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Trust Decisions

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One of the most prominent characteristics of the modern business world is the fierce competition which exists in all branches of trade. If the old maxim which has been so often quoted, that competition is the life of trade, were strictly true and applied with full force to the present situation, it might be reasonable to suppose that those business enterprises which are now subject to the sharpest rivalry would enjoy the greatest prosperity. But judging from the complaints which are uttered concerning the evils of unrestricted competition, and the efforts which are made to avoid its effects, it seems safe to assert that the contrary is the result, and that there may be too much of this life giving element. The tendency of late seems to have been towards an unlimited expansion in all lines of business. Factories and shops have been built, and goods have been produced by them, with little apparent regard to the demand which must regulate the price for which they will be sold. These goods, once made, must be disposed of in order that the money used in their production may be

re-employed in paying running expenses and indebtedness. As a result prices would be measured not by the value of the goods, but by the necessities of the owners. Few concerns could afford to carry their stock until paying prices could be obtained, but would be compelled to sell out for whatever sum could be gotten. As a result, the over production of the goods and the financial weakness of their owners forced down the prices of many stable articles until they became so low that little or no profits were to be earned by their manufacture. Not only was this result brought about by the reckless manner in which manufacturing establishments were increased in number; but also by the increased facilities for transportation and communication. By these last, localities situated at a distance would be brought into direct competition; and establishments whose existence would be utterly unknown to one another in one year would be business rivals in the next. The result of all this was a fierce struggle, not only for profits, but in many cases for very existence. The continued existence of this condition of things naturally caused those most directly affected to seek most dil-

igently for some remedy. This search seemed to convince all that there was but one thing to be done, and that was to reduce the number of competitors. Such a purpose met with the approval, not only of business men, but of writers on ecnomic subjects, and even in some cases of the courts. Two alternatives were offered in accomplishing this object: Either to engage in such a fierce war of competition as to drive to the wall all weak concerns; or to use more peaceful means, and by purchase remove a competitor from the field altogether, or by consolidation make him an ally. The first alternative possessed too many dangers to be adopted except as a last resort. The second was the one which was adopted, and in some form or other put into effect. This last alternative might be brought about either by removing competitors one at a time by contracts with each one, or by a combination which would include all or a majority and render their interests identical. The first course by which one competitor might be removed through a contract in which he restrained himself from competing, has been sanctioned by many decisions. One of the first of these seems to be the case of

Broad v. Jollyfe--Cro. Jac. 596--(1621) in which it was said: "For a valuable consideration, and voluntarily, one may agree not to use his trade." In the same direction was the decision in the famous case of Mitchell v. Reynolds--1 P. Wms. 181-- decided in 1711, and which case, on account of the discussion of the law of restraint of trade which the judge incorporated into his opinion, has been cited a vast number of times; and very often as authority for decisions differing very much in their results from those arrived at in this particular case. The tenor of more recent cases, both in England and America, seems to be toward holding that the restriction in such contracts must be reasonable, that is afford no more protection to the party benefited, and impose no greater restraint upon the party restricted, than is necessary to carry out the purpese of the contract. This rule as to the reasonableness of the restraint has changed and grown broader and broader, until now the restriction from competition which a man may place upon himself when he sells out his business to another is almost limitless. Some recent cases which discuss and apply this rule as to reasonableness are; Leslie v. Lor-

rillard--110 N. Y., 519-- Diamond Match Co. v. Roeber--106 N. Y., 473-- Leal v. Chase--31 Mich., 490-- Lorsont v. Leather Co.--Law Rep. 9 Eq. Cases, 345-- Rousillon v. Rousillon--L. R. 14 Ch. Div. 351--. In the first of these, a corporation running a line of steamships from New York to Norfolk, Va. bought out a competing line; and a clause in the contract restraining the owners of the rival line from entering into any further competition, was upheld. In the second, a contract made by Roeber not to engage in the match business anywhere in the United States except in Montana and Nevada was sustained. In the fourth, a restriction which embraced all Europe was discussed and held good; and in Rousillon v. Rousillon, an employee of the plaintff in consideration of his employment agreed not to enter into any competition with the plaintiff for a certain period after leaving him, and the agreement was held good. A few quotations from these decisions may serve to show the attitude of the courts on the subject of competition. Says Judge Gray in Leslie v. Lorrillard, "The tendency of modern thought and of the decisions, however, has been no longer to uphold in its strictness the doctrine

