1890

Modern Trusts

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ON

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BY

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CORNELL UNIVERSITY.

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MODERN TRUSTS.

Prehaps the most singular and striking feature of the present commercial and financial condition of the country is the formatiom,existence and power of what are called "trusts". From "the spacious days of great Elizabeth," when that "sagacious monarch" strengthened the foundations of her throne by the charter of monopolies,to within a recent date,men have supposed that through the agency of corporations could best be secured all that "organization and aggregation of men and mind and money" can accomplish by way of domination in the financial world. But now at the close of the nineteenth century,we have entered a higher plane of business life,a new,more complicated,more economical and more intelligent era in trade and business. A new form of association has been devised;a significant movement in the direction of that organized aggregation of the commercial and manufacturing interests;which is the most prominent and vital feature

of the trade and business of the present decade. What previously, through the clumsy medium of an incorporated company, was the work of a generation, is now attained in the short space of little more than a year. It is a significant matter that the commercial world takes on this form so suddenly. The assurance of this fact and that it is here to remain constitutes one of the greatest legal problems of the present day. During the last two years "trusts" have been accorded an amount of attention never before, in this country, bestowed upon any purely economic question. Indeed it has, of late, become the all absorbing theme of public discussion. This is due in a great measure to the impression abroad that trusts are working a public mischief. To such an extent is this true that propositions to limit "trust organization" by law, are now being discussed both by the national and by the state legislatures.

MODERN TRUST DEFINED.

"Trust",in law,embraces every case in which one person holds property for the benefit of another. COOK on STOCK and STOCKHOLDERS,Sec.503,a.defines "trusts" as follows: "The word "trusts" was first used to mean an agreement,between many stockholders in many corporations,to place their stock in the hands of trustees and to receive therefor trust certificates from the trustees.It is now used in a wider and more popular sense.It is used to designate any combination of producers for the purpose of controlling and suppressing competition."
Mr.S.C.T.DODD,the general solicitor and originator of the "Standard Oil Trust," defines a trust as "an arrangement by which the stockholders of various corporations place their stocks in the hands of certain trustees,and take in lieu thereof certificates showing each shareholder's equitable interest in all the stocks so held."

PROFESSOR T.W.DWIGHT, says: "The term trust, is an unfortunate one, since it is in no respect descriptive of the subject at issue."

The Courts have not attempted to define the "Modern Trust

FORMATION OF TRUSTS.

All "modern trusts" are formed principally upon the same basis. Each are carried on in a manner peculiar to it; but the general methods and principles that apply to one apply to all.

The "Standard Oil Trust" is a type of the system of organization. It is the original trust, and the most renowned as well as the most solid and successful. It was organized in 1882, (though it existed in some form for ten years previous) by about fifty persons engaged in the production of, what is known as, "coal or kerosene oil." They entered into an agreement by which they, representing many different corporations, joint-stock associations and partnerships, in many different States, placed their stock in the hands of nine trustees, and in lieu thereof seventy million dollars of face value in its capital certificates

were issued, afterwards increased to ninety millions and in 1889 (according to the testimony of the "trusts'" president) the actual value of the property controlled was more than one hundred and forty eight millions. By the trust agreement it is provided that "all property, real and personal, assets and business, shall be transfered to and vested in the said several companies." The duties of the trustees are restricted to "the receipt of the devidends declared by the various corporations, and the distribution, pro rata, of all the aggregate of them to the holders of the trust certificates," to "hold and vote upon the stock of the corporations." The objects of the ~~corporation~~ combination, as set forth in the trust agreement are (1) "To cheapen transportation, ---. (2) To manufacture a better quality at less expense, ---. (3) To unite with the business of refining the business necessarily collateral thereto, ---.

(4)To cheapen illuminating oils by obtaining profits from the by-products. (5) To employ agents and send them through the world to open up new markets,---. (6) To increase the supply of oil and lessen the price to the consumer,---."

The great "Sugar Trust" differed from the Oil Trust in no way except that it was composed solely of corporations.

TRUSTS AS MONOPOLIES.

