

TRUSTS
OR
INDUSTRIAL COMBINATIONS AND
COALITIONS
IN THE UNITED STATES

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TO

My Grandfather

MORITZ MEYERSBERG

OF HAMBURG

IN ALL GRATITUDE

DEDICATED

INTRODUCTION.



IT has become customary, within the last few years, to apply to all kinds of industrial combinations and coalitions indiscriminately the name of "trusts." This is very significant; for it shows that the public has unconsciously recognized that, though different in their form and sometimes in their temporary aims, all these attempts at combination are but manifestations of one underlying tendency. While theorists still discuss the advisability, lawyers attack the legality, and politicians doubt the constitutionality of the principle of combination, we learn daily of the formation of new combines throughout the civilized world. This seems somewhat to discredit the cheerful hopefulness of the believers in the orthodox teaching that combinations are nothing but temporary aberrations from the natural law of free competition. At the same time it becomes evident that mere legal prohibition has proved neither successful nor

productive of any satisfactory results. Men who were among the strongest opponents of all sorts of combinations a few years ago now officially admit them to be in certain instances the lesser evil.¹

But the way in which the discussion has, up to this time, been carried on before the public can hardly be said to have done justice to the question as a whole. Very few of the numberless writers on trusts have attempted to treat the subject from a more general and independent standpoint. Their views, as will be shown later on, have been mostly dictated by theoretical reasoning, self-interest, or desire for popularity.

It must certainly be disappointing to the theorist, who reasons from transcendental principles, to wake up one day to find that he is left alone in the field, and that events have taken a somewhat different direction from that which he thought would be their natural course. He will discover

¹ The present railroad commissioner of Texas, Mr. Regan, to whose endeavours, when in the House of Representatives in 1886, the anti-pooling clause of the Interstate Commerce Law was mainly due, has recently admitted in his official report that thorough investigation has taught him the advisability of railway pools under certain restrictions in the interest of all parties concerned. (Report of the Interstate Commerce Commission, 1892, p. 51.)

by and by that theories can be based only on the amplest knowledge of the facts of economic life and of their historical development. On the contrary, the discussion that has taken place has already passed judgment on *laissez faire*. Advocates of this principle certainly fall into their own trap when they cry out for restrictions against things that have naturally developed, and for state interference to secure "the unhindered working of natural forces."

The right of the public to look into the affairs of the combinations, although it has been generally acknowledged, has been questioned by the parties immediately concerned. Yet, as Schmoller says, "they must be reminded that they are not violets that may blush unseen."

To leave the investigation, discussion, and settlement of the trust problem in the hands of politicians does not seem to have proved a success in the United States. In other countries it is regarded as one of the chief duties of political economists to make themselves the foremost experts on the facts of economic life and conditions. Their advice is more and more sought where there seems to be danger that party politics and self-interest may lead people to a one-sided view. This gives them a most important mission under a

system of popular government, and has removed, to a great extent, the prejudice existing against economists and economic science in general,—the prejudice which was expressed, for instance, in an answer made by the Saxon government at the beginning of this century. An application to have a chair of political economy established at the University of Leipzig was declined on the ground that this would be a useless expense, as the political economist taught things that were not true, and theories that had no application to real life.

In Germany, since the beginning of the sixties, economists and other leading public men, aware of their duty of influencing public opinion, have established associations for the purpose of discussing the economic questions of the day. It has become customary to prepare volumes of reports which should give the members of the associations, as well as the public at large, the most reliable information about the facts concerned. In earlier days the “*Volkswirtschaftliche Vereinigung*” was of the foremost importance, and the discussions and opinions of its members had a far-reaching influence in the abolition of guilds, the introduction of free migration, currency reform, and commercial policy. Its standpoint was something like that of the Cobden Club. When, in

the seventies, a reaction was felt against the older economic school and the policy which it advocated, and when it appeared that henceforth the social question would demand the chief part of public attention, the "Verein für Social-Politik" was established (1872). Its influence steadily increased, so that within about ten years it took the place of the older society. A series of fifty-eight volumes of reports and proceedings, covering many questions of the day, had been already published, when, in the year 1892, the board of the association decided to take up as the next-subject "Industrial Combinations" in all countries. Among others, the author, then in Chicago, was requested, in May, 1893, to take part in the preparation of the report, and the United States were assigned to him. After some eight months of investigation he was able to submit a paper, which has since been printed in Volume LIX. of their publications.

The present book is not a mere translation of this essay. A great deal of material has been omitted, which, though necessary to the German reader, dealt with subjects which have, of late, been sufficiently discussed in the United States and England; such as the railway problem and a part of the legal history of the trust question. On the other hand, a great deal of the remainder has been

rearranged and rewritten, and much further information added. The most recent literature has been taken notice of, especially the very interesting essay by Professor Jenks in the *Political Science Quarterly* for September, 1894.

An economist is entitled to take a definite attitude towards the subject he deals with, after having investigated it carefully. He is entitled to make his book a programme of his convictions; but it seems indispensable that he should try to do justice as fully as possible to all interests concerned, and make his work neither a blind eulogy nor an acrimonious pamphlet.¹

The principles of perspective may easily apply to the intellectual eye, just as they do to the physical, — enlarge the near and prominent, and make the background seem small. According to the different tastes and party affiliations of the observer, he will endeavour to draw the picture as he sees it or wants it to be seen, adjusting the focus to group the lights and shadows so as to harmonize with his particular purpose.

If, however, one wishes to obtain an unbiassed

¹ The latter objection must be raised against H. D. Lloyd's "Wealth against Commonwealth," which loses considerable part of its value by not even attempting to present the facts on both sides.

impression, one has to proceed mathematically, and to attempt a determination of the relation between the parts and the whole. For that purpose an analytical division into the several elements is necessary; and then, by re-combining the various parts of the problem, we may hope to put ourselves in a position to judge the phenomenon as a whole. Let us ask, then, what are the inherent tendencies of the general development? What the product of a local and temporary situation? What of accidental and individual influences? These questions must suggest the outlines of an analytical inquiry.

There are, accordingly, four preliminary matters to be considered.

1. The general economic development, which, growing out of the past, influences and is influenced by the present, and furnishes the basis for the conditions of the future, themselves changing in their turn.

2. The national character, to which it is due that phenomena differ from place to place, although the general features of the development are similar.

This largely conditions

3. Legal relations, which determine the form of the new phenomena, unless they are strong

enough to break them down and create new ones for themselves.

4. Then there are, lastly, the purely "subjective" influences, the chance concurrence of circumstances, the presence or absence of particular individuals, which give their colour to events. These are usually put in the foreground, and are only too likely to have an undue influence upon our judgment by misleading us as to the relative importance of things.

In his investigation the author has been supplied with much valuable information by all parties interested in this question. These personal experiences, combined with the contents of the books referred to in the bibliography, Appendix XVI., have furnished the materials of the sketch. The author avails himself of the opportunity, with very great pleasure, to express his thanks to all the statesmen, economists, trust-presidents and attorneys, labour-leaders, financiers, merchants, and lawyers who have supported him in his task. Besides, he feels especially obliged to Professor W. J. Ashley, who has been so very kind as to read the proof-sheets and remove the numerous Germanisms of the manuscript.

Boston, January, 1895.

TRUSTS

OR

INDUSTRIAL COMBINATIONS AND COALITIONS IN THE UNITED STATES.



CHAPTER I.

EARLIER PUBLIC POLICY AS TO COMBINATIONS.

IN the United States the question of combinations presents a different appearance from that which it has in Europe, where guilds and corporations have, from time immemorial, been legal institutions. Not before the great industrial changes in the first half of our century — in some countries not till 1867¹ — were they abolished. And this was at the time the necessary condition for economic progress.

The constitution of the United States, and the English law, in the shape in which it was adopted at the time of the separation from the mother

¹ In certain states of Germany the “Gewerbeordnung des Norddeutschen Bundes” abolished artisans’ guilds.

country, did not recognize guilds and combinations. The old English law of the eighteenth century abhorred monopolies and agreements to control or restrict the production and sale of goods, or in any way to enhance prices.¹ The Constitution aimed at securing equal personal rights for every one, and at prohibiting whatever might be attempted to cripple them, or to interfere with the free transaction of lawful private business. It was drawn up in the time of the complete predominance of the "physiocratic" doctrines of natural rights, and the rise of the *laissez faire* theory. These ideas penetrated the first rulers of the United States; to this their actions bore witness. In the first half of the century, the physiocratic principles permeated the whole of American public life. They seemed to be confirmed by experience. Experiments with state ownership of banks and railroads, almost every extension of public activity, turned out disastrously. A belief in the blessings of a minimum of government, and a disinclination for the interference of society with the sphere of the individual, was more widely diffused than in any other country. To forbid as little as possible,

¹ *Coke*, "On Monopolies."

and to regard what was not forbidden as silently permitted, to consider a right once granted as irrevocable: these were the principles on which public opinion was built. The device of free competition partook, in the eyes of the people, of the character of an eternal holy truth, remote from the influence of time and economic conditions. Whoever disregarded it was *eo ipso* wrong; his actions were "against public policy."

And for some time, public opinion seemed to be justified. For, what the energetic children of the Anglo-Saxon race, with their inborn sense of individuality, active strength, and economic ability, achieved by free self-conscious labour, is most remarkable. Advancing the work of civilization from place to place, the individual, looking out merely for his own self-interest, brought about a gain for the community; especially since a steady stream of emigration rejuvenated the country's blood, kept the people informed about European progress in invention and thought, and provided ample fields for the wants of fresh productive labour. If a town was overcrowded with tailors or shoemakers or smiths, these availed themselves of the opportunity of western expeditions, to seek new homes where they were sure to find a profitable and growing trade.

The building of railroads in the eastern states seemed still further to brighten the prospect. By improved means of transportation, artisans were enabled to largely extend their field of transactions, and, at the same time, by the gradual introduction of machinery, their scale of production. They become manufacturers.

But with the extension of the railway system a new problem arose. Centres of production grew up, which very soon destroyed local industries, and acquired control of the supply of vast territories. Consequently, that paragraph of the constitution which vests in Congress the power of regulating interstate commerce became of unexpected importance.

In all his undertakings the American is an enthusiast. In this case, also, he took a very optimistic view. With that zeal which accompanies him throughout, he set up manufactories wherever the conditions seemed fairly favourable. About his neighbour's doings he did not trouble himself.

All over the country there is a peculiar tendency to generalize and to jump at far-reaching conclusions, — a tendency which the geographer *Ratzel* has so brilliantly explained by the physical conditions of the country with its boundless areas and magnificent distances. It is the necessary

counterpart to the American spirit of specialization and adaptability to given circumstances. Therefore, the general belief was that the true public welfare depends upon a continuous increase of production, and upon a utilization of all natural resources to the utmost of technical possibility. "The more we produce, the cheaper we can sell; the larger, therefore, the consumption. An increase in the demand provides more hands with work, with higher wages, and consequently results in a further rise in the consuming capacity of the nation; and this again leads to a further opportunity for extension of production," and so forth. Similar ideas were upheld in the courts of the country. They were not inclined to follow the example given by the English Bench, which, in two well-known decisions, had extended the principle of *laissez faire* so far as to remove the old restrictions of common law¹ upon combinations and upon "forestalling, enhancing, regrating, and engrossing."² From the days of Adam Smith, who

¹ Most of the older statutes, especially 5 and 6 Ed. VI. c. 14, had already been abolished by 6 George I. c. 18-28, and 12 George I. c. 71.

² *S. C. T. Dodd*, "Present Legal Status of Trusts"; *W. W. Cook*, "Treatise on Stock, Stockholders, and General Corporation Law," 3d ed.; *A. Abbott*, "Condition of the Law as to Combinations."

had compared "the popular fear of forestalling" with "the popular terrors of witchcraft," public opinion had inevitably gone in this direction. Subsequently, in 1844, Parliament recognized the altered conditions by abolishing definitely all restrictive legislation in this direction, except, of course, the general restrictions of common law as to offences against public policy.

But in the United States the tendency of public policy itself was different. The democratic theory would not admit that the creation of classes or of a firm economic organization could in any case be beneficial. And further, the lack of governmental power and authority made the rise of combinations a much greater menace to the fundamental democratic policy. Therefore the courts did not adopt the English precedents. They upheld the validity of the unchanged common law and statutory restrictions; occasionally even of some repealed in England before the time of the separation.¹ Yet, of course, all this meant a violation of the principle of *laissez faire*. We can divide the decisions into four groups:

1. Cases where the parties to a combination had not fulfilled their agreements with one another.

¹ *Bishop*, "On Criminal Law," sec. 527.

Here the court declined to protect those who considered themselves damaged thereby, whether it were that a member sued the combination or the combination prosecuted a member. Agreements of this sort were declared illegal and void. "Illegal agreements do not exist before the law; the court leaves the parties where they are."¹

2. Cases where a party to a transaction sought to have it annulled. Here also, the court refused to interfere.

3. Cases where outsiders felt damaged and brought suit. Here the combinations were declared illegal by the courts, and occasionally summoned to dissolve; but this has never been of much practical effect.

4. Cases where the public prosecutor proceeded in the name of the people against the combination or the parties constituting it. As we shall see later, such proceedings usually came to nothing.

The decisions of earlier date very often refer to questions of principle in connection with our problem, and explicitly base themselves upon the above views; whilst, as will be seen, to-day most of them avoid this carefully, and draw their arguments from formal points and questions of fact.

¹ Cases in *Cook*, "Stock, Stockholders, etc.," 3d ed., pp. 642-51.

Before the beginning of the war there were not yet many symptoms in public life to foreshadow the great change which, in consequence of a new economic development, was bound to make its appearance. We only learn of a few attempts at combination,¹ *e.g.* in the anthracite coal trade of Pennsylvania, in the telegraphic service, and, above all, in the eastern railroad business.

¹ *Spelling*, "On Trusts and Monopolies."

CHAPTER II.

THE CONDITION OF AFFAIRS BEFORE THE INTER-STATE-COMMERCE LAW, AND THE ANTI-TRUST LEGISLATION.

THE civil war closed the first great period of United States history. Its result secured the continuance of political union and the equal status of all its inhabitants. The extension of the railway system, within the next two decades, brought the closer tie of economic union, which alone makes a country a state, by adding to the legal freedom of trade the practical possibility. This second period came to an end soon after 1880. Whatever railway building may be done in future between the Mexican and the Canadian Pacific, will be "intensive" work after the "extensive" is practically completed.

During the progress of railroad building, the manufacturers soon became aware that the great hopes of the new era would not all be realized. Everybody had increased his production, regardless of the needs of the market; and whilst he victoriously entered the boundaries of distant

zones, a foreign competitor had attacked him within the range of the domestic hearth.

The crisis all over the world, from 1873 to 1877, clearly displayed the harmful accompaniments of modern industrial methods: suffering industries, and complaints about over-production and under-consumption. Public opinion was startled; and up to the present it has not fully understood what are the reasons and remedies for that unexpected result, and why, ever since, our entire industrial system has been placed under the strain of a continuous excitement; long crises following each other with increasing rapidity after short periods of temporary prosperity.

Business interests, meanwhile, tried to relieve themselves in their own way. The remedy was sought in combination, — a realization of the remark of Stephenson: "Where combination is possible, competition becomes impossible," which President Andrews,¹ fifty years later, expressed in the still more significant words: "The day of old-time competition has set. Law or not law, capital will henceforth march mostly in phalanxes."

It was but natural that business men, seeing that as individuals they were powerless against

¹ "Trusts according to Official Investigations," p. 20.

circumstances, tried to meet the danger by associating in "Pools"; for they could not perceive any other way of relief. The law, however, did not recognize the legality of these unions. Therefore the "Pools" were soon found to be insufficient. It was the genius of John D. Rockefeller which suggested a new and more promising system. We may rightly ascribe to his initiative the actual beginning of the new period, and the first steps towards an industrial reorganization.

The early history of the Standard Oil combination is known throughout the country. Several public investigations have brought to light the devices by which the poor teamster, who in 1865 started with a friend a small oil refinery, within a few years acquired control of the entire oil trade of the country. He was able to secure special rates of transportation with the help of some bribed railroad freight agents. Soon he became powerful enough to dictate arbitrary terms to the railroads through the "Southern Improvement Company," and when this was declared illegal, through the combination of the several state Standard Oil companies. The subsequent building of the pipe line system and the like, we do not need to go into at this place.¹

¹ See the different investigations, and, in the bibliography, the

The formal union was actually completed with the establishment of the Standard Oil Trust in 1882.¹ But this was a mere formality, as the trade was already monopolized long before.²

The apparent success of the Standard Oil Trust gave a vigorous stimulus to the consolidating movement. A number of other trusts were formed on the same general lines,—for the manufacture of sugar, whiskey, lead, cotton oil, linseed

special references to the Standard Oil Company. A very good record of the development of the petroleum industry is given in the recent report of the Bureau of Statistics of Pennsylvania: *A. S. Bolles*, "Petroleum, its Production and Products," which of course does not mention the trust controversy.

¹ For this see *H. D. Lloyd* "Wealth against Commonwealth," which is, however, only a *chronique scandaleuse*.

² Therefore Jenks' criticisms of Aschrott do not seem to me to be completely justified; the former attributes perhaps a little too much importance to the formality of the establishment of a uniform trust. The prices were already before that time controlled by the Rockefeller interest. As to other price statistics given by Jenks, a comparison seems to be desirable with the prices of the same articles and the raw materials they consist of in the markets of other countries, where they are not manipulated, and with the entire movement of wholesale prices for other articles in the United States during the same period; and even then the price question is rather doubtful, because the figures as given in the papers or published by the parties interested will be very often found quite misleading. Managers of the trusts have frequently told the author that the public statements do not always tally with the actual transactions, and that the largest sales are made very often on quite different terms.

oil, starch, etc. The securities of the combines were introduced on the stock exchanges. Soon they wielded a powerful influence over the whole of business. But their appearance was by no means universally looked upon in a cheerful mood. Competitors, who either had not been able to secure admittance under satisfactory terms, or had not been willing to give up their independence, and to entrust their property and interests to the promoters of the new schemes, arose everywhere in opposition. Producers of raw materials, used by the combinations, felt uneasy, now that they faced only one strong buyer instead of many competitors for purchase. Retailers and consumers felt the effect of a new régime in the supplies of certain goods. On the exchanges the rapid increase of huge quantities of stocks, rather doubtful in their value, provoked a good deal of distrust and anxiety. The whole public was disturbed by the incessant news of "deals" between combinations and railroad companies, legislators, and even the judiciary.

In railroad affairs, things had become so unbearable that in 1885 Congress gave up its former attitude of non-interference with private matters. After two years of investigation and deliberation, the Interstate Commerce Act was passed. The

facts in connection with this part of the problem have been discussed so often in this country within recent years, that there is hardly any need of repeating them here.¹ The two most important points for our purpose in the law which was finally passed are the prohibition of all discriminating rates and the forbidding of railway pooling,—though a majority of the Senate was strongly opposed to the latter clause.

The interstate commerce investigation revealed much that was new about the character and tactics of the industrial combinations, and led in consequence to demand for governmental action. In the state of New York, Tammany Hall established an anti-trust agitating committee, and in numerous addresses its leaders demanded energetic measures against the fleecers of the people.

Newspapers daily devoted columns to the gathering of alleged facts about trusts. The latter had carefully avoided a publication of their deeds, and kept their methods and objects in absolute darkness. Even the certificate holders were not allowed an inside view; they did not know the text and meaning of that agreement upon which

¹ *Vide* the publications of *Stickney, Hadley*, Congressional Documents in Connection with the Interstate Commerce Act, 1885-87, etc.

the exchange of their former stocks in the different companies for the new trust securities was based. In the first edition of his *Trusts* Cook gives a fair statement of the general feeling as to trusts, before detailed information was accessible. He helps us to understand why the resolutions of the New York Senate and of the Federal House of Representatives to create committees for an investigation into trusts met with the most hearty approval on the part of the people.

Their principal results have been set forth in many publications; the best of which are the article of President Andrews in the *Political Science Quarterly*, the second edition of Cook's *Trusts*, and the same author's *Corporation Problem*.¹

A storm had arisen against everything that smelled of combination; newspapers and pamphlets vied with each other in denouncing them as the root of all the evil experiences of the past. Vigorous cries were heard for severe legislation. It has nevertheless been stated, with some appearance of justice, that not all the parties were equally sincere in their denunciations, and that the most zealous of them were not always the

¹ *J. W. Jenks'* monograph on the early history and growth of the Whiskey Trust is to be noticed as the best monograph about an individual trust.

best elements of the community, and did not act from mere unselfishness. "Ward politicians of the baser sort have mostly been noisiest in their denunciations to make something for themselves out of them."¹

Numberless bills were filed with the different legislatures during the next few years,—from three to five in every state. They aimed at forbidding every kind of combination or coalition for the purpose of checking competition, raising prices, and so forth.² Eighteen of them threatened the following punishments:

Whosoever acted against the provisions of the laws should be fined from \$5000 to \$10,000, and imprisoned from five to ten years. Payments could not be collected or afterwards recovered. Directors of a corporation committing the above crimes, all stockholders, officers, agents, and attorneys, should be guilty of conspiracy and liable to imprisonment.

¹ *C. F. Beach, Jr.*, "Facts about Trusts," *Forum*, September, 1890, p. 70. This remark does not seem unjustified; the author learned from a perfectly reliable source, that, in the New York Senate investigation, one of the trusts was offered relief from the investigation by the secret payment of \$7500 to Tammany Hall men.

² *S. C. T. Dodd*, "Shall all business co-operation be rendered criminal?" A statement of pending legislation and its consequences.

With a desire to achieve popularity, many legislatures passed some sort of bill. By the end of 1894 the federal government, twenty-two states and one territory, had enacted anti-trust laws. The first provision in this direction was introduced into the Constitution of Georgia in 1877: "The General Assembly shall have no power to authorize any corporation to make any contract or agreement whatever with any (other) corporation which may have the effect, or be intended to have the effect to defeat or lessen competition in their respective business, or to encourage monopoly; and all such contracts or agreements shall be illegal or void." This was of course not originally directed against trusts but against railroads, but it could afterwards be readily applied to trusts. Anti-trust laws were passed in 1889 by Kansas, Maine, Michigan, Missouri, Nebraska, N. Carolina, Tennessee, Texas, and the territories of Idaho, Montana, and N. Dakota; and the new states of Washington and Wyoming introduced provisions in this direction into their constitutions. In 1890 anti-trust laws were passed by Iowa, Kentucky, Louisiana, Missouri, and S. Dakota. In 1891 Kentucky and Missouri introduced provisions into their constitutions. In the same year Alabama, Illinois,

Minnesota, and the territory of New Mexico; in 1892 New York and Wisconsin legislated to a like effect; while in 1893 California forbade combinations in live stock, Nebraska in coal and lumber. Amendments to these laws were passed in Missouri and Tennessee in 1891; Louisiana in 1892; Illinois, Minnesota, and South Dakota in 1893. The United States act was passed in 1891, and the Tariff Act of August, 1894, makes some general provisions of the same character as to the regulation of prices.¹ No anti-trust legislation was passed in 1894 in the several states.