which formerly prevailed in respect to agreements in restraint of trade. The severity with which such agreements were first treated became more and more relaxed by exceptions and qualifications. This changes was gradual and may be considered, perhaps, as due mainly to the growth and spread of the industrial activities of the world, and to enlarged commercial facilities, which render such agreements less dangerous as tending to create monopolies." In the Diamond Match Co. v. Roeber Judge Andrews said; "It is quite obvious that some of the reasons for such a doctrine are much less forcible now than when Mitchell v. Reynolds was decided. Steam and electricity have, for the purposes of trade and commerce, almost annihilated distance, and the whole world is now a mart for the distribution of the products of industry. The great diffusion of wealth and the restless activity of mankind striving to better their condition, has greatly enlarged the field of human enterprise and created a vast number of new industries, which give scope to ingenuity and employment for capital and labor. The tendenct of recent adjudications is marked in the direction of relaxing the rigor of the doctrine that all contracts in

general restraint of trade are void irrespective of circumstances."

It was one of the rules first established in considering contracts in restraint of trade, that they were to be looked upon as prima facie bad, but in Rousillon v. Rousillon this rule seems to have been disregarded, and within certain limits the burden of showing that the contract was invalid on the ground of restraint of trade was thrown upon the defendant.

And in Beal v. Chase, Judge Christiancy, in speaking of the objections urged in Mitchell v. Reynolds, viz.: First. They tend to prevent competition which the public interests favor; and ,
Second. They deprive the state of the services of a citizen by binding him to idleness or emigration; says; "As to the first ground, it may be said it is quite true the public are interested in competion in business; but this is not true under all circumstance nor to every extent. The public is quite as much interested in the propsperity of its citizens in their various avocations as it can possibly be in their competition. The latter may bring low prices to purchasers, but may also bring

them so low that capital becomes unprofitable and business men fail to the great injury of the community." The decision in Mitchell v. Reynolds is then quoted from to show that even at that time the evils of unrestricted competition were recognized, and that it may or may not have been beneficial under different circumstances.

Then the Judge says: "And it may well be asked, who in general are the best judges of these circumstances, the parties concerned, who have an interest in making them the subject of their contracts, or the courts, who can obtain of the circumstances only such partial and unsatisfactory views as conflicting and imperfect evidence can give them. As to the second ground it must be conceded that the state has always an interest that none of its citizens shall be kept in enforced idleness. But when a contract only binds a person not to engage in a particular business within the state, is this consequence a necessary or even a probable one? It might have been so in England in the days of Chief Justice Parker when a system of apprenticeship prevailed which rendered it exceedingly difficult for one to obtain a living by his industry in any other avocation than that

for which he had fitted himself by serving his time under its rules and under the law, but in this country at this time -- where a change of occupation is too common to excite remark; where merchants become manufacturers, and lawyers farmers, and farmers traders, not because they receive a consideration for doing so, but because with larger opportunities for observation than they had at first, they have fully satisfied themselves that such changes will be for their advantage, as oftimes they have proven to be,--- any rule of law which should assume that one who for a valuable consideration bargains not to follow his previous business, had thereby bound himself to idleness and penury, would be a rule absurd in itself, and contrary to general experience and observation.""

These quotations show the drift of the recent decisions in treating contracts whereby one person is restrained from competing with another. The tendency in these cases seems to be towards almost complete freedom in the making of such contracts, and the old rules that treated them as prima facie the outcast and pariahs of the contract world and rendered it exceedingly difficult

for their good character, if they had one, to be proven, have almost become obsolete.

This tendency, as has been said in one of the quotations, arises from the changes and modifications in business methods that have been constantly made, and these changes seem to continually call for more liberty in the making of contracts of this nature.

But while the courts were growing more lenient in their treatment of these contracts, the situation was becoming such that some more expeditious and comprehensive means of suppressing competition was necessary; and by the time the rule as to contracts in restraint of trade had been relaxed to its greatest extent, those wishing to attain this result had adopted other means for the purpose.

These different methods of doing away with competition,, first by individual restraint by contract, and second the various methods of restraint by combination, were not tried in the order named, but practically at the same time. Nevertheless they seem to present distinct steps tending in the same direction. The next step taken was by combination. To the business man, anxious

to avoid the fierce rivalry which he must endure, the prospect of making allies of his rivals; and working with them to attain successful results and sharing with all the profits of the entire business, was very alluring. This fact caused many of these combinations to spring into being. The first and most simple attempts were in the form of agreements between several parties binding themselves to observe certain restrictions in conducting the business they carried on in common. These restrictions usually were intended to cotrol prices and the amount of product.

