THE SUPREME COURT AND THE ANTI-TRUST ACT

Victor Morawetz Discusses the Interpretation and Effect of the Sherman Law—The Sugar Trust Case.

It has been urged that the sugar trust case of the Supreme Court of the United States, in the present form of the anti-trust laws, cannot be sustained by the evidence. The court, in its recent opinions, has stated that the sugar trust case is not to be sustained on the ground that there was no evidence of any combination in restraint of trade. The court has also stated that the evidence in the sugar trust case is not sufficient to support the conclusion that there was a combination in restraint of trade. The court has further stated that the evidence in the sugar trust case is not sufficient to support the conclusion that there was a combination in restraint of trade.

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firms companies, paying therefor the excess of the price of refined sugar over that of refined sugar was an article of interstate commerce; that all the companies were engaged in interstate commerce; and that the decision in the Sugar Trust case was one of the earliest decisions under the Anti-Trust act, and it is acknowledged that the Court was not in violation of the Anti-Trust act.

The precise grounds upon which the Supreme Court based its decision in the Sugar Trust case are not stated clearly in the opinion delivered by the Court. Apparently, however, the Court based its conclusions upon the following propositions: (1) that commerce succeeds to manufacture and is a part of it, and, therefore, although the manufacture or commerce was prohibited by law, it cannot be declared by the courts to be unlawful because subsequent independent action of a similar character may be unlawful.

It is clear that, in the Anti-Trust act, Congress intended to use the words "in any manner," which is a technical sense, but in the sense in which it commonly is understood at the present day. Accordingly, in view of the Sugar Trust case, the Supreme Court decided that the Anti-Trust act renders unlawful contracts or other combinations, by the destruction of competition to secure for the benefit of certain individuals or groups of individuals, a control over interstate or international commerce. Congress, it may be, can only prescribe the rules by which commerce shall be regulated and cannot regulate the use or disposition of property, or prohibit monopolizing a manufacturing business, merely because of its interstate or international character, or because it may be affected, or in view of these constitutional limitations Congress did not attempt to control interstate or intercontinental commerce. Its restriction, therefore, as to, or to the right of control or commerce by the States was that the commerce be regulated by the States.

This situation of the States of the residence of the defendants related exclusively to the business of the defendant companies, and the business of reining sugar in Pennsylvania and bore no direct relation to commerce between the States or with foreign countries, and that although

the instruments of interstate commerce was necessarily involved to dispose of. Congress, however, evidenced by its failure to follow an attempt, through effectual, to monopolize the manufacture of refined sugar was an article of interstate commerce in refined sugar, the prohibition falling to divide any attempt to restrain interstate trade or commerce. The decision in the Sugar Trust case was one of the earliest decisions under the Anti-Trust act, and in the opinion delivered by the Chief Justice, there was a concurrence with the subsequent decisions of the Supreme Court. In a number of subsequent cases the Court decided that Congress had the power to prohibit, and by the Anti-Trust act did prohibit, the monopolization, or attempting to monopolize, or combining or conspiring to monopolize interstate trade or commerce by means of contracts or trade agreements among the States or with foreign countries. It is clear that Congress had the power to prohibit, or the making of contracts that are sanctioned by State laws than the prohibition of contracts or acts of monopolization by State laws.

In northern States the Supreme Court decided that Congress had power to prohibit, and by the Anti-Trust act did prohibit, a combination restraining interstate commerce by acquiring and vesting in the business of controlling the amount of the shares of capital stock of two railway companies owning parallel and competing interstate lines. The property acquired consisted of shares of capital stock of competing companies.

The question remains what remedies should be applied by the courts if parties have monopolized or have attempted to monopolize by buying up all competitors in the business of producing some article of interstate commerce and by carrying on interstate commerce in this article.

The evils and dangers that would result from such legislation cannot be overestimated. Therefore those who are interested in our great manufacturing combination or trusts should consider carefully the question whether such a decision would place them in a better position than a decision requiring, as a condition of their organization, the existence of a reasonably competitive condition.

Some of the views expressed in this article were published in the Harvard Law Review for May, 1910.