THE STEVENS-AYRES BILL.*

BY J. LEYDEN WHITE.

Over thirty years ago, when I was a boy in a wholesale drug house in Chicago, word came to us one day that a small retail druggist on Twenty-second street was selling a one-dollar patent medicine for ninety-four cents. This, within my knowledge, was the first cut-rating in Chicago, and about gives the time when the fight against the cutter commenced. This old association, the American Pharmaceutical, was the only national organization of pharmacists at that time, but, being considered as exclusively professional, it did not take up the fight against the cutter as an organization, although its members were from the first active in individual and group work. Later the National Association of Retail Druggists was formed for the single purpose of antagonizing the methods, such as are now known as unfair competition, and among the charter members of the National Association of Retail Druggists were some of the most prominent members of the American Pharmaceutical Association. It is not my intention to go into the history here, so I will now take up the matter of the bill now before Congress, which represents the state of work at the present time.

Each period has its new phrases that busy the tongue. To-day there are few in such common use and expressing so much of vital importance as "unfair competition." Under the humbuggery larded by the words "bargain," "cheap," "cut rate," "below cost," and so forth, greed is doing its merciless work to crush mercantile individuality, and, even more, destroying the small towns, giving growth to city slums and forging the fetters of a great distributing monopoly upon the people of the nation, of the world.

Of all the methods of unfair competition, price baiting with standard merchandise is the most demoralizing. Next to this cutting of townsman against townsman, brother against brother, comes (and it is a very close second) the monopolistic process of the mail-order house.

If an inventor, an originator, or the manufacturer who has purchased the right to the invention or novelty may not lawfully maintain the selling price of the goods all along their path of exchange until they reach the consumer, then the very corner-stone of American success, the foundation of its greatness, originality, genius, has been destroyed. Soon the hour of labor of the watchmaker will receive no greater reward than the hour of toil of the man with the hoe.

The maintenance of price is lawfully upheld in public service by the interstate commerce and many public utilities commissions. It is upheld by the government itself in all its own transactions, from the sale of penny postage stamps to the salaries of cabinet officers. It is upheld with more vigor, more contention in the union wages of those who produce merchandise than in any class of transactions. As a matter of fact, the Stevens Bill seeks to give to the sale of merchandise nothing more than is now practically given to all the rest of the country's business. Even in merchandising, this justice, this right of the maintenance of sale and resale prices was acknowledged to be legal up to a few years ago.

This being no legal document, I shall not go into a *résumé* of the Miles, Sanatogen, Macy, and other cases which, if they did not exactly legalize unfair competition, certainly did much to cripple fair trade. What we face is the fact

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that, as at present interpreted, the laws of the land forbid a living profit preservation, or, as latterly and generally described, price standardization. It therefore follows that for the restoration of fair trade of such nature as will give the advantages of honest merchandising to the American consuming public it will be necessary to have Congress enact a law. It is absolutely necessary for the protection of consumers, producers, and all handling and forwarding elements that the Stevens-Ayres Bill be passed.

Peculiarly, happily, the Stevens-Ayres Bill holds provisions that directly refute most of the criticisms made against it. Thus some may say that in allowing a maintenance of price it proposes to foster monopoly, whereas the second paragraph of the bill says of the person seeking protection under it:

> Such vendor shall not have any monopoly or control of the market for articles belonging to the same general class of merchandise as such article or articles of commerce as shall be covered by such contract of sale; nor shall such vendor be a party to any agreement, combination, or understanding with any competitor in the production, manufacture, or sale of any merchandise in the same general class in regard to the price at which the same shall be sold either to dealers at wholesale or retail or to the public.

That there may be no discrimination in prices at any stage of the passage of the article in exchange, the bill provides that all prices to wholesaler, retailer, and to consumer shall be filed in schedule form with the proper bureau of government, and that each separate article so protected shall have affixed to it a notice showing the price at retail, the name and address of the maker, and the trademark or other brand of the article. It should also be noted by this reference to brand that objections often made to the bill have no standing at all when such objections refer to commodities, for the law sought under this bill bears upon nothing but trade-marked or otherwise lawfully branded goods.

The thoughtless and yet common objection to the bill that it is unconstitutional is refuted by the fact that within it there is nothing mandatory. It is simply permissive. It does not compel any manufacturer to contract under it for the maintenance of a resale price, but it does permit him to if he so choose.

