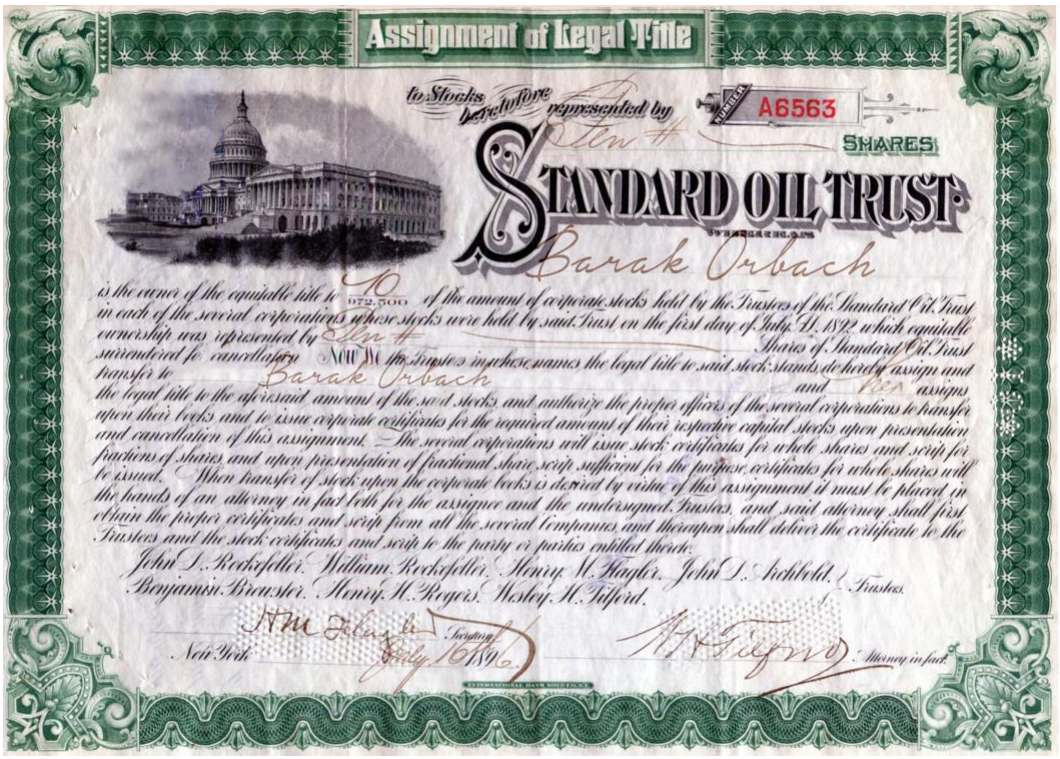


Assignment of Legal Title

to Stocks heretofore represented by A6563 SHARES

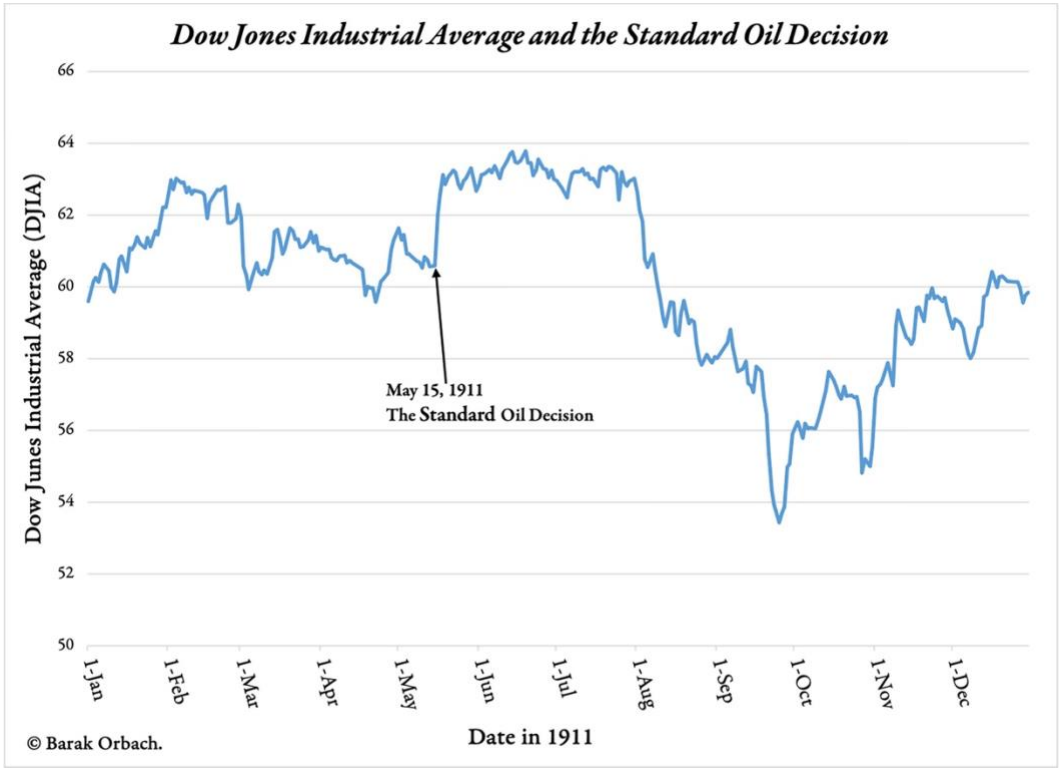
STANDARD OIL TRUST

Barak Orbach

is the owner of the equitable title to 10 of the amount of corporate stocks held by the Trustees of the Standard Oil Trust in each of the several corporations whose stocks were held by said Trust on the first day of July A.D. 1892 which equitable ownership was represented by Ten # Shares of Standard Oil Trust surrendered for cancellation. NOW the Trustees in whose names the legal title to said stock stands do hereby assign and transfer to Barak Orbach and his assigns the legal title to the aforesaid amount of the said stocks and authorize the proper officers of the several corporations to transfer upon their books and to issue corporate certificates for the required amount of their respective capital stocks upon presentation and cancellation of this assignment. The several corporations will issue stock certificates for whole shares and scrip for fractions of shares and upon presentation of fractional share scrip sufficient for the purpose certificates for whole shares will be issued. When transfer of stock upon the corporate books is desired by virtue of this assignment it must be placed in the hands of an attorney in fact both for the assignee and the undersigned Trustees, and said attorney shall first obtain the proper certificates and scrip from all the several Companies and thereupon shall deliver the certificate to the Trustees and the stock certificates and scrip to the party or parties entitled thereto.

John D. Rockefeller. William Rockefeller. Henry M. Flagler. John D. Archbold. Trustees.