"Trusts" as they now exists were unknown to the common law, yet, what is claimed to be the evil effect of the "modern trust" was attempted to be perverted by the Courts. Various statutes were enacted to prevent "forstalling, regrating, (buying to sell again) and engrossing." Any willful attempt to enhance prices, made with the intent to injure the public, was made criminal by statute (5&6 Ed.VI, c.14) passed by parliament in 1552. In REX v. WADDINGTON, 1 East 167, the charge was "wickedly intending to enhance the price of hops." He had in the presence of hopplanters and others, declared that the existing crop was nearly exhausted, and that, before the hops then growing could be brought to market, the existing crop would be exhausted. Thus inducing those present, having hops on hand to abstain from

selling, and thereby greatly enhancing the price. The Chief Justice said: "Now this defendant went into the market for the very purpose of tempting the dealers to raise the price of the article, offering them higher terms than they themselves proposed and urging them to withhold their hops from the market inorder to compel the public to pay a higher price. What defence can be made for such conduct, and how is it possible to impute an innocent intention to him? We must judge a man's ~~action~~ motives from his overt acts, and by that rule it cannot be said that the defendant's conduct was fair and honest to the public." The ignorance and narrowness shown by the view taken of the common law, is well illustrated by the case of REX v. RUSBY, Peaks Nisi Prius Cases 189. Rusby was indicted in 1799 for "regrating" thirty quarters of oats. Having bought ninety quarters on that day at 41 shillings per quarter, on the same day sold thirty quarters at

43 shillings. LORD KENYON charged the jury as follows: "This case presents itself to your notice on behalf of all ranks, rich and poor, but more especially the latter. Though in a state of society some must have greater comforts and luxuries than others yet all should have the necessaries of life; and if the poor cannot exist, in vain may tha rich look for happiness and prosperity.--- The common law though not to be found in the written records of the realm, has long been well known. It is co-evil with civilized society itself, and was formed from time to time by the wisdom of man. Good sense did not come in with the Conquest or at any other one time, but grew and increased from time to time with the wisdom of mankind. Even amongst the laws of the Saxons are to be found many wise provisions against forestalling and offenses of this kind, and those laws laid the foundation of our common law.

That it remains an offence,nobody has controverted. --- Speculation has said that the fear of such an offence is rediculous,and avery learned man,a good writer,has said you might as well fear witchcraft. I wish Dr. ADAM SMITH had lived to hear the evidence of to day,and then he would have seen whether such an offence exists and whether it is to be dreaded. If he had been told that cattle and corn were bought to market,and then bought by a man whose purse happened to be larger than his neighbors,so that the poor man who walks the streets and earns his daily bread by his daily labor could get none but through his hands and at the price he chose to demand;that it had been raised three pence,sixpence,ninepence and even more per quarter on the same day; would he have said there was no danger from such an offence?" Rusby was convicted,sentenced and heavily fined.

Slowly trade has freed itself from the paralyzing fetters of such laws. It required centuries of experience to teach legislators that buying and selling should be free and that co-operation in trade should also be free. With the wisdom taught by business experience sound principles triumphed, and in 1844 Parliament repealed all of said laws and enacted that "no proceeding shall lie either at common law or by virtue of any statute, for or by reason of said offences or supposed offences." But not until 1856 did England free itself from the shackles it had placed upon its own industries and permit free combination of persons and capital.

We brought our laws and customs on this subject from England, and the change has been slowly wrought, as all legal changes are, but to day there is scarcely a State in the Union in which any number of persons may not combine their capital in any

lawful business enterprise. Our Courts have generally looked upon large "trust combination" with suspicion; but the governing element is the legality of the purpose and object for which the trust is formed. JUDGE DALLEY says: "Combinations are unlawful the design and effect of which necessarily is to give the parties combining a monopoly, more or less, for any lenght of time, of the manufacture or sale of a commodity, or to secure any pecuniary advantage in restraint of trade which would be injurious to the community." Where the object of a combination is clearly to obtain exclusive control of a commodity and thereby establish a monopoly the Courts will not permit it to stand.

