do that. What it did answer in reply to

- 1) Tarbell, I. M. The History of the Standard Oil Company (1904)
Vol. II. Page 144

Mr. Watson's petition was that the Standard Oil Company of Ohio had nothing to do with the Trust. The agreement it said was signed by the individual stockholders of the Standard Oil Company, not by the company in its corporate capacity. The Standard Oil Company of Ohio had nothing to do with the Standard Oil Trust. True, certain of its stockholders had turned over their stock to the nine trustees, but the company did its business as before, discharging all its duties as its charter required. This was the essential point of the defendant's answer. This, and the claim that if the court should hold that the action of the stockholders in becoming parties to the agreement in their individual capacity was a corporate act of the Standard Oil Company, even then the charter should not be forfeited, since the law barred an act committed more than five years before a petition was filed. (1)

When the suit came to trial after many efforts to persuade Mr. Watson to drop it (2) the Standard's leading counsel, Joseph H. Choate, pled for the concern's life because of the "absolute innocence and absolute merit for everything we have done within the scope of the matters brought before the court by these pleadings." (3)

- 1) Tarbell, I. M. The History of the Standard Oil Company. Vol. II
Page 144 (N.Y.1904)
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- 2) Idem. Page 145-148
- 3) Ideam Page 149

The court was unconvinced. It did not take the charter from the company as the New York courts had from the North Sugar Refining Company, but it took away the privilege of entering into the trust agreement, the power of recognizing the transfer of the stock, and the power of permitting the trustees to control its affairs. It was also ordered to pay the costs of the action. (1)

In giving its decision ^{the Court} it made a statement which was a consolidation to the independent oil world as well as to great bodies of people who refused to believe that the right of men and women to conduct their own affairs as they saw fit include the right to make dictators of themselves either in politics or business, ^{who felt} that was something which was not conducive to the "general welfare" the constitution gave as its chief aim.

"Much has been said," the Ohio court declared, "in favour of the objects of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its products to the consumer. But such is not one of the usual or general results of a monopoly; and it is the policy of the law to regard, not what may, but what usually happens. Experience shows that it is not wise to

1) Tarbell, I. M. The History of the Standard Oil Company. Vol. II
(N.Y. 1904) Page 150

trust human cupidity where it has the opportunity to aggrandise itself at the expense of others. The claim of having cheapened the price to the consumer is the usual pretext on which monopolies of this kind are defended." (1)

The judgment of the court was given in March of 1892. Nine days later the Standard Oil Trust bowed to the decision in this way. It called a meeting of the trustees to terminate the trust agreement. "As this agreement was not entered into as a corporate agreement, and as this decision gives it an effect quite different from the intent of the parties who entered into it, it seems better to end it," (2)

So Mr. S. C. T. Dodd, the Standard Attorney, who had framed the agreement in the first place told the gathering.

The trust certificates were to be turned back and in exchange the holders were to receive their proper share in each of the twenty companies which made up the Trust in 1892. The trustees under the name of "liquidatory trustees" continued to conduct the affairs of the twenty concerns as they had been doing. This state of things went on for five years when again an attorney of Ohio, Frank S. Monnett brought suit against the Standard Oil Company of Ohio for evading the order of the court in 1892 - guilty of contempt. There was a long and stormy melee which was

- 1) History of Standard Oil Case in the Supreme Court of Ohio, 1897-1898, Part I, Pages 27-28. Original opinion of the court.
- 2) Proceedings of meeting dissolving trust. History of Standard Oil Case in the Supreme Court of Ohio, 1897-1898. Part I Pages 80-81

still going on at the end of our period, a wrangle that convinced the trust by this time that its only peace, if not safety, lay in incorporating as the Sugar Trust had done in 1891. This regulation was completed in June 1899 when the Standard Oil Company of New Jersey was formed - a \$110,000,000 concern - which with its new stock bought ^{up} the still outstanding trust certificates as well as the assignment of titles which had been made in the now seven years since the original trust was dissolved. (1)

The disclosure of the major trust investigations, as well as the variety of information obtained through suits brought by different states against corporations of their creation which had turned over their stock to a trust, stirred Congress to action.

Mr. J. H. Reagan of Texas who had been so active in securing the Inter-state Commerce Commission introduced an anti-trust bill into the House in the summer of 1888. It was one of fifteen ^{similar} measures ~~hitting at the trust~~ which were placed before the body in the session. (2) This same year, 1888, Senator John Sherman deeply concerned about the effect the trust discision might have on the tariff placed before the Senate a bill
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1) Tarbell, I. M. The History of the Standard Oil Company. (N.Y. 1904) Page 214, 265 Vol. II

2) Seager, Henry R. The Recent Trust Decisions. Political Science Quarterly. Dec. 1911. Page 582

declare unlawful trusts and combinations in the restraint of trade and production."

The bill passed unnoticed, but when Congress opened in December of 1889 the Senator introduced it again and this time events made it ^{more} imperative that it be considered. The chief complaint against Senator Sherman's bill seems to have been that a majority believed it unconstitutional. His arguments make it quite clear, however, that he was not wedded to any particular form. He had, as he said, no intention to interfere with the States' control of combinations, "each State can and does prevent and control combinations within the limit of the State. The power of State Courts has been repeatedly exercised to set aside such combinations. These Courts are limited in their jurisdiction to the state and in our complex system of government ^{are admitted} I admit to be unable to deal with a great deal that now threatens us." (1)

An objection raised to the bill was that it interfered with "lawful trade, with the customary business of life." - the objection heard frequently in the discussion on the Interstate Commerce Bill.