Before we go into details, an examination of the character of the different forms of organization seems advisable, because we shall see that the effects of legislation, as far as there have been any, have been felt only on the surface.

¹ *F. H. Cooke*, "Economic and Anti-Economic Legislation."

CHAPTER III.

THE FORMS OF ORGANIZATION.

THE United States have gradually become covered with a network of different combinations and coalitions. These can be grouped in various classes corresponding to their objects and ends. In view of the large number of species, which in infinite variety adjust themselves to the special purposes of every case, we can only consider the principal ones.

I. More or less amorphous.

(a) Associations of men who are interested in the same line of business, for certain general purposes, without altering the conditions of competition, *i.e.* national, state, or local associations for the protection of special interests. Such are the "Brewers' National Convention," which occasionally collects money to influence the elections, or to pacify the legislatures, — especially when unfavourable taxation or temperance laws are imminent. Similar associations exist in all branches of the liquor traffic, among the butchers (Butchers'

National Protective Association), the bankers (Bankers' National Convention), among travelling salesmen, hotel men, actors, teachers, etc. In some instances aid and invalid funds, life policies, or pensions for widows and orphans are features of the unions; and these form an important part of their programme whenever the words, "mutual," "protective," or "provident" occur in the title.

(b) Associations in which besides the above-mentioned features, there are regulations concerning trade customs, listings, and quotations, or scales of prices. Again, the brewing industry is very instructive. In the year 1886, the brewers of the Northwest entered upon an agreement as to the normal price of beer, and concerning rebates to the trade. They fixed the prices in the saloons. In Cincinnati, at one time, they installed agents on common account, who opened bar-rooms to compete with some disobedient customers, and who sold beer more cheaply to the public, with the intention of crushing the offenders.¹ The Brewers' Associations of Chicago and New York determine the kinds and limitations of rebates to be granted to retailers; they restrict those "treating"

¹ Collection of newspaper clippings by Mr. *H. D. Lloyd*. Letter B.

expenses of the drivers, which were customary upon delivery of beer at the restaurants; they limit the presents to customers, such as beer, ice-boxes, pictures, etc.; pledge themselves to cut down advertising, and the like. Allied against them we find in New York the "Wine, Liquor, and Beer Dealers' Central Association." It demands that non-members shall not be accommodated by the brewers. When they were disregarded, they started a co-operative establishment of their own, the "New York Consumers' Brewery."

Much more important for the whole country is the centralization of cattle and meat dealing in Chicago, momentous enough to justify a special investigation¹ in 1889-90. Though this did not reveal a formal union of the large Chicago packers, it was demonstrated that heavy pressure on the railroads and ownership of the Chicago stock-yards on the one hand, "friendly agreements" on the other, had resulted in an effective control of the whole market. Armour, Swift, Morris Nelson, and Hammond rule the cattle and meat market of the country. They conduct their business individually, but jointly they fix the

¹ U. S. Senate Report, No. 829, 51st Congress, second session, May 1, 1890.

prices for the purchases of cattle and sales of meat in the markets of Chicago, Kansas City, and Omaha. They annihilate independent butchers by cheaper sales through their own agents.¹ They determine the daily market price of cattle. If the seller refuses to take the first bid, he is generally forced to accept a lower one; the purchasing agents are instructed never to overbid each other. The principals themselves are in constant communication with each other, and decide the evening before what shall be the tendency of the morrow's market. They have an agreement not to interfere with each other in certain markets and localities. They bid jointly for public contracts, and ruin those who dare to appear against them.

There has been much talk about a league of the same sort in the milk trade² of New York. An association of milk wholesalers has established a so-called Milk Exchange; and, though only joined by a majority of the tradesmen, it establishes the prices for the entire business. The farmers in the neighbourhood were unsuccessful in an attempt to resist their alleged arbitrariness by means of an association.

¹ Ibid. p. 6; "Testimony," p. 481.

² See N. Y. Senate investigation.

The Exchanges of the country are closed corporations. They regulate the standard of quality of articles dealt in, the admittance of securities to dealings and listings, the terms of payment, the forms of transaction, the methods of clearing; occasionally they forbid certain practices, as recently the arbitrage business at the New York Stock Exchange. Their directors (governors) act as arbitrators among members, and have jurisdiction as to their moral conduct in business.¹

To this same group belong, in a way, physicians and lawyers. They serve their common interest in boards, academies of medicine, and associations of the bar. They have general scales of prices; their competition is limited by "professional courtesy"; and the lawyers sit in courts of honour in cases of unprofessional conduct.

(c) Associations where the parties hold regular meetings to fix prices, and to decide upon the output, or appoint common agents to market the product. This has for many years been customary with the coal trade. The sales agents of the owners of the large anthracite mines meet once a month at the Fifth Avenue Hotel in New York, to fix prices, and to allot the quota of the

¹ See Rules and Regulations of the various Exchanges in the country.

output.¹ Similar friendly agreements we find in the railroad business.² All these arrangements approach very near to the second class, and are species of the large genus, "Pool."

II. Agreements strengthened by a more formal or material tie.

(a) Sometimes the resolutions concerning output, quantities to be marketed, and prices, are verbally formulated and put in writing. To this class belonged the contract between the petroleum refiners, or the "Standard Oil Company of New York," acting as their representative, and the "Oil Producers' Association," for a temporary restriction of the oil production in 1887.³ Other instances are the numerous agreements among the wholesalers' associations concerning the minimum prices of sales to retailers.⁴

(b) Sometimes the ties are made closer still by the institution of penalties, or by the payment

¹ There have been various investigations of the coal combines by the state of Pennsylvania in 1833, 1858, 1871; by the federal government in 1886, 49th Congress, report 46, part 2; in 1887-89, 50th Congress, second session, No. 4147; in 1893, 52d Congress, second session, No. 2278.

² Cf. Reports of the Interstate Commerce Commission, sections on classification.

³ See U. S. House investigation on Standard Oil Trust, 1889, July 30.

⁴ *Andrews*, "Trusts according to Official Investigation," p. 6.

of a share of the earnings into a common fund in order to secure the observation of the agreement, or for expenditure in the common interest, and later redistribution in fixed percentages.

As to penalties, we have numerous reports from the iron industry, rail combines, and so on.¹

For the second case, the envelope industry furnishes an illustration. The "Standard Envelope Company" of Springfield, Mass., is composed of a number of envelope manufacturers who produce the majority of all envelopes for consumption of the country; its only powerful competitor being the United States stamped envelope. Its capital is \$5100.² On each thousand of manufactured envelopes every member pays into the company's treasury a certain sum which serves in part to buy out competition and acquire new patents, and is in part redistributed according to the respective holdings in the company's stock.³

(c) In some cases, finally, the coalition is upheld by a system of premiums. The one party pledges itself to buy only from the other, or to sell exclusively to it; in compensation it receives special

¹ See the *Iron Age*, November 16, 1893, p. 880.

² New York state investigation.

³ *Andrews*, p. 7, and *ibid.*

rebates. The "American Tobacco Company" has for a long while granted such rebates to the cigarette dealers. The Whiskey Trust grants them at this present time to its exclusive customers.¹ Such rebates are also very common in life and fire insurance.

Again, the newspapers of the country have established uniform news and cable service by means of the "Associated Press," the "United Press," and their southern and western affiliated branches. No large paper can exist without their accommodation, because separate and independent correspondence would be too costly. Consequently the associations are free to shut out undesired competitors by requiring exorbitant initiation fees from new applicants for admission. The German papers of San Francisco a while ago put this fee for a new German daily at \$80,000; whereupon the projector had to give up his plans. In that city the Western Press Association alone holds full sway. In New York several companies compete, but this does not influence the fees very much.

Herewith end the groups which may rightly be described as "Pools."

¹ Further evidence gives *Andrews*, *ibid.* pp. 8-10.

III. Combinations which strive for and attain identity of *all* interests.

(a) Cases where the individual undertakings are really or nominally preserved: the "Trusts proper."

1. Either the trust is established by a transfer of a majority of stock of the different companies to the trustees, in whom thereby the control is vested, and who issue trust certificates in exchange ;

2. Or the total amount of all the stocks is transferred to the trustees, who issue the trust certificates whilst the former owners keep mortgages to the extent of the valuation of their factories, and perhaps receive an additional bond ;

3. Or the property is unconditionally transferred to the trustees, in return for the delivery of trust certificates.

Under 2 came the former "Whiskey Trust," under 3 the "Standard Oil Trust." The divergences between the three forms, which fundamentally rest upon the same principle, are explained by the degree of confidence which the trustees enjoy. Where mortgages are given, the trust certificate represents only the good will.

(b) Cases (practically differing little from the above "trusts") where the undertakings themselves are consolidated ; either

1. Temporarily, by lease or rent, which is quite common with railroads, and also happens in all other branches of business; or

2. Permanently,

a. By sale: a trunk line buys a branch line; one concern purchases another, and closes it or runs it as a branch;

β. By complete control through ownership of the stock;

γ. By amalgamation: as the Hecker-Jewell-Jones Milling Company in Brooklyn, which evolved from three separate mills; the New York Central and Hudson River Railroad, etc.

δ. By establishment of a new large company which absorbs in itself all those already existing. Some are then operated entirely by the central administration. To others a certain independence is left for particular branches or districts. Still others are run as branch offices; others again, — as all the establishments located in different states, controlled by ownership of the whole or a majority of their stock, — are managed in one of the forms described above. (1 and 2 *a, β, γ*). This last group contains the legal successors of the industrial trusts, into which the latter have been recently transformed.

Both in number and comprehensiveness the

most important, by its control of entire classes of industrial production and trade, is group III., which represents the last and final phase of national centralization for the control of particular branches of industry. It means complete union both financial and technical in whole fields of production.

CHAPTER IV.

THE OBJECTS OF ORGANIZATION.

OF the various kinds of combination classified in the preceding chapter, only certain groups need here be considered. They are those in which the individual undertakings are influenced materially by their connection with the combination: in which quantity of production, or prices with reference to the scale of actual earnings, are the objects of the agreement.

I. *Natural monopolies.* There are commodities which only exist in quantities locally limited, or are manufactured from materials so limited. The ownership of certain territories, therefore, or the purchase of their products, can easily confer a controlling power upon certain individuals. The attempts at combination in the production of raw materials are still to a great extent embryonic; among these may be reckoned the Rockefeller interests which seek to monopolize the mining regions of Lake Superior. Generally iron ore is found in too many places, and in too

various forms, even to offer a chance for preliminary steps in this direction.

The same is true of bituminous coal. A very rough understanding about the quantities to be mined, the range of prices and wages, had been attained in the Middle states some time before the outbreak of the crisis of 1893. But during that disastrous period it collapsed completely in the district west of the Alleghanies. Some of the mine-owners attempted to increase their production by a cut in prices, and they indemnified themselves against the losses incurred by a reduction in wages. After the end of the panic, their conduct made a resurrection of the old scheme impossible, and was the principal factor in bringing about the grievous coal strike in May, 1894. The other operators were not able to restore wages without their co-operation.¹ That no closer agreement was reached previously, is found to have been due to the widely diffused territories in which bituminous coal is found, and the vast differences of economic conditions within them. As long as the understanding lasted formally, local divergencies were agreed to as to hours of work and as to wages; but this system was never thoroughly effective.

¹ *The Nation*, May 24, 1894.

Anthracite coal, on the other hand, is found only in a very limited area in Pennsylvania and the neighbouring states; the recently discovered western coal fields are too distant and too small to come into consideration in the market. The competition of Nova Scotia is hindered by high duties and bad facilities for transportation, but would probably be of little consequence in any case.

Much has been said and written for more than half a century about combinations in the anthracite coal production; but a truly organic union of the producers has not as yet taken place. Pools of one form or another existed for many years. The anthracite region is covered by a number of large railway systems: the Philadelphia and Reading; the Lehigh Valley; the New Jersey Central; the Pennsylvania; the Delaware and Lackawanna; the New York, Lake Erie, and Western; the New York, Susquehannah, and Western; and the New York, Ontario, and Western.¹ The annual capacity amounts to 50,000,000 tons; the actual output averages hardly over

¹ Report of Commission appointed to investigate the waste of coal mining, with a view to the utilizing of the waste. Commonwealth of Pennsylvania, Phila., 1893 — *J. F. Jones*, "A Short Description of the Pennsylvania Anthracite Coal Fields," Philadelphia, 1892.

41,000,000 tons. Of this total, the lines mentioned bring about 35% to tide-water. Of the total product in 1892, 70% were consumed in Pennsylvania, New York, and New Jersey; 10% in the New England states; 13% in the western states; 4% in the southern and Pacific states; and 3% in Canada.

The coal lands belong partly to the railroads themselves, partly to companies whose stock is in their control, or who are otherwise dependent upon them. Only about 5% are independent and in private hands.

In 1884 the pool arranged for monthly meetings of the sales agents, at which they should agree to a definite allotment of the output. This, a "friendly agreement among gentlemen," merely oral, without any penalties for violation of the agreement, is said not to have been obeyed very strictly. In 1891 the Reading obtained control of over 60% of the total output by leasing the Central Railroad of New Jersey, and the Lehigh Valley road for 999 years each; it attempted thereupon to bring about a further centralization and a more binding agreement with the others. About 85% of the coal roads became parties to this, the Pennsylvania alone absolutely refusing. By purchases of shares in the New York and New England

Railroad, the president of the Reading system aimed at opening a direct outlet into New England. But in October of the same year signs of decay were already apparent, when the Delaware road began to exceed its allotted quota of the output. The managers of the Jersey Central, also, no longer seemed to be satisfied with the arrangements; they, or powerful interests behind them, were able to secure a legal decision from the courts of New Jersey, — based upon a recent statute which had been advocated by the Pennsylvania railroad interest, — which declared a lease entered into by a foreign corporation illegal and void.¹ As a matter of fact, the president and managers of the Reading, seeing their old plan failing, had sold out their own interest in the road and invested heavily in other stocks. They managed in a short time to make the Reading pay \$1,500,000 for its lease of the Lehigh Valley; and circulated fictitious reports, causing enormous English investments in Reading. Then suddenly they declared the road bankrupt, which terminated *eo ipso* the Lehigh Valley lease. Thus the coal combine foundered.

The union of sales agents, however, continues to exist. Its success is only moderate, as every par-

¹ See Appendix IX.

ticipant secretly breaks the agreements. Furthermore, the Pennsylvania system refuses to become member of any close agreement for restricting and allotting the output. Its assessed share is 10%. But as the road is miner as well as carrier, it can afford to cut prices on the raw product, being compensated by ample freight rates. The cost of freight within the last few years has averaged between 46% and 40% of the price of coal in New York City.

It is impossible to foretell how the anthracite coal trade will develop in the near future. Bituminous is gradually replacing anthracite in the iron industry, as better results are obtained thereby. On the other hand, the western states bring a new demand for anthracite. They consumed 2,231,000 tons in 1882, and 4,996,000 tons in 1889. This is probably due to the movement to replace the dirty and unhealthy soft coal by the more cleanly anthracite in large cities.

To this same group belongs a combine in the borax production, which is concentrated in some of the western states. We hear, in certain districts of the country, about combinations in quarries, particularly in marble and sandstone; *e.g.* the latter in connection with agreements with

the architects and contractors of New York. But, on the whole, the failure of the great international copper syndicate seems temporarily to have checked the attempts at combination in the mining industries.

Much more numerous are the attempts at combination in those industries which use the products of mining as raw materials. Combines exist for the various products of the iron, copper, zinc, silver, and lead industries, and especially for refined petroleum. This has been manufactured for a long while exclusively in the United States, and its only possible competitor, the oil from the Baku districts of Russia, is of comparatively recent origin. The failure of attempts to monopolize the production of the raw material, is explained by the fact that the digging of a well requires only a small capital; so that men of small capital are able every day to open new wells, the run of which will, of course, not exceed from twelve to twenty years. Refining and transportation, on the other hand, require such an enormous capital to be profitable, that only the most centralized undertaking will succeed in them. The same is true about cotton oil.

II. *Quasi-natural monopolies; i.e.* certain plants which everybody can establish, but

which, once introduced, can hardly be competed with, at least only with very disastrous economic consequences; because they require an enormous machinery of capital, employees, and management. By the mere fact of their existence, they become nearly as powerful as natural monopolies. Therefore it is now almost generally recognized that they cannot be treated like other business undertakings.

(a) The general knowledge of *railway* affairs in this country makes it unnecessary to dwell upon them at any length. It need only be observed that a tendency towards centralization has existed from the first in the railroad world, and that this centralizing process has steadily continued in spite of hostile legislation. Competition among rival railway systems has always proved very dangerous, not only to the railways, but also to the public. The inevitable rate wars not only destroy millions of railway property, but also very often give an unhealthy stimulus to business activity and the distribution of merchandise throughout the country. The crisis of 1884 was the last great illustration of this; the rate war between the Vanderbilt lines and the new Drexel Morgan system from New York to Chicago involved the whole country in its consequences. The

desperate situation of railway affairs during 1893 was also, to a large extent, due to former contests of this kind ; as is shown by the situation of the Atchison and the Missouri Pacific systems, which are both weakened by their mutual competition.

The repeal of the anti-pooling clause of the Interstate Commerce Law ¹ is universally acknowledged as a necessity. Its repeal will publicly recognize the fact that in the railway business unrestricted and free competition has proved unwholesome.

The progress towards consolidation among the great Atlantic freight and passenger *steamship* lines may be mentioned at this point, though the conditions are somewhat different. Though these lines can hardly be called quasi-natural monopolies, they have a great power based on their capital, acquired reputation, and good will. The American line is an amalgamation of three formerly independent companies. For some years the foreign lines have pooled their steerage rates, forming for this purpose the North Atlantic Steamship Association. Recently pooling has been extended to other rates. The North German Lloyd and the

¹ On the progress of the consolidation process, see the Reports of the Interstate Commerce Commission, and its "Statistics of Railways in the United States."

Hamburg-American line, in the winter of 1893, amalgamated their entire Mediterranean service, and soon extended their agreement to the whole passenger traffic on all their North American lines, and to a part of the freight business. They came to terms also about the pooling of freight traffic with the other foreign lines. The English, refusing to join them, were notified of the invasion of their own territory by the establishment of a competing line from Liverpool, thus precipitating a fierce rate war. This, it is reported, very soon led to the reopening of negotiations, which are still pending.

(b) 1. It is well known that European railroads are, to a large extent, operated by the state. More generally still, state ownership has been introduced in Europe in the *postal*, *telegraphic*, and *telephone* service, and the cities furnish *water* and *light*. Of all these enterprises, only that branch of the postal service which takes charge of letters and printed matters is completely under public administration in this country. The express service and the greater part of the money order and transfer business are conducted to-day by four great private companies,¹ with an aggregate

¹ Adams, American, United States, and Wells-Fargo Express Companies.

capital of \$48,000,000. These companies have gradually bought out or ruined all smaller ones, excepting local "expresses," which serve as feeders. Agreements have been reached concerning uniform rates, a geographical division of the country to avoid competition, and transfers of business from one company to another. Contracts have been concluded with the railroads for the monopoly of the package-carrying traffic on their respective lines. The express employees count by the thousands.

2. The telegraph system has developed since the fifties. Two companies, in spite of numerous attempts to restrict them, and to declare their actions illegal, have succeeded in buying out, or checking all competitors, — the older and more powerful Western Union, and the younger Postal Telegraph Company. They own some of the international cables, and have contracts with the proprietors of others. They are controlled and administered principally by those New York financial circles which represent the large railway interests. The origin of the Western Union Company dates back to the years 1852 to 1856, when this company absorbed some fifty minor companies, and received a New York state charter on April 4, 1856. Many others were absorbed subsequently, till in

1880 the last great consolidation took place. The capital stock of forty-one millions was raised to eighty millions, "giving par (\$15,000,000) for the stocks and bonds of the American Union, 60% for old Atlantic and Pacific stock in new Western Union, and a stock dividend of 48.5% to Western Union shareholders."¹ The Western Union had since 1877, through its ownership of 71,000 shares, controlled the Atlantic and Pacific Company, and had also gradually bought up the American Union stock. An attempt to get an injunction against this consolidation was fruitless.² In 1887 the Baltimore and Ohio Telegraph Company's stock was bought for \$5,000,000; and in October, 1892, the Western Union capital stock was raised to \$100,000,000, of which \$8,620,148 were paid as a 10% scrip dividend to the stockholders, "surplus earnings expended on the property."³ The

¹ Investors' Supplement of the *Commercial and Financial Chronicle*, May 26, 1894, p. 151.

² Archives of *Bradstreet's*.

³ The policy of the Western Union administration was, except on certain occasions when Jay Gould abused his influence for his own purposes, always very conservative. In former times of hard fighting with rivals, the payment of dividends was stopped, in order not to impair the capital. It is worth while noticing that the *Financial and Commercial Chronicle*, No. 1498, reports that after Jay Gould's death the securities rose in price as well as in public appreciation.

following table shows the property and business of the company:¹—

| Year. | Miles of Poles & Cables. | Miles of Wire. | Number of Offices. | Number of Messages. | Receipts. | Profits. |
|---------|--------------------------|----------------|--------------------|---------------------|-------------|-------------|
| 1866-67 | 46,270 | 85,219 | 2,565 | 5,879,282 | \$6,586,925 | \$2,624,919 |
| 1869-70 | 54,109 | 112,191 | 3,972 | 9,157,646 | 7,138,737 | 2,227,965 |
| 1879-80 | 85,645 | 233,534 | 9,077 | 29,215,509 | 12,782,894 | 5,833,937 |
| 1890-91 | 187,981 | 715,591 | 20,098 | 59,148,343 | 23,034,326 | 6,605,587 |
| 1892-93 | 189,936 | 769,201 | 21,078 | 66,591,858 | 24,978,443 | 7,496,037 |

The dividends in 1887 amounted to 2% ; since then they were 5% per annum. In January, 1890, an extra dividend of 7 $\frac{3}{4}$ % was declared, and in 1892 the 10% stock dividend referred to.