Benjamin Brewster. Henry H. Rogers. Wesley H. Tilford.

New York July 10th 1892. Attorney in fact.



Standard Oil Company of New Jersey v. United States

221 U.S. 1 (1911)

Mr. Chief Justice White delivered the opinion of the Court.

The Standard Oil Company of New Jersey and thirty-three other corporations, John D. Rockefeller, William Rockefeller, and five other individual defendants, prosecute this appeal to reverse a decree of the court below. Such decree was entered upon a bill filed by the United States under authority of § 4 of the act of July 2, 1890, known as the antitrust act. . . . The record is inordinately voluminous, consisting of twenty-three volumes of printed matter, aggregating about 12,000 pages, containing a vast amount of confusing and conflicting testimony relating to innumerable, complex, and varied business transactions, extending over a period of nearly forty years. . . .

[The corporate defendants include seventy some subsidiaries of the Standard Oil Trust and seven individuals. The government alleges that the defendants engaged in a conspiracy to restrain trade] in petroleum, commonly called 'crude oil,' in refined oil, and in the other products of petroleum, among the several states and territories of the United States and the District of Columbia and with foreign nations, and to monopolize the said commerce. The conspiracy was alleged to have been formed in or about the year 1870 by three of the individual defendants: John D. Rockefeller, William Rockefeller, and Henry M. Flagler. The detailed averments concerning the alleged conspiracy were arranged with reference to three periods, the first from 1870 to 1882, the second from 1882 to 1899, and the third from 1899 to the time of the filing of the bill.