In the Ohio Salt Co. v. Guthrie, O.St.35, p.666; thirty or more salt manufacturers, doing business seperately and independently, entered into a voluntary association, agreeing to sell all their pro-

duct to the association, composed of and directors elected by the manufacturers. It was the duty of the directors "to regulate the price and grades of salt." Each member bound himself "to sell salt only at retail and at the place of manufacture," and there only "at such prices as may be fixed by the directors from time to time." The Court held the agreement void as against public policy, and refused to enjoin one of the parties from breaking his contract. The Court saying: "Public policy unquestionably favors competition in trade, to the end that its commodities may be afforded to the consumer as cheaply as possible. The clear tendency of such an agreement is to establish a monopoly and to distroy competition in trade; and for that reason, on the ground of public policy courts will not aid in its enforcement." In Morris Run Coal Co. v. Barcley Coal Co. 68 Pa. S. 173, five coal corporations of Pa.

entered into an agreement to devide two coal regions of which they had control; to appoint a committe to adjust the prices, rates of freight etc. To appoint a general agent, all coal to be delivered through him. The five companies could sell their coal themselves only to the extent of their proportion and at prices adjusted by the committe. Held that the agreement was against public policy, illegal and void. IN Arnot v. Pittston Coal Co. 68 N.Y.558, two coal companies entered into an agreement whereby the one in Pa. was to send coal north of the State line to no other company than the one agreed with in N.Y. The Pa. company refused to carry out its contract, and brought action for price of amount delivered. Held that the agreement was illegal, that both were parties to the fraud; therefore the Court would not aid. In each of these cases the attempt was to gain control of a natural productof

the soil, a necessary commodity, and thus, at will, enhance prices to the detriment of the public. Such combinations can never be defended. Anti-competitive contracts to avert personal ruin may b e perfectly legitimate. It is only when such contracts are publically oppressive that they are condemned as against public policy. In Marsh v. Russell, 66 N.Y.288, certain parties entered into a contract that if they or either of them, should make a contract with any towns of a certain county to furnish recruits, they would share equally in the profits and loss of the business, and that, without the consent of all, they would make no contract for a less summ than $500 per man. Held that the contract was not void, per se, as against public policy. The Court said: "Where business is carried on by a firm its members could regulate the price at which they would buy and sell. Suppose they

had formed a partnership to buy and sell wheat, how can it be doubted that they could lawfully agree in their articles of co-partnership that neither member of the firm should come in competition with the firm, and that wheat should not be purchased for more tham a certain price, nor sold for than less a certain price? Such an agreement would certainly not upon its face be unlawful." It is different, however, said the Court, "when there could be no apparent purpose for such an agreement except to prevent competition between the parties thereto." In Pippen v. Stickney, 2 Met. 384, the rule is laid down that agreements to prevent competition are valid when they evince an honest purpose of carrying out a legitimate enterprise, but otherwise when the circumstances evince a fraudulent purpose. The difference between combination for the purpose of obtaining exclusive control of

a commodity, and combination for the purpose of maintaining, extending or increasing a particular business, is illustreated by the case of Mogul &c v. McGregor 59 L.T. Rep.514, recently decided.(1888) Here most of the shipowners doing business between London and China formeda combination whereby their patrons were allowed a certain rebate if no shipments weree made with competitors of the combination. A competitor sued the combination for damages resulting from conspiracy. Held that he could not recover; that the plan of operation was initself legal and that illegality could arise only in using illegal means to carry out the plan. CHIEF JUSTICE COLERIDGE said: "The line between legal and illegal acts affecting competition is dificult to draw; but I cannot see that these defendants have passed the line which separates the reasonable and legitimate selfishness of traders from wrong and

malace. If the acts are done wrongly or maliciously,or in furtherance of a wrongful and malicious combination,they are actionable. Trade not being infinite,what one man gains another loses. But persons have a right to push their trade by all lawful means. Among lawful means is certainly included the inducing,by profitable offers,customers to deal with them rather than their rivals." The "Standard Oil Trust"was,at one time severely censured for entering into similar arrangements with various railroads. Until forbidden by the "Interstate Conmerce Act," common carriers,to secure its custom,granted to the Standard enormus secret rebates. On shipments from Pittsburg to Phila delphia,for a time,it received a rebate of more than half the freight,no matter who was the shipper. That these preferentials worked hardships and evils all will agree;yet it is not so easy to say what

admitted principles of business ethics they traversed. Nothing but the magnitude makes it seem outrageous. Few certainly are the busines men who do not give to heavy buyers special rates. Combinations for the purpose of advancing prices beyond a normal rate are soon destroyed by natural forces without the interference of the courts.