It is also sometimes claimed that dealers would become "stuck" with "dead," damaged, or otherwise unsalable stock, because of the prohibition against cutting. However, Section D of the bill explicitly provides for just such contingencies.

In declaring the perfect justice and economic harmony of maintaining a resale price under such restrictions as this bill provides, we contend that the mark of genius, of originality, of energy, of perseverance as is evidenced by the brand, does, in the vast majority of cases, follow into the goods. That is to say, that no price restriction accorded to an article having a mark of identity will be of any lasting benefit to it unless the article is meritorious within itself. Such subtle frauds as have sometimes passed public scrutiny only can or should be reached by the Pure Food and Drugs Act and similar laws. Indeed, the Stevens-Ayres law should be a powerful factor in elevating and purifying merchandise, for in stimulating the unobstructed sale of goods of proved merit it would lessen the market for worthless or harmful imitations. Here again is shown the anti-monopolistic character of the bill, for there is nothing in this world so independent as thought, the seed of genius, the flower of individuality, and so, by preserving a market for goods of distinction, the field of fair competition will be maintained, because there will always be the coming of things new.

Under fair conditions the little retailer can give just as good service and just

as low average prices as the big fellow. This seems like an extreme statement, but it is true now, and, if you will pardon the play of language, growing truer. Exhaustive investigations have proved that the overhead, the gross selling charges per dollar of business done are heavier in the big cut-rate stores and mail-order houses than in other businesses. That these charges have become excessive has been evidenced by combined efforts to lessen, even do away with, such things as writing- and reading-rooms, varied forms of amusement, and even going so far as to use coöperative unsigned advertisements asking the public to cease buying goods on approval, making exchanges, and asking delivery of small parcels.

Now you may say that if this is so the independent retailer, and conjointly wholesaler and manufacturer, does not need protection from the varied sorts of cutters. The independent merchandiser or manufacturer does not need protection in a fair field, and he does not ask it. He is simply asking the restoration of a fair field. The size of the individual business cuts no figure here. This is a warfare of truth against falsehood with the two-edged sword of the law apparently placed in the hands of falsehood. The Stevens-Ayres Bill simply seeks to deprive falsehood of this weapon and restore to us, to give to all, the simple, the fundamental American right of contract, even now denied in no channel of commerce, law, or ethics, except in the sale of merchandise.

That the great cut-rate establishments must make a larger gross profit on sales than the small dealer is now commonly acknowledged, and therefore, in order to compete with him, they must resort to unfair competition. They may cut the price below their actual cost on a line of well-known trade-marked goods in one department for a certain time, and make up the loss many times by selling unbranded, unknown, oftentimes unworthy goods in other departments at extortionate prices. Thus the small dealer whose whole business is in one line, such as drugs, groceries, or hardware, suffers, is misrepresented, by those who choose his only line as one of their many lines for the false and misleading methods of price-cutting.

The passage of the Stevens Bill would not in the least lessen true competition. Rather would it increase it, for it would advance competition to the basis of business ethics all intelligent people are advocating. It would bring the competition of qualities, quantities, convenience, salesmanship, and generally progressive methods. Nor would the Stevens law even lessen the competition in price-making. It would increase that also, for it would bring conditions that would stimulate manufacturers to vie with each other in efforts to present the largest quantities of the best qualities at the lowest standardized prices.

If it is unfair and un-American to pay labor less than a fair wage for producing merchandise, there can be no worse phase of such general unfairness than to necessitate the scab wage and the sweat-shop product in order to secure goods to meet the unfair competition of cut prices. And it is a notorious fact that the great mail-order houses and lower classes of department stores are enormous buyers of the unbranded goods made by convicts, children, women, and underpaid labor in general. If it is against our national standard of fair play to underpay any man, woman, or child for making a thing, then it must be just as much of a national degradation to underpay, to crush the weak, to destroy individualism by destroying profits and forcing the independent retailers out of business and making them, their children, oftentimes even their wives, become the hirelings of the monopolistic cut-raters.

