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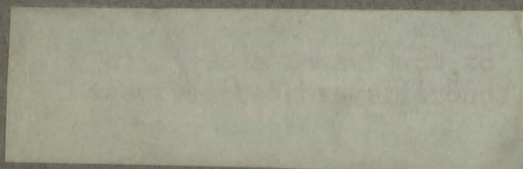
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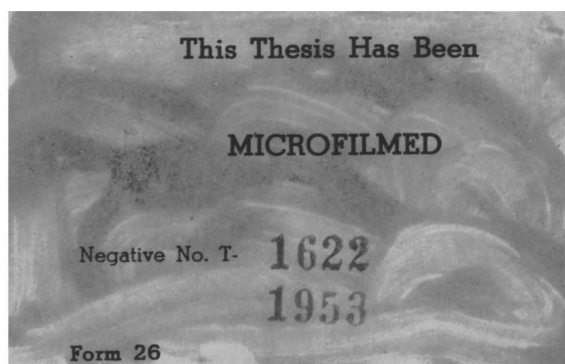
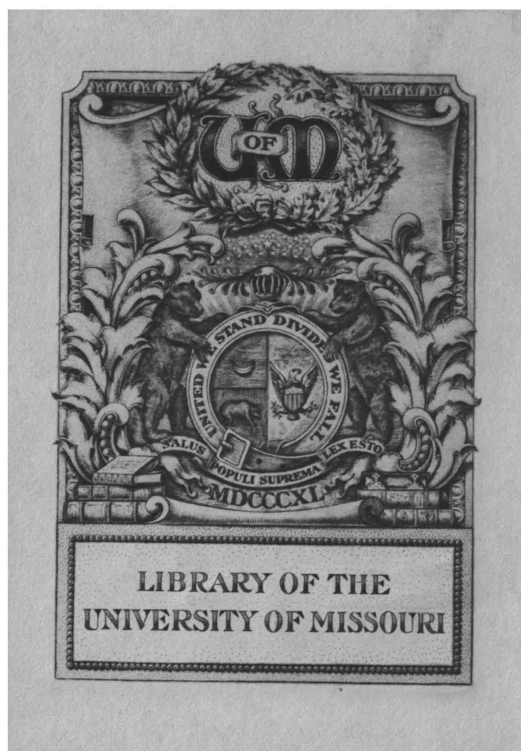


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Approved  
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THE LEGAL PHASE OF MONOPOLIES.





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## Legal Phase of Monopolies.

### Introduction.

In the treatment of monopolies it is, perhaps, very properly conceded that some attention be paid to the Labor Question. Such a conclusion is based upon a two fold consideration:

1st Because modern economists have placed labor as a commodity along side of the other products of industry.

2nd Because the common law, together with the early statutes, give us a clear idea of the conception of the law in regard to monopolies as shown by the Law of Conspiracies in Restraint of Trade.

As regards the merits of the first of these reasons, an acceptance of the well recognized view of the economists will be sufficient. The second consideration brings us not only to an appreciation of the then existing conditions of society, but may furnish us with some information from which there may be deduced legal principles, that will serve as a precedence to guide us in our study of the present difficulties.

Industrial undertakings were as yet in their infancy and society needed very little protection against the manufacturer. As far as he was concerned we find the prototype of the measures that have lately been agitated and advised in the few meagre statutes against engrossing, forestalling etc., together with the crude conception of





Contracts in Restraint of Trade. Labor as a commodity was well developed and it was as a protection against the artisan that a consideration of public good led to the laws of Conspiracies in Restraint of Trade. Just so to-day, public welfare demands a powerful instrument to ward off the encroachments of the capitalist and to regulate his influence upon society. Based upon a common consideration of public good, this similarity of purpose will likely lead us to some principle mutually applicable.

#### Sec.I. Conspiracies in Restraint of Trade.

##### a. In General.

The law relating to conspiracies in restraint of trade is regulated partly by the common law and partly by statute. Stated broadly at common law all combinations to affect alterations in the rate of wages are illegal conspiracies, those only being excepted which are protected by express words of certain statutes. At common law it appears that a purpose to raise wages, or indeed to affect them in any way, is one of those purposes which it is unlawful for people to try to effect by combinations, though it is perfectly lawful to do so by individual efforts, and therefore a combination of workmen to raise their wages is an indictable conspiracy. This harsh doctrine proceeded upon principles of political economy, which considered a combination to raise wages to be an artificial and mischievous interference with the public.



Roscoe's Criminal Evidence(7Ed.) 425

Chitty on Criminal Law Vol. 3.

b. Early Adjudications as to Combinations of Laborers.

The earliest case of which we have any record was that of R. vs. Tailors of Cambridge, decided in 1720. Several journeymen tailors of Cambridge were indicted for a conspiracy to raise their wages and were convicted. The charge was conspiracy and refusal to work at so much per diem. The court held that the refusal to work was legal, but that it was for the conspiracy that they were found guilty.

So it was held by the earlier cases that a conspiracy in itself is illegal, though the matter about which they conspire is perfectly lawful. R. v. Ecks 1 Lea 274, R. v. Hammon & Welch 2 Esp. 719. R. v. Mawberry 6 T.R. 636.

In the case of Hilton vs. Eckersley 6 E&B 62, 2 Jur (N.S.) 587. Lord Campbell speaking for the court said. "It would seem, from the earliest cases, that a conspiracy of workmen to raise their wages is in itself illegal, but ~~that~~ I cannot bring myself to believe that if two workmen who sincerely believe their wages to be inadequate should meet and agree that they would not work until their wages were raised, without designing or contemplating violence or any illegal means of gaining their object, they would be guilty of no misdemeanor. The object is not illegal and therefore, if no illegal means are to be used, there is no indictable conspiracy."



This decision of Lord Campbell's makes it lawful in his opinion to raise or lower wages by any artificial means, so long as the means by which such end was to be effected contemplated the commission of no illegal act.

c. Early Adjudications as to combinations of Employers.

In the case of Rex v. Hammond & Welsh 2 Esp. 719 decided in 1799 in the trial of two journeymen shoemakers on a charge of conspiracy to raise their wages, Lord Kenyon in speaking for the court said, "That masters should be cautious of conducting themselves in such a way as to show a spirit to reduce wages by combined effort. In such a case they are as liable to an indictment for conspiracy as are the journeymen.

In Hilton vs. Eekersley 6 El. & Bl. 47. 2 Jur. (N.S. 587) the condition of a bond recited that combinations of workmen existed preventing free labor, and that complainants were manufacturers and for the purpose of aiding one another in the free management of their capital, they had agreed as to the amount of wages, the periods of engagements, the hours of work, and the general management of their establishments. The court held that such bond was void at common law being an effort by combined action to control the price of labor.



d. Conclusion as to status of the Common Law.

In spite of this strong opinion to the contrary, the general result as gathered from the other cases is that the common law considered all combinations to effect alterations in any way in the rate of wages, ~~was~~ an artificial intermeddling with the natural laws of supply and demand, and therefore ~~was~~ an indictable conspiracy.

e. Early Statutes against Combinations.

Where these cases were decided a great number of statutes collectively known as the combination laws were in force. Many of these forbade in express terms combinations of workmen in particular trades to raise their wages; others forbade all combinations in general terms and under severe penalties; still another class of statutes authorized the fixing of wages by magistrates upon a hearing of both parties.

33 Edw. I 2. (1304) is the first statute defining conspiracies.

"Conspirators be such as bind themselves by oath, covenant, or other alliance to aid and bear the others falsely to maintain their malicious practices."