The great Copper Syndicate was a victim of "the doctørine of ADAM SMITH." It contracted with the principle producers of copper through the world for the product of their mines. It thus became almost exclusive controler of the product. Copper advanced from 9 cents to .1946 cents per pound. But in obedience to never failing economic laws, the production was stimulated, copper began to accumilate in the hands of the Syndicate, and when it had exhausted its capital of $10.000.000 it resorted to borrowing, the public lost confidence

and the Syndicate fell. In like manner the great Whiskey Trust fell, being forced to admit so many new distilleries.

Trust combination received a severe blow by the recent decision in the case of the PEOPLE v. NORTH RIVER SUGAR REFINING Co. 3 N.Y. Sup. 401. This was a combination entered into by all the sugar refineries in this State, and, with a few exceptions in the U.S. Its foundation rests upon a written agreement dated Oct. 24" 1887, which is styled the "trust deed". By the "trust deed" it was provided that "the partnerships shall all be turned into corporations. The corporations already formed agree for themselves, and the partnerships agree as to the corporations which they are to form, that the capital stock of all such corporations shall be transfered to a board consisting of eleven persons to be held by them as joint tenants subject to the

purposes set forth in the deed. "Trust certificates," it was provided, "shall be issued not to exceed fifty millions of dollars," to be divided by the eleven trustees, among the refineries in proportion to the value of their respective plants, to be in turn divided by them among the cestuis que trustent in proportion to the stock of the corporation which each cestui que trust held prior to the transfer to the eleven trustees, or "trust board" as they are termed. The duty of the "trust board" was to receive all profits from every corporation and divide them in the shape of dividends on the "trust certificates". Provision was made for taking into the combination other sugar refineries. Each corporation remained in tact, with its board of directors; but it is claimed, they had no real power, holding office at the pleasure of

the "trust board." The objects of the combination were, inter alia, to promote econemy of administration: to reduce cost of refining: to protect against inducement to lower the standard of refined sugars: to promote the interests of the parties hereto in all lawful and suitable ways.

The Court held that it was a corporate combination, and not an agreement among stock holders. That the combination was unlawful, as being in restraint of trade,, and tending to create a dangerous monopoly. BARRETT, J. said: "It is clear from the above that this was a combination of corporations and not merely a combination of stockholders. The purpose to effect a corporate combination cannot be disguised. It is quite impossible to sever the acts of the persons solely interested in these corporations from those of the corporations themselves. What is a corporation apart from the whole

body of the members or stockholders, clothed with the statutory franchise? Merely a name. Where the whole body of stockholders offend the law of the corporate being, the corporation offends and the persons who have actually offended forfeit the franchise which they possessed under the corporate name." He further says, in substance, that the trust is a devise to unify and utalize corporations for concurrent action, by partly or wholly separating in each the voting power from the beneficial ownership, concentrating the former for all of the constituent corporations in one and the same body, namely the "trust board." The shareholders of the corporations relinquish their power as stockholders and look solely to the trust board for future guidance, control and profits. "Here for the first time in the history of corporations we have a double trust in their management,--one set of

trustees elected formally to manage the corporate affairs,and a second set created to manage the first.---The truth is that under this arrangement the trust board can direct the business movements of the 17 or 18 corporations as absolutely as a general of a great army can direct the movements of its various corps d' armée." In substance he says,the trust board is clothed with the power of both stockholder and director,it can close every refinery at will,limit the purchase of raw material,and thus enhance the price to enrich themselves at the public expense,thereby creating a "legal monopoly," which he defines as "any combination the tendency of which is to prevent competition, in its broad and general sense,and to control and thus at will enhance prices to the detriment of the public."---"Theoretically,it cannot prevent other capitalists from comming forward and

utilizing their means in combination with labor, but practically it can.--A vast harvest could be reaped at the expense of the public before the foundation of the competitive edifice could be laid,--and that harvest could then be utilized, by the sudden lowering of prices,to the suppression of the foreign competitor."