[1870-1882]

[During this period, the] individual defendants, in connection with the Standard Oil Company of Ohio, purchased and obtained interests through stock ownership and otherwise in, and entered into agreements with, various persons, firms, corporations, and limited partnerships engaged in purchasing, shipping, refining, and selling petroleum and its products among the various states, for the purpose of fixing the price of crude and refined oil and the products thereof, limiting the production thereof, and controlling the transportation therein, and thereby restraining trade and commerce among the several states, and monopolizing the said commerce.

. . . John D. and William Rockefeller and several other named individuals, who, prior to 1870, composed three separate partnerships engaged in the business of refining crude oil and shipping its products in interstate commerce, organized in the year 1870 a corporation known as the Standard Oil Company of Ohio. [They] transferred to that company the business of the said partnerships, the members thereof becoming, in proportion to their prior ownership, stockholders in the corporation.

. . . [T]he other individual defendants soon afterwards became participants in the illegal combination, and either transferred property to the corporation or to individuals, to be held for the benefit of all parties in interest in proportion to their respective interests in the combination; that is, in proportion to their stock ownership in the Standard Oil Company

of Ohio.

[By 1872], the combination had acquired substantially all but three or four of the thirty-five or forty oil refineries located in Cleveland, Ohio. [The Trust] obtained large preferential rates and rebates in many and devious ways over their competitors from various railroad companies, and that by means of the advantage thus obtained many, if not virtually all, competitors were forced either to become members of the combination or were driven out of business; and thus, it was alleged, during the period in question, the following results were brought about:

(a) That the combination . . . had acquired [refineries across the country, which it] dismantled to limit production, or continued to operate. . . . [Although the properties that the combination acquired were owned by or were held] for the benefit of the combination, [they] were ostensibly divergently controlled, some of them being put in the name of the Standard Oil Company of Ohio, some in the name of corporations or limited partnerships affiliated therewith, or some being left in the name of the original owners, who had become stockholders in the Standard Oil Company of Ohio, and thus members of the alleged illegal combination.

(b) That the combination had obtained control of the pipe lines available for transporting oil from the oil fields to the refineries in [several states].

(c) That the combination during the period named had obtained a complete mastery over the Oil industry, controlling 90% of the business of producing, shipping, refining, and selling petroleum and its products, and thus was able to fix the price of crude and refined petroleum, and to restrain and monopolize all interstate commerce in those products.

[1882-1899]

That during the . . . second period of conspiracy the defendants entered into a contract and trust agreement, by which various independent firms, corporations, limited partnerships, and individuals engaged in purchasing, transporting, refining, shipping, and selling oil and the products thereof among the various states, turned over the management of their said business, corporations, and limited partnerships to nine trustees, composed chiefly of certain individuals defendant herein, which said trust agreement was in restraint of trade and commerce, and in violation of law, as hereinafter more particularly alleged.* . . .

[In 1892, the Ohio Supreme Court held that the Standard Oil Trust agreement was void because it was] restraint of trade and amounted to the creation of an unlawful monopoly. [John D. Rockefeller and his associates dissolved the Ohio company and created an identical trust in New Jersey, which sought to draw corporations]. . . .

[1899-1907]

That during the third period of said conspiracy, and in pursuance thereof, the said individual defendants operated through the Standard Oil Company of New Jersey, as a

* [In 1882, Samuel Calvin Tait ("C.T.") Dodd, Standard Oil general counsel, developed a legal instrument—"trust" that enabled the operation of national companies, then business entities that consisted of multiple companies operating in different states].

holding corporation, which corporation obtained and acquired the majority of the stocks of the various corporations engaged in purchasing, transporting, refining, shipping, and selling oil [in the United States]. . . .

[In 1899], the trust came to an end, the stock of the various corporations which had been controlled by it being transferred by its holders to the Standard Oil Company of New Jersey. . . . [Succeeding the Standard Oil Trust, since 1899], the Standard Oil Company of New Jersey [has] monopolized and restrained interstate commerce in petroleum and its products.