It is strange that the masses of America cannot see; it is lamentably inexplicable that American labor cannot see, or at least does not acknowledge that everything which has to do with merchandise, from the gathering of the raw

materials to the placing of the finished product in the hands of the consumer, is included within production. Accepting as an economic fact the claim that decreasing cost of production increases consumption and thus benefits the race, we must at the same time declare that the decrease in cost of production must be general to be beneficial, for if the race is injured by degradation of labor through decrease of the wages of manual workers, it must be fully as greatly injured by the lowering of the living standards of those whose part in production is the retailing thereof.

The most serious criticism that can be brought against organized labor; one that questions its intelligence and brings doubt of its sincerity, is that it demands standardization of prices in everything and every person connected with merchandise, from the farm, the mine, the forest to the retailing counter itself; even organizing and demanding a standard price, a union wage for retail clerks, and there at the counter immediately coming to a right-about face, and by its countenance, by its practices, even by its preachments, commence an inevitable tearing down of all these wage standards it has set by not only refusing its support to the effort consistently to complete the chain with the standardization of prices, but, on the other hand, giving its vigorous and outspoken support to predatory rate-cutters, and going further by upholding the trading-stamp coupon and other insidious something-for-nothing schemes by which the people are decoyed and fleeced.

Up to a few generations ago *caveat emptor* applied to all the merchandising of the world. It was assumed that the only reputation any merchant could have was a bad reputation, and so it was that the buyer was universally warned to beware. He was not only made to take the responsibility in a play of wits, but he was expected to have the needed knowledge and use unlimited time to protect himself in every deal. After a while it probably happened that one miller who ground his grains well might have used a peculiar knot in fastening the mouth of the sack. So the knot spoke the name of the miller and became the brand for his meal. It was his trade-mark, and the sight of it, its acceptance as a guarantee for quality and measure, saved the buyer both the mental labor and the time of haggling. With such a standard for quality and measure the standard price automatically came. Thus originated what has undoubtedly been a blessing to the world at large and to America in particular—the package system of merchandising.

Now the predatory cutter does not want to restore all the conditions of the age of barter, but he does seek the opportunity to dispose of inferior goods at unreasonable profit. To accomplish this he adopts two methods, and both dishonest, both appealing to human greed. In the first he advertises standard brands at below cost, and then at the same time turns trade from them while acknowledging their merit by offering a profitable substitute which he says is " just as good." The second process is to sell the branded articles freely at the advertised cut price, perhaps actually taking a direct loss on every sale, but at the same time, by advertising and in every other way, bring other, unknown, unbranded, inferior, and overpriced goods before the purchaser, and thus, by possibly selling 50 cents' worth at a loss of 5 percent, induce the sale of $5 worth at a profit of 30 percent.

What is the result upon the people of the nation as a whole?

Congressman Kelly, in his speech in the House of Representatives, said:

It means making a nation of deceitful bargainers, putting a premium on cheating practices, and putting a handicap on the honest dealer, while injuring the buyer from every angle. It forces the lowering of qualities in all articles, and the substitution of articles driven from the market. The retailer must make a profit to stay in business; if he cannot make it on some articles, he must increase his profit on others.

We may add that, as it is fundamentally true that honest advertising decreases the cost of merchandising because it saves more in the value of time to all concerned in the sale than the cost of the advertising itself, or, to express it differently, as advertising saves more than its own cost in the decrease in selling cost that it effects, therefore any return to past methods, to the use of time for haggling and shopping, to the time consumption, humbuggery, and fraud of barter must advance the general cost of goods, and that this has actually been the effect is proved by the fact that, while cut prices and " bargains " were never so common in America as they are now, the cost of living was never so high.

While we commonly hear of the injury to small towns by the mail-order cutters and the consequent demoralization of real estate values, few realize how much cut-rating and concentration of business in the hands of the few have to do with the disturbance of fiscal conditions in the cities.

At the hearing on the Stevens Bill before the Interstate Commerce Committee of the House of Representatives, Miss Laura A. Cauble, a social worker of New York, said, among other things:

I investigated 526 small stores in one year, and in that time price-cutting in the larger establishments either forced the sale or the failure of 116 of these small stores.

Believing that more may be accomplished through discussion to-night than by a long talk from me, I shall briefly state what has been done to make a law of the Stevens Bill, and what the prospects are for its enactment.