3 Hen. VI c 1 . In 1492 there was enacted the first statute against combinations. "Whereas by the yearly congregation---made masons, in their general chapters and assemblies, the good cause and effect of the statute of laborers be openly violated and broken," it was directed "That such chapters and congregations shall not be hereafter holden: and any persons originating such combination were judged felons attending to





and persons attending to be imprisoned and ransomed at the King's will."

In 1548 The statute E 2 & 3 Edw. V c 15 " Artificers, hand-i-craftsmen and laborers have made confederacies and promises and have sworn mutual oaths not only that they should not meddle one with another's work---but also to constitute and appoint how much work they should do in a day and what hours and time they should work contrary to the laws and statutes of the realm." This statute provided punishment for such conspiracies, so also for the interrupting of other workmen."

Other statutes enacted the fixing of wages by Justices and forbade the combinations of laborers in many particular branches of trade. This the Justices often neglected to do at the remonstrances of the Masters, and laborers suffered as a consequence of the right to combine among one another was prohibited.

Geo. Howell Conflict of Labor & Capital. Par. 83.

In 1726 by statute 12 Geo. I c. 34 it was enacted that all contracts or agreements entered into by any one exercising the mystery and art of woolcomber and weaver (1) for regulating trade, (2) the price of goods, (3) or increasing wages, (4) or diminishing hours of work are illegal and void, and in addition punishment was prescribed for such offenses.

From the Statute of Laborers in the reign of Edw. III down to the time of Geo. III there was a series of statutes directed against combinations of laborers to effect their wages or terms of employment.



The statute 5 Geo. IV c. 95 repealed the laws requiring justices to fix the wages of laborers, and also certain combinations of both workmen and Masters were exempted from punishment. By this statute thirty five prior acts were repealed and it was declared that there should be no punishment either by statute or common law for combining with others to affect wages, hours of work, time of work, or to influence other people. This same privilege of combining was extended to Masters.

This was soon found to be too broad and 6 Geo. IV c. 129 imposed a penalty upon any person who should by violence to the person or property, or by threats, or by molesting or in any way obstructing another, force or endeavor to force any object affecting wages, hours of labor etc. This was not however to extend to prevent meetings of laborers or masters for the sole purpose of consulting or determining a policy to pursue for the benefit of those interested.

f. Modern English Statutes.

34 & 35 Vict. c.32. Is an enactment and statement of the law of conspiracies as it now stands in England to-day. The statute provides that any one who shall threaten or intimidate, or use violence against any person or his property, molest or obstruct with a view to coerce any person; being a master to cease to employ any workman, or being a workman to quit any employment before the work is finished; being a master not to offer any work, or being a laborer not to accept work



and being a master or workman to belong to an association temporary or permanent which imposes penalties,- shall be liable to imprisonment, with or without hard labor for a term not exceeding three months. Nothing under this act will prevent a person from being liable under any other act in force. No person is to be held liable to any punishment for doing or conspiring to do an act on the ground that it restrains the free course of trade unless such act is one such as herein specified, and is done with the object of coercing.

In Reg vs. Bunn 12 Cox Qd. 316 upon a trial for conspiracy, it was held that the mere fact that defendants were members of a trade union is not illegal. The mere fact that they broke an agreement by leaving work, which they were under contract to do, is not enough to find them guilty. But if there was an illegal agreement among them to control the will of their employer by improper molestations, then they are guilty of an illegal conspiracy at common law which is not abrogated by 34 & 35 Vic.c.32.



g. Conspiracies in Restraint of Trade as applied in the United States.

Conspiracy consists in the corrupt agreeing together of two or more persons to do, by concealed action, something which is unlawful either as a means or as an end. The gist of the action is the act conspiring which is punishable at common law. Bishop on Criminal Procedure 2 par. 172. That combinations of workmen to raise their wages or of employers to reduce them are both detrimental to public interests, results from a consideration of the familiar principles which regulate the economy of labor and of trade. Demand and supply whether of labor or of commodities which labor produces will be commensurate with one another and will regulate themselves. When they are affected by the disturbing force of some extraneous influence, as by combinations they will be as a consequence abnormal. Wages affected by this artificial means become on the one hand unduly elevated or unduly depressed. (Third annual Labor report p1112.)

The first trial for conspiracy occurred in the United States in 1741. In that case certain bakers were convicted of a conspiracy for refusing to work until their wages were raised. In a similar case tried in Philadelphia in 1806 the doctrine adopted by the court was; that a combination of workmen to raise their wages is to be considered from a two fold point of view: First, to benefit themselves. Second, to injure those who will not join their society. The rule of law condemns both. Third annual Labor Report page 1115,-1119.





In 1821 this same court held in the case of "Common wealth vs. Castile," that a combination to raise wages was not per se unlawful, and that it only became unlawful when the object to be obtained, or the means of reaching such object was unlawful.

In 1834 the Supreme Court of New York in the case of People v. Fisher 14 Wend 9 held that journeymen shoemakers who had refused by concerted action to work until their wages were raised, or until their employer had discharged a certain other laborer who had refused to keep his agreement with them, were guilty of a conspiracy.

In 1867 the same court set forth the following doctrine in the case of 2 Daly 1. That it is not illegal for workmen to agree that they will not work for a sum less than a certain amount or for employers to agree that they will not pay more than a certain sum, and that therefore such associations to be unlawful, there must appear the element of force and threats, menaces and intimidations by which persons are made to do as such association directs.

The doctrine of this case has been followed very generally throughout this country. Carew vs. Rutherford 106 Mass. 1. Rogers vs. Evarts 17 N.Y. Supp. 1. It is now well settled that a Trades Union may order its members to withdraw from the service of their employer in an orderly manner and that laborers or employers may by artificial measures affect the price paid for labor, so long as they do not use force or



coercion against person or property. 26 Or. 527. 38 Pac. Rep. 547.

Arthur vs. Oakes 63 Fed.310. 24 U.S. App.239. Cote vs. Murphey 159 Pa  
St.420. Cooley on Torts(2Ed.) p329.

h. Statute in the United States.

Conspiracies are defined and the law relative thereto is laid down in the statutes of most of the states. Most of these statutes provide a fine or imprisonment or both as penalties for unlawful conspiracies. It is pretty generally agreed that in order to find a combination of workmen guilty of conspiracy there must be a plain manifestation of threats and means of intimidating or coercing some other person or persons to do or abstain from doing against his will, that which he has a legal right to do, or in threatening to injure, or injuring his property with intent to intimidate him.

Such statutes have been enacted in thirty-two of the States and territories. In the absence of such legislation in some of the State the common law doctrine relative to such conspiracies is still in force. Again in other States the absence of statutory authority on the matter is explained the comparative rarity of serious strikes and boycotts.



## Sec.II Contracts in Restraint of Trade.

### Introductory.

The evolution of the doctrine of Contracts in Restraint of Trade covers a period of no less than 450 years. The final outcome as we now have it sustained by the courts is of comparatively recent application. Considerations other than the tendency towards monopolization and the prevention of free competition have been instrumental in the development of the present rule of law, nevertheless the element of monopoly and the fear of dangers resulting to the public therefrom have been chiefly the spirit by which courts have been guided. 2 Parsons on Contracts.