The trust proceeds upon the theory that a corporation is a wholly different entity from the corporators who form it. What they do with their stock does not concern the corporation.If they choose to lodge it with trustees,no taint attaches to the corporate character. Each of the associate legal persons remain perfectly free and independant. No charge of ultra vires is maintainable, only the board of directors can voice the corporation's will,and not one of these has had ought to do with the formation of the trust. They may

proceed without a scrap of corporate agreement, and with no compact at all of which there is record. But, says BARRETT, J. "Whatever the theory or whatever the status in law, the trust is in actual fact a solid, organic, centralized structure." But there are no laws on our statute books which prohibit such a combination. Thus it would seem that the learned JUDGE was not guided by any legal precident, or previous legislation.

LEGALITY OF TRUSTS.

The trust having a lawful object is not illegal.
FIRST. The trust does not vest personal property or realestate in the hands of a trustee for a longer period than is allowed by law. Generally this time is fixed as the lifetime of the survivor of any two or more persons then living and designated by the person creating the trust. In N.Y. the suspension can be for only two lives in being, and, in certain cases, twenty one years thereafter. 11, R.S.7ed.p.723 Sec.15. A trust formed for a longer period is initself void. The law is clear that "every kind of valuable property, both real and pe-rsonal, that can be assigned at law may be the subject matter of a trust." Perry on Trusts Sec.67.
SECOND. The formation of a trust for the purpose

of carrying on business, in the name and under the management of trustees is legal and allowable both at common law and under the statutes. Ex Paret Garland, 10 Wes 110. In GOTT v. COOK, 7 Paige 521, the Chancellor said: "The Revised Statutes have not attempted to define the objects for which express trusts of personal property may be created.---Such trusts, therefore, may be created for any purpose which is not illegal." In POWER v. CASSIDY, 79 N.Y. (1880) the Court said: "The law does not limit or confine trusts as to personal property except in reference to the suspension of ownership.---They may be created for any purpose not forbidden by law."

THIRD. The shifting of the parties interested - that is, the certificate holders - is allowed in trusts. The law does not require the cestui que trust to remain continuously one and the same per -

son. Perry on Trusts Sec.66. Trusts are legal in this sense, on the same principle that it is legal for a bond holder, secured by a railway trust deed or mortgage, to sell or transfer his interest to another.

The MODERN TRUST is not a partnership, or a consolidation of corporations.

It seems well settled that corporations cannot form partnerships, unless authorized by express grant or necessary implication. It is treated as an act ultra vires and subjects the corporations to a loss of franchise. The legal effect of the consolidation of two corporations, under the provisions of Act No.157 of 1874, is to terminate the existence of the consolidating corporations as such, and operates the creation of a new one. Thus concentrating in one corporation the members, the property and the capital stock of both.

The consolidated corporation not only assumes duties and obligations similar to those of the former corporations;but it will be held on the very identical liabilities and obligations incured by either of the former corporations. In the FULTON BANK case,Chief Justice SAVAGE said: "General principles are against the power of corporations to do such acts. They have no powers but such as are granted and such as are necessarily incident to the grant made to them. Corporations at common law have certain powers;but not such as would authorize the formation of partnerships,or the consolidation of two corporations into one." In the "modern trust" each corporation remains in tact,free and independant,no one is bound by the acts of the other. Each carry on the business in their own behalf,paying all expenses

and turning over to the trustees,or "trust board," only profits. H.O.Havemeyer,(a member of the sudar trust board)being sworn,declared the statement that the trustees had anything to do with the management of the sugar-refining business absolutely false;and likewise false the notion that they directed in any way any one of the corporations whose stock was deposited with them."There is," he said,"a specific provision in the deed that nothing of the kind shall occur,and it has been rigidly observed." They act simply as a general agent to divide profit and loss;for there was no common fund;there being no community of interest before the division of profits is made. The corporations have no interest in the profits of the association as profits,simply a right to demand an accounting for a certain percent of the profits,accompanied with an obligation to pay a

certain percent of the loss.