The Postal Telegraph Cable Company is the successor of the Postal Telegraph Company and the Postal Telegraph and Cable Company. Its capital is to-day \$10,000,000.

The Western Union Telegraph offices line the railroads; the Postal uses the public highways. The growth of the demand for the telegraph service has been so rapid, specially between the large centres of population, that it was almost impossible for one system to keep pace with it. This

¹ *Investors' Review*, *ibid.*, p. 152.

explains why there are still to-day two separate organizations, which, however, will by and by probably amalgamate.

The rates for telegraphing have meanwhile steadily and largely decreased, and are to-day for shorter distances not appreciably higher, and, considering the purchasing power of money in the United States, perhaps lower, than in Europe.¹

The telephone service is monopolized by the Bell Telephone Company and its concessionaires, after a victory in a number of patent cases. Of the total amount of \$82,000,000 invested in telephone stocks, this company owns a majority. The local service is done by a number of individual companies, some of which are confined to certain parts of a state, as in New York ; others extend over the whole state, as in Nebraska; others over several states, as does the New England Bell Telephone Company. The interstate service is done by the American Telegraph and Telephone Company. With the Western Union Telegraph, the General Electric Company, and other large concerns, the Bell Company has made especial contracts. The individual com-

¹ *R. T. Ely*, "The Telegraph Monopoly," 149, *North American Review*, 1889; *G. Gunton*, "The Economic and Social Aspect of Trusts," 3, *Political Science Quarterly*, 1888.

panies enjoy rebates up to 50% and more, and the monopoly for their districts. The charges are rather high. After some of the patents had expired, on January 28, 1894, a slight reduction was expected, to prevent possible competition.¹

3. The water supply of many of the large cities and districts is also owned by capitalistic companies which have acquired chartered privileges. In many places a lease is granted to them by the communities, either for fixed money rental or for a share in the receipts. A particular source of complaint has arisen on account of the use of disreputable means in obtaining the charter. The charge of bribing influential persons, with the intention of putting competing interests at a disadvantage, has often been brought. Valuable franchises are thus said to be unjustly disposed of; for the community does not at present receive an adequate share in the profits. The tendency is in favour of the public administration of these institutions.

4. The same is true of gas works. Of particular interest for our purposes is the so-called Chicago Gas Trust. The four gas companies of Chicago had formed a regular trust in April, 1887, the

¹ See Group 4.

“Chicago Gas Trust Company.” In April, 1890, the name was changed to the “Chicago Gas Company,” and an Illinois charter taken out. As a concession to the public feeling, the state of Illinois soon proceeded against the company, and in the subsequent contest the organization was declared illegal. Thereupon the stockholders surrendered their charter,¹ and a committee was appointed to wind up its affairs. But immediately after consultation with the attorney-general of Illinois, in April, 1891, the stock of all the four companies was deposited with the Fidelity Insurance Trust and Safe Deposit Company of Philadelphia. This company issued trust receipts, certifying “that the holder is entitled to his ratable proportion of the ownership in all the stocks of the several Chicago gas companies, held by the Fidelity Company (subject to the lien of the bonds), and has a right to receive the dividends thereon, and to vote the same as he may choose.”² Of the twenty-five millions of trust receipts, \$114,200 have been cancelled. In

¹ *Bradstreet's Archives*, Investors' Supplement of the *Commercial and Financial Chronicle*, March, 1894, p. 138; May, 1894, p. 140.

² The bonds formerly issued by the Trust are still under the guarantee of the four companies jointly. See *Commercial and Financial Chronicle*, vol. xlvii., p. 746.

September, 1893, ten millions of 6% bonds were issued, of which four millions were used to redeem all prior bonds. The companies furthermore control the Chicago Economic Fuel Gas Company. Recently the attorney-general of Illinois has begun new proceedings to annul the charters of the participant companies, on the ground that they are still maintaining a "trust."¹

To this group belongs also, from one point of view, the General Electric Company. It has an authorized capital of \$50,000,000, of which \$10,000,000 may be preferred cumulative seven per cents; \$30,459,700 common and \$4,251,900 preferred stock are outstanding. Convertible debentures are due to the amount of \$10,000,000, as well as a small amount of guaranteed bonds of the old Thomson-Houston securities. The General Electric Company has been organized under a New York charter. It consists of the Edison General Electric, the Edison Electric Light, the Thomson-Houston Electric, and the Thomson-Houston International Companies. On

¹ It seems very remarkable to a foreigner that a number of papers of good standing have stated, without being contradicted, that the details of the attorney-general's proceedings were known earlier by certain stockbrokers than by the general public, and have added, that these proceedings were apparently utilized for the purpose of stock manipulation.

January 31, 1894, 1479 central-station lighting companies and 541 electric railways used its apparatus.¹ Formerly the General Electric accepted payments from these companies in their own securities. In August, 1893, because of the financial stringency, the General Electric Company was obliged to turn over twelve millions of these miscellaneous securities to a new institution: "Street Railway and Illuminating Properties," organized to receive them for four millions in cash. Since then, only cash sales can be made. Owing all the patents of its mother companies, the General Electric belongs, like the Bell Telephone Company, also to the next group:

III. *Legal monopolies to-day are Patents and Copyrights.* There has never been any question about their right to existence, "as they stimulate the genius and give a due reward to the promoters of human progress."² Patent rights have been the basis of innumerable important combinations, originating in patented processes of manufacturing, or in patented machinery. The legal decisions are, contrary to the tendency in other instances, usually in favour of the widest construction of the franchises given by patent.

¹ Investors' Supplement, May, 1894, pp. 143, 144.

² *Vide Spelling*, "Trusts and Monopolies."

In the case of important patents, we find either several branch manufactures distributed all over the country for utilizing the process, or one central establishment. Sometimes the owners grant concessions to a number of other establishments to use their patents in return for fixed royalties, whilst they pledge themselves to a certain restriction in the number of their concessionaires. In some cases, finally, the undertakers of one group combine to buy up various patents, and use them jointly, or they establish another company to utilize them.

All of these different instances are strikingly exemplified in the barbed-wire industry.¹ The house of Washburn & Moen had originally acquired the patents relative to the manufacturing of barbed wire. Its exclusive right has been vainly contested in several law-suits since 1873. In the first stage, Washburn & Moen produced almost the entire supply. When the industry began to grow, the firm established branches. Then it admitted several other companies upon payment of high fees. Finally, those jointly bought up the entire set of patents, and transferred it to the "Columbia Patent Company," chartered in Kentucky, with a capital of four millions. Since then

¹ Collection of Mr. *H. D. Lloyd*.

outsiders are only admitted upon the payment of exorbitant fees.¹

Among the combinations on the basis of copyright, the so-called school-book trust is worth mentioning. It embraces all publishers of school-books, except three publishing houses, and it has been attacked for keeping prices unduly high.²

IV. Besides the groups mentioned heretofore, we find a vast number of combinations, the cause for which can only to a limited extent be found in the conditions described. In numerous industries, they spasmodically appear, and often disappear just as quickly. The free-traders attribute their growth to the protective tariff, upon which, they assert, the welfare of the combinations depends entirely. Others claim that they could not have come into existence without a criminal conspiracy with the railroads of the country.

Day by day one reads of the birth, growth, and vanishing of "pools" and combinations, of amalgamations and separations.

¹ An agreement to exclude outsiders absolutely from the enjoyment of patents of that sort, or to combine for that purpose, had been declared illegal. But it is permitted to pay money to a person who desists from any claim to the use of certain patents; see *Spelling*.

² *De Witt Warner*, "Tariff Trusts," 5 *Tariff Reform*, p. 729.

The free trade organ of the New York *Reform Club*¹ mentions one hundred instances which it affirms are entirely due to protection, and the connection of which with the high protective duties it strives to show: anthracite coal; axe; barbed wire; biscuit and cracker; bolt and nut; boiler; boot and shoe; borax; broom; brush; button; carbon; candle; cartridge; casket; castor oil; celluloid; cigarette; condensed milk; copper ingot; copper sheet; cordage; crockery; cotton duck; cottonseed oil; cotton thread; electric supply; envelope; flint glass; fork and hoe; fruit jar; galvanized iron; glove; harrow; harvester; hinge; indurated fibre; lead; leather board; lime; linseed oil; lithograph; locomotive tire; marble; match; morocco leather; oat meal; oil cloth; paper bag; pitch; plate glass; pocket cutlery; powder; preserves; pulp; rice; rubber, gossamer; rubber, general; safe; salt; sandstone; sanitary ware; sand paper; sash, door and blind; saw; school-book; school furniture; sewer pipe; shot and lead; skewer; smelters; soap; soda-water machinery; spool, bobbin and shuttle; sponge; starch; steel rail; stove board; straw board; structural steel; sugar; teazel; tinned plate;

¹ See *Warner* in "Tariff Trusts."

tombstone; trunk; tube; type; umbrella; vapour-stove; wall paper; watch; wheel; whip; window glass; wire; wood screw; wool hat; wrapping paper; and yellow pine.

This list is no longer accurate. In the two years since it was compiled, a number of the combinations have dissolved (as the trunk trust). Others are established, as the "American Leather Company," the wall-paper, the umbrella, the fire-extinguisher, and the playing-cards trusts. But the list neither claims completeness, nor would it be possible to prove in all instances that the closeness of the union is such as to warrant the name of "pool." A valuable list has recently been given in Mr. Lloyd's book; this has served as the basis of the list of combinations given in the Appendix.¹

Much can be said in detail concerning the alleged relation between the combinations and the tariff; *e.g.* an extension of the great cordage combination all over the country was prepared in 1890, in anticipation of the passage of the McKinley Act.²

A market nationally closed is a more fertile soil for the rise of combinations, because it offers a firmer grasp, and consequently a better chance

¹ Appendix XV.

² *Bradstreet's Archives.*

of success. The prospect of a full enjoyment of the extra profits derived from the protective system is very inviting; therefore a change of the tariff system would probably have a certain bearing upon a number of combinations. As to the other alleged cause we have already remarked that without doubt a number of combinations have been able to secure special advantages from the railroads,¹ and that these have greatly facilitated their growth. But closer investigation shows that these are only two of the many points to be considered, and, as will be seen, not even the most prominent ones. A general economic tendency of a far more profound nature has called into existence these organizations. They may rightly be called *capitalistic* combinations.

¹ *Vide Bonham*, "Railroad Secrecy and Trusts."

CHAPTER V.

NATURE AND EFFECT OF TRUSTS.

WE have in the foregoing two chapters drawn the general lines of classification for all the various groups. The rise of combinations we found to have been favoured by natural or artificial monopolies, though here was not the single cause of their appearance, and we found that the form depended upon the inclination of the parties, and their confidence in the ability of the leaders. But what makes them flourish? How do they work?

We shall now discuss somewhat more at length the highest forms of undertakings, — the trust and the corporation of corporations. Here capital and business ability work in unison towards the regulation of all the elements which contribute to the production of the articles in question. We shall consider principally the largest of them, such as the petroleum, lead, cotton oil, linseed oil, sugar, cigarettes, matches, whiskey, starch, cordage, crackers, rubber, and leather combines.

The goal of undertakings of this sort is rightly expressed by such phrases as the cheapening of production, the regulation of output, and the control of prices.

I. The large undertakings do not originate in ideal, moral, or general economic considerations; their immediate aims are simply larger and surer profits. Hardly would a Rockefeller in his first efforts have divined what economic mission his action was destined to fulfil; hardly did old Commodore Vanderbilt invest his first money, acquired through the Staten Island ferry service, in railroads, with the intention of establishing a model of centralized railroad administration. But none the less the existence of these great personalities has been of an extraordinary, and often decisive, importance for the general development of the several industries.

That such men went into the petroleum trade, or into New York railroad enterprises, had, as things turned out, consequences not only much beyond their anticipation, but also affecting regions far outside their immediate sphere. In this country where the activity of the individual is least restricted, the personality of the projector, more perhaps than in Europe, seems to dominate the situation. Men who promote the giant works

of civilization and who, with creative energy, have impressed the stamp of their individuality upon whole industries, can be found more often here than abroad.¹ These men have to show initia-

¹ The rapidity with which one industrial phase has succeeded another has brought about the impression that a larger percentage of extraordinarily able men is to be found in the United States than elsewhere. This does not seem to me to be justified. American authors (*Gunton, Cook, Bonham, etc.*) show, however, what has led to this belief. In Europe the leading spirits are often attracted into other directions, — to the government, the army, or the paths of abstract science; in the United States the exceptionally able man, to show his abilities, and to attain a coveted position, is almost entirely restricted to the industrial field. With the public at large the governmental service is only a business, and a much less respected one than private business; and abstract science is but too often looked upon with a feeling of contempt, as being a loophole for second-class geniuses. In such a democratic community there does not exist any hereditary aristocracy, and the public service has not yet created an aristocracy of honour. Therefore ambition finds the only way to entrance into and pre-eminence in society “through the golden door of the dollar.” Not so much the love of the almighty dollar *per se*, as the social pre-eminence and power secured through its agency, seems to be the leading motive for the most successful business men and their lawyers in their enterprises. In his inquiries the author found that, in the case of two large trusts, their establishment was explained by the social aspiration of their promoters. They had already become very rich, and economically there was no strong inducement for them. Their chief motive to accept the proposition to join a certain combination in a leading position was a social one. They expected that this would lead them to that higher place on the social ladder, which heretofore they had vainly striven

tive, to realize the wants of the times, and to take the leadership of the various movements. And by grouping the existing means for these purposes in an appropriate manner, they become examples to others.

Governmental and police institutions, the public ideas of honour and business morality, are somewhat more flexible here, and therefore men find greater opportunities than their European brethren. Different periods and stages of society have different needs. There are times of rapid progress, in which the personality of the promoter, the audacious creator, holds the predominant position: and there are times for the conservative preservation of existing conditions, times which rely upon organization and regulation, and which distribute over the country the progress already attained. Invention and creation depend upon one great spirit; the carrying-on of the work afterwards may be provided for by a consulting body of average men.

Even the most conspicuous men are restricted by the iron tendencies of general development.

for. To other strong men the mere sense of power is welcome. "For the time being there is no other chance for them in this direction, and, therefore, they create a position for themselves more powerful than that of many a feudal prince." — *Cook*.

Their activity is checked. They cannot arbitrarily defy what are so often called by the newspapers and a certain class of economists in this country "economic laws." But they can greatly advance the interests of concerns which have been fortunate enough to secure their services.

II. It seems that great economic revolutions are inevitably bound to crush a part of the opposing forces. The history of the attempts at centralization in this country abounds with episodes, in which numberless individuals have been economically ruined by powerful adversaries. The methods employed were not always the most honest. We have already mentioned the secret relations between some of the trusts and the railroads, and have shown how the competitors of the trusts found themselves suddenly annihilated by a mysterious force. According to Bonham,¹ this system of secret agreements is much older than the trusts, and dates from the very beginning of railroad management. If one merchant did not avail himself of it, some one less scrupulous would, and thus the business of the former would be undermined. And these were not the only objectionable methods employed by the trusts. Various

¹ *Railway Secrecy and Trusts*, especially pp. 41-50.

most cruel devices, which could be used with impunity under the régime of *laissez-faire*, have been revealed by recent investigations. The sighs of the victims are still audible, though it appears that in the course of time, with wider expansion, the older trusts and their practices steadily become less violent and more conservative. Great business men and large undertakings are even to-day able to secure discriminations from the railroad companies, and they slaughter undesirable competitors in cold blood. But these are phenomena not peculiar to the trusts. They occur in the establishment of every large enterprise — as in the building up of large dry goods firms or grocery houses, trades where there is no organization ; and the cruelties are matters not so much connected with our immediate problem as with the general public morality. Of course public morality is influenced by the example of the combinations and their leaders who take such a conspicuous position in public life.

After the Standard Oil Company had broken the ice, its imitators found their task much easier, and did not need to apply so much pressure. Bonham's distinction between trusts which originate in railroad discriminations, and such as do not so originate, useful as it may be in some ways,

is very superficial, in so far as it presupposes that all trusts of the latter kind are merely accidental schemes. Many of them are natural outcomes of long struggles and alliances.

The whiskey industry, for instance, was depressed for many years. Whenever a change in taxation was proposed, the production of whiskey was increased enormously¹ during the time the debates were pending.² Toward the end of the sixties, the productive capacity of the distilleries surpassed by three times the consumptive power of the country. These distilleries could only exist by means of enormous revenue frauds. Alcohol was occasionally offered in the market at a lower price than the tax itself. In 1870 all but three distilleries north of the Ohio River pledged themselves to restrict their production to two-fifths of their capacity. By and by consumption increased, and in 1878 began a brisk export to Europe, where bad crops within the next few years made possible an importation of more than 40,000,000 gallons of alcohol. But these prosperous times again brought into the field numer-

¹ *F. W. Jenks*, "Whiskey Trust," *loc. cit.*

² Taxes on alcohol per gallon: 1862, 20c.; 1864, March, 60c., July, \$1.50; 1865, \$2.00; 1868, 50c.; 1872, 70c.; 1875, 90c.; 1894, \$1.10.

ous new competitors. When in 1883 the exports began to decrease in consequence of good European crops and of changes in the tariffs of most of the countries, the vast overproduction reappeared. The exports decreased from 20,600,000 gallons in 1879 to 250,000 gallons in 1888, whilst a capacity surpassing four times the domestic consumption had to be faced. In 1881 prices had already fallen below the cost of production, as they had done several times before. The formation of a pool was decided upon and the establishment of a "Western Export Association," which should export alcohol even at a loss, and cover the loss by means of monthly assessments in proportion to the production of the different distilleries. None of the distilleries could be closed at once, because they were at the same time cattle-feeders, and could not have disposed of their live stock without heavy losses. An attempt made to secure a bounty from Congress proved a failure. The pool was broken down in the spring of 1882 by the refusal of some of its members to pay the assessments. But it was re-established in the fall of the same year. From 1883 to 1887 one pool follows the other, until in 1887 the Distillers' and Cattle Feeders' Trust was formed. It began by lowering prices in order to force out-

side competitors either to yield or to join,—a method employed by other trusts.

The belief of impartial observers is that without the formation of great combinations the fate of smaller and economically inferior establishments would have been still more problematic. The growth and preponderance of the large competitors would have ruined them; whereas now a considerable percentage of them could effect an entrance into the new combinations under fairly acceptable terms.¹ The natural conditions of production, such as the price of real estate, of wages, and of grain, and the rates of transportation, gave to the city of Peoria, Ill., such an advantage, that most of the distilleries in other places would in the course of time have been unable to stand its competition. So also the Havemeyer and Spreckels interest had already such a predominant position in the sugar-refining industry, they produced so much more cheaply in consequence of the extent of their works and the improved methods secured by patents, that they largely controlled the market prices. Mr. Havemeyer has testified

¹ *Vide* Mr. Havemeyer's testimony before the United States Senate Investigation Committee on Alleged Stock Speculation of United States Senators, 52d Congress, second session, Washington, 1894.

before a Senate Committee that many of the smaller refineries had very often to choose between stopping their factories, or running them at a loss, when he and a few others could still make a very fair profit. In the steel industry the gigantic Carnegie works in Pittsburgh predominate to such a degree that rival factories must make every effort to pool with Mr. Carnegie. And, as frequently as an old pool is broken up, they enter into new negotiations in spite of the experience that co-operation with Mr. Carnegie does not always turn out entirely to their own advantage. He governs with almost absolute power. At the close of the year 1893 he broke up a pool,¹ because one of its members had produced more than his share. Then, a few weeks later,² he combined again with six steel manufacturers, thus bringing 65% of the output under his control. Outsiders were paid heavy premiums to close their establishments.³

¹ *Vide* the terms of the pool in the *Iron Age*, November 16, 1893.

² *Vide* speech of Congressman *Johnson* of Ohio, in the *Congressional Record* of January 10, 1894.

³ The circumvention of the anti-trust legislation is effected in an interesting way. One of the participants in the pool makes a contract with a factory in Maryland for the delivery of 300,000 tons of rails; but this is mere form. In fact, the stress is laid on that paragraph by which the former binds

As a rule a combination does not need to have complete control over the market in order to be effective.¹ Generally command over a majority of the producers or the greater part of the output has proved sufficient.² Therefore we find in all these cases a small number of outsiders left more or less unmolested as long as they do not show aggressive tendencies. They enjoy all the benefits of the combine without being forced into it.

III. The ability of a large undertaking to produce more economically makes it superior to a smaller one. Such an undertaking is based upon the employment of large capital, is favoured by local or individual circumstances, and is promoted by pre-eminent men, who through enterprising skill are able to secure further advantages.

With the exception of a few whose rise was gradual and steady, the birth of combinations is favoured by times of dulness in business. In prosperous periods individuals frequently feel safe enough in their independence; in hard times they realize how much better off they might be

himself to pay the latter a penalty of a dollar per ton in case he should not receive the ordered rails; thus the Maryland Company receives \$300,000 for the close of its works.

¹ *W. J. Ashley*, "The Canadian Sugar Combine."

² *Vide* also *Jenks in Pol. Sci. Quar.* IX. pp. 487, 488.

in union. Extraordinarily low prices, grave disturbances of the market, the crushing rivalry of competitors, or vigorous associations of workmen with repeated demands and strikes, give an impulse to the starting of combinations. Nevertheless these would have met with much greater difficulties, and some of them would not have come into existence at all, had they not been cheerfully greeted by the stock exchanges. The prospects of great speculative gains have proved very enticing; though frivolous manipulation—such as overcapitalization—and unscientific management—have resulted in serious losses.

The material, administrative, commercial, and technical basis, on which the promoter establishes his enterprise can soon be ascertained from the results achieved. Let us see how men of sagacity proceed.

The preliminaries generally take months and years; they are often interrupted and resumed; and it needs more than common ability to reconcile all the diverging interests. When this is finally done, and the preliminaries agreed upon, a document (trust-deed, articles of association, or option contract,¹ etc.) is signed.² The undertaking

¹ See Appendices I. and II.