Many of these associations were formed, but it soon appeared that they could not withstand the attacks made on them from without, nor survive internal dissensions. Their own members would break the rules laid down and if any legal steps were taken to compel obedience to these rules the courts would, so far from enforcing them, hasten to brand the whole combination as illegal.

The fate of these associations, as well as some of their objects and restrictions may be illustrated by the following cases.

One of those most often cited and also one of the

earliest is Hooker v. Vandewater--4 Denio, 349-- decided in 1845. In this case an agreement between the owners of five lines of boats doing business on the Erie Canal was in question. By this agreement they entered into a combination and prescribed one schedule of rates for freight and passenger charges, and also provided that the total proceeds of the business should be divided among the various lines in certain proportions. Each of these lines was to cary freight and passengers at the prices fixed by the schedule, and to obey all the other restrictions made by the contract.

This agreement was held void and illegal under the provisions of the Revised Statute which made it a misdemeanor for two more persons to conspire together to do an act injurious to trade or commerce.

The interpretation placed on the agreement was, that since it did away with competition it created such a combination as to constitute an act injurious to trade or commerce, and hence within the provisions of the Revised Statutes. The result was to fix prices arbitrarily. The people were deeply interested in having transportation rates subject to competition, and hence any combina-

tion doing away with such competition must be injurious and illegal. So, since the contract was illegal, its enforcement or any relief asked under it would be refused.

The case of Staunton v. Allen--5 Denio, 454-- decided in 1848, dicussed a similar combination with the same result. This combination was greater in extent and more carefully planned, but the principal details were much the same as in Hooker v. Vandewater, and the court followed that decision.

In these cases the court applied a statute in passing upon the question involved. In Morris Run Coal Co. v. Barckley Coal Co.--68 Pa. St. 173-- decided in 1871, the court came to the same comclusion basing its decision on common law principles.

In this case five coal companies, incorporated under the laws of Pennsylvania, agreed to combine and place their business under one managment and divide the profits in certain proportions. A committee was appointed to manage the business, which committee had power to fix prices and the proportions which each company should furnish to the stock of coal to be sold, and should

control the sale thereof. While each company might sell coal itself, it could only do so at the price fixed by the committee and could not sell beyond the proportion assigned to it. The companies bound themselves not to ship or sell any coal except according to the provisions of the agreement. These companies practically controlled the output of this particular kind of coal which was extensively used and a necessary article in manufacturing. The coal companies claimed that the purpose of the combination was to reduce expenses &c. in producing and selling coal.

The court declared, that the reason of the combination was immaterial since the important fact remained that the combination controlled the output, and made the coal bring greater prices than it would if the business had bee left free and open to competition. That it concerned an article of prime necessity. That its operation was general in a large region and affected all who used coal. Any one of these companies might by itslef have taken any step tending to increase the price of its own goods, yet all combined could not be permitted to take similar steps. There is a potency in numbers when combined which the law cannot overlook, when injury

is the consequence of the combination; and such a combination, being wide in its scope and general in its effect, could only result in injury. Hence it must be considered contrary to public policy and void.

The courts said: "A contract is criminal when it has a tendency to prejudice the public, or to oppress individuals, by unjustly subjecting them to the power of the confederates, and giving effect to the purpose, whether it is extortion or otherwise." So on the ground of public polict this combination was declared illegal.

Still another case is Craft v. Mc Conoughy--79 Ill., 346-- decided in 1875. In this case there was an agreement among five grain dealers in a town ; which while in the form of something in the nature of a partnership, was really a combination to stifle competition and enable the parties, by secret means, to control the price of grain, cost of storage, and expense of shipment at this town. This was a written agreement signed by the parties, dividing the business into certain proportions and leaving the control of each man's business in his own hands, but providing for reports of business done to a general bookkeeper, and division of the profits in

proportion to the share of the various parties. The prices to be charged were regulated by the combination. One of the parties to this agreement died soon after it was made and his son, who succeeded to his business, refused to recognize it. Suit was brought to compel the payment of certain money, belonging to the combination, said to have been held by his father; but the court refused to grant relief. The grounds of the decision being that the contract was for the purpose of stifling competition, and hence illegal.