### b. Early Common Law.

At early common Law contracts in restraint of trade, however little the restraint was, were illegal and void being against public policy. Lawson on Contracts 324. The earliest expression of the law is found in the "Dyer's Case" Year Book 2 Hen.V fol.5 pl 26. which was decided in 1415. The defendant had broken his agreement, that he should not exercise his trade as dyer for half a year within a certain city. The obligation was declared void as against the common law. The opinion of the courts is plainly manifest from the ardor with which the judges attacked the plaintiff for coming into court to enforce such a contract as he added 'per Dieu', if the plaintiff were here he should go to prison until he paid a fine to the King.



c. Relaxation from the Early Rule.

With changing conditions there grew up in the process of time certain rules by which contracts in restraint of trade were governed. Many authorities have classed them as follows; First. Where the restraint was unlimited as to both time and space, the contract is clearly void being in total restraint.

Second. Where the restraint is limited as to space, but unlimited as to time, it was considered not illegal because the obligor could engage in his business in any other place other than in the one in which he had so bound himself.

Third. Where the restraint was limited as to time but unlimited as to space it was held to be void, on the ground that being unlimited as to space it forbade the covenantor from carrying on his business anywhere during the continuance of the restraint to which he had subjected himself. Lawson on contracts 325-327.

The leading case upon the subject is that of Mitchell vs. Reynolds 1 P. Wms 181. Here the bond was to the effect that neither the defendant nor his assigns should keep a victualling house or vend liquors therein or in any other place within a mile of Rosemary Lane for a period of twenty-one years. The consideration of the contract being that the defendant gave his interest therein to the plaintiff. It was held that the bond was valid and binding. But, said the court, a bond conditioned not to set up a trade in any part of England for a time limited





or unlimited would be invalid.

So in *Homer vs. Graves* 7 Bing. 735 it was held after considerable deliberation that a bond executed by a dentist not to practice over a district two hundred miles in diameter was illegal. Other decisions in point are *Colgate vs. Bachelor* Cro. Eliz 872; *Rogers vs. Parrey* 2 Bulsto 136; *Board vs. Jollyfe* Cro. Jac. 596; *Burham vs. Guy* 4 East 190; *Gale vs Reed* 8 East 80; *Hayward vs. Young* 2 Chitty 407. In America the early decisions follow these rules. *Pierce vs. Fuller* 8 Mass.223.

#### d. Modern Doctrine.

Within the last twenty-five years there has been developed the general principle ~~that~~ throughout the courts <sup>that</sup> no definite rule as to the extent of the restriction can be laid down, but that "reasonableness" is to be the guiding star of the courts. *Lawson on Contracts* 324-329.

If the restraint be such as to afford a fair protection to the party in whose <sup>interest</sup> it is imposed, and is not unduly oppressive to the other party, or without an adequate countervailing benefit, then it will be sustained. When the restraint goes beyond this it will be held to be illegal, not only on ground of being unduly oppressive, but because such a contract would have a tendency to prevent competition, enhance prices, and expose the public to all the evils of monopoly.

In *Roussillon vs. Roussillon* L.R. 14 Ch. Div. 351 (1880), the defendant agreed not to associate himself with any other firm, nor would he himself go into the business of champagne dealing for a period of two



years. The court granted the injunction prohibiting the defendant from dealing in the Champagne contrary to his contract. The court here held the restraint to be reasonable even though it was unlimited as to space.

In Oregon Steam Nav. Co. vs. Windsor 20 Wall (U.S.) 67 the U.S. Supreme Court held that a contract not to run a boat on the waters of a certain state was not unreasonable. The doctrine was here laid down that the question of reasonableness of the restraint was one of law for the court, and not of fact for the jury, thus placing the power of deciding such question in the discretion of a more competent judge.

So in 31 Mich 490 in the case of Beal vs. Chase, it was held by Judge Campbell that with the sale of a printing establishment, a covenant by the vendor that he would not engage in that business anywhere in the state, as long as the vendee continued in it, was not an unreasonable restraint, as the business so sold extended practically over the whole territory of the state.



### Sec.III. The Law against Monopolies.

#### a. Definition. General Nature.

Despite the opinion of some of the judges, that a monopoly includes the reduction to private use of such articles alone as are in their nature both necessary and of public consumption, (McKiver vs United States, 14 Ct. of Cl. 396), the general principle upon which both legislatures and the judiciary have proceeded seems the more logical and scientific. Philosophically speaking monopoly is power of control. As viewed in law, it is power of control carried to such an extent that it becomes dangerous to society through excessive stifling of competition, (Ms. of Econ. Hicks.), a monopoly then exists where-ever there is an absence of competition, varying in intensity inversely as the absence of competition is complete (Hadley-Railroad transportation p 63).

Monopolies are either legal, natural, or industrial. (Hadley-Railroad transportation p.64.)

A legal monopoly is such as is protected by sanction of the law, competition being prohibited. The guilds of the middle ages, the postal service of the United States to day are almost complete legal monopolies. Also, there may perhaps, here be classed such institutions or allowances as patents, copy-rights and trade marks, by which the sovereign grants to any person or corporation the exclusive right of buying, selling, making, working or using the particular thing that is



given. (Slaughter-house cases 16 Wall (U.S.) 102.) The principle of the law involved in the case<sup>of</sup> patents and copy-rights is an ancient one, and exists for the purpose of stimulating individual genius, by the development of which the public may be benefited. These institutions are now the only remnants of a once complex system of monopolies granted by the sovereign.

A Natural monopoly is where the physical environment~~g~~ renders competition impossible. The water supply of large cities is often a tolerably complete monopoly. Other instances of natural monopolies are mines, canals and even lands, in all of which competition is more or less absent.

While physical and legal hinderances are fast disappearing with the growth of modern civilization and increased methods of transportation, there has grown up another and more widely influential class of monopolies. These are the third class, the industrial monopolies and exist, aside from protective tariff against the foreigner on the frontier, not because of legal or physical hindrances, but because the interest of the parties concerned make competition impossible. Prices are being determined in a monopolistic and not a competitive market.

It is , then, the industrial monopoly with which we have to deal. Courts and legislative bodies are now directed to the fast growing tendency towards monopolization of all the instruments of commerce.





b. Early Monopolies.

The earliest industrial monopolies are found in the offenses of forestalling, engrossing and regrating, which were punishable both at common law and by statute. Ashley--"English Economic History" Vol.I. Cunningham--"Growth of English Industry and Commerce" page 230-231-484-466. Cooley's IV Blackstone 157.

The price of corn was necessarily left to be settled by competition and all that could be done was to try and insure that this competition be public, so that there should be no attempts to make an artificial scarcity. The prohibition of engrossing, regrating and forestalling had this object in view. Common folk had a strong suspicion that a man who was able to secure a monopoly by buying up available supply of any article would retail it on terms suitable to himself but not advantageous to the community.

Although forestalling, regrating and engrossing came to have separate meanings, it seems that during the thirteenth and fourteenth centuries they were used almost synonymously, meaning any action which prevented goods from being bought by the producer or bona fide merchant to open market-- the forestaller or engrosser buying them wholesale either outside the town or with market itself, and there securing by means of monopoly a higher price than would have otherwise been paid.

Statutes 51 Hen. III(1267) and 13 Edw. I (1285) are the first legal definitions of such tricks of trade, and penalties were prescribed



for their transgression. During the later years of Edw. III (1350-1375) the prohibitions against forestalling were again and again removed by statute.

5 & 6 Edw. IV c.14-(1466-67) we have statutes defining these offenses. "Forestalling is the buying or contracting for any merchandise or victuals coming in the way to market; or dissuading persons from bringing their goods or provisions there, or persuading them to enhance the price when there, and of which practices make the market dearer to a fair trader.""

"Regrating is the buying of corn or other dead victuals in any market and selling it again in the same market or within four miles of the place."