² To frame this the most skilful work of corporation counsel

is now practically established, and to comply with the legal requirements a charter¹ is usually taken out. Meanwhile a detailed valuation of the several properties has been carried through. On this basis the capital of the new company is divided among the parties to the agreement. An elective meeting takes place and by-laws are agreed upon.² Thereupon the administration passes to the president and board of directors. One of their first steps is to ascertain the productive capabilities of the individual factories. What prove to be the best methods of production are adopted. Only the best equipped and the most profitable works are run to the full extent of their capacity. Of the less profitable, as many are raised to the same degree of efficiency as are needed to supply the market; the remainder are closed. They have *ab initio* been admitted only to avoid competition. Before the establishment of the combinations hardly any industry had been able to utilize its

is required. These counsel have, of course, to take into careful consideration every legal decision bearing on the situation, in order that the document may be unassailable in the courts. Such work and its importance to grant interests explain the large earnings of the great corporation lawyers in the financial centres.

¹ See Appendix XII.

² See Appendices II. and XIII.

full capability. For instance, even before the days of the Cotton Oil Trust numerous presses and refineries had for a long time been inactive. The trust closed at once more than a dozen of the small old-fashioned mills. The same thing happened with the Sugar Trust, which can supply the whole market with the product of one-fourth of the plants it owns. The Whiskey Trust immediately closed sixty-eight of its eighty distilleries, and with the remaining twelve was enabled to furnish the same output as before, and soon to largely increase it.

The enterprises were further assisted by extension into closely connected and neighbouring branches of trade, by gaining and utilizing by-products, by manufacturing their own packing materials, by improving the means of transportation, etc. An attempt was made, and often with success, to increase the sales and to extend the markets. For this purpose the Standard Oil Trust and the Cotton Oil Trust established European branches.¹

¹ See Appendix III. The Standard Oil Company has bought out a number of European oil merchants, who have been paid in stock of the newly established German-American, Italian-American, and English-American Petroleum Companies. The Standard Oil Company declares that it controls them by the command of 51% of the stock, whilst they affirm that they hold

In all these directions, the existing trusts seem to have been quite successful, and, therefore, to be making an approach towards the economic ideal of producing the largest amount of utilities with a steadily decreasing amount of labour and with the greatest possible saving of materials. We find continual efforts at further advance, by the application of the newest machinery and of new labour-saving processes, and this as rapidly as is consistent with the amortization of the means of production on hand. For example, the American Sugar Refining Company has built a new refinery, furnished with the newest technical improvements, to serve only as a safeguard in the case of a suddenly increased demand, or of stoppages in other factories. The Cotton Oil Company has a great experimental station of its own. The Whiskey Trust has introduced quite a number of inventions to improve the quality of its product. In the domain of the Standard Oil Trust there exist to-day more than three hundred by-products, which have yielded most valuable materials to numerous other industries; and the danger of explosion of the oil has been continually diminished by introducing more effective

50%. As this information comes from reliable informants on both sides, the author is unable to explain the discrepancy.

refining processes.¹ By all new inventions the whole business is benefited at the same time, while the great number of plants gives a chance to make local experiments with new processes of manufactures.

In this direction, none of the adversaries have been able successfully to accuse the trusts of negligence; on the contrary, since the beginning complaints have been based upon the very allegation that through the introduction of labour-saving processes and of machinery of the newest construction, and through the closing of superfluous factories, numerous workmen have lost their occupation,—an objection which surely is not a new one, nor peculiar to this form of industrial progress. Only in combinations secure against all kinds of competition—*i. e.* legal monopolies—can there ever arise the danger of a standstill in methods of production.

IV. As regards the regulation of production there have been occasional complaints of an

¹ It has recently been charged that the Standard Oil Company's product has deteriorated. In Europe as well as in the United States a decrease in the illuminating capacity and an increase of explosions has been recorded. The oil people claim that this is only due to the introduction of the Ohio oil, which they have not yet learned to refine as well as the Pennsylvania oil.

objectionable restriction, which have not been without foundation. In the period of lively demand, the trusts have attempted to bring about a great rise in prices by diminishing the supply. But these attempts at corners have always been of only a temporary nature. The more far-seeing and successful administrators have begun to realize the boomerang character of such attempts, and to take the position that the greatest earnings are always derived from the production of a steadily increasing quantity. On the other hand, they naturally try to prevent a disastrous inflation of the market.

The most vigorous attacks arose from the alleged attitude of the combination towards the regulation of prices. It has been objected, and sometimes proved, that the trusts keep prices immoderately high for the consumers, and pay immoderately low prices to the producers of raw materials. So, above all, the Sugar Trust. It is alleged that it arbitrarily dictates prices on its purchases, and, with the aid of the tariff, sells at prices which yield a greater profit to the refiner than could be obtained under free competition.¹

¹ This was admitted by Mr. Havemeyer before the investigating committee of the United States Senate, June 15, 1894. *Vide* diagram on p. 73.

But experience has taught, and probably will make it more and more apparent, that in the long run only those trusts are successful which succeed in steadily cheapening and improving their product. Whenever they have raised prices unwisely, competition, allured by the prospect of great gains, has arisen at once to such an extent as to endanger the very existence of the undertaking. The Starch Trust has attempted for a while to keep prices unreasonably high,¹ and in consequence of the enormously increased competition was at one time believed to be on the verge of ruin.

It cannot be denied that the prices of raw material have in some instances been depressed. The United States Leather Company, which controls all the sole-leather tanneries of the country as far as Texas, succeeded in reducing prices immediately after its appearance in the markets of Chicago and Kansas City. It maintains a purchasing agent in Chicago. In the face of the ring of packers it does not seem to have violently changed the dynamics of supply and demand, but only to have readjusted them. The American Tobacco Company is said to have depressed the

¹ *Bradstreet's Archives.*

purchasing price of cigarette tobacco in the leaf by several per cent immediately after it began business.

But we also observe a tendency in the opposite direction. With the increase of the cotton oil production, the price of cottonseed, which the trust had at first somewhat depressed, rose much above the former level.¹ The trusts urge in their defence that in consequence of their efforts to increase consumption, the producers are given the opportunity to dispose of much more raw material, and that thus, in the end, they will enjoy an increase of total profits, even where prices are reduced.

The assertion as to the increase of prices is undeniably justified in certain instances. But the possibilities as well as the consequences of such enhancement have certainly been exaggerated. Only a small increase of prices is possible without danger.² On the other hand, trusts undoubtedly can prevent a collapse of prices, and they can temporarily raise prices slightly, and pocket larger

¹ Report of fourth annual meeting of the stockholders of the American Cotton Oil Company, August 31, 1893. In 1894 the enormous crop again reduced the prices for cottonseed.

² *Jenks* sets forth in detail these dangers: Rise of new competitors, diminished consumption, etc.

profits in consequence of their improved methods of production. Within the range of common market prices the cost of production under ordinary conditions and the normal rate of profit may fluctuate at the expense of each other. Production under the most advantageous economic conditions yields an extra profit to the individual undertaker. Whether under existing conditions of distribution the community at large should share in this extra profit, certainly is open to discussion. Jenks declares that the combinations have occasionally attempted to secure more than this legitimate extra profit, and that the establishing of trusts resulted in a temporary increase of prices. The general range of prices, as given in his article, for petroleum, sugar, and spirits, raw material and product, may be seen from the following table and diagrams.¹

All well-managed and successful trusts have thus far attempted to progress through steadily improving their plant and affording increased facilities to their customers. None have succeeded in securing an absolute and lasting monopoly, in spite of the protective system. As soon as a competitor sees an opportunity, he makes use of

¹ *Jenks'* "Capitalistic Monopolies," pp. 491-493, 497.

AVERAGE ANNUAL PRICE IN CENTS OF REFINED AND
CRUDE PETROLEUM.

| YEARS. | Price of Crude. | Price of Refined. | Difference. |
|--------------|-----------------|-------------------|-------------|
| 1870 | 9.19 | 26.35 | 17.16 |
| 1871 | 10.52 | 24.24 | 13.72 |
| 1872 | 9.43 | 23.59 | 14.16 |
| 1873 | 4.12 | 17.87 | 13.75 |
| 1874 | 2.81 | 12.98 | 10.17 |
| 1875 | 2.96 | 13.00 | 10.04 |
| 1876 | 5.99 | 19.16 | 13.17 |
| 1877 | 5.68 | 15.44 | 9.76 |
| 1878 | 2.76 | 10.76 | 8.00 |
| 1879 | 2.04 | 8.08 | 6.04 |
| 1880 | 2.24 | 9.05 | 6.81 |
| 1881 | 2.30 | 8.01 | 5.71 |
| 1882 | 1.87 | 7.39 | 5.52 |
| 1883 | 2.52 | 8.02 | 5.50 |
| 1884 | 1.99 | 8.15 | 6.16 |
| 1885 | 2.11 | 7.93 | 5.82 |
| 1886 | 1.69 | 7.07 | 5.38 |
| 1887 | 1.59 | 6.72 | 5.13 |
| 1888 | 2.08 | 7.49 | 5.41 |
| 1889 | 2.24 | 7.11 | 4.87 |
| 1890 | 2.06 | 7.30 | 5.24 |
| 1891 | 1.67 | 6.85 | 5.18 |
| 1892 | 1.32 | 6.07 | 6.75 |
| 1893 | 1.50 | 5.22 | 4.72 |

it, even against the almighty Standard Oil Trust.¹ A combination of independent oil refiners has recently attempted direct exports to Europe. A new pipe line has been built, — the United States Pipe Line, — and the Columbia Oil Company, which controls it, has successfully combined a number of smaller oil refineries. They own three pipe systems for refined oil, tank-plants and tank-steamers. They ship their oil regularly to customers in London, Amsterdam and Mannheim. It seems very likely that this attempt will finally lead to an understanding and combination.²

The rise of the Columbia Oil Company and the fact that the Standard Oil Company does not own a considerable part of the oil lands, is said to have led to the failure of the American-Russian negotiations of 1894. When the question of a division of the world was discussed in Paris, the Standard Oil Company could not comply with the conditions insisted on by the Russians. The latter required evidence that the Standard Oil Company has successfully checked all competition.

¹ *Vide L. G. McPherson* "The Meaning of Corporations and Trusts," *Popular Science Monthly*, July, 1894, p. 297.

² *Tollos*: "Nachtrag zu der Abhandlung: Cartelle in Russland," in *Schriften des Vereins für Socialpolitik*, Vol. II. 2, p. 325.

The Americans asked for a stay of proceedings until they should have dealt with the Columbia Oil Company.¹

The Cotton Oil Company² can maintain its position only by the continuous improvement and enlargement of its plant and the cheapening of its product. Again and again independent competition crops up from among a class which detests "serfdom" in large undertakings. A new southern cotton oil company has been established. In sugar refining, Claus Spreckels originally started a number of refineries in San Francisco and Philadelphia, to compete with the trust.³ Later he consolidated with the trust. But there are still a small number of independent refineries, and two larger ones are nearly completed.⁴

How far some trusts have gone in their attempts to ward off competition is shown by numerous examples.

The Distilling and Cattle Feeding Company has tried, through its secretary, to bribe one of the public gaugers. The latter, while perform-

¹ *Vide* *ibid.*

² *Vide* *below.*

³ *Vide Claus Spreckels'* testimony, United States House Report, 50th Congress, No. 3112, p. 172.

⁴ It is difficult, however, to ascertain whether in one form or another these are not connected with the trust, and are not built only to preserve the semblance of competition.

ing his official duties, was to place a bomb under one of the alcohol tanks in the Chicago distillery of its most dangerous competitor.¹

In the petroleum business, an oil dealer in Buffalo attempted to trade with the competitors of the Standard Oil Company, who made him cheaper offers. After a while the Standard Oil agent came and told him that unless this should be stopped, an office would be opened to undersell him until he should be ruined. To indemnify itself, the Standard Oil Company would raise the price of oil correspondingly in certain zones around Buffalo. Thereupon the merchant thought it better to resume relations with the Standard Oil Company, in spite of its higher prices.²

Where it was impossible to overcome the com-

¹ *Vide* report on the Whiskey Trust investigation, House Report No. 2600, pp. 16-30 and 63. No doubt is left as to the truth of this fact. There is evidence that, in case of the gauger's compliance, the machine was constructed so as to blow him up at once with the tank, and thus to secure his silence. In spite of the unmistakable proofs, the parties interested succeeded in having a suit against them dropped. It was also testified that they were well prepared for the "accident," and had entered, with this in view, into heavy stock speculation, in the expectation of a bull move after the annihilation of the largest competitor. *Vide* also the story of the "Buffalo Explosion" in *Lloyd's* "Wealth against Commonwealth," p. 250.

² *Vide Lloyd, ib.*

petition by the usual means, special systems were devised to secure the continuous patronage of customers. Thus originated the rebate systems in the cigarette and alcohol trade. The trust grants to its customers a rebate of 5%-7%, or other inducements, in case they are able to prove that within a given time they have bought their entire supply from it. To secure effective control, the rebates are not paid until after a certain period and the filing of an affidavit that the customer has, in the interim, not bought elsewhere. Since, meanwhile, new purchases are concluded, the interest of the customer to continue the relation is constantly kept up.¹ This system has been upheld by the courts, whilst a pledge to deal exclusively with a single party was adjudged illegal, and consequently not permitted.²

For the reasons given above, the author does not care personally to undertake that most difficult task, the investigation of prices. Dodd and Gunton show decreases, Jenks increases, as a

¹ Voucher; cf. Appendix X and X a.

² Its enemies reproached the Whiskey Trust for indemnifying itself by a sudden raise in prices as soon as the rebate list had reached high figures. The customers in that case could not help accepting the measure. The trust denies the truth of this charge, and declares that it does not change its prices except in connection with the situation of the market.

result of combination. A glance into the excellent and most valuable publication of the United States Senate on wholesale prices, teaches that, leaving local and temporary fluctuations out of the question, the trusts have at least not stopped everywhere the reduction of prices in the industrial products. One might feel encouraged to believe that they will by and by bring about a state of stable equilibrium at a generally lower level; though Jenks declares that thus far the friends of the combinations have more often talked about possibilities in this direction than shown that anything has been actually done.

V. The following table shows the amount of capital and funded indebtedness of the most important industrial trusts. It may be noted that the amount of capitalization does not correspond at all to the actual value of the undertakings at the time of their establishment.

(The bracketted figures give the amount of authorized capital.)

| NAMES. | COMMON STOCK. | PREFERRED STOCK. | BONDED INDEBTEDNESS. |
|-------------------------------------|-------------------------------|--|---------------------------|
| American Cotton Oil Co. | { (21,092,000) 20,237,100 | (15,000,000) 10,198,600 | (5,000,000) 3,566,000 |
| American Soda Fountain Co. . . . | 1,250,000 | 2,500,000 ¹ | — |
| American Straw-Board Co. | 6,000,000 | — | 1,081,000 |
| American Sugar Refining Co. . . . | { (37,500,000) 36,773,000 | (37,500,000) 36,773,000 | (10,000,000) — |
| American Tobacco Co. | { (21,000,000) 17,900,000 | (14,000,000) 11,935,000 | — |
| American Type Founders' Co. . . . | 5,000,000 | 4,000,000 | — |
| Diamond Match Co. | 9,000,000 | — | — |
| Distilling and Cattle Feeding Co. . | 35,000,000 | — | (8,000,000) 3,500,000 |
| National Lead Co. | { (15,000,000) 14,905,400 | (15,000,000) 14,904,000 | (.) — |
| National Linseed Oil Co. | 18,000,000 | — | 8,000,000 |
| National Starch Co. | { (5,000,000) 4,450,700 | (15,500,000) ² 4,066,200 | (4,500,000) 3,887,000 |
| New York Biscuit Co. | { (10,000,000) 9,000,000 | — | 1,841,000 |
| United States Cordage Co. | 20,000,000 | 14,000,000 ³ | (7,506,000) 6,076,000 |
| United States Leather Co. | { (60,000,000) { | (60,000,000) | (10,000,000) 6,000,000 |
| United States Rubber Co. | { (25,000,000) 20,166,000 | (25,000,000) 19,400,500 | — |

¹ \$ 1,250,000 first preferred, ditto second preferred.² (3,000,000) 2,219,400 first preferred, (2,500,000) 1,846,000 second preferred stock.³ 6,000,000 guaranteed 6% stock; 8,000,000 preferred stock.

The Standard Oil Trust originally was established with \$70,000,000 trust certificates, which exceeded the actual value by at least 100%. Later, it has increased its capital by distributing a 25% stock dividend among its certificate holders. At the time of its dissolution, it was stated to have a nominal capital of \$102,500,000, on which it distributed 12% per annum; this dividend was equal to at least 30% of the real capital. Besides, it is said to have accumulated a considerable amount, by which, in one form or another, its security-holders will be benefited. The Cotton Oil Company and all the others are likewise overcapitalized by 200%-500%. Not only the former, but also the future earning capacity has been taken into account. The original valuation is not based upon the actual property, but, to a larger extent, upon good will, rights, and prospects. In most of the trusts the common stock originally represented only water. The quotations show that, in the opinion of the exchanges, the anticipated increase of value has not always been realized. No information can be got about the present condition of the Standard Oil Trust, for it has been formally dissolved (*vide infra*).

The table on the next page shows the dividends

paid by the above companies in the years after 1890.¹

The opinion of financial circles as to the value of securities of that sort may be seen from a table of quotations for a longer period; a third table gives, for the same securities, the monthly quotations during the panic-year 1893, with the addition of a few other leading companies, and the price of silver bullion certificates in New York.

The foregoing tables show remarkable features, which will be discussed later from a general point of view.²

A great and striking difference exists in the position of the several companies, in consequence of their methods of management. Some of them, as the American Tobacco Company and the Standard Oil Trust, are model organizations, which look forward only to a continual betterment of their position. The same is true of the reorgan-

¹ From *Bradstreet's*.

² The financial results have by no means been in all instances as favourable as were expected. This may to some extent be ascribed to the enormous salaries voted to the managers by the boards, *i.e.* their friends. A disproportionate amount of the earnings is absorbed in this manner; and this, of course, absorbs a good deal of the benefits derived from economies. On the other hand, it is argued that men possessed of extraordinary business ability would not otherwise be induced to offer their services.

ized Cotton Oil Company, and as far as business management is concerned, of the Sugar Refining Company, and others. Some, however, have been subject to the most scathing criticism. Thus far two great disasters have gone on record: in 1889 the old Cotton Oil Trust suspended payments, and on May 4, 1893, the National Cordage Company went to pieces. Both were ruined through very apparent mismanagement. The managers misused the companies' funds for gambling purposes on the exchanges, and did not concern themselves with the development of legitimate business, but with Credit Mobilier transactions, and speculations for rapid gains. It is one of the most disastrous holes in the corporation law of the United States, that stock companies are not forbidden to buy or sell their own securities. In Europe such transactions have been punishable for many years. It has occasionally happened in the United States that managers, when successful in operations on the exchanges, have pocketed the profits, but when unsuccessful, have thrown the loss on the stockholders.

In the Whiskey, Linseed Oil, and Starch trusts, actual crises have not yet occurred; but in 1892 the Distilling and Cattle Feeding Company was very near the verge of ruin, and to-day it is again

CHAPTER VI.

THE LATEST PHASE OF CORPORATION LAW, AND
ITS EFFECT ON THE FORM AND NATURE OF
COMBINATIONS.

I. THE essential provisions of the anti-trust legislation passed in the different states are summarized by Mr. Dodd¹ as follows (the word "persons" being used for "persons, corporations, associations, and partnerships," and the word "agreement," or "attempt," for "contract, combination, conspiracy, understanding, arrangement, or act") : —

In sixteen states, it is a criminal conspiracy for two or more persons to agree to regulate or fix the price of any article, or to fix or limit the quantity of any article to be manufactured, mined, produced, or sold. Regulating and fixing prices necessarily include increasing and reducing prices, but in most of the statutes these are also specified as criminal.

In six states, it is a crime for two or more persons to enter into any agreement whereby "full

¹ "Present Legal Status of Trusts," *Harvard Law Review*, vii. p. 164.

and free competition in production and sale” is prevented.

In two states and one territory, it is a crime for two or more persons to “attempt to monopolize” any article.

In Nebraska, two or more persons are guilty of conspiracy if they agree to suspend or cease the sale of any manufactured products, or if they agree that the profits of any manufacture or sale shall be made a common fund, to be divided among them.

In Texas and Mississippi, besides the crimes of fixing, regulating, increasing, and reducing prices, it is also a crime for persons to settle the price of any article between themselves, or between themselves and others.

In New York, it is a crime to enter into any contract whereby competition in the supply or price of articles in common use for support of life and health may be restrained or prevented for the purpose of advancing prices.¹

The bias of public opinion against trusts proper was bound to produce some effect; especially as some decisions of the courts² gave rise to

¹ Anti-Trust Laws of the United States, Illinois and Texas; Appendices IV.-VII.

² *People versus North River Sugar Refining Company*, 121

the fear that the judiciary would not be found willing to recognize the legality of the "trust" agreements. It was considered wise to yield in the matter of form. The trusts were transformed into companies. Already in 1887 Cook pointed out¹ that although in New York and several other states a stock company could not own the stock of other companies, this has always been permitted in some other places. "Maine, Connecticut, and New Jersey, since time immemorial, had been the snug-harbour of roaming and piratical corporations. Afterwards they were outdone by Kentucky and West Virginia, whose corporation statutes are marvels of alluring attractiveness for the incorporation of enterprises located in other states."² Seeing what financial advantages these states enjoyed in consequence of their liberality, what large revenues they drew from their incorporated "guests," many of the others followed them in changing their legislation and practice. As citizens of one state may establish a stock company in any other state, and as a stock company, in consequence of the *interstate comity*, is free to

New York, 582 ; *State versus Standard Oil Company*, 30 U. S. Rep. 279.

¹ "Trusts," p. 6.

² *Cook*, "Corporation Problem," pp 107-110.

transact business all over the country,¹—with the one exception of *quasi*-public corporations, such as railroads, gas companies, etc.,—it has been very easy to find a new and more comfortable home for prosecuted trusts.

We now had the strange spectacle of the enactment of the most severe laws against trusts and combinations on the one hand, and on the other of a transformation of the corporation law which facilitated a remodelling of the trusts, and their continued transaction of business in the state. Meanwhile a change in the taxation laws was provided in many states, favourable to foreign corporations.² This removed the very difficulty which had been one of the chief reasons why originally the form of “trusts” had been chosen; the old laws of several states would have compelled a foreign company to pay taxes on its full stock or transactions. The most popular states for chartering companies are at present New Jersey and Illinois. The former has attracted across the river nearly all corporations doing business in New York. In New York, the courts and public opinion are in favour of large companies; but the charter is too expensive, taxation too high, and

¹ *Cook*, “Stocks and Stockholders,” §§ 237–240.