[The government listed a large number of allegedly unlawful restraints of trade]:

Rebates, preferences, and other discriminatory practices in favor of the combination by railroad companies;

- Restraint and monopolization by control of pipe lines, and unfair practices against competing pipe lines;
- Contracts with competitors in restraint of trade; unfair methods of competition, such as local price cutting at the points where necessary to suppress competition;
- Espionage of the business of competitors, the operation of bogus independent companies, and payment of rebates on oil, with the like intent;
- The division of the United States into districts, and the limiting the operations of the various subsidiary corporations as to such districts so that competition in the sale of petroleum products between such corporations had been entirely eliminated and destroyed; and . . .
- 'Enormous and unreasonable profits' earned by the Standard Oil Trust and the Standard Oil Company as a result of the alleged monopoly.

. . . [The defendants did not contest the key factual allegations, such as] the alleged acquisitions of property, the formation of the so-called trust of 1882, its dissolution in 1892, and the acquisition by the Standard Oil Company of New Jersey of the stocks of the various corporations in 1899. [However], they deny all the allegations respecting combinations or conspiracies to restrain or monopolize the oil trade; and particularly that the so-called trust of 1882, or the acquisition of the shares of the defendant companies by the Standard Oil Company of New Jersey in 1899, was a combination of *independent or competing* concerns or corporations. . . .

[The government filed its complaint in June 1907]. A special examiner was appointed to take the evidence, and his report was filed March 22, 1909. It was heard on April 5 to 10, 1909, . . . before a circuit court consisting of four judges. The court decided in favor of the United States. . . . [The court found that the Standard Oil Trust and its Successor, the Standard Oil Company (including its subsidiaries), violated Section 1 and 2 of the Sherman Act. The court ordered dissolution of the Standard Oil Company though the separation of its 37 subsidiaries].

[ANALYSIS]

Both as to the law and as to the facts, the opposing contentions pressed in the argument are numerous, and in all their aspects are so irreconcilable that it is difficult to reduce them to some fundamental generalization, which, by being disposed of, would decide them all. . . . While both sides agree that the determination of the controversy rests upon the

correct construction and application of the 1st and 2d sections of the anti-trust act, yet the views as to the meaning of the act are as wide apart as the poles, since there is no real point of agreement on any view of the act. And this also is the case as to the scope and effect of authorities relied upon, even although in some instances one and the same authority is asserted to be controlling.

. . . Thus, on the one hand, . . . it is insisted that the facts establish that the assailed combination took its birth in a purpose to unlawfully acquire wealth by oppressing the public and destroying the just rights of others, and that its entire career exemplifies an inexorable carrying out of such wrongful intents. . . . [T]he pathway of the combination from the beginning to the time of the filing of the bill, [the government alleges], is marked with constant proofs of wrong inflicted upon the public, and is strewn with the wrecks resulting from crushing out, without regard to law, the individual rights of others. [T]he Standard Oil Company of New Jersey, with the vast accumulation of property which it owns or controls, because of its infinite potency for harm and the dangerous example which its continued existence affords, is an open and enduring menace to all freedom of trade, and is a byword and reproach to modern economic methods.

On the other hand, in a powerful analysis of the facts, [the defendants argue that the facts] demonstrate that the origin and development of the vast business which the defendants control was but the result of lawful competitive methods, guided by economic genius of the highest order, sustained by courage, by a keen insight into commercial situations, resulting in the acquisition of great wealth, but at the same time serving to stimulate and increase production, to widely extend the distribution of the products of petroleum at a cost largely below that which would have otherwise prevailed, thus proving to be at one and the same time a benefaction to the general public as well as of enormous advantage to individuals.

[The defendants do not deny] that in the enormous volume of proof contained in the record in the period of almost a lifetime, to which that proof is addressed, there may be found acts of wrongdoing. [However, they argue that the alleged violations of law] were rather the exception than the rule, and in most cases were either the result of too great individual zeal in the keen rivalries of business, or of the methods and habits of dealing which, even if wrong, were commonly practiced at the time. . . .