"Engrossing is the getting into ones possession or buying up large quantities of corn or other dead victuals with intent to sell them again."

5 & 6 Edw. IV. A severe law was passed against the engrossing of corn, wine, fish, butter, cheese, candles, tallow, sheap, lambs, calves, pigs, geese, capons, hens, pigeons and conies.

2 & 3 Edw. VI c. 15. All monopolies and combinations to keep up prices of merchandise provisions and workmanship were punishable with forfeiture of goods and perpetual banishment.



c. Phases of Modern Monopoly. Legality at Common Law.

Forestalling the market as an offense has been abrogated by statute in England. 7 & 8 Vict. c. 24.

In the United States forestalling the market takes the form of pools, corners, trusts etc. which are attempts by one person or a conspiracy or combination of persons to monopolize an article of trade or commerce, or to control or regulate, to restrict its manufacture or production in such a manner as to control the supply of the given article and so enhance the price. Such a combination is illegal on grounds of public policy though probably not criminal.

Coal corner.

An agreement was made between two coal companies to divide the coal regions which they controlled; to appoint a committee to take charge of all their interests, which committee was to decide all disputed questions and appoint a general agent through whom all coal mined was to be delivered, each corporation to deliver its own coal, at its own cost, in the different markets at such times and to such persons as the committee might direct. The respective companies were to sell their coal only to the extent of their proportions and at prices adjusted by the committee. Such an agreement was held to be illegal and void as against public policy by the Pennsylvania Supreme Court upon being asked to enforce the contract. *Morris Run Coal Co. vs. Barclay Coal Co.* 68 Pa. St. 173.



Salt Combination.

A voluntary association of salt manufacturers was formed for the purpose of selling and transporting that commodity. By the articles of association all the salt manufactured or owned by the members, when packed in barrels became the property of the company whose committee was required and authorized to regulate the price and grade thereof, and also to control the manner and time of receiving salt from the members, and each member was prohibited from selling any salt during the continuance of the association except by retail at the factory, and at prices fixed by the company. The court held that there was a tendency in such a combination to stifle and prevent competition, and held the contract to be void, because it was injurious to the public welfare. Also that it would not affect the question if it were shown that competition was not thereby prevented, nor prices thereby enhanced because such contracts have a tendency to create monopolies and enhance prices and should therefore be discouraged. Salt Co. vs. Guthrie 35 Ohio St. 666.

An Agreement not to sell; made between several firms, any cotton bagging for a period of three months except with consent of the majority of them was held to be invalid and unenforceable.

India Bagging Assoc'n vs. Knock 14 La. Ann 164.

The Supreme court of Massachusetts held that an agreement to "make a corner" in stock by buying it up so as to control the market and then purchase for future deliveries is illegal. The parties thereto are





of partners, and any one of said parties thereto whose funds have been appropriated according to the terms of the contract cannot recover the amount thus expended, thus leaving the parties to an illegal agreement at where they placed themselves. Sampson vs. Shaw 101 Mass. 145.

A pool is an agreement between rival railway companies, where their business is united into one common total, from which the business or the money received therefor is divided among the combining companies according to ratios fixed by the agreement, the prevention of competition being the main object of the agreement.

Hudson--The Railways and the Republic page 196.

Hadley--Railroad Transportation page 74-76.

In England it has been held that an agreement for the division of freight money between competing roads, based upon a past experience of the business of the road, to accord with estimated rather than actual business, is not necessarily illegal. Especially is this so when the manifest end of such an agreement is to prevent competition which would lead in the survival of the stronger leaving the community ultimately dependent upon a monopoly.

Hare vs. London & North-Western R.Co. 2 Johns & H 98; Shrewsbury & Birmingham R. Co. vs. London & North-Western R.Co. L.R. 17 Q.B. 652.

It has however been intimated that an agreement to divide profits arising from any particular traffic in fixed proportions without reference

to the question, by whose trains it has been carried is unsafe.

Hodges--Law of Railways (7 ed.) 58.



In the United States the authorities as to the legality of the pool at common law have been conflicting. It has been said that there is no principle of public policy in the common law which renders void a traffic agreement between two or more lines of railways for the purpose of avoiding competition (Redfield on Railways (6 ed.) par. 146.) The Supreme Court of Connecticut has held that, in the absence of statutory prohibition, a pooling agreement is valid and enforceable.

Manchester & etc. R.R. Co. vs. Concord R.R. Co. 20 At.Rep. 383.  
In Cent. Trust Co vs. Ohio Cent. R. Co. 23 Fed. 306, the terms of a pooling contract were held to be specifically enforceable in equity upon complaint of either party. Such was the opinion of the U.S. Circuit Court of Oregon in Ex Parte Koehler 21 Am. & Eng. R. Cas. 57. In New Jersey the validity of a pooling contract has been repeatedly recognized in Sussex R. Co. vs Morris & Essex Ry. Co. 19 N.J. Eq. 13.  
Elkies vs. Camden & Atl. R. Co. 36 N.J. Eq. 246.

The Supreme Court of Louisiana held that independent of statute a pooling agreement was illegal and unenforceable.

Texas Pac. R. Co. vs. Southern Pac. Ry. Co. 41 La Ann. 970.

Pooling contracts between competing Canal companies were formerly held to be illegal in New York. Stanton vs Allen 5 Denio 434; Hooker vs Vandewater 4 Denio 349. In Loes vs. Smith 3 N.Y. Supp. (Hun) 645 it was held that a pooling agreement for the division of certain territory between competing and parallel railroad lines was not contrary to the



spirit of public policy. The first meeting of the New York Railroad commissioners declared a pooling contract illegal. 1 N.Y. R.R. Com.Rep p.77 (1885)

Some courts have held that a combination is prima facie illegal, and that, in order to establish the legality of any pool, the burden is on such carrier to show that the pool was formed to prevent ruinous competition, and that such an agreement does not establish unreasonable rates, unjust discriminations or oppressive regulations. Cleveland etc. R.R. Co. vs. Classer 126 Ind. 348. Denver etc. R.R. Co. vs. Atchison etc. R.R. 110 U.S. 667.

d. Statutory Regulations.

The inability of common law principles to deal with new conditions has called forth many statutes in the past few years, both Federal and Commonwealth. The statutes passed in the several states are regulative of commerce within their respective confines, and vary widely as to the extent of the control they have assumed.

Congress by virtue of the power vested in it by the Constitution Art.I Sec.VIII Par.3, over interstate commerce, has, by two great acts sought to control the influence of the spirit of monopolization upon society. There has likewise been established commissions by both the Federal and many of the Commonwealth governments whose functions vary from that a merely advisory character to that of regulative.



1. Federal Legislation.

By the Interstate Commerce act Sec.5. 24 St. at Large p.380 passed Feb.4, 1887 it is provided that "it shall be unlawful for any common carrier carrying on interstate commerce, to enter into any contract, agreement, or combination with any other common carrier, or carriers for the pooling of freight of different or competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof."

The Sherman act of 1890, entitled an act to protect trade and commerce against unlawful restraints and monopolies, U.S. Stat. at Large Vol.26 ch. 647. p.209. enacts as follows.

Sec.1 "Every contract, or combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared illegal. Every person who shall make such contract. or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding \$5000, or by imprisonment not exceeding one year or by both said punishment, in the discretion of the court."

Sec.2. "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with





foreign nations shall be punished" --- (same as above.)

Sec. 3. "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in any Territory of the United States or in restraint of trade or commerce between any such Territory and another, or between any such Territories and a State or States or the District of Columbia, or with foreign nations is hereby declared illegal." Persons found guilty punishable by same punishment found in Sec. 1.