The rebellion against unfair competition through price-cutting was commenced by retail druggists about twenty-five years ago. For a number of years they worked practically alone, and accomplished little more than agitation through expressions of personal opinion. Later their organizations took up the work and carried it on until it became a national issue. Their first rebuff came when through actions in courts, brought by opponents, they found, to their amazement, that not only were they forbidden to enter into any common agreements for the maintenance of retail prices, but even the right of contract between manufacturer and retailer for the protection of such a price was denied.

After the first federal court decisions of an adverse nature were handed down there was for some time longer a continuance of effort to find a way to maintain prices without violation of existing laws. While it may be said that such effort is not yet entirely abandoned; while such decisions as those in the Cream of Wheat, Victor Talking Machine Company, and others are favorable, and in certain contingencies effective, it has been for some time commonly acknowledged that a general and thoroughly fair system of price standardization demands congressional legislation, the passage of a law explicitly sanctioning the right of voluntary contract between producer and both wholesale and retail distributers.

An appreciation of this necessity brought together a number of the most prominent retailers, manufacturers, lawyers, wholesalers, professors of political economy, and others in the land. They, led by Louis D. Brandeis, the famous lawyer, framed the Stevens, now the Stevens-Ayres Bill. They at the same time organized under the title of the American Fair Trade League.

The bill was introduced in the House of Representatives by Congressman Raymond B. Stevens, of New Hampshire, on February 12, 1914. At the time of its introduction few members of Congress had given it any thought at all, but, before the Sixty-third Congress had adjourned, the Stevens Bill had become familiar to the great majority of the members of both House and Senate; it had

figured largely in the hearings before both the Interstate Commerce and Judiciary Committees of the House when they were framing the Federal Trade Commission Bill and the Clayton Bill, and it has been said that the agitation for the Stevens Bill was largely responsible for the insertion of the unfair competition clause in the Federal Trade Commission Act. Aside from this, the Interstate Commerce Committee of the House held a hearing on the Stevens Bill itself before adjournment, at which Louis D. Brandeis was the chief witness.

When the Sixty-third Congress ended by limitation on March 4, 1914, about one-third of the members of the House and a like number of Senators had pledged themselves to its support.

Naturally, among those who failed to return to the following Congress for various reasons were a number of those who had been pledged to the bill. But, despite this, the work for the bill, especially by retailers, continued so persistently through the long summer that when the Sixty-fourth Congress assembled on December 6 there were pledged to support the bill 165 members of the House of Representatives out of a total of 435. This does not include the many who may properly be classed as favorable, but only such as are pledged to support the bill in letters over their signatures. To this number fifteen have been added since Congress reconvened. While the efforts to secure the pledges of Senators have not thus far been very great, fully as large a percentage of the Senate is pledged, and some prominent Senators have given the most outspoken support that the bill has received from any officials. It is significant that the average of pledges from both parties is so nearly even as to prove the bill to be absolutely non-partisan. Also, while we feel that the problem of unfair competition will have prominent and fair attention by all administrations to come, it is only fair to state that no administration has ever given the matter such clear thought, never given the little fellow such a square deal, as has the one presided over by President Woodrow Wilson.

Of course, when the Sixty-third Congress expired by limitation all bills died with it, so when the present Congress convened there was, technically at least, no Stevens Bill. However, it was reintroduced on December 14, 1915, by Representative William A. Ayres, of Kansas, and it could not have appeared in the present Congress with a better sponsor behind it. Mr. Ayres acted purely voluntarily, stating that he introduced it merely " because it is a good bill and should be passed." As proof of the breadth of the man who now fathers it it should be said that he still refers to it as the Stevens Bill. But, though he thus acknowledges the importance of retaining the name by which it is so well known, many are justly referring to it as the Stevens-Ayres Bill.

Mr. Ayres is a young and mentally and physically vigorous man. He comes from an economically pivotal state, as Kansas suffers much from the mail-order affliction; he represents one of the most progressive constituencies in the nation, his home being in Wichita; he is personally close to and in hearty sympathy with the retailers of his country, and the fair trade of the nation is to be congratulated upon having so clean and valiant a champion for its cause.

While fully appreciating that Congress has before it problems graver than any since the days of our Civil War; while earth itself seems to be like unto a great mine, ready for a universal economic explosion, we are convinced that the Stevens-Ayres Bill will be prominently before Congress from the day it returns, January 4. Finally, we believe that it will pass both Houses of Congress, be signed by the President, and become the law of the land before Congress adjourns by limitation, March 4, 1917.