In Arnot v. Pittston & Elmira Coal Co.--68 N. Y., 558-- decided in 1877, the question arose out of an agreement between two coal companies, the Pittston & Elmira Coal Co. and the Butler Coal Co., by which the latter agreed not to ship any coal to New York State except such as it sold to the former company, and by the terms of the contract could only ship 2,000 tons into this territory in any event. The Butler Company might sell its coal anywhere except in New York as it chose, and was not obliged to ship any into that state, but such as it did ship into that state must be subject to the terms above mentioned.

This company produced coal largely in excess of 2,000 tons per month. The purpose of the Elmira Company in this case was to keep out of the New York market all of the coal of the Butler Company's mines except such as it could control. Similar agreements had been made by the Elmira Company with other coal companies.

The court said: "That such a combination was inimical to the interests of the public and that all contracts designed to effect such an end are contrary to public policy and therefore void. Every individual dealer has the right to use all legitimate efforts to obtain the best price for his wares. But he has no right to endeavor to artificially enhance prices by suppressing or keeping out of the market the products of others; and any endeavor which he may make to bring about such a state of things is contrary to public policy. If such agreements or contracts were sustained there would nothing to prevent the price of articles of necessity from being raised unnaturally and sold at a ruinous rate. In this case, if the Butler Company had sold a certain amount of its coal at a certain rate, or had sold its whole product, the contract would have been

good, since the Butler Company had a right to sell its goods to the best advantage even if the vendee intended to make an improper use of the goods and the vendor knew it. But if the vendor did anything to help along the improper purpose he will be held to be particeps criminis and cannot recover the price. This was the present case. The Butler Company made no certain and definite sale, but simply agreed to keep its coal out of the Elmira Company's market, or if any came in it was to be subject to the control of the Elmira Company. Thus, knowing the illegal nature of the contract and assisting in its execution, it was a party to it and for coal sold under it neither the company nor their assignees could recover.

In 1880 the case of Salt Co. v. Guthrie--35 Ohio St., 666-- was decided. Here a voluntary association of salt manufacturers was formed for the purpose of selling and transporting that commodity. By the articles of association all salt manufactured or owned by the members, when packed in barrels, became the property of the company; and its committee was authorized to regulate the price and grade thereof, and also to control

the manner and time of receiving salt from the members. Each member was prohibited from selling any salt during the continuance of the association except by retail at the factory and at prices fixed by the company.

In the decision the court said: "Public policy unquestionably favors competition in trade to the end that its commodities may be afforded to the consumer as cheaply as possible, and is opposed to monopolies which tend to advance market prices to the injury of the general public." It also pronounced the clear tendency of such an agreement as this to be to establish a monopoly and destrot competition in trade, and for that reason on grounds of public policy the court refused to enforce the agreement.

These cases show the dangers which assailed these combinations, and resulted in their destruction. They received no mercy at the hands of the courts. No matter how ingenious were the arguments offered in their behalf, the instant the fact that their tendency was to restrict the production or enhance the price of any article appeared, the court, without stopping to listen any further, pronounced them illegal and refused to have anything to

do with the agreements which bound the different parties composing them.

Deprived of enforcement by the courts, these agreements became so much waste paper, and any member was free at any time to withdraw, and might at the same time take aleng with him as much of the funds belonging to the association as might have come into his possession, and be none the worse off. Or if there was no dispostion on the part of any member to take such summary steps,and even if all were content to remain loyal to the agreement, death,or any of the ordinary changes which occur in business,would almost certainly cause some break in the ranks. So the greater the extent of the agreement and the greater the number included in the combination the more opportunities were offered for dissension, and the less the chance of permanent and successful combination. Since any member who withdrew and continued in the same business at the old rates would be successful beyond measure unless the others followed his example, the result was that the whole combination depended upon the action of any one member; so if one deserted the rest must follow and the whole thing tumbled like a

house of cards.

On account of these many drawbacks, schemes of this sort ceased to flourish for a time. But the causes which led to them continued to exist and to increase, and, as a result, the principle of combination was once more resorted to. This seemed necessary as competition grew sharper and sharper, and the profits grew correspondingly less. But the fate of those agreements which had already been made and broken made it apparent that some more substantial form of union must be created if the result was to be any more satisfactory. Then the modern trust came into existence.