Sec. 4. Provides that jurisdiction to restrain the violation of this act be vested in the United States Circuit Courts. And also provides that it shall be the duty of the several District Attorneys to institute proceedings in equity to restrain such violations. Relief may be granted by the court either by temporary or permanent injunction, the latter only upon a due hearing of the person or persons accused.

Sec. 5. Provides for the subpoena of any witness or witnesses which the court may, in its discretion, deem necessary, whether they may or may not reside in the district in which the court is held.

Sec. 6. Provides for the forfeiture and condemnation of any property belonging to such a combination or conspiracy mentioned in the act, which may be at the time in the course of transportation from one state to another or to a foreign country.

Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of any violation of this



act, may sue therefor in any Circuit Court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy and shall recover three-fold the damages by him sustained and costs of the suit including reasonable attorney's fee.

Sec. 8. Construes the word "person," or "persons" to include corporations and associations existing under, or authorized by, the laws of either the United States, any of the Territories or States, or any foreign country.

#### 2. Decisions Under these Acts.

It was held by the United States Supreme Court in United States vs. Joint Traffic Association 171 U.S. 505, that under the Interstate Commerce act Congress has the power to prohibit an agreement among competing railroads belonging to joint traffic association, to establish rates among the parties to such combination even though the rates thus established are reasonable. That the offense in such an agreement consisted in the fact that competition was prevented and such contract is liable to restrain trade, both of which are expressly declared illegal by act of Congress. That in forbidding a combination among railroads the constitutional freedom of contract in the use and management of ones property is in no wise abridged or impaired.

In the Trans-Missouri Decision the Supreme Court construed the Sherman act, declaring every combination in the form of trust or other-



wise in restraint of trade or commerce among the several states or with foreign nations to be illegal, to include a contract between competing railroads relating to the traffic rates for the transportation of articles of commerce between the states, because the direct effect of such an agreement is to produce a restraint upon trade and commerce, and all combinations in restraint of trade whether they take the form of trusts or not are illegal and prohibited by the act of Congress. The Court say, "An agreement between railroad companies for the purpose of mutual protection of establishing and maintaining rates, rules, and regulations on all freight traffic both through and local is by necessary effect an agreement to restrain trade or commerce within the meaning of the act of Congress of 1890, no matter what the intent on the part of the persons who signed it. *United States vs. Trans-Missouri Freight Association* 166 U.S. 290. L.C.P.Co. Book 41 page 1007.

In *United States vs. Jellico Mt. Coal Co.* 46 Fed.Rep. 432 the court sustained the constitutionality of the Sherman act, holding that an agreement between coal mining companies operating chiefly in Kentucky and coal dealers doing business in Tennessee, creating a coal exchange to advance the interests of the coal trade, and to fix the prices of coal, forbidding its members from buying coal from, or selling to, any coal dealers or miners who were not members of the exchange, constituted a violation of the act.

The decision of the court in the case of *United States vs*



Greenhut 50 Fed. 49 admits that in order to maintain an action under the act, it is necessary to allege that the accused monopolized or conspired to monopolize, as the language of the Statute does not fully, directly and clearly set forth all the elements necessary to constitute the offense.

In United States vs Knight 156 U.S. 1, it was decided that the Act of Congress of July 2nd 1890, was intended to prevent combinations, contracts, and conspiracies to monopolize or restrain interstate or international trade. The contract of the defendants in this case related exclusively to the acquisition of sugar refineries and the business of sugar refining within a state. The article manufactured was to be sold in the different states, and though in the disposition of the product of the company the instrumentality of commerce was necessarily invoked, it does not follow that a monopoly of commerce is involved in the attempt to monopolize or actual monopoly of the manufacture of such product. Congress has not attempted to assert the power to deal with a monopoly as such, or to make criminal acts of persons in the acquisition or control of property which states sanction or permit. So a corporation organized under the laws of New Jersey, for the purpose of manufacturing sugar, may buy manufacturing houses in Pennsylvania. The mere fact that the article manufactured is for export to another state does not make the manufacturing industry an article of commerce, and though sales of





the sugar were made in the different states this is merely incidental and the power of Congress to regulate Interstate Commerce does not give the Federal Courts jurisdiction over such a contract.

This seemingly rather broad construction of the Sherman Act, has been very recently, to some degree, retracted. In the late case of Addyston Pipe and Steel Co. vs. United States decided at the Oct. term 1899, the Supreme Court held, that an agreement between corporations engaged in the manufacture, sale and transportation of the same article of commerce, located in different states and carrying on their business in different states, by which they enter into public bidding for contracts not in truth as competitors, but under an agreement which eliminates all competition between them for the contract and permits one of them number to make his own bid, while the others are required to bid over him is in violation of the anti-trust act of Congress, so far as it applies to sales for the manufacture of such article and delivery beyond the state in which the sale is made. That Congress has by virtue of its power to regulate interstate commerce, jurisdiction to prohibit a combination that restrains trade by preventing competition for contracts.

The regulation of commerce applies to the subject of commerce. The combination in the Knight case (supra) did not fall within the purview of the act, because it related directly only to the manufacture of the article, though the indirect result of the combination might, in the future sale of the article, affect interstate commerce. In the Addystone



Pipe case the direct effect of a combination to eliminate competition in the securing of contracts for the sale and transportation to other states of specific articles was held to affect interstate commerce, and to give to give the court jurisdiction over questions, though the combination related at the same time to the manufacture of such article.

In the Trans-Missouri decision (*supra*) it was held that parties guilty of such an illegal combination, could not, after decision of the lower court declaring it illegal escape the consequences of such illegal combination, and keep the jurisdiction of the court from attaching upon appeal, by a voluntary dissolution of the combination in the meantime.

### 3. Commonwealth Legislation.

The Statutes passed during the past few years by the state legislatures pretty generally cover the entire field of combinations, be they in the form of trusts, pools, or otherwise. In some of the States there are as yet no such enactments, this is probably due to the small amount of commerce carried on in such states, and hence the necessity has not yet been felt. In other states statutes exist merely against the pooling of freights. In New Hampshire a statute directing that each railroad shall be dependent upon its own earnings for support, and shall be managed by its own officers and agents has been repeatedly held to make pooling illegal. *Morril vs. Concord R.R.Co.* 55 N.H. 531; *Manchester R.R. Co vs. Concord R.R. Co.* 20 Atl. Rep. 383.



In New York it is enacted that no stock corporation shall combine with any other corporation for the prevention of competition. Session Laws 1890 p. 1069.

An act of the Nebraska legislature has declared it unlawful for any person or partnership, company, association or corporation to enter into any contract or combination whereby a common price shall be fixed for any article or product, or whereby the profits of the manufacture, or sale of any product shall be made a common fund to divide among the parties to the combination, Session Laws 1889 p. 516.

In Kansas combinations of persons engaged in the buying and selling of live stock, whereby competition is eliminated is alone prohibited, Session Acts 1891 p. 294 ch.158.

In Louisiana all contracts, combinations or conspiracies of trade or commerce are declared illegal, and in addition any person who monopolizes, or attempts to monopolize, or combines or conspires to monopolize any part of the trade or commerce within the state shall be deemed guilty of a misdemeanor, Session Laws 1890 p. 90.

In South Dakota a person adjudged guilty of being a party to any trust or combination which tends to prevent a free, fair, and full competition in the production, manufacture or sale of any article of domestic growth, use or manufacture, or to advance the price thereof beyond the reasonable cost of production, shall be deemed guilty of a criminal offense, Session Acts 1890 p. 323 ch. 151.