(Senator Sherman was strong in his denial. "It aims only at unlawful combinations. It does not in the least affect combinations in aid of production where there is free and fair competition. It is the right of every man to work, labor, and produce in any lawful vocation, and to transport his

1) Sherman, John. Recollections of Forty Years. (1895) Vol. II
P. 1072

production on equal terms and conditions and under like circumstances. This is industrial liberty, and lies at the foundation of the equality of all rights and privileges." (1)

Senator Sherman's bill was referred to the Senate Finance Committee and there put in the hands of Senator George F. Hoar of Massachusetts to rewrite.

Early in 1890 Senator Hoar had ^{ready} constructed a bill which his Committee reported. For some six months the Bill received the attention of Senate, House and conference committees and finally in July of 1890 President Harrison signed it.

This measure is always spoken of as the Sherman law. "For no other reason that I can think of," says Senator Hoar in his chapter on Trusts in his autobiography, "except that Mr. Sherman had nothing to do with framing it whatever." (2)

"An act to protect trade and commerce against unlawful restraint from monopolies," was the description given of the new law. The first and second sections give the gist of the measure.

Section I. "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

1) Sherman, John. Recollections of Forty Years in The House, Senate and Cabinet. Vol. II. Page 1073

2) Hoar, George F. Autobiography of Seventy Years. Vol. II. Page 363

Section II. "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states or with foreign nations shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." (1)

This anti-trust law was a much more drastic statute than the Inter-state Commerce Bill inasmuch as to the great satisfaction of a large part of the struggling and bewildered country it provided punishment for those found guilty of disobeying its orders.

President Harrison's Attorney General immediately went after the Whiskey Trust which a few months before the bill was signed had abandoned the trust agreement and formed a corporation under the laws of Illinois with a capital of \$35,000,000/. All of the property in the hands of the trust was transferred to the new creation and the old trust certificates exchanged for stock. (2)

A careful study of the testimony that had already been produced in the investigations by Congress and New York State would seem to prove beyond any doubt that the Whiskey Trust had attempted to monopolize, had combined and conspired with other persons to monopolize the business, but the indictment

- 1) Seager, Henry R. The Recent Trust Decisions. From Political Science Quarterly, Vol. XXVI, No. 4, Dec. 1911. Page 583
- 2) Eddy, Law of Combinations, I. Page 632

was squashed by a District Court Judge on the ground that it "was clearly insufficient according to the elementary rules of criminal pleading," (1) which amounts to saying that the Attorney General had not produced the factual evidence available, or in other words had not properly prepared his case. The troubles of the Whiskey Trust were not over for in 1895 the Attorney General of Illinois brought suit against the company alleging that it was in fact a continuation of the old trust and that it exercised a monopoly over the manufacture of spirits, high wines and other products distilled from grain. The Supreme Court decided that it was "organized for the purpose of getting control of the manufacture and sale of all distillery products, so as to stifle competition, and be able to dictate the amount to be manufactured, and the prices at which the same should be sold, and thus to create, or tend to create, a virtual monopoly on the manufacture and sale of products of that character....The trust obtained possession of nearly all the distillery products of the United States, thus enabling it to dictate prices and the amount of production, and to thus draw to itself the substantial control of the distilling business of the country. (2)

The corporation was ousted but on petition to the

1) Seager, Henry W. The Recent Trust Decisions. Page 585

2) Eddy, Law of Combinations. Pages 580 & 581

circuit court a receiver was appointed. Subsequently the shareholders were permitted to buy back their company by giving up their rights as stockholders in the old company.

President Harrison's Attorney General brought suit in four other cases. There was one against the cash register combination which was allowed to lapse in the Cleveland administration; another against the E. C. Knight Company, a sugar refinery of Philadelphia; another against the Trans-Missouri Freight Association.

Of these the sugar case was the most important as it was the first under the law to reach the Supreme Court. It seems that the American Sugar Refining Company had bought four Pennsylvania refineries, its only remaining competitor of importance. This purchase practically completed its monopoly.

But the Attorney General did not bring suit against the trust he brought it against ^{the} units ~~this~~ trust had bought. The suit charged that the contracts constituted a combination in restraint of trade and aimed at monopoly. But the courts including the United States Supreme Court ~~substantiated~~ held that the purchase of a piece of property by a trust, though it might complete a monopoly and so produce restraint of trade, was not in itself an illegal act. Besides as the Supreme Court reminded the District Attorney, "what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several states or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations." (1)

A fourth case brought in the Harrison Administration raised two interesting points. Did the Anti-trust law apply to railroads and did it intend to declare ^{illegal} ~~all~~ contracts in restraint of trade _A /reasonable or unreasonable? These were the points in the Trans-Missouri Freight Association case where the United States attacked an agreement of a large number of interstate railways fixing rates and on competitive freight traffic south and west of the Missouri River. It was not until 1897 that

1) Ripley, W. Z. Trusts, Pools and Corporations. Page 266

the case reached the Supreme Court where it was held that the law did apply to railroads and that it prohibited all contracts in restraint of trade, reasonable or unreasonable.

In spite of the Federal anti-trust law and the efforts making to find out what could and could not be done under it, in spite of the activities of certain states in exercising authority over the corporations they had created, the trusts continued to thrive and multiply. Fifteen had been organized between 1880 and 1890; twenty five came into being in the five years following - 1891 to 1895. (1) That they were a factor in the great industrial catastrophe of the '90's to which we are now coming is certain. It is doubtful, however, if it is possible to estimate with any fairness and exactitude the extent of their responsibility.

1) Moody, John. The Trust about Trusts. Pages 453-475 - 1904