Duly appreciating the situation just stated, it is certain that only one point of concord between the parties is discernible, which is, that the controversy in every aspect is controlled by a correct conception of the meaning of the 1st and 2d sections of the anti-trust act. . . .

First. The text of the act and its meaning.

The [Congressional] debates show that doubt as to whether there was a common law of the United States which governed that subject in the absence of legislation was among the influences leading to the passage of the act.

They conclusively show, however, that the main cause which led to the legislation was the thought that it was required by the economic condition of the times; that is, the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organization, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations

known as trusts were being multiplied, and the widespread impression that their power had been and would be exerted to oppress individuals and injure the public generally.

Although debates may not be used as a means for interpreting a statute . . ., that rule, in the nature of things, is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is, the history of the period when it was adopted.

. . . It is certain that [the terms "restraints of trade," "monopolization," and "attempt to monopolize"], at least in their rudimentary meaning, took their origin in the common law, and were also familiar in the law of this country prior to and at the time of the adoption of the act in question. . . .

a. [Restraints of Trade]. It is certain that at a very remote period the words 'contract in restraint of trade' in England came to refer to some voluntary restraint put by contract by an individual on his right to carry on his trade or calling. Originally all such contracts were considered to be illegal, because it was deemed they were injurious to the public as well as to the individuals who made them. [Over time, this doctrine changed to provide that only unreasonable restraints are unlawful].

b. [Monopolies]. [In England, the word "monopoly" used to mean an exclusive right to engage in a particular line of business granted by the King]. . . . The evils which led to the public outcry against monopolies and to the final denial of the power to make them. As monopoly, as thus conceived, embraced only a consequence arising from an exertion of sovereign power, no express restrictions or prohibitions obtained against the creating by an individual of a monopoly as such. [Over time, the meaning of the word has changed to cover entities that acquire monopoly power in some fashion. In sum, under] the common law, monopolies were unlawful because of their restriction upon individual freedom of contract and their injury to the public. . . .

Without going into detail, . . . it may be with accuracy said that the dread of enhancement of prices and of other wrongs which . . . flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions. . . .

[Section 1 of the Sherman Act provides that 'Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce . . . is hereby declared to be illegal.' . . . What was the rule which it adopted?

The statute . . . evidenced the intent . . . to protect that commerce from being restrained by methods, whether old or new, which would constitute . . . an undue restraint. . . .

[Section 2 of the Sherman Act] intended to supplement [Section 1], and to make sure that by no possible guise could the public policy embodied in the 1st section be frustrated or evaded. . . . The ambiguity, if any, is involved in determining what is intended by monopolize. But this ambiguity is readily dispelled in the light of the previous history of the law of restraint of trade to which we have referred and the indication which it gives of the practical evolution by which monopoly and the acts which produce the same result as monopoly, that

is, an undue restraint of the course of trade, all came to be spoken of as, and to be indeed synonymous with, restraint of trade. . . .

Second. The contentions of the parties as to the meaning of the statute, and the decisions of this court relied upon concerning those contentions.

In substance, the propositions urged by the government are reducible to this: That the language of the statute embraces every contract, combination, etc., in restraint of trade, and hence its text leaves no room for the exercise of judgment, but simply imposes the plain duty of applying its prohibitions to every case within its literal language. [This proposition is inconsistent with] the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute. . . .

Third. The facts and the application of the statute to them.

. . . [T]he court below held that [the creation and operations of the Standard Oil Company and its predecessor] operated to destroy the 'potentiality of competition' which otherwise would have existed. [The company, the district court held, is] a combination or conspiracy in restraint of trade, in violation of [Section 1], but also to be an attempt to monopolize and monopolization bringing about a perennial violation of [Section 2]. We see no cause to doubt the correctness of these conclusions, considering the subject from every aspect . . .:

a. Because the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation . . . , aggregating so vast a capital, gives rise, in and of itself, in the absence of countervailing circumstances . . . to the prima facie presumption of intent and purpose to maintain the dominancy over the oil industry. [The aggregation of capital was] not as a result of normal methods of industrial development. [B]y new means of combination which were resorted to in order that greater power might be added . . ., the whole with the purpose of excluding others from the trade, and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce.

b. [T]he prima facie presumption of intent . . . is made conclusive [when we consider] (1) the conduct of the persons or corporations who were mainly instrumental in bringing about the extension of power . . . prior to the formation of the trust agreements of 1879 and 1882; [and] (2) the proof as to what was done under those agreements . . ., as well as by weighing the modes in which the power vested in that corporation has been exerted and the results which have arisen from it.

