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our children are entrusted with none of the traditional constitutional safeguards with which we protect the most unsavory of other of our citizens.

A warning has been sounded by Judge Jesse Olney of California,

> It (the juvenile court) is fast developing into a complete system of fascism, as dangerous to our institutions as communism. Our youth are jailed, bailed, granted or denied rights on the mere order of probation officers, county attorneys, sheriffs and other executive officers. Laws and regulations are made not by legislation or settled law but by those in control. Juvenile executives are properly called 'the law'. A further question arises whether under such a judicial system there is any method by which personal rights can be protected? The Juvenile Court machinery is supposedly geared to insure order, but there appears nothing to protect rights"[29].

Consider again the hypothetical case of John X, the sixteen year old boy who did not like to go to school. Would not our constitutional safeguards of trial by jury, confrontation by witnesses, assistance of counsel, and uncoerced confessions have stood him in better stead than the streamlined procedure of the juvenile court?

To negate the possibility of a case such as John's ever occurring it would seem that into the existing framework of the juvenile court our traditional constitutional guaranties should be fitted. Then even our junior citizens will be assured of justice under law.

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[29] Olney, *Juvenile Courts—Abolish Them,* 13 Cal. State Bar Journal 1, 2 (1938).

Present Status of Price Maintenance Contracts in Interstate Commerce

The proponents of the Fair Trade Movement are faced with a problem as a result of the decision by the United States Supreme Court in *Schwegmann Bros. et al. v. Calvert Distillers Corp.,* 341 U. S. 384 (1951). The court ruled that price fixing agreements valid under state laws [1] could not be enforced against nonsigners under the Miller-Tydings Amendment [2] to the Sherman Anti-Trust Act [3] with regard to interstate commerce. The court's decision being based on the fact that the Miller-Tydings Amendment [4] did not specifically contain a nonsigner provision whereas all the state acts contained a nonsigner clause. At the present time all states have fair trade acts except Missouri, Texas

[1] *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 299 U. S. 183 (1936); *McNeil v. Joseph Triner Corp.*, 229 *U. S.* 183 (1936); *Kunsman v. Max Factor & Co.*, 299 U. S. 198 (1936).

[2] Amendment to Par. 1 of the Sherman Act, 50 Stat. 693 (1937), 15 U. S. C. §1 (1946).

[3] 26 Stat. 209 (1890), 15 U. S. C. §1-7 (1946).

[4] See note 2, *supra.*

and the District of Columbia. The dissenting opinion in the Schwegmann case [5] stated that the nonsigner clause was implied in the Miller-Tydings Amendment [6] by reference.

The economic conditions of the late twenties and early thirties gave rise to legislation concerning or governing price maintenance. Protection of the small retailer from the large chains and the desire of the manufacturers to protect their trade-mark and good-will interests in their product were the prime motives for this type of legislation. In the light of the drastic effect of the great depression on retail sales, income and business in general, one can justify the need for such a control as the resale price contract. At its inception resale price agreements had a three-fold purpose. First, to protect the manufacturer's property interest in his trade-mark; secondly, to protect the distributor against unscrupulous price cutting, and finally to protect the public generally.

No specific reference was made to price fixing agreements in the Sherman Anti-Trust Act passed in 1890.[7] However, Sec. 1 of that Act stated:

> Every contract, combination in form or trust . . . or conspiracy in restraint of trade . . . is hereby declared to be illegal . . .

This section was judicially construed by the United States Supreme Court to prohibit price maintenance.[8] The Federal Trade Commission Act passed in 1914 [9] prohibited "unfair methods of competition." The Supreme Court interpreted the Federal Trade Commission Act to outlaw resale price contracts.[10] Thus under both the Sherman Act and the Federal Trade Commission Act resale price maintenance contracts were illegal and void. There was a continuous effort to have federal legislation passed legalizing resale price maintenance contracts in interstate commerce. In 1929 during the 71st Congress, the Capper-Kelly Fair Trade Bill was offered.[11] This bill merely legalized an agreement "That the vendee will not resell the commodity specified in the contract except at the stipulated price."[12] The Capper-Kelly bill never became law but it did serve as a model for future legislation both state and federal. It is interesting to note that the Capper-Kelly bill did not include a nonsigner clause.

State legislatures in the meantime were not idle. California became the first state to pass a bill legalizing price maintenance contracts.[13] This law was

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[5] *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384 (1951).
[6] See Note 2, supra.
[7] See Note 3, supra.
[8] *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373 (1911).
[9] 38 Stat. 717 (1914), as amended 15 U. S. C. §41-51 (1946).
[10] *F. T. C. v. Beech-Nut Packing Co.*, 257 U. S. 441 (1922).
[11] H. R. Rep. No. 11, 71st Cong 1st Sess. (1929); H. R. Rep. No. 536, 71st Cong. 2nd Sess. (1930).
[12] See Note 11, supra.
[13] Cal. Stat. 1931, c. 278.

later altered to include a nonsigner clause.[14] Vested interests led the way in having this type of legislation enacted. One of the most effective groups was the National Association of Retail Druggists.[15] The National Industrial Recovery Act also gave impetus to such legislation. The example set by California was periodically followed by other states passing similar fair trade legislation until in 1941 there were forty-five states having this type of law on their statute books.[16] The United States Supreme Court upheld the constitutionality of the Illinois and the California acts in their entirety.[17] The Court in *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*[18] declared the principal provisions including the nonsigner clause in the Illinois statute as constitutional. On the strength of this decision state legislatures were now deluged with fair trade bills, which included the nonsigner clause.