KENT'S Commontaries,13"ed.vol.3,p.25,nl. "Agreements for pooling profits,that is,for putting the net profits of different concerns together at the end of a certain time and dividing them in a certain proportion irrespective of the amounts contributed have been held not to create partnerships." In MERRICK v.GORDON,20 N.Y.33,a firm,carriers upon the N.Y canals,agreed with a firm of carriers upon the Great Lakes for a division in fixed proportion,of the total frieght which should be received for the carriage of goods. Held that it did not constitute them partners. BURNETT v. SNYDER,81 N.Y.556;STROBER v.ELTING,97 id.102. In SNELL v.DE LAND,43 Ill.323, A.and B.as partners and C.and D.as partners,composing distinct firms;made a contract with E.to furnish him a certain quantity of wool,and agreed among themselves

to share profit and loss in the speculation, each firm to furnish a certain proportion. Held, that as to such transactions, they could not be considered as partners between themselves or as to third parties. IRVIN v. R. R. 92 Ill. 100; 13 Minn. 449.

The law is certain that a stockholder has the right to put his stock in the hands of a trustee; that each may select the same trustee and designate the same purpose; and there is nothing in the law of personal property requiring the declaration to be in writing; the stockholder being agreeable, since the trust-certificate given him for his stock is certain. Therefore, it is simply a voluntary union of the equitable rights of the stockholders, forming an unincorporated joint stock association. It was declared in Lousiana that the "American Cotton Seed Oil Trust" was illegal, on the ground that under the statutes of Lousiana,

unincorporated joint stock associations were illegal, and that a "trust" was one kind of an unincorporated joint stock association. But their legality is unquestioned in all the other states. Nor can this view now be sustained under the old common law. In England there was formerly some doubt, due to the breaking of the famous "South Sea Bubble," which caused Parliament to pass the "Bubble Act." This statute was passed in 1720 for the purpose of suppressing unincorporated companies; but was repealed in 1826, LINDLEY says: "Juster views of political economy and of the limits within which legislative enactments should be confined have led to the repeal of the statute in question, which, though deemed highly beneficial half a century ago, probably gave rise to more mischief than it prevented."

TRUSTS BENEFICIAL TO THE COUNTRY.

That the concentration of capital into large enterprises is an economic and social advantage, tending to increase production, to lower prices, and to raise wages, is demonstrated in the history of every progressive country in the world.

The trust system introduces systematci production, the demand of the market can be acurately calculated and each manufacture his share; thus preventing disasterous failures. It cheapens the cost of production; each has the privilege of all advantages known to the other. The history of petroleum, which is, probably, in the hands of the largest trust in the world, is an example. What has been accomplished by the "Standard Oil Trust" would never have been had combination been pre-

vented. Next to the Oil Trust, the Western Union Telegraph Company is, perhaps, regarded as the worst monopoly in this country. But since its organization rates have been reduced 85 per cent. It is true that lower rates of toll are given to the public in England where the telegraph service is in the hands of the State: but England possesses many natural advantages, for cheap telegraph service, over the United States.

"It is," says GEORGE GUNTON, "a characteristic feature of all social development that the advent of new and more ~~complicated~~ complex phenomena always creates the possibility of new evils." It is conceded that so powerful an organization as the "modern trust" may be put to a use greatly detrimental to the public. CLAUS SPRECKLES, one of the trustees for the sugar trust, puts it well in his words to the Congressional Committe,

"I can conceive of a trust, if it is not too anxious to make money, being in fact a real benefit to the country in cheapening costs; but if they are all selfish, as most men are, I can conceive of the trust being very injurious to the interests of the country." The question in the end is, does the trust inevitably tend to public injury?