The Act of Iowa makes it a misdemeanor for any corporation, partnership, individual or association to become a party to any trust or agreement to regulate the price of any article of merchandise, or to issue or own trust certificates, or to become a member of any combination to limit or fix the price or lessen the production of any article of commerce. Iowa Laws, 1890, p. 41, ch. 28.

Under the Session acts of Illinois, it is made a criminal offense for any corporation to enter into any pool or agreement to limit the production of or regulate the price of, any commodity, and provides that any contract or an agreement in violation thereof shall be void.

Session Laws 1891 p. 206.

In the act of July 20th 1893, a trust is defined to be a combination of capital by two or more corporations to create restrictions in trade, to limit production, to increase or reduce prices of a commodity and prevent competition. In the case of *Harding vs. American Glucose Co.* 55 N.E. Rep. (Ill) 577, it was held that an agreement whereby all but one of the seven competing manufacturers of an important commercial article, convey their plants to a corporation to be formed and largely composed of the officers of the competing companies to be managed by such newly formed corporation, with an agreement on the part of the selling corporations to abandon their business for a certain time, is in violation of the Illinois anti-trust laws, because such a combination would result in the suppression of competition and the creation of a monopoly.





In the case of Union Pape Co. vs. Connolly (Jan.29,1900) the United States Circuit Court held that the clause in the Illinois act of 1893, which excepted that the said act should not apply to agriculture products or live stock while in the hands of the producer, was class and special legislation and in violation of the Illinois and Federal Constitutions (Amed.14th). This clause being void the whole act was thereby invalidated.

An act of Arkansas Legislature (Mar.6 1899) provides that any corporation, partnership or individual, or association of persons, who shall become a party to any combination with another such corporation, person etc., to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or article or thing whatsoever, or the price or premium paid for insuring property against loss or damage etc, or to maintain such prices when fixed, shall be deemed guilty of a conspiracy to defraud and fined as provided for by the act. Any corporation created under the laws of Arkansas shall upon conviction of such an agreement, forfeit its charter and cease to exist. Every corporation must inform the Secretary of State upon oath, once a year, as to whether they have violated this act.

In Missouri, any corporation partnership or individual, or association of persons whatsoever, who shall enter into or become a member to any pool, trust, or combination with any other such corporation etc., to regulate the price of any article of merchandise or commodity, or to



fix or limit the amount or quantity of any such article commodity or merchandise to be manufactured, produced, mined or sold in this state shall be deemed adjudged guilty of a conspiracy to defraud and punished as provided by the act.

A corporation is prohibited from owning or issuing trust certificates, placing the management of the combination thus formed, or the manufactured articles thereof in the hands of any trustee or trustees, with an intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption.

Any contract or agreement made in violation of any provision of this act shall be absolutely void, and any purchaser of an article or commodity from such illegal combination or member thereof, shall not be liable for the purchase price, and may set up this<sup>act</sup> as a defense.

Any corporation incorporated under the laws of Missouri who shall violate this act shall forfeit its charter. The president or other officer of each corporation doing business in the state shall inform the Secretary of State, once each year, upon sworn statement as to whether such corporation is carrying on business in violation of such act.

Missouri Laws 1889 p.97; Missouri Laws 1891 p. 186.

In State vs. Simmons Hdw. Co. 109 Mo. 188 that part of the act requiring president or other officer to inform the Secretary of State as to whether, or not, the corporation was carrying on business in violation of the act was held to be unconstitutional on grounds that it compelled



a person to testify against himself upon a criminal charge.

In Texas the Anti-trust Laws of (May 28, 1899) provides- that "any union or combination, or affiliation of capital, credit, property, assets, trade custom, skill or acts, or any other valuable thing or possession, by or between persons, firms, or corporations, whereby any pool, agreement, combination, confederation, or understanding is entered into, whether such union or consolidation be effected by the ordinary methods of partnership, or by actual union under legal form of a corporation, or way whatsoever, to regulate and fix the price, to maintain the price when so regulated and fixed, or to limit the production of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any thing or article whatsoever, or the price or premium paid for insurance, shall be deemed a conspiracy against trade.

Likewise where any one engaged in the manufacture of articles of commerce or consumption from raw materials produced or mined in this state, or agent of such person producing or mining such article elsewhere, shall with intent to drive out competition, or to injure competitors financially, shall sell at less than cost of production or give away such article or thing, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade.

Any one engaged in the buying or selling of any article who shall enter into a combination, pool, trust, agreement whatsoever, to control



or limit trade in any such article or thing, or to limit competition in such trade by refusing to buy from or sell to any other person or corporation for the reason that such person or corporation is not a member of such combination, or shall boycott or threaten any person or corporation for so buying from or selling to such person or corporation, shall be deemed guilty of a conspiracy.

Penalties provided for the punishment of violations of this act are that such persons who are guilty shall be subject to fine, and also if a corporation created or organized under the laws of Texas shall violate this act such corporation shall forfeit its corporate rights and franchises, and shall upon conviction cease and determine. If a corporation organized under another state or country shall violate any provision of the act it shall forfeit its rights and privileges to do business thereafter in the state.

The president, or other officer, or director of each and every corporation doing business in or organized under the laws of Texas, shall, once each year in reply to requests sent to each corporation by the Secretary of State, under sworn statement, tell whether<sup>or</sup> corporation of which he is a member, has, or has not, violated any of the provisions of the act.





Statutes prohibiting pools, trusts or combinations to regulate or control prices have been enacted in the following states in addition.

Alabama-----Acts 1890-91, p.483 ch.202.

New Mexico-----1891 p.27 ch. 10.

Tennessee-----1891, p.428 ch.218.

California-----1893 ch. 19 par. 4.

Maine-----1889 ch.226 par. 1.

Kentucky-----1890 ch. 1621.

Michigan-----1889 ch. 225.

Minnesota-----1891 ch. 10.

Miss<sup>ss</sup>issippi-----Laws 1890 ch. 36 par. 1.

North Carolina---1899 ch. 374.

e. Conclusion.

Beginning with the Interstate Commerce act of 1887 there has been a vast amount of legislation on the subject of trusts, pools, combinations and conspiracies in restraint of trade.) Of the remaining twenty-four states whose specific acts are not taken <sup>into</sup> account ~~of~~, doubtless there already is, or soon will be, steps taken in this direction. (It is particularly since the Sherman Act of 1890 that the majority of the states have found it necessary to take decisive measures in the way of prohibiting restraints ~~to~~ which trade and commerce is being subjected.

there exists three sources from which courts draw their ~~op~~ opinions in construing each specific case, these are; (1) The common



law of contracts in constraint of trade, (2) the federal acts and constitution, (3) the acts and constitution of their own state. All about us we hear of the constitutionality of legislative enactments being tested. technicalities in each case as well as the diversified form of which legislation has taken serve to complicate the question. How far and to what extent this vast array of legislation, narrowed or extended by the construction of the courts will meet the emergencies of each case; how far ~~will~~ such measures <sup>will</sup> be able to cope with the growing tendency towards monopolization, is a question of vital importance to the present and future generations.