² *Cook*, “Corporation Problem,” pp. 102–107.

the liabilities of stockholders and officers are too far-reaching. In New Jersey the incorporation fee is one-fiftieth of one per cent of the par value of the capital stock; the annual tax is one-tenth of one per cent of the same; and a charter can be obtained for "any lawful business or purpose whatsoever." Only one director need be a resident of the state; the amount of capital stock is unlimited; there is no liability on the part of the stockholders for corporate debts; property and property rights can be made the basis of a stock issue; and annual reports of the business are not required to be made public.¹ Similar provisions are contained in the Illinois law. But the proceedings instituted against a number of "trusts" by the attorney-general makes it likely that, if such proceedings continue, the corporations will no longer feel safe in Illinois; some of them have already announced their intention to abandon their Illinois charter and take out one in New Jersey. In West Virginia, the fee is only \$56; the annual tax, \$50; no director need be resident; annual and other meetings may be held outside the state, etc.

¹ *William H. Corbin*, "The Act concerning Corporations in the State of New Jersey," Jersey City, 1891.

“Therefore¹ all the tramp and bubble companies seem to have gravitated to her jurisdiction.” The manufacture of corporations for the purpose of enabling them to do all their business elsewhere seems to be the policy of this “young and enterprising state,” and it has become the “Mecca of irresponsible corporations.” But the largest corporations have nevertheless preferred to this charter or that of Kentucky the more expensive, but seemingly more respectable, charters of the states before mentioned.

II. The transformation of the trusts into corporations has been mainly brought about by proceedings of a formal character. A former trustee and present director of one of them, has told the author that he is not aware of the slightest change in his position, or in its meaning. After a committee had decided upon the preliminaries, a charter was taken out; the trustees became directors; the officials of the trust were appointed officers of the new company; the trust certificates were exchanged for shares, through the agency of some trust company, on the basis of a stipulated triangular agreement. The parties to this agreement were the trustees, a certificate holder's

¹ *Cook*, “Stocks and Stockholders,” p. 1604.

committee, and the trust company.¹ The latter issued, sometimes to the individual companies, and sometimes to the trust certificate holders, an amount of stock of the new company representing the corresponding value of trust certificates deposited with it for that purpose.

Attempts of certain individuals hostile to trusts to have a receiver appointed for liquidating the trust affairs (as in the case of the Standard Oil Trust) did not meet with the approval of the courts. All former trusts have passed through this metamorphosis with the exception of the Chicago Gas Trust (*vide supra*), and of the Standard Oil Trust, whose position was a different one, inasmuch as its nine trustees owned personally more than 50% of the total capital stock. Their motion, at the general meeting of trust certificate holders, on March 21, 1892, to dissolve the Standard Oil Trust, and to restore to the individual trust certificate holders a proportionate share in the individual companies, was practically without significance. The proposition was accepted; the "equitable interest" of the trust certificate holders as registered in the books of the company was retransformed into a "legal ownership" of

¹ Appendix XI.

corresponding amounts of stock, and recorded in the books of the individual participating undertakings. All previous actions of the trustees were accepted and approved. These officers were commissioned to wind up affairs in such way as they deemed fit; to file, as "attorneys in fact," all necessary papers; and to report periodically. Four months after the passage of that motion, the voting power of the trustees was to expire. In September, 1893, at a new meeting, information was given that more than 50% of the trust certificates had been exchanged in the proposed manner. Considering the fact that the resolutions do not ask for, but only permit, a change of the certificates; that the trustees own more than 50% of the capital stock as their private property; and, finally, that there is no reason why the other trust certificate owners should have lost their confidence in the former trustees,—we may feel justified in assuming an identity of the trust certificates retransferred, with that private property of the trustees. Of the other certificate holders, it is not likely that many have felt an inducement to make the change. Thereby it is explained why the Standard Oil managers did not see the necessity of re-establishing a new large company. By means merely

of their proprietary rights, they cohere firmly enough; they look upon their securities as permanent investments, and do not use them for gambling purposes. The large owners now, as formerly, control the management of all the companies. No changes have taken place in the general administration, nor is it expected, in the near future, that anything like one centralized institution will be re-established. In the aforesaid meeting of September, 1893, one of the stockholders put the question whether in future the individual companies would practically compete with each other. The administration maintained a diplomatic silence: that was to be left to the future.¹ The stock of about twenty refining and transportation companies, of establishments for the manufacture of by-products and packing materials was finally held ready for distribution. If ever serious attempts should be made to attack the large companies by legal proceedings, the Standard Oil institution would offer the least purchase in its formal organization. The advisers

¹ Before the expiration of the voting power of the trustees, and before the formal dissolution of the trust, a number of smaller corporations were dissolved or amalgamated with larger ones. (Proceedings of meeting held at 26 Broadway, New York City, on March 21, 1892.)

of the Standard Oil Company seem still to be as superior to those of other companies, as they were twelve years ago. At that time they avoided the introduction of any of the clauses into the original deed, which later on the Sugar and Cotton Oil Trust introduced as an improvement. It was this very improvement which enabled the attorney-general to point out the illegal tendencies of the combinations.¹

The Sugar Trust² would have been able to take the same course as the Standard Oil Trust, because here, too, the trustees owned a controlling interest. But it was preferred to give the trust an immediate successor in the American Sugar Refining

¹ The Standard Oil Trust deed did not contain detailed statements of any especial purposes of the trust, except such as are of the very nature of every common law trust. The Sugar Trust deed added a number of details, such as: to promote economy of administration; to reduce the cost of refining, thus enabling the price of sugar to be kept as low as is consistent with reasonable profit; to give to each refinery the benefits of all appliances and processes known to the others, or used by others, and useful to improve the quality and diminish the cost of refined sugar; to furnish protection against unlawful combinations of labour; to protect against inducements to lower the standard of refined sugar; and to generally promote the interest of the parties hereto in all lawful and suitable ways. (U. S. House Reports, No. 3112, Sugar Trust, p. 3.)

² Details about the Sugar Trust, though not from sources altogether reliable, in "The Sugar Trust," *Tariff Reform*, August, 1894.

Company. The uncertainty of the American tariff policy made it very desirable to the trustees to be in a position to rapidly dispose of their property, whenever a change in the tariff threatened a decrease in values. In such a case, the stock of a large company naturally would be more marketable.¹

The following is the outline of the present organization of the large combinations: At their head we find a president, with a board of administration and a staff of officers, as required by the respective corporation laws. The board is

¹ Events proved their course to have been the right one. The tariff debates of 1894 at one time caused the fear of an abolition of all sugar duties. This abolition would have considerably decreased the value of the American Sugar Refining Company's property. At the time of the last general meeting in January, 1894, it was found that, in anticipation of these events, the principal stockholders in the board had already rid themselves of a large part of their holdings. The measures adopted by the Standard Oil Trust tend of course in a direction exactly opposite to that intended by the anti-trust movement. Public hostility had been aroused because in a trust there was no one who could be held responsible in case of unlawful operations. More publicity was desired. The trust seemed to yield; the anti-trust laws required dissolution, and so it dissolved. But in fact this was nothing but a complete withdrawal from the field of publicity. Nothing shows more clearly the mistakes of the present anti-trust legislation. Both groups, Standard Oil and Sugar, Cotton Oil, etc., comply with the letter of the law only to more safely circumvent its intentions.

usually divided into two chief departments, one of which takes charge of the financial, the other of the technical side of the undertaking. They are subdivided¹ into committees on sales, on purchases, on the technical supervision of especial branches, and so on. The individual undertakings are run with a certain degree of independence, which occasionally extends to their very organization. In general, the central office buys the raw material, fixes the selling price of the manufactured goods, and apportions larger orders. The branches take smaller orders directly, and decide upon most of the details of their management. Continuous intercourse is kept up with the central office, and regular reports are filed. For example, in the Whiskey Trust the branches send daily statements of production, sales, and deliveries. Most of the organizations encourage a spirit of independence and of rivalry among their branches, in regard to improving and cheapening the process of produc-

¹ The board of the United States Leather Company, for example, consists of twenty-seven members, with an executive committee of nine. The other eighteen preside over the administration of the individual tanneries. The executive committee is divided into committees on finance, on purchase of green hides, on sales, etc. The technical processes are left to the individual members.

tion. The reports of the American Cotton Oil Company¹ give a very complete inside view of its organization. The company has fifteen directors, eleven of whom live in New York, two in New Jersey,¹ one in St. Louis, and one in Atlanta, Georgia. The president is chosen from among the members of the board; not so the vice-president, the secretary, and the treasurer. The administration has an attorney of its own. The executive offices are in New York City; executive officers besides those just mentioned are the chairman of the Board, and the three members of the finance committee (recently established). The head office is in New Jersey. A banking firm serves as transfer agent and registrar of debenture bonds, a trust company as registrar of preferred and common stock. There is a central accounting department with a comptroller, an auditor, and a statistician, and there are also departments for sales, transportation, insurance, and advertising. A chemist is in charge of a central laboratory. The Holland American Cotton Oil Company has been opened as an independent branch with a Dutch charter a year ago, and the former foreign representative of the

¹ Reports presented to the stockholders of the American Cotton Oil Company, at their annual meetings, for the fiscal years ending August 31.

Cotton Oil Company has been appointed its president. The headquarters of the foreign representative have, in consequence, been transferred from Hamburg to Rotterdam. Nine state companies, operating crushing mills, exist in Alabama, Arkansas, Georgia, Mississippi, Texas, North Carolina, South Carolina, Tennessee, and Louisiana; they are managed by vice-presidents. Of nine refineries, two are situated in New Jersey, one in Chicago, one in St. Louis, one in Cincinnati, one in Providence, one in Memphis, one in Louisville, and one in Louisiana. Two of them, the Wilcox Lard and Refining Company and the N. K. Fairbank Company, are in themselves establishments of a world-wide reputation. They maintain branches devoted to a further utilization of cotton oil. They have their own staff of officers, sales agents, etc. One hundred and twenty manufacturing properties are located in sixteen states. They are divided into:

| | Running. | Dormant | Dismantled | Total. |
|-------------------------------------|----------|---------|------------|--------|
| Crude Oil Mills | 49 | 5 | 18 | 72 |
| Refineries | 10 | 5 | | 15 |
| Lard and Cottolene Plants | 4 | | | 4 |
| Soap Factories | 8 | 1 | | 9 |
| Cotton Gineries. | 11 | 4 | | 15 |
| Cotton Compressors. | 2 | 1 | | 3 |
| Fertilizer Mixing Establishments | 2 | | | 2 |
| Total | | | | 120 |

The company owns one tank steamer of 4300 tons and 2300 horse power, 355 tank cars, 23 box cars, and one barrel car. A table in the report for 1894¹, gives a comparison between the cash value of the property and the good will, and shows the proportion, borne by each, to the capital stock. From 45.2% in 1891, the actual value of the property rose to 48% in 1892, 50% in 1893, 50.8% of the capitalization in 1894. From this we may conclude that at the time of establishment of the trust and even up to its reorganization, the actual value of the undertaking, minus the good will, was not much more than from one-fourth to one-fifth of the capital stock.² A calculation in the report for 1893 shows that the actual property then represented a security on the preferred stock equal to 125% of its par value; the common stock was represented by the 25% surplus above the par value of the preferred stock, all other increment of property, and surplus earnings over the 6% preferred stock dividends, and also by the good will, franchises, leases, contracts, patents, processes, brands, and kindred assets of the business.

¹ p. 23.

² This agrees with the testimony of *Mr. John Scott* before the New York State Committee in 1888.

This statement is important for the understanding of the morphology of a well-managed giant undertaking of that sort.¹

The rubber combination has adopted a peculiar organization. For a number of years, negotiations were pending which, after the failure of several pools, led, in 1892, to a preliminary understanding. But not until 1893 was strength and vitality infused into the combination, when the head of the most prominent concern in the rubber manufacture, which at that time joined the pool, was elected president of the whole. To-day it includes all rubber-shoe companies of the country, and a few other rubber-goods factories. The United States Rubber Company owns only its own stock, and they pretend to be run independently. Practically it exercises a complete and uniform control; it buys the rubber on a large scale through its agents in the South American markets, imports it in shiploads, and furnishes it to the individual factories. To avoid even the semblance of a combine, all the officers of the

¹ It is said to be customary for the preferred stock in all kinds of American stock companies to represent the money value of land, plant, materials, products, etc., whilst the common stock at the beginning represents good will, rights, etc., to which by and by accumulated profits add a more tangible basis.

several companies are left in their positions. The sales are entrusted to a company in New York, while the financial affairs are managed by a third firm. The company has closed several of the factories, and in order to keep the remainder in touch with each other without transgressing the corporation laws, the *United States Rubber Advancers' Club* has been formed, composed of the managers of the various factories. They began by paying a joint visit to each establishment, and investigating the best methods of production. Since then they have met "socially from time to time, in an informal manner, and have *en passant* discussed business affairs." Besides the savings resulting from the wholesale purchases and the doing away with middlemen, much stress is laid by the managers upon the technical improvements effected. On account of the short time of the combination's existence, it is not yet possible to form a definite judgment of its working. The same may be said about the United States Leather Company. It may be mentioned that these two companies, and also the Diamond Match Company, the American Typefounders' Company, the American Tobacco Company, the new United States Cordage Company, and a few others, have never been trusts in the strict legal sense, but joint stock companies from the beginning.

III. Mr. Cook seems to be right in regarding it as a great moral victory for public opinion, that the trusts have been compelled to intrench themselves under the cover of corporate charters.¹ The secrecy of the trusts, their power to refuse information, and their complete lack of responsibility was indeed a very great danger. But the most important legal questions still remain unsettled. No serious investigator of this question attributes great weight to the anti-trust statutes in their present shape. More may perhaps be expected finally from the decisions of the courts. Legal judgments depend upon the conception of public policy; and, as this conception is subject to change, the law-creating action of the courts is likely to change also. That this is possible, and indeed is done by a process of quiet and natural progress, is the very thing that constitutes the strength of the English common law. It is not to the disadvantage of conservative development that the decisions of the judges are occasionally somewhat behind the advanced demands of the age. It has been well remarked that a judge who has to render a decision on modern problems received his education in economics twenty-five to fifty years ago, when condi-

¹ *W. W. Cook*, "Corporation Problem," p. 245.

tions and views were very different. Therefore he is very likely to take a mistaken attitude towards a recent movement. In a comparatively short time, however, there will sit on the benches a race of judges who have received a modern economic training. They will be able to decide such a case from a practical standpoint and with due consideration for time and place.

The most important recent decisions of the United States courts already show a changed tenor.¹ They declare the anti-trust legislation in its present shape to be entirely unserviceable. In his report for the year 1893,² the attorney-general of the United States expresses his views regarding the Sherman anti-trust law. He considers this law illegal. Though a member of the Democratic party, he apparently does not expect very much from any sort of anti-trust legislation of the present form.³ He thinks that an exact definition of the punishable acts is almost impossible, and that what is said about monopolies can be applied just as well against individual business

¹ *Dodd*, "Present Legal Status of Trusts," p. 167-169.

² p. 26.

³ As the former attorney of the Whiskey Trust, he has, of course, had the opportunity to study the trust question from a practical standpoint.

transactions. He quotes for his support the conclusions of a judge in the United States Court for the Southern District of Ohio, recently elected an associate justice of the Supreme Court: "(1) that Congress cannot limit the right of state corporations or of citizens in the acquisition, accumulation, or control of property; (2) that Congress cannot prescribe the prices at which such property shall be sold by the owner, whether a corporation or individual; (3) that Congress cannot make criminal the intents and purposes of persons in the acquisition and control of property which the states of their residence or creation sanction; (4) that monopoly as prohibited by the statute means an exclusive right in one party coupled with a legal restriction or restraint upon some other party which prevents the latter from exercising or enjoying the same right; (5) and that contracts in restraint of trade and commerce as prohibited are contracts in general restraint thereof, and such as would be void at common law, independently of any statute."

This decision must be accepted and acted upon as a precedent, until it is reversed by a tribunal of last resort. The attorney-general finally directs attention to the fact that an attempt has been made to treat strikes as coming within

the provisions of this law, and even to declare illegal upon this ground a paragraph¹ on the statutes of the Brotherhood of Locomotive Engineers. In other words, these measures of restriction were invoked even to solve the great problem of capital and labour! It is generally believed that the final decisions of the Supreme Court will move on the lines of the attorney-general's report.

¹ § 12.

CHAPTER VII.

PUBLIC OPINION AND THE COMBINATIONS.

I. THE Theorists.

There are many who disapprove of trusts and combinations upon general anti-centralistic and individualistic reasons, and as a matter of principle. They regard the trusts as hideous and rapacious monopolies, which annihilate the individual, and by heaping up wealth stolen from the people, and by their entire organization, play into the hands of socialism.¹ "They are things to be feared. They antagonize a leading and most valuable principle of industrial life, in their attempt to curb competition and bring it under strict control. And when we witness the heartless manner in which some trusts have closed manufactories, and turned men willing to be industrious into the street, in order that they may increase profits already reasonably large, we cannot help asking ourselves whether the trust, as we see it, is not a public enemy, whether it is

¹ Such are the views of writers like *Professor Hadley*. See his Speech before XIX. Century Club, New York, December, 1894.

not teaching the labourer dangerous lessons, whether it is not helping to breed anarchy.”¹

These views are upheld by a number of the older “Manchester men”; their arguments are most clearly summed up in the statement of Gen. Roger A. Pryor before the New York Senate Committee.²

“1. Competition between buyers of the raw material enhances the price to the producer.

“2. Competition between sellers of the manufactured article reduces its price to the consumer.

“3. Reduction of price multiplies the number of consumers.

“4. Increase of consumption stimulates production to supply the increased demand.

“5. Increase of production implies an increase in the employment of labour.

“6. Competition between the employers of labour enhances the wages of labour.

“7. Enhancement of the wages of labour involves the material and moral amelioration of the condition of the labouring class.

“8. Competition to sell stimulates to improvements in the quality of the article offered.

“9. Competition to sell urging reduction in the cost of the article, ingenuity is quickened to

¹ *Judge Cooley in Belfort's Magazine*, June, 1888.

² “Trust Combinations,” p. 54.

the invention of expense-saving and labour-saving machinery, and so a stimulus is applied to the progress of the useful arts and sciences.

“In short, competition ministers to the welfare of all classes of the community, and augments the resources and power of the state. But the evil of excessive competition is counteracted and arrested by the principle of self-interest and the operation of the law of supply and demand. On the other hand, by monopoly all these salutary results are arrested and prevented.

“1. There being but a single buyer of the same material, he dictates to the producer what price he pleases.

“2. There being but a single seller of the finished article, he extorts from the consumer an exorbitant price.

“3. The increased price to the consumer diminishes the number of consumers and restricts consumption.

“4. Diminished consumption necessitates diminished production.

“5. Diminished production diminishes the employment of labour.

“6. There being but a single employer of labour, he hires it at his own reduced price.

“7. Monopolizing the market, and assured of a

sale in any event, the seller has no motive for improving the quality of the article, and so it necessarily deteriorates.

“8. Monopolizing the market, and so commanding his own price, and assured of his profit, the manufacturer has no motive to reduce the cost of production by the invention of labour-saving and expense-saving machinery.

“9. Monopolizing the production and the market, and so commanding what profits he pleases, the manufacturer has no motive to increase production, but, on the contrary, is urged by interest to save the expense of, to him, unnecessary production, and so takes factories in the combine for the purpose only of dismantling and stopping them.

“In one word, monopoly despoils and oppresses all classes of the community and debilitates and impoverishes the state.

“But the political effects of the monopoly are even more menacing than are its economic results, — as is illustrated by the impressive warning of the late Judge *David Davis*. Great corporations and consolidated monopolies are fast seizing the avenues of power that lead to the control of the government. It is an open secret that they rule states through procured legislatures and corrupted

courts, that they are strong in Congress, and that they are unscrupulous in the use of means to conquer prejudice and to acquire influence. This condition of things is truly alarming, for unless it be changed quickly and thoroughly, free institutions are doomed to be subverted by an oligarchy resting upon a basis of money and corporate power.”

On the other hand, we find in favour of combinations most of the younger economists of the country who have studied the question thoroughly. Under the influence of historical thought, they feel convinced that the movement is an unavoidable step in an organic development, and that it finds its justification in the tendencies of modern capitalism and its technical auxiliary, — the large undertaking. To such opinions they have been led by the observation of facts. They are fully aware that in the modern mechanism of trusts there are many defects and faults, and these they strongly condemn. But they think that all these drawbacks are not inherent, but rather temporary. According as they are influenced by their professional position or their conception of industrial society, they ask either for *laissez faire*, or for legal recognition and regulation. The former standpoint is taken by Mr. Dodd.¹ He breaks

¹ “Aggregated Capital.”

into a panegyric on the progress which has been derived from the application of large capital and from the centralization of undertakings. He shows how humanity, by means of organization and combination, is led from "thatched huts, without chimneys or glass," from a state where "naked women chanted wild measures, while the men with brandished clubs danced a war dance," to the highest blessings of civilization.¹ He emphatically declares that all state interference is unlawful, unnecessary, and hampering; he tries to defeat the anti-trust wing of the *laissez-faire* party on their own ground, by urging that the play of natural forces and the endeavours of individuals in furtherance of their own and the common interest ought to be left unchecked. President Andrews, Professor Jenks, and Mr. George Gunton, likewise, all approve of the tendencies towards organization, which they believe to be necessary, but they think that control, and protection against the frequent abuses of combinations, are badly needed.² Mr. Gunton warns them not to employ unjust methods, which cannot

¹ "Aggregated Capital," p. 54.

² *Andrews*, "Trusts according to Official Investigation"; *Gunton*, "Economic and Social Aspect of Trusts"; *Idem.*, "The Economic Errors of Trusts"; *Jenks*, "Capitalistic Monopolies."

but result—so he declares—in their annihilation. Their only justification he finds in their constant effort towards the cheapening and improving of products. Professor Jenks admits the great importance of cheaper prices; he finds, however, this to be only one of many justifications for the rise of combinations and urges that the mere fact of an increase in prices is not a sufficient reason for denouncing trusts as an evil *per se*.

The radical socialists, especially the European immigrants with social-democratic tendencies, favour trusts, in so far as they appear to be a progress along the lines of their Marxian creed, and a step in the direction of their future system of production, in accordance with Marx's theories. The large capitals concentrated in a few hands, the masses impoverished,—that will hasten the nationalization of all private property.¹ Against the present controllers of the trust these men of course protest most decidedly.