This word trust in its popular signification is vastly more comprehensive than in its legal sense. Cook in his work on Corporations describes it, in its legal sense, as meaning an agreement between many stockholders in many corporation to place all their stock in the hands of trustees, and to receive certificates therefor from these trustees. "The stockholders thereby consolodate their interests, and become trust certificate holders. The trustees own the stock, vote it, elect officers of the various corporations, control the busi-

ness, receive all the dividends on the stock, and use all these dividends to pay dividends on the trust certificates. The trustees are periodically elected by the trust certificate holders."

The popular signification includes any combination of the producers or dealers in any commodity. No matter what the form of agreement which binds the members together, no matter what the purpose or result, the mere mention of the fact that such a combination exists, at once entitles that combination to name of Trust, as well as all the honors and abuse which that name in its popular sense carries with it.

While, as we have seen, the idea of combination is an old one; the popular agitation against these combinations and their denunciation are recent. The reason of this being, no doubt, the great extent, power, and wealth, which a few have attained. The purpose of their existence, as announced by their enemies, is to increase the price of the articles contolled, and thus extort unreasonably large profits from the purchaser. When this purpose is persistently called to the attention of the public by those who for some cause or other

announce themselves as enemies of the trust and friends of the people, and the announcement of this purpose is actually accompanied by an increase in the price of the particular article, it is natural that they should become decidedly unpopular.

This unpopularity having become apparent, it speedily found expression in the press and the utterances of political parties. Newspapers, anxious to make good their claims as champions of popular liberty and the peoples rights, have bristled with editorials fiercely denouncing any and all such combinations; and having denounced all those whose existence was known, so zealous were they that they could not stop there, but must needs discover the existence of many mythical trusts, and against these imaginary enemies do battle manfully for the peoples rights. The two great political parties hastened to put themselves on record, and rivaled each other in their pledges and promises. Ambitious politicians and alleged statesmen have made trusts the text for many an eloquent address, and have shown that their existence was occasioned by the existence of a tariff, and, with equally convincing logic, that a country en-

joying the blessing of free trade was their paradise Bills have been introduced into various legislative bodies with the intention of making the existence of so called trusts impossible, and which had they become laws would no doubt have succeeded in this object, and probably would have rendered the existence of nearly every other combination or partnership illegal also.

The general consensus of opinion seemed to be that the trust must go. Every one seemed to think except the trust themselves. Notwithstanding their unpopularity they seemed inclined to remain; and not only to remain, but to increase in numbers and wealth. They bore up serenely under the denunciation of the press. They did not appear to care what political parties said about them. And, as for the bills which when enacted were to destroy them, they seemed to have little vitality, and never made any substantial progress toward the statute book. At last more practical steps were taken to bring about their destruction. The courts were invoked, and the latest struggle between public policy and private selfishness was instituted.

The combinations which were now to be assailed were

those which were either in the form of trusts-- using that word in its legal sense-- or else those which sought to carry out their projects under the form of corrations. An example of a trust was The Suger Refineries Company, or, as it was popularly called, the Sugar Trust. The illegality of this trust has been declared in the lower courts of this state, and is now awaiting final decision in the Court of Appeals. Both the opinion of Judge Barrett at the Circuit, and of Judge Daniels at the General Term, are to be found in 54 Hun, 354.

The plan of this trust is described in these opinions. It appears that in forming it the first step taken was to incorporate such of the concerns which were to become members and which had before done business as partnerships or as individuals. This was done in order to enable the proposed trust board to more easily control all of the concerns. The provisions creating this trust board, and all the other provisions necessary to the existence of the enterprise, were described in what was called the "trust deed." This document set forth the various purposes for which the combination was said to be formed. These were to promote economy and reduce

cost; to afford protection against unlawful combinations of labor, to keep up the quality of refined sugar, and generally to promote the interests of the members. All the stock of all the corporations was transferred to a board of eleven trustees. To represent this stock, these trustees issued to the original stockholders what were called trust certificates. When the stockholders received these certificates their connection with their own corporation ceased. Thenceforth the control of all these corporations was in this board of trustees by virtue of the fact that they held all of the stock of each of the corporations. Thus their power in each case was as great as that which would have been exercised by the original stockholders. Only so much of this stock was parted with by the trustees as was sufficient to render enough men elegible to fill the boards of directors of the various corporations. These boards, being named by the trustees and under their control, would naturally be subservient to their wishes. The trustdeed provided that the profits made by the various concerns should be paid over to the trustees, and by them divided among the trust certificate holders.

