over which it has constitutional power to legislate, **public policy in such a case is what the statute enacts.** If the law prohibits any contract or combination in restraint of trade or commerce, a contract or combination made in violation of such law is void, whatever may have been theretofore decided by the courts to have been the public policy of the country on that subject. The conclusion which we have drawn from the examination above made into the question before us is that the anti-trust act applies to railroads, and that it renders illegal all agreements which are **in restraint** of trade or commerce as we have above defined that expression, and the question then arises whether the agreement before us is of that nature."

I have made these extended extracts from the opinion of the court in the trans-Missouri freight case in order to show beyond question that the point was there urged by counsel that the anti-trust act condeemed **only** contracts, combinations, trusts, and conspiracies that were in **unreasonable** restraint of interstate commerce, and that the court in clear and decisive language met that point. It adjudged that congress had in 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, and that no distinction, **so far as interstate commerce was concerned,** was to be tolerated 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 determined to meet, and did meet, the situation by an absolute, statutory prohibition of **"every** contract, combination, in the form of trust or otherwise, in restraint of trade or commerce." Still more, in response to the suggestion by able counsel that congress intended only to strike down such contracts, combinations, and monopolies as unreasonably restrained interstate commerce, this court, in words too clear to be misunderstood, said that to so hold was "to read into the act by way of **judicial legislation,** an exception not placed there by the lawmaking branch of the government." "This," the court said, as we have seen, **"we can not** and **ought not** to do."

It thus appears that 15 years ago, when the purpose of congress in passing the anti-trust act was fresh in the minds of courts, lawyers, statesmen, and the general public, this court expressly declined to indulge in judicial legislation, by inserting in the act the word "unreasonable" or any other word of like import. It may be stated here that the country at large accepted this view of the act, and the federal courts throughout the entire country enforced its provisions according to the interpretation given in the freight association case. What, then, was to be done by those who questioned the soundness of the interpretation placed on the act by this court in that case? As the court had decided that to insert the word "unreasonable" in the act would be "judicial legislation" on its part, the only alternative left to those who opposed the decision in that case was to induce congress to so **amend** the act as to recognize the right to restrain interstate commerce to a **reasonable** extent. The public press, magazines, and law journals, the debates in congress, speeches and addresses by public men and jurists, all contain abundant evidence of the general understanding that the meaning, extent, and scope of the anti-trust act had been judicially determined by this court, and that the only question remaining open for discussion was the wisdom of the policy declared by the act—a matter that was exclusively within the cognizance of congress. But at every session of congress since the decision of 1896, the lawmaking branch of the government, with full knowledge of that decision, has refused to change the policy it had declared or to so amend the act of 1890 as to except from its operation contracts, combinations, and trusts that **reasonably** restrain interstate commerce.

But those who were in combinations that were illegal did not despair. They at once set up the baseless claim that the decision of 1896 disturbed the "business interests of the country," and let it be known that they would never be content until the rule was established that would permit interstate commerce to be subjected to **reasonable** restraints. Finally, an opportunity came again to raise the same question which this court had, upon full consideration, determined in 1896. I now allude to the case of Unites States v. Joint Traffic association, 171 U. S., 505, decided in 1898. What was that case?

It was a suit by the United States against more than 30 railroad companies to have the court declare illegal, under the anti-trust act, a certain agreement between these companies. The relief asked was denied in the subordinate federal courts and the government brought the case here.

It is important to state the points urged in that case by the defendant companies charged with violating the anti-trust act, and to show that the court promptly met them. To that end I make a copious extract from the opinion in the joint traffic case. Among other things, the court said:

"Upon comparing that agreement [the one in the joint traffic cases, then under consideration, 171 U. S., 505] with the one set forth in the case of United States v. Trans-Missouri Freight association, 166 U. S., 290, the great similarity between them suggests that a similar result should be reached in the two cases (p. 558.)"

Learned counsel in the joint traffic case urged a reconsideration of the question decided in the trans-Missouri case, contending that "the decision in that case [the trans-Missouri freight case] is quite plainly erroneous, and the consequences of such error are far-reaching and disastrous and clearly at war with justice and sound policy, and the construction placed upon the anti-trust statute has been received by the public with surprise and alarm." They suggested that the point made in the joint traffic case as to the meaning and scope of the act might have been but was not made in the previous case. The court said (171 U. S., 559) that "the report of the trans-Missouri case clearly shows not only that the point now taken was there urged upon the attention of the court, but it was then **intentionally** and **necessarily** decided."