The author has attempted to learn the opinions of the anarchists in regard to trusts,² but he has

¹ *Vide Powderly*, "Trusts," p. 24.

² Besides the Russian-Polish immigrants there are some native Americans who from theoretical and ideal considerations have been led into the ranks of anarchism. For instance, Mr. Ben. R. Tucker, in his "Instead of a Book, a Fragmentary Explanation of Philosophic Anarchism." I cannot help thinking

not succeeded in understanding them. They declare the capitalistic organization of production to be extremely harmful, as well as all capital and all organization. But what they desire to put in its place they are unable to say.

II. The Politicians.

The great political parties differ in their views about the usefulness of large combinations, according to their general doctrines. The Democrats, who are anti-centralistic, regard them as a great danger to the institutions of the country. They refer to innumerable cases of bribery, of undue influence upon the courts and the legislatures, which are directly ascribable to the trusts. In this point some of their adversaries agree with them; but Mr. W. W. Cook, who is himself a Democrat, believes this to be a danger which will diminish steadily with the progress and de-

that these men, who are not so frenzied as the Italian and French anarchists, have been led into anarchism simply by seeing the enormous corruption of the administration around them. They are mostly to be found in New York and Illinois. It does not seem inexplicable that men who have never seen a good European government, and are too near-sighted to conceive of one, but have for a long time witnessed the failures of attempted domestic reforms, arrive at the conclusion: rather no government than such a one!

This, of course, applies only to a small minority; the majority can hardly be credited with such ideas of an ethical nature.

velopment of legislation. "They are not seeking glory, or honour, or even power for the sake of power; they are seeking property. . . . They are in politics for business only. . . . If government could afford to have nothing to do with their property, they would have nothing to do with government. . . . Government is seeking to rule the corporations, and the corporations are seeking to control the government. . . . This source of political corruption, however, will decrease, as time goes on. The points of controversy between the corporations and government will grow less and less, and, as these disputes diminish in number and intensity, so also will diminish the motives and reasons of the corporations for interfering with government."¹

The Republicans are more in favour of combination from the very nature of their principles. They strive for organization and centralization where the individual has proved insufficient. Wherever combinations employ illegal methods, as the trusts frequently have done, they are willing to restrict them. Otherwise they regard them as a natural outgrowth of modern economic

¹ *Cook*, "Corporation Problem," p. 247.

life.¹ But public prejudice made it appear wise to them not to confess too openly their feelings, and the platforms of 1894 contain, as well on the Republican as on the Democratic side, strong denunciation of trusts.

The Populists detest every sort of capitalistic organization. They deemed it fit, however, in the Texas anti-trust law, whilst forbidding combinations in manufactured goods, to exempt the agricultural products in the hands of the farmers from this restriction. So far as they appreciate the unavoidable character of the movement, they ask for state control or ownership of the monopolies.²

To thoughtful men of whatever party, the rise of a plutocracy, in consequence of the greater ease with which wealth can now be accumulated appears to be a source of weighty objection from the standpoint of economic policy.³ This is one of the largest questions forced to the front by the

¹ Opening address of the Republican Congressional campaign in Boston by *George O. Shattuck*, October 2, 1894.

² *H. D. Lloyd*, "Wealth against Commonwealth," Chapter XXXV.

³ Economists like Professor Sumner do not consider this to be dangerous at all. He expresses his astonishment, in the *Forum*, 1894, at the fact that a man can hold a professorship of economics in a leading German university who points out in his lectures that the increasing inequality in the distribution of wealth may prove a great danger in social politics.

modern economic system, and it covers a much wider field than our problem. Some like Mr. Cook,¹ who are well aware of the danger, regard the *corporate* investment of wealth as likely to avert it. "Corporations are created by the state; as soon as they abuse their privileges, the people can restrict or annihilate them. The plutocrat gives bonds to keep the peace when he acts through the corporation."

Mr. Dodd, also, remarks that the middle classes, and even the workingmen, are enabled to participate in the largest combinations by acquisition of their stock, and he tries to show by statistics that this very often occurs. The figures published by the Sugar, Cotton Oil, and some other companies seem to justify this view to a certain extent.²

During the past few years the subject of trusts and monopolies has begun to play an important rôle in political campaigns. It was one of the factors which, together with the silver question and the tariff, brought the Democrats in 1892 back

¹ Cook, "Corporation Problem," p. 279.

² To ascertain whether the increase of stockholders is not largely due to a more general distribution of the individual securities among a relatively very small group of capitalists who gradually diversify their investments, would require a very minute comparison of the lists of stockholders in the various companies.

into power.¹ There is no doubt that in the near future, the trust question will prove a still more important issue.

In the last two or three campaigns the matter has come to the front, not so much directly, as in its connection with free trade and protection. The free traders have skilfully, and with a good understanding of their effectiveness, directed violent attacks against protection and trusts together.² Their arguments are, that the tariff favours the trusts, that the latter impoverish the people by raising domestic prices, whilst selling more cheaply to foreign countries, that they depress wages, and even dismiss workingmen, and force them to become tramps. Instead of increasing production, as was intended by the tariff, of opening new establishments, and employing more hands, the trusts are alleged to have limited and restricted industrial progress. Some Republicans, such as Senator Sherman, have therefore declared their willingness to abolish the protective tariff in industries controlled by trusts. During the recent tariff debates

¹ *Vide D. A. Wells*, "Trusts and Monopolies."

² See the pamphlets of the New York Reform Club: "The Trusts and the Tariffs"; "Labour, Wages, and Tariff"; "Tramps, Trusts, and Tariff"; "Tariff Trusts plead guilty"; "Labour, Wages, and Trusts"; "Trusts vs. Wages."

of Congress, the House of Representatives voted for free coal, sugar, and iron, chiefly because of the combines therein, but the combinations secured the services of the Senate, and defeated this attempt.¹

The free traders think that, once the duties are abolished and the extra profits thence accruing are removed (profits which in the Sugar Trust recently amounted to \$20,000,000 a year²), trusts will no longer pay, and so will collapse.

III. The Jurists.

Their opinions have already been touched upon in former chapters. Some of them have remained strictly on the basis of the old English law, and,

¹ The proceedings in the Senate, especially those in connection with the sugar schedule, make it worth while to remember *Cook's* words: "They have controlled nominating conventions, carried elections, dictated appointments, tampered with aldermen and municipal authorities, bribed judges, legislators, and other public officers, and made their influence felt in Congress and in every branch of the national government. . . . Politics and bribery are to them a matter of business." — "Corporation Problem," p. 246. But Professor *Jenks* is right when he calls events of that sort political phenomena, which originate not from the character of the trusts, but from the character of prevailing political morality.

² *Vide* "The Sugar Trust" in *Tariff Reform*, August, 1894. Twelve to thirteen millions, according to Mr. Havemeyer's testimony before the Stock Gambling Investigation Committee, p. 324.

according to their views, that maxim is still valid which two hundred and fifty years ago declared the trusts "very dangerous and obnoxious to divers arts and artisans." Formerly this was Cook's standpoint, and to-day it is that of Spelling. But the body of lawyers friendly to combines has of late grown both in number and weight. Prominent among its leaders are to be mentioned the late Professor Dwight, Austin Abbott, and Ch. F. Beach, Jr.¹

Undeniably the decisions of the courts have been influenced by considerations of a merely political nature, — which may be attributed to the practice in many states of electing judges and public attorneys by popular vote and only for a limited period.

IV. Among business men the trust has met with many enemies who felt themselves put at a disadvantage by its existence. They noticed with sorrow how they were being deprived of their business, and exposed pitilessly to the arbitrariness of the magnates. Seeing their bread vanish, they cried out that the whole country was going to starve. Numberless are their complaints, contained in the reports of the various investigations,

¹ *Th. W. Dwight*, "Legality of Trusts"; *Austin Abbott*, "Condition of the Law as to Combinations."

in law-suits, and in newspaper articles, and many of them seem well justified by the methods which the trusts have employed, and by their secret agreements with railroads and individuals.¹ Yet it must be remembered, as Jenks says,² that under a system of the freest competition, many of the businesses would have been destroyed which have come to grief from the action of the trusts.

The public has complained about some sudden rises of price. The Sugar Trust was once accused of having kept back from the market the due supply, in order to advance prices artificially; but it urged as its defence poor crops and the non-arrival of raw materials. The Whiskey combine has doubtlessly displayed a great deal of arbitrariness. Complaints have been made about the deterioration of the trust-made products; for instance, recently against the Standard Oil combine. The latter answers that this is only temporary, and due to the introduction of the new Ohio oil, which is much more impure, and cannot at once be refined to the highest degree. Generally the trusts claim to have raised steadily the standard of quality, whilst it is well known that formerly

¹ *H. D. Lloyd*, "Wealth against Commonwealth," Chapters II., IV., VIII., IX., XII., etc.

² "Capitalistic Monopolies," p. 500.

an exaggerated competition served as an inducement for adulteration. Flour was mixed with the sugar; leaves of a poorer quality, and even of other plants, with good tobacco; fusel oil and water with alcohol; cotton oil with mixed lard products; and lime with starch, etc.

The Whiskey Trust for a good while has put out more than 75% of the total alcohol produced by the country. Eighty-five per cent of this is compounded by the admixture of fusel oil, chemicals, liquors, fruit juices, water, and sugar into all sorts of spirits — whiskey, cordials, and every kind of wine — by specially licensed rectifiers. These compounded goods are sold everywhere under the pretence of being original products; but the Distilling and Cattle Feeding Company denies any connection with these practices, which had been common before its establishment and were legally authorized by “compounders’ and rectifiers’ licenses.”¹

All other attacks the trusts try to meet with explanations, or, if this is not possible, with complete silence. On the other hand, they boast of their technical achievements, the introduction of better and cheaper methods of production, the

¹ Whiskey Trust Investigation of 1892, specially pp. iii-iv, 1-7, 67-74, 82-6, 87-90.

lower prices, improved quality, and safer condition of the undertaking. They declare that they are able to ward off crises, and to guarantee the steadiness of trade. They show how they have furthered the export trade of the country. They demand credit for having at certain periods exported at a rate cheaper than they asked at home; though this has not everywhere been a characteristic of such organizations, since while Standard Oil and Cotton Oil have done a good deal in this line, on the contrary, the establishment of the trust has just stopped such practices in the whiskey trade. But if there should occur a decrease in consumption in the country, they would be enabled by this method to continue production, and thus to avoid a depreciation of their plants and a dismissal of their workingmen.

One of the arguments which, economically, is of great interest, the saving of national wealth by means of regulated and steadily improved production and the advantage which thereby accrues to the community, the author has, to his surprise, found nowhere definitely expressed.¹ Economy

¹ *Vide Losch*, "Nationale Produktion und Nationale Produktionsgliederung." He tries to figure out how much saving could be effected by the application of centralized processes of production on a large scale.

in the use of raw material has not yet become a fundamental maxim in this country, where one meets throughout with an enormous waste of the natural wealth. Jenks makes some suggestion in this direction and acknowledges its fundamental bearings. He shows the enormous cost of advertising *e.g.* in the tobacco industry, of gifts in the grocery business, of travelling salesmen, etc.¹

V. The Workingmen.

The trusts claim to have much improved the condition of their workingmen by reducing hours of work, increasing wages, and securing steady employment. Their opponents allege that the first step of the trust has always been to dismiss many labourers, and then, in consequence of the increased number of the reserve army of workingmen and their competition for work, to extend the hours of labour, or to reduce the wages together with the hours of labour. Of this the Democratic tariff reformers have endeavoured to gather as many instances as possible.² We have, indeed, seen that at the beginning numerous workingmen were discharged; but the information given by the workingmen themselves seems to prove that generally a reduction of the hours of work, seldom

¹ "Capitalistic Monopolies," pp. 488-90.

² *Holt*, "Trusts vs. Wages."

a reduction of wages, and occasionally an increase, have taken place, especially where the workingmen were well organized themselves. This they are in the railroad, petroleum, iron, and sugar industries. In other industries subject to trusts the organization of workmen has as yet gone but a little way.¹ It is pretty clear that the labourers in centralized undertakings have not been worse off than in decentralized ones.

Mr. Gompers, ex-president of the American Federation of Labour, believes that the combinations of producers are necessary, and that their consequences are, at least, not harmful. He realizes the blessings of a more stable condition of things. The grand-masterworkman of the Knights of Labour is not in favour of trusts; he is in favour of the nationalization of the great enterprises like coal-mining, oil-refining, railroads, gas works, etc. The heaping up of vast capitals seems to him to be to the disadvantage of the workingmen. Dodd, on the other hand, thinks that much more can be done in the interests of the workingmen when capital is united in the hands of experienced men. How little, he says,

¹ In the cotton oil industry the majority of the workingmen are negroes; in the cigarette, match, and biscuit factories women are generally employed.

would the prosperity of the workingmen be increased by those fortunes which to-day, in the hands of a Vanderbilt, a Stanford, a Rockefeller, or a Carnegie, have liberally established universities, museums, institutions of art and charity, and which have again and again opened new fields to productive labour.

The men in control of the trusts have over and over declared that they were fully conscious of their duties toward their workingmen. Being almost the only employers within their branches, they were in a position different from that of an individual employer surrounded by competitors. Furthermore, — and that is really the keystone, — nothing would be more suicidal in their fight against public opinion, than to be convicted of an unjust pressure on their workingmen. There is hardly any doubt that in view of the importance to the political parties of the votes of the workingmen, the legislatures would proceed very draconically against the oppressors of labour. The workingmen do not as yet form a political party of their own; they are Democrats, Republicans, or Populists; they are divided on the tariff and most of the other questions; and they have not yet taken a uniform position in regard to the trust question. In the crisis of

1893 the workingmen in industries organized under trusts and the like seem to have suffered less than in unorganized ones, as is shown in the difference between the anthracite and bituminous coal regions.

VI. The Trusts and the Exchanges.

On the exchanges, principally on those of New York, all the financial interests of the large undertakings are concentrated. Naturally the great combinations exercise a considerable influence there. Though in part not officially recognized, they were all admitted by the backstairs of a quotation among the unlisted securities. In the beginning the stock exchanges probably wanted to avoid the odium and the responsibility that might be attached to the official admission of securities which were but too often of a rather dubious character. But they were neither willing nor able to forego the vast profits accruing from transactions with these corporations. Trust papers, soon after their introduction, gained the leadership in the speculative stock market; economically expressed, they became the medium by which demand and supply are usually made to balance one another in the money market.

In regard to the trust question, the members of the exchanges are divided into two parties. To

the one it seems desirable to deal with large units and concerns, where there is an opportunity for a uniform supervision of the entire business. They have more confidence in them; and furthermore the power derived from a connection with such an undertaking is one of the mainstays of their position. These are the magnates of the exchanges. The medium-sized or smaller brokerage and banking concerns, which formerly did business for the smaller undertakings, of course find themselves nearly excluded from the transactions with the giants. Only as second-hand representatives, or surreptitiously, when the leaders do not want to act personally, are they employed. Therefore they are opposed to the new concerns. Moreover, the expectation that the trusts would provide the smaller capitalists with a very remunerative and safe kind of investment, has, so far, not been realized at all.¹

It is a thorn in the side of some great financiers that the trusts are enabled, by their centralized power, to obtain more favourable terms of credit, and that thus their opportunity for individual gain is lessened. They do not like transactions involving great risks, and they see that the risk

¹ *Jenks*, "Capitalistic Monopolies."

is greatly increased in dealings with the trusts. They think the whole stock-exchange, that business life itself, is threatened. They admonish the public to take warning by the disasters in the administration of the cotton oil and cordage combines, where it is clearly shown what may happen in other cases. How terrible have been the panics resulting from the collapse of the Cordage Trust, from the failure of the large railway systems! It was just the uncertainty of the original trust and its secret methods which aroused the opposition of almost all parties. The spirit of uncertainty originating from it, was, in consequence of the well-known nervousness of the exchanges, disseminated throughout the whole business world.

The organizers of some trusts, as we have seen, had no other purpose than the creation of a marketable paper, of an enlarged opportunity for speculation, of which they abundantly availed themselves. Manipulating now on the bull and now on the bear side, their influence was decidedly demoralizing. They invited the disaster which befell the undertakings. Therefore the administrators of many of the bankrupt railway systems and combinations have by many been declared largely responsible for the recent crisis.

The well-managed combinations have passed

through the hard times much better than they were expected to do, principally those which were placed upon a sound financial basis, *i.e.* not burdened with a great funded indebtedness of bonds or mortgages, and not in need of extensive credit. Wherever vast current expenses had to be met, and for that purpose recourse to extensive credits was necessary, — as in the Distilling and Cattle Feeding Company to carry their large stock and pay the accumulated rebates,¹ — there have been moments of great anxiety. Only those giant undertakings whose financial power was independent of outside help have proved reliable in hard times. The endeavour of the combinations is as a rule to give and employ as little credit as possible. Wherever they must avail themselves of it, as in the importation of raw materials, they enter into vast transactions with first-class financiers at New York or London. It is the avowed purpose of the trusts to restrict and regulate

¹ Again the Distilling and Cattle Feeding Company has to pass through a great internal crisis. It is impossible for the outsider to get a clear idea about these endless proceedings in the courts, rumours about bankruptcy, plans of reorganization, action taken by groups of stockholders, etc. Certainly the business methods around this concern cannot do very much to strengthen the arguments of the advocates of centralization or to refute the enemies of gambling on the exchanges.

the credit granted to their customers, and to deal as much as possible on a cash basis.

One of the most striking features of the American stock markets in connection with this problem are the reorganization committees. It is generally known what is their purpose. Besides those who are largely interested in the bankrupt undertaking either for themselves or as representatives, there are many who only try, in one way or the other, to make money out of the job. The numberless reorganization committees within the last years, and the way in which they have settled affairs, have not always been samples of sound business policy. Under the present conditions all depends upon the quality and the standing of the men of whom they are composed, what interests are represented in them, and what intentions work beneath the surface. The exchanges and the public seem rather tired of this system. It has sometimes proved satisfactory, very often, not. It is alleged that companies have occasionally been wrecked in order to give a chance to the spoliation of "reorganizers."

The cotton oil¹ and cordage² reorganization committees needed months to clean out the Augean

¹ Appendix XI.

² Appendix XIV.

stables of the old administrations. Payment of new assessments on the stock, reduction of the fixed liabilities as well as of the original capital, and the issue of new preferred securities, were the principal elements of the final settlement. The administration was changed, and better financial advisers taken into the board of directors. Apparently the majority of the existing combinations had to pass through disasters and reconstructions, though of a less radical character, before they settled on firm ground.¹

¹ It may finally be said that it is not very advisable to refer to the newspapers as representatives of public opinion as to trusts. As far as they are not in the pay of the one or the other, the papers, for the sake of cheap popularity, are almost unanimous in condemning them, without any attempt to do justice to the real situation. They know that nothing is more interesting than attacks upon "the robbers of the people," and for that purpose they collect all kinds of statements with no sort of critical selection. The author has hardly seen one good and reliable newspaper article on trusts

CHAPTER VIII.

CONCLUSIONS.

THE course of the foregoing investigation has shown that our subject has an importance far beyond its temporary and local aspect. Throughout it is linked to all the momentous problems of our time, — indeed to the problem of the whole future organization of our economic life. Large undertaking *versus* small workshop, centralization and regulation *versus* individualism, the distribution of wealth among the masses, and, finally, the relation of all this to the form of government, — such are the questions that are involved.

An attempt at present to prophesy whither the movement will lead can only be guess-work; for not only do opinions differ, but also the facts. In every direction we witness the collapse of fresh attempts. Numberless combinations come into existence and break down, come once more and go again, and innumerable are the reasons upon which all these movements depend. Now great business geniuses succeed in uniting large

branches; then, after they have disappeared, sometimes their creations disappear also; whilst, in other cases, these survive in consequence of their centripetal gravity, grouped around capital and property and sustained by improved technical efficiency.

What changes will the near future bring in the economic life of the country, and in the organization of enterprises? We hear about the newly discovered iron regions of the Mesaba range. A great concern has been established for their exploitation. The iron ore penetrates to the surface, in apparently inexhaustible quantities and the greatest possible purity. No mining is necessary; it simply needs to be dug. Will this lead to a concentration of all iron production?—What discoveries and inventions will the technical development of the next years bring to light? We have just witnessed at Niagara Falls a first attempt to utilize the natural water power for productive purposes on the largest scale, so as to provide the smallest and most distant undertaking with a cheap and effective motive power. Does this indicate a step in the direction of decentralized production?

While, in the manufacturing industries, the victory of production on the large scale seems as-

sured, in the cotton cultivation of the southern states the small producer, the farmer, outstrips the plantation owner. The large undertaking and the hired labour of the plantation yield less than the small farm, where the proprietor, in a limited area, uses nothing but his own physical and intellectual working power. The large planter becomes impoverished, the farmer secures a safe position. The average size of the cotton plantation decreases. The same is true wherever American agriculture proceeds to "intensive" methods. And even in the cotton oil industry we see a relapse into decentralized production, at least as far as the production of raw oil and its by-products is concerned. Outside of the American and the Southern Cotton Oil Companies a number of small, independent mills have been recently established which claim to yield better results than the large companies with their staff of highly paid officials.

No definite judgment about the trust question is possible as yet. It is too recent, and its phases undergo rapid and constant changes. But one thing is certain, the mere form of organization is irrelevant,—possibly effect, surely not cause. Armour or Chicago Gas Companies or Sugar Trust; Carnegie, or the separated Standard Oil

Companies under uniform management, or the American Cotton Oil Company — the form of ownership or control is of a secondary importance economically. The issue proper is, and will be for the near future: shall it be small or large undertakings, or to what extent shall there be compromises between them?

In the United States, public opinion has to decide finally about the meaning and nature of things. It will not be able, in the long run, to lean upon mere theories and maxims; it will be forced by the actual development to undergo changes, to reform and to remodel itself in correspondence with the great laws of historical progress. The old ideas about the infallibility and exclusive desirability of individual and unrestricted activity have begun to fade. The masses still adhere to them, and are supported therein by the newspapers and politicians who prefer popularity to thoroughness and thought, and by the cheap economics of old-fashioned every-day economists, who are not able to perceive that, since the time of their youth, there has been any change or progress in practical life, as well as in the scientific interpretation of it. But whosoever tries to understand the times, at once perceives the different character of modern problems, and the necessity of new standards of judgment.