The situation under this deed is thus described by Judge Larrett: "Thus we have a series of corporations existing and transacting business under the forms of law without real membership or genuinely qualified directors,---mere abstract figments of statutory creations,-- without life in the contrete or underlying association. Every share of stock has been practically surrendered and vital membership resigned."

The State brought an action to vacate the charter of The North River Sugar Refining Co., one of these corporations; and in this action the decision of both the trial Court and the General Term was to the effect that the stockholders of this company had relinquished that control over its management which the law contemplated, and had turned over to the trust board. That the corporation in this case could not set up that it was a separate individual, and that the acts of the stockholders were not its acts, and hence it could not be punished or held responsible for such acts, since the corporation was composed of these stockholders and the act of the entire body of stockholders would be the act of the corporation. That by this act the corporation ceased

to exercise the functions prescribed by law, and placed itself under the control of a power which the law never intended should control it. This was held a sufficient offence against the provisions of the acts under which the corporation was created to warrant its dissolution.

In addition to this it was held that the purposes for which this assignment of powers was made was one which was unlawful. Although certain purposes were mentioned in the trust deed and these were innocent in themselves, the court could look further for other purposes which might exist. From the facts of this case the court inferred that another purpose existed, which was to control the product of sugar to an extent injurious to the public. The trust deed contained so many provisions for the absolute control of the various factories by the trust board that it was reasonable to suppose that they were to be used, and they could hardly be used with any other result than the suppression of competition; "and where that appears to be the fact the association or whatever else it may called, having for its object the removal of competition and the advancement of prices of necessaries of life, is subject to the condemnation

of the law by which it is denounced as a criminal enterprise."

After citing cases the Judge also said that "the association was created for an unlawful object, and the defendant by making itself a party to the association had renounced and abandoned its own duties, and placed it interests and affairs under the direction and control of a board which legally should have no power over it, and made itself liable to the judgment (of dissolution) which had been rendered in this action."

Thus, this most carefully prepared scheme for the purpose of restraining competition was destroyed by the assertion of the simple proposition that public policy required freedom of competition; and that corporations, being the creatures of law, and restricted by law to certain rights the exercise of which must be according to law, and by those to whom the privilege was granted, could not turn over the exercise of those rights to others for purpposes opposed to public policy.

Another attempt to avoid competition was the Chicago Gas Trust Company. This was declared illegal by the Supreme Court of Illinois. (22 N. E. 798)

This company was organized under the general incorporation law of Illinois. The purposes for which it was incorporated were set forth in the statement, filed with the Secretary of State, as follows; to make and sell gas and electricity for lighting purposes, and to buy and hold or sell the capital stock of any gas company in Chicago or elsewhere in Illinois. This company after its incorporation purchased a majority interest in four gas companies doing business in Chicago, and managed them so that they ceased to compete and acted as a unit in charging higher prices for gas to all consumers. The Gas Trust Company's right to do this was questioned. It was claimed that the their charter gave them this right.

The court decided, that since the only mention of these powers was in the statement filed with the Secretary of State, they could not be said to have been obtained by the necessary legislative authority. The filing of the certificates was only a step in the process of incorporation provided by the general law, and that the charter of the corporation was the general law and the various statements and agreements taken together,

and that the provisions of the general law would control. This company, if it were formed for the purposes of making gas, would by the terms of the law possess all necessary powers for that purpose. But the buying of stock in other companies was not such a necessry power, and would not be acquired under a charter empowering the company to make gas. The company claimed that it was created for two purposes, making gas, and buying stock in other companies. The court expressed some doubt as to whether a corporation could be created for two distinct objects; but, without passing upon that point, proceeded to examine into the legality of the second object. The court observed, that under this power the company had obtained control of all the gas companies in Chicago, and could manage them as it saw fit by means of boards of directors of its own chosing. The result of this was to destroy competition and build up a monopoly. The only powers that the company could obtain under the general incorporation law were legal powers. The business of supplying gas was of a public nature, and companies engaged in this business owe a duty to the public, and any unreasonable restraints upon the per-

formance of such is contrary to public policy. Any act to prevent competition and create a monopoly is contrary to public policy . Unlawful acts of a corporation are said to be, not only those malum in se and malum prohibitum, but also those which have no right to perform lawfully, that is those which are ultra vires. If contracts and grants which tended to promote monopoly were void at common law then authority for similar acts could not be obtained by a corporation under a general incorporation act.

