

Senator CUMMINS. You have advocated here the passage of a law which makes 40 per cent of the business, I think, *prima facie* evidence of a violation of the antitrust statute?

Mr. BRANDEIS. Presumptive; yes; in case of a combination.

Senator CUMMINS. Now, if we can arrive, with the information we have now, generally speaking, at the conclusion that any consolidation or combination that proposes to take in 40 per cent of the business is against public policy or against the statute, there certainly would not be very much difficulty in the commission arriving at a similar conclusion, either increasing that percentage or diminishing it, as the case may be. We have enough general information to carry us to some conclusions upon this subject of industry.

Mr. BRANDEIS. Well, I think the volume of the accessible information is extremely small. For instance, in connection with the investigation which I was obliged to make in the Tobacco Trust case, I endeavored to ascertain with some exactitude the status of the independents. I had the assistance of some of the ablest and best versed of all of the independents who had given some thought not only to their own business but the business of others.

Yet there was an extraordinary lack of knowledge on their part. None of those men were able to give fully the kind of information in respect to their competition—other than the trust—which you and I would wish to act upon in any important affair of life. I dare say if I had had open for me the avenues of the Bureau of Corporations—which must have investigated to a certain extent also the independents as well as the trusts—I could have gotten more information. But whatever information the bureau had was the result of a very wide inquiry, and I think if to-day you would undertake in any branch of industry to ascertain accurately the trade facts you would find that the inquiry would involve a considerable investigation the moment you reached what was termed the other day the “twilight zone.”

Mr. BRANDEIS. I am convinced that there is much reason in the position which you take, and I heartily sympathize with the purpose of it. The doubt I have is as to our ability to develop safely at once the machinery to which can be confided the serious power of licensing the corporations, because the effect of such licensing will be a certificate of good character as ¹ would be an extremely potent force.

¹ Thus in original.—Ed.