A good while will probably elapse before the majority of the public has learned to account for what has happened, and to draw its conclusions correspondingly. This process possibly will take longer, and witness more painful experiences, than in countries where an institution exists,* whose purpose it is to gather information impartially and to impart it to the public. The earlier attempts to deal with the problem have been fruitless, because they were dictated by mere theory and by partisan views as to what ought to be, and were not based upon a sufficient and intelligent weighing of facts. No definite settlement can follow before the results of such an examination have entered into the public mind, and every attempt will be thrown away which tries to block the road of economic evolution. Marx is mistaken in saying that the development of society has been caused exclusively by economic forces. But doubtless an attempt to interfere with economic forces for the sake of general principles is not very promising to-day. It must either remain unsuccessful, or turn out disastrous to the nation which passes through it. In the United States, past experiences make it more likely that the former result will be the fate of every arbitrary, restric-

tive legislation. In Europe, it has come to be seen that legal interference can only to a limited extent create an economic situation. It can prepare, accompany, or follow it, and can adapt existing institutions to the exigencies of a novel situation. European legislators, and Congress in this country, to be sure, command very good lawyers; but trade will always be able to pay better ones, who will show how to legally circumvent laws which prove impracticable. And success, if the undertaking attains it, will show afterwards that they were right.

The situation differs too widely from the European for there to be much chance for socialism in the form it takes in America. But the social idea of organization has, during the last few years, spread in many directions. The progress of national development, the increase of the population of the country, the closer and closer contact between men and their interests, — all this increases the need for a new regulation of the relations of individuals. The evident result of the concentration of modern undertakings has been the unavoidable advance into new lines of legislation, such as the attempts of the interstate commerce and anti-trust legislation. Wherever a great public interest of an economic order arises,

public regulation is bound to follow. To-day the centralizing movement in industry has not yet reached its height. The tide is apparently still rising. Therefore an increased need of legislation during the next few years is more than probable.

The existing trusts, as described, are no ideal beings. Like all human creations, they show virtues and vices. They come because they must; their influence is diversified, their effect not yet sufficiently comprehensible. Wherever they appear, they call forth a wild excitement and the natural resistance against everything unusual. Now they prove useful in the hands of an able control, now dangerous and hurtful to their own leaders, as well as to guiltless outsiders. The misconception of their nature, which took them for something altogether exceptional, whilst they were really only one form of a group of phenomena, did not make feasible a just appreciation of them. A better understanding will replace horror and malediction with an attempt to check their abuses, to extend their utility.

The first reasonable propositions have already been made. In a form which corresponds to the character of the people and constitution, the railroad problem has been entrusted to a controlling commission; a similar measure is asked for to-day,

in view of the great capitalistic organization of production. The means by which it is attempted to settle the great social problems are in many respects identical all over the world. For problems are involved which concern the civilization of the world. It is not a mechanical regulation of business life, which would lame the individual and make him subservient to a vast machine, that is sought for; but a display of the rights of the nation, by means of a control in the hands of the community, and in the full light of publicity. No author has conceived better the meaning of the corporation problem for the commonwealth than Henry C. Adams. He asks for *publicity*, publication of the results, and the ways in which they were reached, a control through public bodies, and a responsibility of the individual member of the administration of the corporation for the observance of the necessary restrictions. The leaders of the large companies have power and honour, but are not kept face to face with sufficient public supervision.

The idea of an imposition of higher taxation has already made way even beyond the ranks of the extreme radicals. What seems to the author indispensable for the beginning of an effective solution of the difficulties is, above all, a uniform

commercial code, or at least a uniform corporation law for the whole United States. A uniform practice is indispensable considering that the activity of the great enterprises has extended far over the boundaries of individual states. It can only be a question of time, until, by an amendment of the constitution, the corporation law shall have been brought within the reach of congressional legislation.¹

Meanwhile, the repeal of the present anti-trust legislation seems desirable. Passed as they were merely for political purposes, even those politicians who sought by their passage to soothe popular feeling, do not expect them to be complied with. And the multiplicity of laws of such a character is a great danger to the community. It explains to a large extent the astonishing immorality in politics and in the political thought of large classes. The necessity of circumventing so many laws because they prescribe things simply impossible must in the long run undermine the sense of legality and respect for law.

¹ The American Bar Association has already established a Committee on Uniform State Laws, to which twenty-two states and territories have delegated members. Here the attempt will probably be made to prepare the laws uniformly and to pass them in the individual states, as had been done with the Commercial Code of Germany before the establishment of the Empire.

Whatever experiences the next few years may bring, the entire character of the movement which this investigation has tried to follow makes it evident that the American people will by and by realize the meaning of the facts, proceed in the same direction, and adapt its actions to given conditions. Wise economic policy does not take a second step before the first. As long as one does not feel sure of a complete victory of the large undertakings, one must avoid making more concessions than are really called for by the situation. A progress is manifest, but also increased dangers; an increase of the large undertakings, and the augmentation of the masses dependent on large capital; the growth of the colossus, and an increase of that tendency towards self-destruction which is innate in all things. It is satisfactory to witness the genuine impulse in the American people to push on towards further self-development, and to secure progress by an evolutionary transition into new forms of society, upon the basis of present conditions, which cannot at once be radically changed. Ready as it is to wait, the people may be able meantime to equip itself with the administrative machinery of a reformed civil service; for this will probably have to play a very important part in the time to come.

Without it, great reforms can hardly be made effective.

It is my belief that the future belongs neither to the prophets of individualism, nor to the ideals of the social-democrats. Its next phases belong to social reorganization. And the probability is that this will show a corporate character, and will be sustained and controlled by public supervision.

APPENDIX I.

THE STANDARD OIL TRUST AGREEMENT.

THIS agreement, made and entered upon this second day of January, A.D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto, Witnesseth :

I. It is intended that the parties to this agreement shall embrace three classes, to wit :

1st. All the Stockholders and members of the following Corporations and Limited Partnerships, to wit :

Acme Oil Company (New York), Acme Oil Company (Pennsylvania), Atlantic Refining Company, of Phila. ; Bush & Co. Limited, Camden Consolidated Oil Company, Elizabethport Acid Works, Imperial Refining Company, Limited, Chas. Pratt & Co., Paine, Ablett & Co., Limited, Standard Oil Company (Ohio), Standard Oil Co. (Pittsburg), Smith's Ferry Oil Trans. Co., Solar Oil Company Limited, Sone & Fleming Manufacturing Co. Limited.

Also all the Stockholders and members of such other Corporations and Limited Partnerships as may hereafter join in this agreement at the request of the Trustees herein provided for.

powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or if necessary to comply with the law, the powers aforesaid may be restricted and reduced.

(3) At any time hereafter, when it may seem advisable to the Trustees herein provided for, similar Corporations may be formed in other States and Territories.

(4) Each of said Corporations shall be known as the Standard Oil Company of — (and here shall follow the name of the State or Territory by virtue of the laws of which said Corporation is organized).

(5) The Capital Stock of each of said Corporations shall be fixed at such an amount as may seem necessary and advisable to the parties organizing the same, in view of the purpose to be accomplished.

(6) The shares of stock of each of said Corporations shall be issued only for money, property or assets equal at a fair valuation to the par value of the stock delivered therefor.

(7) All of the property, real and personal, assets and business of each and all of the Corporations and Limited Partnerships mentioned or embraced in class first shall be transferred to and vested in the said several Standard Oil Companies. All of the property, assets and business in or of each particular State shall be transferred to and vested in the Standard Oil Company of that particular State, and in order to accomplish such purpose, the Directors and Managers of each and all of the several Corporations and Limited Partnerships mentioned in class first, are hereby authorized and directed by the Stockholders and members

thereof (all of them being parties to this agreement) to sell, assign, transfer, convey and make over, for the consideration hereinafter mentioned, to the Standard Oil Company or Companies of the proper State or States, as soon as said Corporations are organized and ready to receive the same, all the property, real and personal, assets and business of said Corporations and Limited Partnerships. Correct schedules of such property assets, and business shall accompany each transfer.

(8) The individuals embraced in class second of this agreement do each for himself agree, for the consideration hereinafter mentioned, to sell, assign, transfer, convey and set over, all the property, real and personal, assets and business mentioned and embraced in schedules accompanying such sale and transfer, to the Standard Oil Company or Companies, of the proper State or States, as soon as the said corporations are organized and ready to receive the same.

(9) The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by them in the Corporations or Limited Partnerships herein named, to the Trustees herein provided for, for the consideration and upon the terms hereinafter set forth. It is understood and agreed that the said Trustees and their successors may hereafter take the assignment of stocks in the same or similar Companies upon the terms herein provided, and that whenever and as often as all the stocks of any Corporation and Limited Partnership are vested in said Trustees, the proper steps may then be taken

to have all the money, property, real and personal, of such Corporation or Partnership assigned and conveyed to the Standard Oil Company of the proper State on the terms and in the mode herein set forth, in which event the Trustees shall receive stocks of the Standard Oil Company equal to the value of the money, property and business assigned, to be held in place of the stocks of the Company or Companies assigning such property.

(10) The consideration for the transfer and conveyance of the money, property and business aforesaid to each or any of the Standard Oil Companies shall be stock of the respective Standard Oil Company to which said transfer or conveyance is made, equal at par value to the appraised value of the money, property and business so transferred. Said stock shall be delivered to the Trustees hereinafter provided for, and their successors, and no stock of any of said Companies shall ever be issued except for money, property or business equal at least to the par value of the stock so issued, nor shall any stock be issued by any of said companies for any purpose, except to the Trustees herein provided for, to be held subject to the trusts hereinafter specified. It is understood, however, that this provision is not intended to restrict the purchase, sale and exchange of property of said Standard Oil Companies as fully as they may be authorized to do by their respective charters, provided only that no stock be issued therefor except to said Trustees.

(11) The consideration for any stock delivered to said Trustees as above provided for, as well as for

stocks delivered to said Trustees by persons mentioned or included in class third of this agreement, shall be the delivery by said Trustees, to the persons entitled thereto, of Trust Certificates hereinafter provided for, equal at par value to the par value of the stocks of the said Standard Oil Companies so received by said Trustees, and equal to the appraised value of the stocks of other Companies or Partnerships delivered to said Trustees. [The said appraised value shall be determined in a manner agreed upon by the parties in interest and said Trustees.] It is understood and agreed, however, that the said Trustees may, with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other Companies engaged in business similar or collateral to the business of said Standard Oil Companies on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said Trust Certificates, and may sell, assign, transfer and pledge such bonds and stocks whenever they may deem it advantageous to said Trust so to do.

III. The trusts upon which said stocks shall be held, and the number, powers and duties of said Trustees, shall be as follows:

- (1) The number of Trustees shall be nine.
- (2) J. D. Rockefeller, O. H. Payne and Wm. Rockefeller are hereby appointed Trustees, to hold their office until the first Wednesday of April, A.D. 1885.
- (3) J. A. Bostwick, H. M. Flagler and W. G. War-

den are hereby appointed Trustees, to hold their office until the first Wednesday of April, A.D. 1884.

(4) Chas. Pratt, Benj. Brewster and Jno. D. Archbold are hereby appointed Trustees, to hold their office until the first Wednesday of April, A.D. 1883.

(5) Elections for Trustees to succeed those herein appointed shall be held annually, at which election a sufficient number of Trustees shall be elected to fill all vacancies occurring either from expiration of the term of office of Trustee or from any other cause. All Trustees shall be elected to hold their office for three years, except those elected to fill a vacancy arising from any cause, except expiration of term, who shall be elected for the balance of the term of the Trustee whose place they are elected to fill. Every Trustee shall hold his office until his successor is elected.

(6) Trustees shall be elected by ballot by the owners of Trust Certificates or their proxies. At all meetings the owners of Trust Certificates who may be registered as such on the books of the Trustees may vote in person or by proxy, and shall have one vote for each and every share of Trust Certificates standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at such election shall elect.

(7) The annual meeting of the owners of said Trust Certificates for the election of Trustees, and for other business, shall be held at the office of the Trustees, in

the City of New York, on the first Wednesday of April of each year, unless the place of meeting be changed by the Trustees, and said meeting may be adjourned from day to day until its business is completed. Special meetings of the owners of said Trust Certificates may be called by the majority of the Trustees at such times and places as they may appoint. It shall also be the duty of the Trustees to call a special meeting of holders of Trust Certificates whenever requested to do so by a petition signed by the holders of ten per cent. in value of such certificates. The business of such special meetings shall be confined to the object specified in the notice given therefor. Notice of the time and place of all meetings of the owners of Trust Certificates shall be given, by personal notice as far as possible, and by public notice in one of the principal newspapers in each State in which a Standard Oil Company exists, at least ten days before such meeting. At any meeting, a majority in the value of the holders of Trust Certificates represented consenting thereto, by-laws may be made, amended or repealed relative to the mode of election of Trustees and other business of the holders of Trust Certificates, provided, however, that said by-laws shall be in conformity with this agreement. By-laws may also be made, amended and repealed at any meeting, by and with the consent of a majority in value of the holders of Trust Certificates, which alter this agreement relative to the number, powers and duties of the Trustees and to other matters tending to the more efficient accomplishment of the objects for which the

Trust is created, provided only that the essential intents and purposes of this agreement be not thereby changed.

(8) Whenever a vacancy occurs in the Board of Trustees more than sixty days prior to the annual meeting for the election of Trustees, it shall be the duty of the remaining Trustees to call a meeting of the owners of the Standard Oil Trust Certificates for the purpose of electing a Trustee or Trustees to fill the vacancy or vacancies. If any vacancy occurs in the Board of Trustees, from any cause, within sixty days of the date of the annual meeting for the election of Trustees, the vacancy may be filled by a majority of the remaining Trustees, or, at their option, may remain vacant until the annual election.

(9) If, for any reason, at any time, a Trustee or Trustees shall be appointed by any Court to fill any vacancy or vacancies in said Board of Trustees, the Trustee or Trustees so appointed shall hold his or the respective office or offices only until a successor or successors shall be elected in the manner above provided for.

(10) Whenever any change shall occur in the Board of Trustees, the legal title to the stock and other property held in trust shall pass to and vest in the successors of said Trustees without any formal transfer thereof. But if at any time such formal transfer shall be deemed necessary or advisable, it shall be the duty of the Board of Trustees to obtain the same, and it shall be the duty of any retiring Trustee or the administrator or executor of any deceased Trustee to make said transfer.

(11) The Trustees shall prepare Certificates which shall show the interest of each beneficiary in said trust, and deliver them to the persons properly entitled thereto. They shall be divided into shares of the par value of one hundred dollars each, and shall be known as Standard Oil Trust Certificates, and shall be issued subject to all the terms and conditions of this agreement. The Trustees shall have power to agree upon and direct the form and contents of said Certificates, and the mode in which they shall be signed, attested and transferred. The Certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement, and by the by-laws herein provided for.

(12) No Certificates shall be issued except for stocks and bonds held in trust, as herein provided for, and the par value of Certificates issued by said Trustees shall be equal to the par value of the stocks of said Standard Oil Companies, and the appraised value of other bonds and stocks held in trust. The various bonds, stocks and moneys held under said Trust shall be held for all parties in interest jointly, and the Trust Certificates so issued shall be the evidence of the interest held by the several parties in this Trust. No duplicate Certificates shall be issued by the Trustees, except upon surrender of the original Certificate or Certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

(13) The stocks of the various Standard Oil Companies held in trust by said Trustees shall not be sold,

assigned or transferred by said Trustees, or by the beneficiaries, or by both combined, so long as the Trust endures. The stocks and bonds of other Corporations, held by said Trustees, may be by them exchanged or sold and the proceeds thereof distributed *pro rata* to the holders of Trust Certificates, or said proceeds may be held and reinvested by said Trustees for the purposes and uses of the Trust, provided, however, that said Trustees may from time to time assign such shares of stock of said Standard Oil Companies as may be necessary to qualify any person or persons chosen or to be chosen as Directors and Officers of any of said Standard Oil Companies.

(14) It shall be the duty of said Trustees to receive and safely to keep all interest and dividends declared and paid upon any of the said bonds, stocks and moneys held by them in trust, and to distribute all moneys received from such sources or from sales of trust property or otherwise by declaring and paying dividends upon the Standard Trust Certificates as funds accumulate, which in their judgment are not needed for the uses and expenses of said Trust. The Trustees shall, however, keep separate accounts and receipts from interest and dividends, and of receipts from sales or transfers of trust property, and in making any distribution of trust funds, in which moneys derived from sales or transfers shall be included, shall render the holders of Trust Certificates a statement showing what amount of the fund distributed has been derived from such sales or transfers. The said Trustees may be also authorized and empowered by a vote of a

majority in value of holders of Trust Certificates, whenever stocks or bonds have accumulated in their hands from money purchases thereof, or the stocks or bonds held by them have increased in value, or stock dividends shall have been declared by any of the Companies whose stocks are held by said Trustees, or whenever from any such cause it is deemed advisable so to do, to increase the amount of Trust Certificates to the extent of such increase or accumulation of values and to divide the same among the persons then owning Trust Certificates *pro rata*.

(15) It shall be the duty of said Trustees to exercise general supervision over the affairs of said several Standard Oil Companies, and as far as practicable over the other Companies or Partnerships, any portion of whose stock is held in said Trust. It shall be their duty as Stockholders of said Companies to elect as Directors and Officers thereof faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavour to have the affairs of said Companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said Trust Certificates.

(16) All the powers of the Trustees may be exercised by a majority of their number.

They may appoint from their own number an Executive and other Committees. A majority of each Committee shall exercise all the powers which the Trustees may confer upon such Committee.

(17) The Trustees may employ and pay all such

Agents and Attorneys as they may deem necessary in the management of said trust.

(18) Each Trustee shall be entitled to a salary for his services not exceeding twenty-five thousand dollars per annum, except the President of the Board, who may be voted a salary not exceeding thirty thousand dollars per annum, which salaries shall be fixed by said Board of Trustees. All salaries and expenses connected with or growing out of the Trust shall be paid by the Trustees from the trust fund.

(19) The Board of Trustees shall have its principal office in the City of New York, unless changed by a vote of the Trustees, at which office, or in some place of safe deposit in said City, the bonds and stocks shall be kept. The Trustees shall have power to adopt rules and regulations pertaining to the meetings of the Board, the election of Officers and the management of the Trust.

(20) The Trustees shall render at each annual meeting a statement of the affairs of the Trust. If a termination of the Trust be agreed upon, as hereinafter provided, or within a reasonable time prior to its termination by lapse of time, the Trustees shall furnish to the holders of the Trust Certificates a true and perfect inventory and appraisement of all stocks and other property held in trust, and a statement of the financial affairs of the various Companies whose stocks are held in trust.

(21) The Trust shall continue during the lives of the survivors and survivor of the Trustees in this agreement named, and for twenty-one years thereafter,

provided, however, that if at any time after the expiration of ten years two-thirds of all the holders in value, or if after the expiration of one year ninety per cent. of all the holders in value of Trust Certificates shall, at a meeting of holders of Trust Certificates called for that purpose, vote to terminate this Trust at some time to be by them then and there fixed. the said Trust shall terminate at the date so fixed. If the holders of Trust Certificates shall vote to terminate the Trust as aforesaid, they may, at the same meeting, or at a subsequent meeting called for that purpose, decide by a vote of two-thirds in value of their number the mode in which the affairs of the Trust shall be wound up, and whether the trust property shall be distributed or whether part, and if so, what part shall be divided and what part sold, and whether such sales shall be public or private. The Trustees, who shall continue to hold their offices for that purpose, shall make the distribution in the mode directed, or, if no mode be agreed upon, by two-thirds in value as aforesaid, the Trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property, or values, or of both, shall be just and equitable, and such as to insure to each owner of a Trust Certificate his due proportion of the trust property or the value thereof.

(22) If the Trust shall be terminated by the expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

(23) This Agreement, together with the registry of

Certificates, books of accounts, and other books and papers connected with the business of said Trust, shall be safely kept at the principal office of said Trustees.

[SIGNATURES.]

SUPPLEMENTAL AGREEMENT.

Whereas in and by an agreement dated January 2nd, 1882, and known as the Standard Trust Agreement, the parties thereto did mutually covenant and agree, *inter alia*, as follows, to wit: That Corporations to be known as Standard Oil Companies of various States should be formed, and that all of the property, real and personal, assets and business of each and all of the Corporations and Limited Partnerships mentioned or embraced in class first of said Agreement should be transferred and vested in the said several Standard Oil Companies; that all of the property, assets and business in or of each particular State should be transferred to and vested in the Standard Oil Company of that particular State, and the Directors and Managers of each and all of the several Corporations and associations mentioned in class first were authorized and directed to sell, assign, transfer, and convey and make over to the Standard Oil Company or Companies of the proper State or States, as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets and business of said Corporations or Associations; and *whereas* it is not deemed expedient that all of the Companies and Associations mentioned should transfer their property

to the said Standard Oil Companies at the present time, and in case of some Companies and Associations it may never be deemed expedient that the said transfer should be made, and said Companies and Associations go out of existence; and *whereas* it is deemed advisable that a discretionary power should be vested in the Trustees as to when such transfer or transfers should take place, if *at all*. *Now*, it is hereby mutually agreed between the parties to the said Trust Agreement, and as supplementary thereto, that the Trustees named in the said Agreement and their successors shall have the power and authority to decide what Companies shall convey their property as in said Agreement contemplated, and when the said sales and transfers shall take place, if at all, and until said Trustees shall so decide, each of said Companies shall remain in existence and retain its property and business, and the Trustees shall hold the stocks thereof in trust, as in said Agreement provided. In the exercise of said discretion the Trustees shall act by a majority of their number as provided in said Trust Agreement. All portions of said Trust Agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental Agreement.

In witness whereof, the said parties have subscribed this Agreement, this 4th day of January, 1882.

[Duly signed by the same parties.]

APPENDIX II.

BY-LAWS OF THE TRUSTEES OF THE
STANDARD OIL TRUST.

ARTICLE I.

ELECTION OF TRUSTEES.

Trustees shall be elected by ballot by the owners of Trust Certificates or their proxies.

Elections of Trustees to succeed those already appointed shall be held annually, at which election a sufficient number of Trustees shall be elected to fill all vacancies occurring either from expiration of the term of office of any Trustee or from any other cause.

All Trustees shall be elected to hold their office for three years, except those elected to fill a vacancy arising from any cause except expiration of term, who shall be elected for the balance of the term of the Trustee whose place they are elected to fill. Every Trustee shall hold his office until his successor is elected.