The question whether the court should again consider the point decided in the trans-Missouri case was disposed of in the most decisive language, as follows:

"Finally, we are asked to reconsider the question decided in the trans-Missouri case, and to retrace the steps taken therein, because of the plain error contained in that decision and the widespread alarm with which it was received and the serious consequences which have resulted, or may soon result, from the law as interpreted in that case. It is proper to remark that an application for a reconsideration of a question but lately decided by this court is usually based upon a statement that some of the arguments employed on the original hearing of the question have been overlooked or misunderstood, or that some controlling authority has been either misapplied by the court or passed over without discussion or notice. While this is not strictly an application for a rehearing in the same case, yet in substance it is the same thing. The court is asked to reconsider a question but just decided after a careful investigation of the matter involved. There have heretofore been in effect two arguments of precisely the same questions now before the court, and the same arguments were addressed to us on both those occasions. The report of the trans-Missouri case shows a dissenting opinion delivered in that case, and that the opinion was concurred in by three other members of the court. That opinion, it will be seen, gives with great force and ability the arguments against the decision which was finally arrived at by the court. It was after a full discussion of the questions involved and with the knowledge of the views entertained by the minority, as expressed in the dissenting opinion, that the majority of the court came to the conclusion it did. Soon after the decision a petition for a rehearing of the case was made, supported by a printed argument in its favor, and pressed with an earnestness and vigor and at a length which were certainly commensurate with the importance of the case. This court, **with care and deliberation** and also with a full appreciation of their importance, again considered the questions involved in its former decision. A majority of the court once more arrived at the conclusion it had first announced, and accordingly it denied the application. And now **for the third time** the same arguments are employed, and the court is again asked to recant its former opinion, and to decide the same question in direct opposition to the conclusion arrived at in the trans-Missouri case. The learned counsel while making the application frankly confess that the argument in opposition to the decision in the case above named has been so fully, so clearly, and so forcibly presented in the dissenting opinion of Mr. Justice White [in the freight case] that it is hardly possible to add to it, nor is it necessary to repeat it. The fact that there was so close a division of opinion in this court when the matter was first under advisement, together with the different views taken by some of the judges of the lower courts, led us to the most careful and scrutinizing examination of the arguments advanced by both sides, and it was after such an examination that the majority of the court came to the conclusion it did. It is not now alleged that the court on the former occasion overlooked any argument for the respondents or misapplied any controlling authority. It is simply insisted that the court, notwithstanding the arguments for an opposite view, arrived at an erroneous result which, for reasons already stated, ought to be reconsidered and reversed. **As we have twice already deliberately and earnestly considered the same arguments which are now for a third time pressed upon our attention,** it could hardly be expected that our opinion should now change from that already expressed."

These utterances, taken in connection with what was previously said in the trans-Missouri freight case, show so clearly and affirmatively to admit of no doubt that this court many years ago, upon the fullest consideration, interpreted the anti-trust act as prohibiting and making illegal not only **every** contract or combination, in whatever form, which was in restraint of interstate commerce, without regard to its reasonableness or unreasonableness, but all monopolies or attempt to monopolize "any part" of such trade or commerce. Let me refer to a few other cases in which the scope of the decision in the freight association case was referred to: In Bement v. National Harrow Co. (186 U. S., 70, 92) the court said, "It is true that it has been held by this court that the act (anti-trust act) included any restraint of commerce, whether **reasonable or unreasonable,"** citing United States v. Trans-Missouri Freight association (166 U. S., 290); United States v. Joint Traffic association (171 U. S., 505) Addyston Pipe, etc., Co. v. United States (175 U. S., 211). In Montague v. Lowry (193 U. S., 38, 46,) which involved the validity, under the anti-trust act, of a certain association formed for the sale of tiles, mantels, and grates, the court, referring to the contention that the sale of tiles in San Francisco was so small "as to be a negligible quantity," held that the association was, nevertheless, a combination in restraint of interstate trade or commerce in violation of the anti-trust act. In Loewe v. Lawlor (208 U. S., 274, 297) all the members of this court concurred in saying that the Trans-Missouri, Joint Traffic, and Northern Securities cases "hold in effect that the anti-trust law has a broader application than the prohibition of restraints of trade unlawful at common law." In Shawnee Compress Co. v. Anderson (1907) (209 U. S., 423, 432) all the members of the court again concurred in declaring that "it has been decided that not only unreasonable but all direct restraints of trade are prohibited, the law being thereby distinguished from the common law." In United States v. Addyston Pipe Co. (85 Fed. Rep., 278) Judge Taft, speaking for the circuit court of appeals for the Sixth circuit, said that according to the decision of this court in the freight association case "contracts in restraint of interstate transportation were within the statute, whether the restraints could be regarded as reasonable at common law or not." In Chespeake & Ohio Fuel Co. v. United States (1902) (115 Fed. Rep., 610, 619) the circuit court of appeals for the Sixth circuit, after referring to the right of congress to regulate interstate commerce, thus interpreted the prior decisions of this court in the Trans-Missouri, the Joint Traffic, and the Addyston Pipe & Steel Co. cases: "In the exercise of this right congress has seen fit to prohibit all contracts in restraint of trade. It has not left to the courts the consideration of the question whether such restraint is reasonable or unreasonable, or whether the contract would have been illegal at the common law or not. The act leaves for consideration by judicial authority no question of this character, but all contracts and combinations are declared illegal if in restraint of trade or commerce among the states."

As far back as Robbins v. Shelby Taxing District (120 U. S., 489, 497) it was held that certain local regulations, subjecting drummers engaged in both interstate and domestic trade, could not be sustained by reason of the fact that no discrimination was made among citizens of the different states. The court observed that this did not meet the difficulty, for the reason that "interstate commerce can not be taxed at all." Under this view congress no doubt acted, when by the anti-trust act it forbade any restraint whatever upon interstate commerce. It manifestly proceeded upon the theory that interstate commerce could not be restrained at all by combinations, trusts, or monopolies, but must

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