#### Sec.IV. Relation of Corporation Law to Monopoly.

##### a. In General.

When the state grants a charter or certificate of incorporation to the projectors of a corporation, there is, by virtue of such grant, created an artificial person, the corporation. As there are powers characteristic of such persons, so likewise there are duties and requirements which are alone applicable to a corporation, and by which such corporation expressly or impliedly consents to be bound by the act of incorporation. The rules regulating the conduct of persons artificial constitute what is known as Corporation Law, and are a part of our Substantive law. Corporation Law is either statutory or derived from principles of the time used common law. In addition to the principles of the law that are said to render combinations of individuals or corporations illegal, there exists certain principles found in the law of corporations which the modern combination of corporations, or trusts violate and for which reasons courts have ordered such offending corporations to be dissolved. While an attempt to monopolize any branch of trade may be declared illegal on the ground that it either restrains the free course of trade, stifles competition, or is in violation of some legislative enactment, that phase of monopoly, commonly denominated in the mercantile world, a trust, may be declared illegal as being in violation of some principle fundamental to the law of corporations.



b. trusts, Definition and Classes.

In its modern application, authors have defined a trust to be an organization of persons or corporations formed mainly for the purpose of regulating the supply and prices of commodities. Black's Law Dictionary; Cook's "Stocks, Stockholders & Corporation Law Par. 503.

In the main trusts have assumed four forms.

First. A copartnership of corporations in the form of a joint stock company. In such a trust, the stockholders of the respective corporations transfer their stock to trustees and receive in exchange trust certificates. These trustees control the management of all the corporations whose stockholders have surrendered their stock, take all the profits, put all into a common fund, and distribute them among the holders of the trust certificates. The Sugar Refining Companies 121 N.Y. 585; Standard Oil trust 49 Ohio St. 137.

Second. A corporation that owns the stock of other corporations engaged in the same business. Such a trust exists where one corporation purchases, holds or sells the capital stock or purchases or leases, or operates the property, plant, good will, rights and franchises of another company or companies engaged in a like enterprise.

People vs The Chicago Gas Trust Co. 130 Ill 268.

Third. Where a corporation or an association or an individual for the purpose of obtaining a monopoly, buys or leases the property of other corporations or persons engaged in the same line of business.





Such a trust was the Diamond Match Company whose purpose of organization was to buy up and lease all establishments engaged in the manufacture of friction matches, and to exact in each case of such transfer a bond that such manufacturer would not for a term of years engage in the manufacture of matches, or aid any one else in so doing in any place where such action would conflict with the interest of the Diamond Match Co.

Richardson vs Buhl 77 Mich. 623; 43 N.W. Rep. 1102; Trendwell vs Sailsbury Mfg. Co. 7 Gray (Mass) 404.

Fourth. Where by governing committees corporations seek to regulate and control the private enterprises of their members. The St Paul Fuel Exchange was a corporation that sought, without dealing in coal itself to control the fuel trade of St Paul and vicinity by enforcing obedience to its <sup>by</sup> ~~by~~ laws, on the part of its members who were ~~not~~ dealers in coal. Kolff vs St. Paul Fuel Exchange 48 Minn. 255. Such an organization was the Chicago Law Stenographers Association. Moore vs. Bennett 140 Ill. 69.

c. The Copartnership Trust.

In the case of People vs. North River Sugar Refining Company 121 N.Y. 582; 24 N.E. 834, the state was joined in a Quo Warranto proceeding asking for the dissolution of the defendant corporation, because of its being a member of a combination with sixteen other sugar refining companies. This combination possessed the absolute control and absorbed the functions of the corporations ~~parties~~ to the combination



dictating the terms, manner, and extent of the entire business activity. All the stocks of these corporations was transferred to a central association of eleven individuals denominated a board. In exchange for such transfer the board or trustees distributed to the stockholders in each corporation, certificates carrying a proportional interest in the capital stock of the consolidated companies. Each corporation being itself subject to this board, and its directors subject to removal by the board. Each corporation lost the power to make a dividend and had to pay over its entire earnings to the master, the board whose servants such corporation had become.

The amount of sugar each was to refine was subject to the masters order. In short each lost its separate identity in the consolidation, and could not act save upon the boards order or approval. Each corporation partook alike in the profits or losses of the other, parties to the combination and the property of each was subject to be mortgaged to supply the board with funds to reach out for other coveted refineries. Similar organizations existed and will be found in; State vs. Standard Oil Co. 49 Ohio St. 137; Mallroy vs. Hanapr Oil Works 86 Tenn. 602.

The object of such companies was clearly to establish a virtual monopoly of the business of producing and dealing in the one commodity by which it might not merely control the production but the price of such commodity at pleasure. Clearly all such associations are contrary to public policy and are void on that ground alone.



Aside from this, it is a principle of the law that a corporation has no right to become a member of a copartnership, because in a copartnership each member may bind the firm by any act of his within the scope of the partnership business. The affairs of a corporation must be managed and controlled by its directors and officers, and this power cannot be delegated to such an outside party as a trustee. Hence the copartnership form of trusts, violates the law of corporate existence and is for such reason clearly illegal.

Marine Bk. vs. Ogden 29 Ill. 248; Whittenton Mills vs. Upton 10 Gray (Mass.) 582; N.Y. Canal Co. vs Fulton Bk. 10 Wend.(N.Y.)412.

d. The Stock-holding Corporation or Trust.

The Chicago Gas Trust Co. was organized under the laws of the State of Illinois. The corporation itself as an individual had purchased and continued to hold the majority of the capital stock of four other gas companies, so that it controlled the action of these companies. They were, The Chicago Gas Light and Coke Co; The Peoples Gas Light and Coke Co, The Equitable Gas Light and Fuel Co., and The Consumers Gas Co. In an action brought against the corporation by the state, the contention of the corporation was that it had the power to hold the stock of other corporations. The court say "to create one corporation for the express purpose of enabling it to control all the corporations engaged in a certain kind of business, and particularly a business of a public



Kind, is not only opposed to the policy of this state but is in contravention of the spirit of the constitution. An exercise of the power attempted to be conferred upon the Gas Company must result in the creation of a monopoly. To create one corporation that it may destroy the energies of all other corporations of a given kind and suck their life blood out of them is not a lawful purpose. People vs. Chicago Gas Trust Co. 130 Ill 268; 22 N.E.Rep. 798.

The American decisions are nearly unanimous in holding that, in the absence of express legislative permission a corporation cannot purchase and hold stock in other corporations. Valley R. Co. vs. Lake Erie Iron Co. 46 Ohio St. 44; Central R.Co. vs. Penn.R.Co. 31 N.Y.eq.475 Franklin Co. vs. Lewiston Sav. Bk. 68 Me. 43; Central R.Co. vs. Calbanks 40 Ga. 582; Falmage vs. Peel 7 N.Y. 328; Berry vs. Yates 24 Barb. 200; State vs. Butler 86 Tenn. 614; Booth vs Robinson 55Md. 433; Nat. Bk. vs. Texas Invest. Co. 74 Texas 421.

In England however trading companies are allowed to buy and hold stock in other companies.

In Re Barnards Banking Co. L.R. 3 ch. 161.

In Re Asiatic Banking Co. L.R. 14 ch. 252.





e. The Leasing or Buying Corporation or Trust.

In December 1880 there was organized under the laws of Connecticut the Diamond Match Company, for the purpose of uniting into one corporation as far as possible all the match companies in the United States. The object of the company was to monopolize and control the business of making matches in this country and also to establish and maintain the price thereof. The process adopted was to buy up all the independent concerns throughout the country, or at least lease the same, in the agreement, not only stipulating for the business itself, but exacting a bond from every transferer that he would not engage again nor aid others in engaging in the business of making or selling matches. In the case of Richardson vs. Buhl 77 Mich. 623; 43 N.E.Rep.1102, the court held this to be an illegal procedure because it affected the production and sale of an article of necessity to life, and which was of such general use, that the public was interested in its production, aside from other considerations such as contracts in restraint of trade, and the suppression of legitimate competition, its charter was on this ground ordered revoked.