No association, trust, or what not, is defensible unless formed for a legitimate business. If combinations are formed, as no doubt they have been and will be, for evil purposes, or if evil efects are produced by association, the law should direct its attention to the specific evils. It is vain to hope to eradicate them by distroying or limiting the right of association.

TRUST LEGISLATION.

Trust legislation should correct and limit the mischiefs of trusts, as corporations are now regulated, taxed and restrained; and not seek to distroy them in crude terms.

Senator JOHN SHERMAN fathers a Bill, now (April, 1890) before Congress, which regulates, not interstate commerce, but business agreements and arrangements, and which inflicts the penalties of fine, imprisonment and confiscation of goods, upon all agreements or arrangements to advance the price of certain products, or to reduce their cost so as to tend to force a competitor out of business. Should this bill be passed the public would derive no benefits from competition. The foremost in the race would be forced to wait for the hindmost to catch up. The rule in business

is emphatically the "survival of the fittest." Under such legislation not only would the "trust" be abolished,but strictly,no business could be conducted;no sale can be made without agreements to fix,regulate,limit,increase or reduce prices. It is opposed to the Constitutional rule that, "no person shall be deprived of life,liberty or property without due process of law." In PEOPLE v.GILSON,109 N.Y.398,PECKHAM,J.says:"It must be remembered that the constitution is the supreme law of the land.---Liberty,in its broad sense, as understood in this country,means the right not only to freedom from servitude,imprisonment restraint,but the right of one to use his faculties in all lawful ways,to live and work where he will,to earn his livelyhood in any lawful calling and to persue any lawful trade or avocation."

The great trouble in dealing with trusts is

the secrecy under which they are conducted.

A reduction of the tariff might seriously effect trusts,for a time. The "Sugar Trust"could be crushed by a reduction of duties;but this might ruin the weaker refineries along with the "trust". How long they would be in combining with European houses,no one can say. The Bagging-makers monopoly too,wuuld fall with the tariff;but would,with absolute certainty,rise again by coming to an understanding with the two combinations which already control the business abroad. It would seem as if the prices of American beef and wheat could never be made dependant on the tariff;yet they may be. Beef is even now at the dictation of four firms,and prices may be forced so high that a tariff duty will be needed to prevent importation. Then,if the people decline thus to protect them, this business <u>might</u> pass into the hands of an

international trust. The interest hitherto centered in the tariff question will then go over to that of trusts. But to assume that combination in itself is injurious is as great a mistake as it would be to prohibit the use of steam because it will explode, or fire because, as a master, it is dangerous. The problem is to wisely control these forces, so that their power for good may be developed and their power for evil may be eliminated.

A Japanese philosopher once said: "To choose that which is good and reject that which is evil, how wise is this."

A D D E N D A.

Since writing the above my attention has been called to a Bill now (May 1890) awaiting the GOVEN-OR'S signature, which, if signed, will take effect MAY 1st. 1891. The Act is as follows: "No stock corporation shall combine with any other corporation for the purpose of preventing competition". Which, with a fair construction, means that the object of the combination shall not be to prevent competition, either at large or between themselves, and that should it incidently prevent competition the combination would not be invalidated. Thus permitting a freedom of combination for business purposes.

This it would seem approaches near to what is for the best interests of the country. It is admitted that the suppression of competition tends to create monopolies, and that whereever a monopoly exists the

the best interests of the country are not served; on the other hand, it will not be denied that the ultimate effect of co-operation of persons and aggregation of capital is to stimulate competition, and thus benefit the public.

This may be legislating to some good purpose. To get rid of the dificulty by invalidating all such combinations, as Senator SHERMAN'S Bill proposed, is simply insanity. The vice of the laws heretofore proposed was that they would prevent all such combination and thus make illegal what have become among the greates means of State and national prosperity.

"Honest co-operation, though it might prevent the rivalry of parties, and thus lessen competition, is not forbidden by public policy." FOLGER, J., in Atcheson v. Mallon, 43 N.Y.147. E.D.L.