Prior to the Miller-Tydings Amendment price fixing contracts were prohibited by the Federal Anti-Trust Laws where interstate commerce was concerned. This Amendment to the Sherman Act and the Federal Trade Commission Act became law on August 17, 1937 and is commonly known as the Miller-Tydings Amendment.[19] This Amendment, which was an exception to the Sherman Anti-Trust Act, legalized resale price maintenance contracts where they were valid under state law. President Roosevelt signed the bill but expressed his fear that the law would hurt the consumer because it would lead to higher prices. Experience would seem to bear out the President's contention in this regard. The Federal Trade Commission was opposed to the Miller-Tydings Amendment. The Commission further stated that the public was opposed to a resale price maintenance amendment to the Sherman Anti-Trust Act. The Commission maintained that the Sherman Act itself was opposed to resale price maintenance.

The Commission had been pursuing a vigorous policy up to the passage of the Miller Tydings Amendment in issuing cease and desist orders in conformance with the Federal Trade Commission Act. The basis of the Commission's opposition was the fact that the Federal Government would be attempting to enforce various and different state regulations. Furthermore, the agreements were to be made without public hearings.[20]

The Federal Law legalizing price maintenance contracts respecting trademarked or branded items sold in interstate commerce provided that making such contracts would not constitute an unfair method of competition under the Fed-

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[14] Cal. Stat. 1933, c. 260: The Cal. law is now found in Business & Professions Code, Pt. 2, c. 3, par. 16904.

[15] Grether, *Price Control Under Fair Trade Legislation,* p. 54 (1939); 24 Calif. L. Rev. 640 (1936).

[16] 2 C. C. H. Trade Reg. Serv. 1951 par. 7056.

[17] See Note 1, supra.

[18] Ill. Laws 1935, p. 1436.

[19] Public Act No. 314, 75th Congress.

[20] Address by William A. Ayres, Chairman of Federal Trade Commission, before National Wholesale Druggists' Association Convention, Oct. 4, 1937.

eral Trade Commission Act.[21] This type of contract was permitted on commodities sold in interstate commerce if they were to be sold in a state where such contracts were legalized with respect to intrastate sales.[22]

The effect of the Miller-Tydings Amendment did not legalize the efforts of the contracting parties to coerce nonsigners to comply, because the nonsigner clause contained in all state statutes was not included in this Amendment to the Sherman Act. This was the opinion of the majority of the court in the *Schwegmann case.*[23] It was also pointed out that although state laws generally contain provisions declaring it unfair competition for a nonsigner to sell below fair trade prices an attempt by contracting parties to coerce nonsigners to comply, where interstate commerce is involved, is a violation of the Federal law and reliance on state law is of no avail to protect such practices. The effect of the decision in this case can be seen in recent state decisions concerning fair trade laws. The nonsigner provisions in the state laws have been stricken down where interstate commerce is involved under the doctrine of the *Schwegmann* case. Several states have also held that the nonsigner provision is invalid now under state law.[24] In a recent Pennsylvania case the argument was advanced that since all of the sales of the nonsigner were intrastate, the federal law would not control the situation and the state fair trade law would apply.[25] The manufacturer argued that since the commodity had become to rest in the state and was out of interstate commerce, state law would be applicable under the familiar dictrine of the *Schecter* case.[26] This argument was contrary to the decision in the *Schwegmann* case. Thus a manufacturer cannot prevent price cutting by a nonsigner under a state fair trade law. On the same day the court decided that the manufacturer of a trade-marked article has no common law right to prevent a retailer from cutting prices.[27]

It is hard to forecast how the proponents of resale price fixing agreements will act to overcome the effect of the *Schwegmann* case. Public opinion is generally opposed to resale price maintenance contracts. Two very important considerations involved in the administration of such a federal law would be (1) the difficulty and and expense of enforcement, and (2) the constitutional problem of depriving a nonsigner of a public hearing.

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[21] See Note 9, supra.

[22] *Resale Price Maintenance,* by the Federal Trade Commission, dated Dec. 13, 1945.

[23] See Note 5, supra.

[24] *Calvert Distillers Corp. v. Sach's,* 48 N. W. 2d 531 (1951).
Seagram Distillers Corp. v. Ben Greene, Inc., 54 So. 235 (1951).

[25] *Sunbeam Corp. v. Civil Service Employee's Co-Operative Assn.,* 187 F. 2d 768 3rd Cir. (1951).

[26] *Schechter Poultry Corp. v. United States,* 295 U. S. 495 (1935).

[27] *Sunbeam Corp. v. S. A. Wentling,* 91 F. Supp. 81 (M. D. Pa. 1951).