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August 19, 1925.

Miss Ida M. Tarbell,
120 East Nineteenth St.,
New York, N.Y.

My dear Miss Tarbell:

I am following with sustained and increasing interest the installments in McClure's on the Life of Judge Gary. I expect in a day or two to have the September issue.

I was much impressed with your handling of the technical and important law features of the so-called trust issue, and I believe that there is little if anything substantial that I could contribute on this subject that would aid or modify your work so far as developed and promised.

It happens, however, that I have carried this old trust issue and burden on my heart for the last quarter of a century, and have done a prodigious amount of labor in at least a sincere attempt to early draw the dividing line between legal and illegal trusts, the last effort as to which I put forth in filing the "voluntary" or "Amicus Curiae" brief in the Steel Corporation case, viz.: U. S. vs. U. S. Steel Corporation.

In 1903 the Northern Securities case was decided by the U. S. Circuit Court of Appeals of the Seventh Circuit. In 1904 on appeal to the U. S. Supreme Court the latter rendered its judgment and decision.

Strange to say, no petition for rehearing was filed in the case by Mr. John G. Johnson and his able colleagues - possibly induced by the fact that as generally understood the U. S. Supreme Court would never grant a rehearing, no matter how clearly it might have erred and no matter how thoroughly it was divided in its first judgment.

To me the error in the U. S. Supreme Court's decision was so patent and so well invited attack that I started to work on an exhaustive analysis and criticism, trying to shock the Justices of the court into a realization of the error as I saw it, viz.: their ruling that in a legally created corporation, invited by law to grow without limit, etc., mere size itself was ominous, and even criminal.

This was the longest and most strenuous brief and argument work I ever undertook, and resulted in 128 printed pages, with no citations or quotations - all "coined" argument.

From time to time after this and for the next fifteen years new "trust" decisions were rendered from time to time, but in not one of the cases, so far as I could discover, did any of the very able and prominent counsel defending the case ever try to win their case by attacking the Northern Securities decision and attempting to get the mischievous holding eliminated; but

in each case the counsel tried to distinguish their case and the situation as respected their company from that prevalent in the Securities issue. No one counsel seemed to deem it his first privilege to serve the Justices by declaring their Securities decision absolutely wrong and telling them plainly that in rendering it they had erred.

Finally, when the Steel Corporation case reached the Supreme Court, and when on examining the "awful" record and prodigious briefs filed in that case I found that this same timidity and blindness of effort had been pursued, and seeing as I thought an opening for service and a niche to fill, I then prepared this Amicus Curiae brief of 45 pages, to which I annexed the first 37 pages of my Northern Securities "Appeal from the Younger Generation," and mailed a copy of this document to each of the Justices and to each of the counsel in the case.

I also sent a copy of these last briefs to my "reading circle" of 100 lawyers and judges throughout the country.

After the decision of the U. S. Supreme Court was rendered in the Steel case, which bodily if not formally overruled the mischievous Northern Securities ruling to the effect that size itself was legally ominous, illegal and criminal, I received a number of letters from various of these lawyers and judges, congratulating me on my quasi victory - since, as they explained, no other brief in the case had squarely attacked the Securities ruling and squarely asked for its recall.

I send you a copy of this last document for what interest it may have for you, and to evidence my own vital interest - sacrificial, as I had almost said - in this issue, which I took up voluntarily nearly thirty years ago and have invested a fortune in time and considerable expense in hacking away at it after my own method. I therefore read with especial interest your installments on this feature of Judge Gary's career. I send this as evidence, too, of how I am able to appreciate his broad-minded policies, which I believe were a great factor in saving the U. S. Steel Corporation from the fate of the Standard Oil Company and other like aggregations.

Very truly yours,

Harry Thurston Peck

(copy to Judge Gary)

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