Further it is said that the public policy of a state is shown by the provisions of its Constitution, and the Constitution of Illinois in 1870 declared against any legislation giving exclusive privileges to any person or corporation. After the adoption of this Constitution the public policy of the State was against the granting of any exclusive privilege. The incorporation law was passed subject to this provision and governed by it. It could not be expected then, that a charter would be granted which would permit the controlling by one corporation of all gas companies which might be formed, or as many as the corporation chose to control. Hence the

purpose of the corporation could not be lawful, and no rights permitting the carrying on of this unlawful purpose could be obtained under the incorporation act.

These companies, being of a quasi public nature, had a duty to perform towards the public and the city. If this corporation by its control prevented the performance of such duties that also was an unlawful act.

For these reasons the court declared that the second purpose mentioned in the statement was one that was contrary to the public policy of the State of Illinois, and such being the case, was a power that could not be obtained or exercised under the incorporation laws. Hence the acts of the corporation were without the protection of law and lacked any corporate authority.

By this decision it appears that the purposes for which a corporation is created must be in accordance with public policy; and that the fact that the steps prescribed by law for incorporation had been properly taken, and a corporate franchise secured, does not prevent the purpose for which the corporation was created from being inquired into. And if the purposes are found contrary to public policy then they will be held to be

powers which the corporation could never have possessed, and acts done in accordance therewith will be declared illegal.

In the case of Richardson vs. Buhl, decided in the Supreme Court of Michigan, (43 N. W. 1102) a corporation intended to control the product of matches was declared to be one created for an illegal purpose, and contracts made to further its formation were illegal and their enforcement was refused by the court. The court said that the purpose of the company was boldly avowed to be to control the manufacture of an article of universal use and necessity. This agreement in question was to further that purpose. Such purpose being contrary to public policy and hostile to the interests of the people, ought to receive the condemnation of the courts. It was an unlawful purpose, and being so this agreement made to further that purpose was illegal and void, and hence relief was denied the plaintiff.

The cases which have been mentioned were all decided by declaring that any agreement which tended to do away with competition was against public policy. So long as the purpose was to dispose of only one rival

the contract was held good, even though it was made avowedly for the purpose of removing a competitor. In the two cases of Diamond Match Company vx. Roeber and Leslie vs. Lorrillard, this was the case, and the court in passing upon them used language which seemed to imply that competition was not to be considered at all times necessary.

When the question arises in passing upon the status of a combination of several parties the view takken seems to be different. The mere fact that the combination is for the purpose of suppressing competition is of itself sufficient to condemn. That purpose is at once pronounced illegal without argument or discussion. Its illegality is taken as an indisputed fact. If this purpose is discovered to have caused the creation of any trust or combination, or if, while more innocent purposes are set forth, the court believes that this was the real purpose, then the trust or combination is at once pronounced illegal. It matters not how carefully the plan is made, nor how elaborately the details are worked out, this one fact condemns it; and, without listening to any argument however profound or technical, the combination is declared illegal. In case after case it is said,

that so long as competition is free the interests of the public are safe, and until this limit is passed the parties may do anything they chose, and take any steps they wish, to improve their position. But to pass this limit is to pass outside the pale of legal protection, and brave the power of the courts backed by popular hostility; and in the conflict that then arises there has been and can be but one result.

This one principle, that monopolies and combinations tending to produce monopolies are illegal, is the ground work of all the laws that have been proposed or enacted for the suppression of trusts. These laws simply repeat that principle in various forms, extend its application perhaps, and fix penalties for its violation. This one rule is the weapon with which trusts are struck down. Courts and legislatures are pledged to use it, and they will continue in its use so long as such seems to be the demand of popular sentiment.

Whether trusts or combinations of this nature will ever become recognized as legal institutions depends upon this popular sentiment. If it can be shown that the objections urged against trusts do not necessarily re-

sult; if the prejudice of centuries against monopoly can be shown to be groundless under modern conditions; then trusts and combinations restraining competition may lose their present unsavory reputation, and become recognized as legal institutions. But if this end is ever attained it must be through a change of public opinion. Until that occurs the courts and legislatures will be their most resolute opponents.