Fourth. The remedy to be administered.

It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. . . . But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. . . . [T]o meet the situation with which we are confronted the application of remedies two-fold in character becomes essential: 1. To

forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of, trade or commerce, is the foundation upon which the prohibitions of the statute rest, and moreover that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property.

[CONCLUSION]

. . . Our conclusion is that the decree below was right and should be affirmed, except as to the minor matters. . . . And it is so ordered.

Mr. Justice Harlan, concurring in part and dissenting in part:

A sense of duty constrains me to express the objections which I have to certain declarations in the opinion just delivered on behalf of the court.

I concur in holding that the Standard Oil Company of New Jersey and its subsidiary companies constitute a combination in restraint of interstate commerce, and that they have attempted to monopolize and have monopolized parts of such commerce . . . in violation of what is known as the anti-trust act of 1890. . . . The evidence in this case overwhelmingly [requires] the dissolution of the New Jersey corporation and the discontinuance of the illegal combination between that corporation and its subsidiary companies.

In my judgment, the decree below should have been affirmed without qualification. But the court, while affirming the decree, directs some modifications in respect of what it characterizes as 'minor matters.' It is to be apprehended that those modifications may prove to be mischievous. [A restraint of trade is unlawful even] if such restraint be not 'undue.'

. . . I must state the circumstances under which Congress passed the anti-trust act, and trace the course of judicial decisions as to its meaning and scope. This is the more necessary because the court by its decision, when interpreted by the language of its opinion, has not only upset the long-settled interpretation of the act, but has usurped the constitutional functions of the legislative branch of the government. With all due respect for the opinions of others, I feel bound to say that what the court has said may well cause some alarm for the integrity of our institutions. Let us see how the matter stands.

All who recall the condition of the country in 1890 will remember that there was everywhere, among the people generally, a deep feeling of unrest. The nation had been rid of human slavery—fortunately, as all now feel—but the conviction was universal that the country was in real danger from another kind of slavery sought to be fastened on the American people; namely, the slavery that would result from aggregations of capital in the hands of a few individuals and corporations controlling, for their own profit and advantage

exclusively, the entire business of the country, including the production and sale of the necessaries of life.

Such a danger was thought to be then imminent, and all felt that it must be met firmly and by such statutory regulations as would adequately protect the people against oppression and wrong. Congress therefore took up the matter and gave the whole subject the fullest consideration. All agreed that the national government could not, by legislation, regulate the domestic trade carried on wholly within the several states; for power to regulate such trade remained with, because never surrendered by, the states. But, under authority expressly granted to it by the Constitution, Congress could regulate commerce among the several states and with foreign states. Its authority to regulate such commerce was and is paramount, due force being given to other provisions of the fundamental law, devised by the fathers for the safety of the government and for the protection and security of the essential rights inhering in life, liberty, and property.

Guided by these considerations, and to the end that the people, *so far as interstate commerce* was concerned, might not be dominated by vast combinations and monopolies, having power to advance their own selfish ends, regardless of the general interests and welfare, Congress passed the anti-trust act of 1890. . . .

Congress [used] unequivocal words declared that '*every* contract, combination in the form of trust or otherwise, or conspiracy, in restraint of commerce among the several states,' shall be illegal. [Congress did not draw a] distinction . . . between restraints of such commerce as were undue or unreasonable, and restraints that were due or reasonable. With full knowledge of the then condition of the country and of its business, Congress [adopted] an absolute, statutory prohibition of '*every* contract, combination in the form of trusts or otherwise, in restraint of trade or commerce.' . . .