The annual meeting of the holders of Trust Certificates and the election of Trustees shall be held at the office of the Trustees in the City of New York on the first Wednesday in April of each year, unless otherwise ordered by the Trustees, and the said meet-

ing may be adjourned from day to day until its business is completed.

Special meetings of the holders of Trust Certificates may be called by a majority of all the Trustees at such time and place as they may appoint.

Special meetings shall also be called by a majority of the Trustees whenever requested so to do, by a request signed by the holders of ten per cent. in value of Trust Certificates.

The business of such special meetings shall be confined to the objects specified in the notice given therefor.

Notice of the time and place of all meetings of owners of Trust Certificates shall be given by personal notice as far as possible, and shall also be advertised in one of the principal newspapers, published in each State in which a Standard Oil Company exists, at least ten days previous to the time of meeting.

At all meetings the owners of Trust Certificates, who may be registered as such on the books of the Trustees, may vote in person or by proxy, and shall have one vote for each and every share of Trust Certificates standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election.

The Transfer Books may be closed for thirty days immediately preceding the annual election.

A majority of the shares represented at such election shall elect.

At all elections of Trustees the Board of Trustees

shall be the judges of the qualification of voters; shall prescribe rules and regulations for voting; appoint Tellers to direct and count the votes and cause the result of the election to be entered in full on their minutes.

The Trustees may commit their powers in this matter to a Committee of their own members.

The election shall be held on the day designated for that purpose, unless prevented by accident, in which case the Trustees shall designate another day for the election.

ARTICLE II.

BOARD OF TRUSTEES.

The Board of Trustees at their first meeting after their annual election shall elect by ballot from their own number a President, Vice-President, Treasurer and Secretary, and such officers shall hold their offices during the pleasure of the Board. Whenever a vacancy occurs in the Board of Trustees more than sixty days prior to the annual meeting for the election of Trustees, it shall be the duty of the remaining Trustees to call a meeting of the holders of the Trust Certificates for the purpose of electing a Trustee or Trustees to fill the vacancy or vacancies.

If any vacancy occurs in the Board of Trustees from any cause within sixty days of the date of the annual meeting for the election of Trustees, the vacancy may be filled by a majority of the remaining Trustees, or at their option may remain vacant until the annual election.

The Board may also appoint an Assistant Treasurer, Assistant Secretary, Auditor and such additional officers, agents, executive and other committees as it may deem advisable and remove the same at its pleasure.

In the absence of the President and Vice-President, the Board may appoint a Chairman *pro tempore*; during a prolonged absence or inability of the President or any other officer, the Board may appoint substitutes *pro tempore*, and on the death or resignation of the President or other officers, it shall fill the vacancy.

A majority of the Trustees shall be required to constitute a quorum for the transaction of business, but less than a quorum may adjourn from time to time and from place to place.

Regular meetings of the Board of Trustees shall be held on the first Wednesday of January, April, July and October of each year, unless the same shall be a legal holiday, in which event the meeting shall be held on the day following.

ARTICLE III.

THE PRESIDENT.

The President shall preside at all meetings of the owners of Trust Certificates or Trustees if present; appoint or remove all officers and agents other than those elected by the owners of Trust Certificates or the Board of Trustees; call meetings of the Board of Trustees, when requested by a majority of the Trustees in writing; sign all certificates of shares, and have a general care, supervision and direction of the affairs

of the Trust. He shall have power to call meetings of the Board from time to time when he shall think proper; to sign certificates of shares in blank and leave them with the Treasurer in sufficient numbers to provide for the prompt transfer of shares.

In the event of the death, absence or inability of the President to perform the duties imposed upon him by these by-laws and the orders of the Board of Trustees, the Vice-President may exercise his powers and perform his duties, subject to the control of the Board of Trustees or Executive Committee.

ARTICLE IV.

THE SECRETARY.

It shall be the duty of the Secretary to notify the members thereof of all meetings of the Board of Trustees, when required by the President or by a majority of the Trustees in writing; to attend such meetings when practicable; keep true records of the proceedings; attest such records after meeting, by his signature; safely keep all documents and papers which shall come into his possession and truly keep the books and accounts of the Trust appertaining to his office, so as at all times to show the real condition of the Trust affairs, and shall present statements thereof when required by the Board. He shall keep books in which transfers of shares may be made by any owner of Trust Certificates or his Attorney duly constituted in writing; also a share Ledger and Certificate Book; prepare new certificates upon the transfer of shares and surrender of the old certificates, and keep a register of all the certificates issued.

On the day of the annual election the Secretary shall furnish for the use of the inspectors an alphabetical list of the names of all the owners of Trust Certificates who shall have been registered as such for thirty days prior to said election. The Assistant Secretary shall perform such of the duties of the Secretary as may be required of him by the Board of Trustees.

ARTICLE V.

TREASURER.

It shall be the duty of the Treasurer to keep and account for all moneys, funds, and property of the Trust which shall come into his hands, and he shall render such accounts and present such statements to the Trustees and Executive Committee as may be required of him.

Disbursements shall only be made by him under resolutions of the Board of Trustees, or by the Executive Committee, or upon vouchers approved by the proper officers.

He shall sign certificates of shares when presented to him after they shall have been signed by the President.

The Assistant Treasurer shall perform such of the duties of Treasurer as may be required of him by the Board of Trustees.

ARTICLE VI.

EXECUTIVE COMMITTEE.

The Executive Committee shall possess and exercise by a majority of all its members all the powers and

duties of the Board of Trustees, but only when the Board shall not be in session. They shall keep a record of all their proceedings, which shall be certified by the Secretary under his hand, which record shall be read at the next ensuing meeting of the Board of Trustees. The Secretary shall call meetings of this Committee on the requisition of the President of the Board or of any of its members.

ARTICLE VII.

The fiscal year of this Trust shall be the calendar year.

ARTICLE VIII.

These by-laws may be altered, amended or repealed at any meeting of the owners of Trust Certificates by a vote of majority in value of all the owners represented, provided, however, that all by-laws relative to formal meetings and formal duties of the Trustees and Officers may be altered by the Board of Trustees.

APPENDIX III.

STATUT DER DEUTSCH-AMERIKANISCHEN
PETROLEUM-GESELLSCHAFT.

(*Gedruckt* 1891.)

I. ALLGEMEINE BESTIMMUNGEN.

§ 1.

Die **Deutsch-Amerikanische Petroleum-Gesellschaft** bezweckt den Betrieb von Petroleumhandel.

Zum Geschäftsbetrieb der Gesellschaft gehören insbesondere:

1. der Erwerb, die Bebauung oder sonstige Einrichtung von Grundstücken für die Zwecke der Gesellschaft im In- und Auslande,

2. der Erwerb von Schiffen, Eisenbahnwaggons, und sonstiger Betriebsmittel für die Zwecke der Gesellschaft,

3. die Be- und Verfrachtung der der Gesellschaft gehörigen Schiffe, die Charterung und Vercharterung von fremden Schiffen,

4. der Kauf und Verkauf von rohem Petroleum und sämtlichen daraus zu gewinnenden Produkten, insbesondere von raffiniertem Petroleum, sowie der Handel mit Waren ähnlicher Art,

5. der Betrieb von Kommissionsgeschäften jeder Art,

6. der Betrieb von Geschäften, sowie die Beteiligung an Unternehmungen, welche nach dem Ermessen von Vorstand und Aufsichtsrat mit dem Unternehmen in Verbindung stehen oder den Zwecken desselben förderlich sind.

§ 2.

Die Aktiengesellschaft hat ihren Sitz in Bremen. Die Errichtung von Zweigniederlassungen ist zulässig. Die Dauer des Unternehmens ist unbestimmt.

§ 3.

Laut Vertrag vom 22. Februar 1890 erwirbt die Aktiengesellschaft von den Herren Wilhelm A. Riedemann in Geestemünde, Franz Ernst Schütte und Carl Schütte in Bremen die in den, dem Vertrage angefügten Spezifikationen aufgeführten Aktiven zu dem Gesamtpreise von 5,000,000 Mark, der durch Barzahlung in Höhe von 3,000,000 Mark und durch Übergabe von Aktien der Gesellschaft im Nominalbetrage von 2,000,000 Mark, welche für voll eingezahlt gelten, beglichen wird.

§ .

Alle namens der Gesellschaft zu erlassenden Bekanntmachungen erfolgen durch einmalige Veröffentlichung im Deutschen Reichsanzeiger.

II. GRUNDKAPITAL, AKTIEN.**§ 5.**

Das Grundkapital der Gesellschaft beträgt 9,000,000 Mark; eingeteilt in 9000 auf den Namen lautende Aktien à 1000 Mark.

Die Aktien werden mit genauer Bezeichnung des Inhabers nach Namen, Wohnort und Stand in das Aktienbuch der Gesellschaft eingetragen. Im Verhältnis zu der Gesellschaft sind nur diejenigen Inhaber von Aktien zur Ausübung ihrer Rechte legitimiert, welche im Aktienbuche verzeichnet sind. Ist eine auf den Namen lautende Aktie auf einen anderen übertragen, so ist dies unter Vorlegung der Aktie und des Nachweises des Überganges bei der Gesellschaft anzumelden und im Aktienbuche einzutragen.

Vor dem 31. März 1905 ist eine Übertragung von Aktien der Gesellschaft gegenüber nur rechtswirksam, wenn die Übertragung von dem Vorstände und dem Aufsichtsrate genehmigt ist.

§ 6.

Soweit die Aktien nicht laut § 3 dieses Statutes den Herren Wilhelm A. Riedemann, Franz Ernst Schütte und Carl Schütte als Gegenleistung für übertragene Werte übergeben sind, sind die Aktien von den Gründern unter Einzahlung von 25 % des Nennwertes übernommen. Die Einzahlung des Restbetrages erfolgt an den vom Vorstände festzusetzenden Terminen.

§ 7.

Die Aktien werden unter fortlaufenden Nummern ausgefertigt und mit der faksimilierten oder eigenhändigen Unterschrift eines Mitgliedes des Vorstandes und eines Mitgliedes des Aufsichtsrates versehen.

§ 8.

Die Auszahlung der Dividende erfolgt gegen Auslieferung des Dividendenscheines. Vorstand und Aufsichtsrat sind jedoch berechtigt, falls der Verlust eines Dividendenscheines ihnen glaubhaft gemacht wird, die Auszahlung an denjenigen vorzunehmen, auf dessen Namen die Aktie in das Aktienbuch der Gesellschaft eingetragen ist; mit dieser Auszahlung erlöschen alle Rechte aus dem Dividendenschein.

Der Vorstand ist berechtigt, neue Serien von Dividendenscheinen an denjenigen auszugeben, auf dessen Namen die Aktie eingetragen ist, wenn der zur Erhebung bestimmte Talon nicht bis zum Fälligkeitstermine des zweiten der Dividendenscheine der neuen Serie eingereicht worden ist; mit dieser Ausgabe verliert der nicht eingereichte Talon seine Gültigkeit.

Ein öffentliches Angebot und eine Kraftloserklärung von Dividendenscheinen und Talons, abgesondert von den Aktien, zu denen sie gehören, findet nicht statt.

III. ORGANE DER GESELLSCHAFT.

§ 9.

Organe der Gesellschaft sind:

- a. der Vorstand,
- b. der Aufsichtsrat,
- c. die Generalversammlung.

a. DER VORSTAND.

§ 10.

Den ersten Vorstand bilden die Herren Wilhelm A. Riedemann, Franz Ernst Schutte und Carl Schütte. Die Generalversammlung ist berechtigt, eine Erhöhung oder Verringerung der Zahl der Vorstandsmitglieder zu beschliessen.

Die Neuwahl von Vorstandsmitgliedern erfolgt auf Vorschlag des Vorstandes durch die Generalversammlung; sind keine Vorstandsmitglieder im Amte, so erfolgt die Neuwahl auf Vorschlag des Aufsichtsrates.

Eine Vertretung von Vorstandsmitgliedern durch Mitglieder des Aufsichtsrates findet nicht statt.

Die Bestellung eines Vorstandsmitgliedes ist nur durch Beschluss der Generalversammlung widerruflich.

§ 11.

Willenserklärungen des Vorstandes bedürfen, um für die Gesellschaft verbindlich zu sein, der Mitwirkung zweier Vorstandsmitglieder, wenn es sich handelt um Ankauf, Verpfändung oder Veräußerung von Grundstücken und Schiffen, um Verträge, welche die Gesellschaft auf länger als ein Jahr verpflichten, um Aufnahme von Anleihen, um Errichtung oder Auflösung von Zweigniederlassungen, um Beteiligung an dritten Unternehmungen oder den Erwerb solcher, um Bestellungen von Prokuristen und Generalbevollmächtigten; in allen anderen Fällen sind Willenserklärungen des Vorstandes für die Gesellschaft verbind-

lich, wenn dieselben von einem Vorstandsmitgliede abgegeben werden.

§ 12.

Der Vorstand bedarf der Genehmigung des Aufsichtsrates :

1. zum Erwerb, zur Verpfändung und Veräusserung von Grundstücken und Schiffen,

2. zu Neubauten und baulichen und maschinellen Änderungen, sofern die Kosten einen Betrag von 100,000 Mark übersteigen,

3. zur Aufnahme von Anleihen,

4. zur Errichtung oder Auflösung von Zweigniederlassungen,

5. zur Bestellung eines Prokuristen,

6. zur Beteiligung an dritten Unternehmen.

Der Vorstand soll das Recht haben, mit Genehmigung des Aufsichtsrats Genussscheine auszugeben, welche zu einem Anteil an dem Gewinn und dem Vermögen der Gesellschaft in Gemässheit näherer Bestimmungen berechtigen sollen, welche von dem Vorstand und dem Aufsichtsrat festzustellen sind.

b. DER AUFSICHTSRAT.

§ 13.

Der Aufsichtsrat besteht nach näherer Bestimmung der Generalversammlung aus drei bis sieben Mitgliedern, welche von der Generalversammlung in geheimer Abstimmung mit absoluter Majorität gewählt werden. Bei Stimmgleichheit entscheidet das Los. Eine

Wahl durch Acclamation ist zulässig, wenn in der Generalversammlung kein Widerspruch dagegen erhoben wird.

§ 14.

Der zuerst gewählte Aufsichtsrat verbleibt bis zum Ablaufe des zweiten, am 31. Dezember 1891 endigenden Geschäftsjahres im Amte. Für die Folgezeit werden die Mitglieder alljährlich gewählt, und endet ihre Amtsdauer in der nächsten ordentlichen Generalversammlung. Die Wiederwahl ausgeschiedener Mitglieder ist statthaft.

Scheidet ein Mitglied während seiner Amtsdauer aus, so hat innerhalb drei Monaten eine Neuwahl zu erfolgen, wenn ohne dieselbe der Aufsichtsrat aus weniger als drei Mitgliedern bestehen würde.

§ 15.

Der Aufsichtsrat wählt alljährlich aus seiner Mitte mit relativer Majorität einen Vorsitzenden und einen stellvertretenden Vorsitzenden. Bei Stimmgleichheit entscheidet das Los.

§ 16.

Die Sitzungen des Aufsichtsrates finden in Bremen oder in New-York statt. Zu den Sitzungen werden die Mitglieder vom Vorsitzenden, bezw. dessen Stellvertreter schriftlich berufen, so oft es diesem erforderlich erscheint. Er ist zu der sofortigen Berufung verpflichtet, wenn die Mehrzahl der Mitglieder oder der Vorstand schriftlich die Berufung beantragen.

Der Vorsitzende ist berechtigt, Beschlussfassungen des Aufsichtsrats auf schriftlichem Wege herbeizuführen, falls nicht von seiten eines Mitgliedes des Aufsichtsrates Widerspruch dagegen erhoben wird.

Zur Gültigkeit eines auf diese Weise herbeigeführten Beschlusses ist Zustimmung der Mehrheit der Mitglieder des Aufsichtsrates erforderlich.

§ 17.

Der Aufsichtsrat ist beschlussfähig, falls wenigstens drei seiner Mitglieder anwesend sind. Den Vorsitz in den Versammlungen des Aufsichtsrats führt der Vorsitzende oder dessen Stellvertreter, oder, falls beide am Erscheinen verhindert sind, ein von einem derselben beauftragtes Mitglied des Aufsichtsrats.

Die Beschlüsse werden mit absoluter Stimmenmehrheit gefasst, bei Stimmengleichheit entscheidet die Stimme des Vorsitzenden der betreffenden Versammlung.

Die gefassten Beschlüsse sind in ein Protokollbuch einzutragen und von dem Vorsitzenden der betreffenden Versammlung zu unterzeichnen.

§ 18.

Ausfertigungen und Bekanntmachungen des Aufsichtsrats werden namens desselben von dem Vorsitzenden oder dessen Stellvertreter erlassen.

§ 19.

Der Aufsichtsrat ist berechtigt, die Wahrnehmungen ihm obliegender Geschäfte, insbesondere die Einsicht

der Bücher und Schriften der Gesellschaft einem oder mehreren seiner Mitglieder dauernd oder vorübergehend zu übertragen, soweit eine derartige Übertragung gesetzlich zulässig ist.

§ 20.

Die Mitglieder des Aufsichtsrats erhalten für ihre Thätigkeit keine Vergütung, jedoch Ersatz barer Auslagen.

c. DIE GENERALVERSAMMLUNG.

§ 21.

Die Generalversammlung werden von dem Vorstande berufen und finden in Bremen statt.

Eine Versammlung ist ordnungsmässig berufen, wenn die Einladung zu derselben wenigstens einen Monat vor dem für die Generalversammlung bestimmten Tage im Deutschen Reichsanzeiger veröffentlicht ist, und wenn die Mitglieder des Aufsichtsrates zu dieser Versammlung geladen sind. Zum nachweis, dass ein Mitglied des Aufsichtsrates ordnungsmässig geladen ist, genügt die von der Postanstalt erteilte Bescheinigung, dass wenigstens einen Monat vor Abhaltung der Generalversammlung ein eingeschriebener Brief an das betreffende Mitglied des Aufsichtsrats abgesandt ist.

§ 22.

Jede in das Aktienbuch der Gesellschaft eingetragene Aktie gewährt eine Stimme; die Vertretung abwesender Aktionäre ist nur durch schriftliche Vollmacht zulässig.

Ohne besondere Vollmacht können vertreten werden: Handlungshäuser oder Kommanditgesellschaften durch einen Geschäftsinhaber oder Prokuristen, Ehefrauen durch ihre Ehemänner, Witwen durch einen ihrer grossjährigen Söhne, Minderjährige oder sonst Bevormundete durch einen ihrer Vormünder oder Pfleger, Korporationen, Institute und Aktiengesellschaften durch einen ihrer gesetzlichen Vertreter.

§ 23.

Die ordentlichen Generalversammlungen finden alljährlich in der ersten Hälfte des Geschäftsjahres statt.

Ausserordentliche Generalversammlungen werden berufen, wenn der Aufsichtsrat oder der Vorstand es für erforderlich erachtet.

§ 24.

Ein Mitglied des Vorstandes oder des Aufsichtsrats führt den Vorsitz. Über die Versammlung ist ein gerichtliches oder notarielles Protokoll aufzunehmen.

§ 25.

Gegenstände der ordentlichen Generalversammlung sind:

1. Entgegennahme der Rechnung und des Berichts des letzten Geschäftsjahres.
2. Beschlussfassung über die Gewinnverteilung.
3. Wahlen für den Aufsichtsrat.
4. Beschlussfassung über etwa sonst gestellte Anträge.

Die Generalversammlung ist berechtigt, zur Prüfung der Bilanz- und der Gewinn- und Verlustrechnung Revisoren zu ernennen. Die Wahl erfolgt in geheimer Abstimmung mit absoluter Stimmenmehrheit.

§ 26.

Beschlüsse der Generalversammlung werden mit absoluter Stimmenmehrheit gefasst; über die nachstehenden Gegenstände kann ein Beschluss nur gefasst werden, wenn der Antrag vom Aufsichtsrate gestellt ist, und für die Annahme desselben dreiviertel des in der Generalversammlung vertretenen Grundkapitals sich erklärt:

1. Abänderung und Ergänzung des Statuts;
2. Vergrößerung des Grundkapitals bzw. eine Herabsetzung oder teilweise Zurückzahlung desselben;
3. Vereinigung der Gesellschaft mit einer anderen oder Auflösung derselben.

Ausserdem ist eine Mehrheit von dreiviertel Stimmen des in einer Generalversammlung vertretenen Aktienkapitals in allen Fällen erforderlich, wo das Gesetz sie verlangt.

§ 27.

Jahresrechnung, Bilanz und die Vorschläge zur Gewinnverteilung gelten als genehmigt, wenn die Generalversammlung nicht das Gegenteil beschliesst.

IV. GESCHÄFTSJAHR, BILANZ, REINGEWINN- VERTEILUNG.

§ 28.

Das Geschäftsjahr ist das Kalenderjahr, das erste Geschäftsjahr läuft bis zum 31. Dezember 1890.

Auf den 31. Dezember eines jeden Jahres muss vom Vorstände die Rechnung abgeschlossen und sodann binnen drei Monaten eine Bilanz nebst Inventar, eine Gewinn- und Verlustrechnung, sowie ein den Vermögensstand und die Verhältnisse der Gesellschaft darlegender Bericht dem Aufsichtsrate zur Genehmigung eingereicht werden.

Vorstand und Aufsichtsrat sind berechtigt, die Vornahme ausserordentlicher Abschreibungen, sowie die Bildung von Specialreserven gemeinschaftlich zu beschliessen.

§ 29.

Die Vorlagen sind von dem Vorstände nebst den Bemerkungen des Aufsichtsrats in dem Geschäftslokale der Gesellschaft auszulegen, und werden sodann der Generalversammlung vorgelegt.

§ 30.

Der bilanzmässige Reingewinn wird wie folgt verteilt:

1. 5 % an den gesetzlichen Reservefonds, bis derselbe die gesetzliche Höhe erreicht hat,

2. der Rest soll, insofern der Vorstand und der Aufsichtsrat nicht dessen Verwendung zu besonderen Reserven beschliessen, als Dividende unter den Aktionären und Inhabern von Genussscheinen zur Verteilung gelangen.

V. ÜBERGANGSBESTIMMUNGEN.

§ 31.

Der Vorstand ist ermächtigt, mit Zustimmung des Aufsichtsrats alle Änderungen und Zusätze der Statuten mit verbindlicher Kraft für alle Aktionäre zu beschliessen, welche zum Zwecke der Eintragung der Gesellschaft in das Firmenregister vom Registerrichter verlangt werden sollten.