The decisions give us no general rule for the determination of what articles are within the rule of necessity and general use. The following articles have been held to be of such general importance that an attempt to control their production is illegal: coal, gas, matches, lumber, cotton bagging, butter, grain, salt, alcohol, candles, milk, preserves,



cloth, grain bags and <sup>harrows</sup> ~~harrows~~. Morris ~~Ream~~ Coal Co. vs. Barclay Coal Co. 68 Pa. St. 173; Arnst vs. Pittsburg Coal Co. 68 N.Y. 568; Gibbs vs. Consolidated Gas Co. 130 U.S. 408; Richardson vs. Buhel (supra) Santa Clara Valley Mill Co. vs Hayes 76 Cal. 387; Indian Bag Assn. vs. Knoch 14 La. Ann. 164; Chaplin vs. Brown 83 Io. 156; Craft vs. McConoughy 79 Ill. 346; Cent. Ohio Salt Co. vs. Guthrie 35 Ohio St. 666; Chancey vs. Onondaga Fine Salt Co. 62 Barb. 395; State vs. Nebraska Distilling Co. 29 Neb. 700; Emery vs. Ohio Candle Co. 47 Ohio St. 320; Chicago Milk Shippers Assn. vs. Ford 4 Nat. Corp Rep. 300; Amer. Preserves trust vs. Tylor Mfg. Co. 46 Fed. 152; Hilton vs. Eckessly 6 El. & Bl. (Eng.) 47; Pacific Factory Co. vs. Adler 90 Cal 110; Strait vs. Harrow Co. 18 N.Y. Supp. 224.

The following articles have been held not to be within the necessity rule. Washing Machines, Dolph vs. Troy Laundry Mach. Co. 28 Fed. 553, Curtain fixtures, Central Shade Co. vs. Cushman 143 Mass. 353, Sewing Machines, Be-Spool Sewing Mach. Co. vs. Acune Mfg. Co. 15 Mass. 404

A second reason for holding a <sup>stock-leasing</sup> ~~monopolistic~~ trust illegal is on the ground that a corporation already in the field has no right to sell out or lease its franchise. In the absence of express legislative permission, a corporation whose business is such that the public are interested therein, has no right to transfer its property to another corporation. Penn.R.Co. vs. St. Louis etc. R.Co. 118 U.S. 309; Firststain vs. Hay 122 Ill. 294.



In State vs Nebraska Distilling Co. 29 Neb. 700 the court say, "The fact that a corporation may by vote of the majority of its stockholders, put an end to its existence, sell its property, and wind up its affairs, does not authorize it to terminate its existence by a sale and disposal of all its property, rights and franchises. There is a contract between every corporation and the state which created it, and the benefits of this contract the corporation cannot sell."

It <sup>has</sup> however been held that a manufacturing company, when public interests are not involved, where a sale would not create a monopoly as regards an article of necessity, may sell its property to another corporation.

In the case of the monopolistic trust the grounds of illegality are thus, 1. because the sale of property of one corporation to another creates a monopoly and therefore in restraint of trade, 2. That a corporation has no right or power to convey away its franchise which was given it by grant from the state.

#### f. Trusts, By Governing Committees.

In the case of combinations, a governing board or committee, authorized to enforce certain rules and regulations by means of fines and forfeitures, contracts the private enterprises of the members of the combination whether such members be corporations, copartnerships or individuals. The necessary effect of such combinations being to restrict competition and control and enhance prices they are clearly illegal on



grounds of public policy alone.

The St. Paul Fuel Exchange was an organization of coal and fuel dealers doing business in the City of St. Paul. This organization was duly incorporated under the laws of Minnesota, and which it did not in any way deal in fuel itself, had, as its <sup>object</sup> ~~subject~~ the control of trade in such articles in the City of St. Paul. The organization consisted of a board of committee selected from members of the exchange whose members were themselves dealers in fuel. The by-laws of the Exchange provided among other things that the committee should from time to time fix and determine the price of coal and wood; that the decision of a majority of such board upon any question should be final and should not be appealed from; that no member of the exchange should establish or maintain more than one office or coal yard in the said city, and that no member of the exchange should sell any coal except when authorized by the committee. Upon complaint being made by one of the members of the Exchange, the court held that the by-laws of the exchange were ultra vires and decreed the dissolution of the corporation. *Kellf vs. St. Paul Fuel Exchange* 48 Minn. 215; 50 N.W. Rep. 1036.

Decisions carrying out the doctrine that such a corporation exceeds its powers are found in the following: *Vulcan Powder Co. vs. Hercules Powder Co.* 96 Cal. 510; *Vulcan Powder Co. vs. California Vigarit Powder Co.* 31 Pac. Rep. 583; *Morris Run Coal Co. vs. Barclay Coal Co.* 68 Pa. St. 173; *Judd vs. Harrington* 19 N.Y. Supp. 406; *Moore vs. Bennett* 140 Ill. 69.





g. Legal Consequences of Forming a Trust.

Having seen that the trust agreement is an illegal one, it will now be proper to notice the respective rights and duties of the parties to an illegal corporation, the rights of the state, of a stockholder, and the liabilities of those who deal with such trusts or organizations.

An illegally incorporated trust is subject to forfeiture of its charter at the suit of the state and so are the corporations that enter into such a trust <sup>combination</sup> corporation.

People vs. Chicago Gas Trust Co. 130 Ill. 268; People vs. North River Sugar Refining Co. 121 N.Y. 582; State vs. Nebraska Distilling Co. 29 Neb. 700; People vs American Sugar Refining Co. 7 Ry. and Corp. Law Jour. 83.

The State may likewise enjoin the formation of an unincorporated trust, State vs. American Cotton Seed Oil Trust. 46 La. Ann. 8

Dissenting stockholders holding a minority of the capital stock of the corporations constituting the trust may enjoin its formation. Small vs. Minneapolis Electro Matrix Co. 45 Minn. 264; Central R. Co. vs. Colvins 40 Ga. 582.

A corporation, member of the illegal trust combination cannot, nor can its receiver, recover by suit any money due it from the trust as a share in the profits of the business. Gray vs. Oxnard Bros. Co. 59 Hun. (N.Y.) 387; Chancey vs. Onon<sub>da</sub> Fine Salt Co. 62 Barb 395.



A court of equity will refuse to appoint a receiver, for anything ~~else~~ that may aid the illegal trust in carrying out the objects of its organization. American Biscuit etc. Co. vs. Kletz 44 Fed. 721. But it has been held that a corporation party to an illegal trust agreement, may rescind its agreement, even after it has been partly executed and obtain a restitution of its property. Mallroy vs. Hanau Oil Works 86 Tenn. 598; Strait vs. National Harrow Co. 18 N.Y. Supp. 224.

So also, even though the trust agreement be void, courts will recognize the holders of certificates as holder of property and will protect their rights as such. Cameron vs. Havemyer 12 N.Y. Supp. 126; Bean vs. American L. & T. Co. 122 N.Y. 622; Rice vs. Rochafeller 134 N.Y. 174.

It was held in Richardson vs. Buehl 77 Mich. 632, that Contracts between third persons and such illegal trust are unenforceable but the illegality of a trust is held not to estop a creditor of the trust from enforcing his claim. Catskill Bank vs. Gray 14 Barb. 479; Pittsburg Carbon Co. vs. McMillin 53 Hun(N.Y.) 67; 119 N.Y. 46.





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