The Sherman Anti-Trust Law: in its Relation to the Economic Welfare of The United Stats

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May 15th, 1912

Submitted to the Department of Economics of the University of Kansas in partial fulfillment of the requirements for the Degree of Master of Arts

SHERMAN ANTI-TRUST LAW:
IN ITS RELATION TO
THE ECONOMIC WELFARE
OF THE UNITED STATES

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A thesis,

presented to

the

Department of Economics and the Dean of the Graduate School, in partial satisfaction of the requirements for the degree of Master of Arts,

by

F R A N C I S D E A N S C H N A C K E.

University of Kansas.

May 15, 1912.

OUTLINE.

Scope of the Sherman law.
- Its modification of the common law doctrines.
- Early decisions of the United States Supreme Court construing the act.
- Recent application of the "rule of reason".

Defects of the Sherman law.
- It is indefinite and uncertain.
- It condemns all monopolies or combinations in restraint of trade alike, whether beneficial to the public or otherwise.
- The law is incapable of full enforcement.
- The enforcement of the law is left to the discretion of the officials of the Department of Justice.

The effects of combinations and trusts on prices.
- In general, prices of "trust" commodities have been lower and more stable than have competitive commodities.
- Prices of the products of the Sugar Trust.
- Prices of the products of the Paper Trust.
- Prices of the products of the Steel Trust.
- Prices of the products of the Oil Trust.

Evils of small business units which may be eliminated by combination.
- As illustrated by the railway business.

Evils of monopoly.
- Local price cutting.
- Use of fraud, coercion, etc.

Business efficiency of combinations.

Plan by which the evils of monopoly may be eliminated and the benefits retained.

The anti-trust legislation in the United States, both by the various states and by the federal government, has been almost entirely enacted within the last twenty-five years. Although much legislation has been placed upon the statute books, statesmen and economists are almost unanimous in the opinion that the trust problem is as yet far from solved, and, says Samuel Untermyer, in an address before the Economic Club of New York on November 22, 1911; "To some of us it" (what to do with the trusts) "seems the most difficult and important economic question that ever confronted a progressive nation and one that while clamoring for immediate settlement cannot be solved without further legislation."(a)

At the beginning of the fifteenth century the common law condemned all agreements by which a person bound himself not to exercise his trade; that is, it borbad the sale of the "good will" of a business. A few centuries later it permitted such restraints for a limited time and space, and during the nineteenth century it abandoned these

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(a) New York Times, Nov. 23, 1911, See Yale Law Journal, Vol. XXI, No. 5, p. 343.

arbitrary limitations and applied the test of reasonableness.(a)

Forestalling the market, regrating, and engrossing were formerly punished in England as common law offenses against the public trade. "Forestalling" the market was the offense of buying or contracting for goods coming in to market, or dissuading persons from bringing their goods there, or persuading them to enhance the price when there. "Regrating" was the buying of corn or other dead food stuffs in any market and selling it again in the same market or a market close by. "Engrossing" was the buying up or obtaining of large quantities of dead food stuffs with the intent to sell them again. The total engrossing of any other commodity, with the intent to sell it at an unreasonable price, was also a crime at common law.(b)

At common law at the present time, both in the United States and England, all contracts or agreements so unreasonable as to be in restraint of trade are illegal and void, but none of such acts, nor the monopolizing of any particular commodity or industry, are common law crimes unless criminal conspiracy is involved. It has been held to be a crime, punishable as a criminal conspiracy, to conspire to raise the price of flour, salt, coal, or any other commodity in general use, by "cornering" the market, though the raising of the prices of such commodities was

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(a) Montague, Trusts of Today, p. 128.

(b) 4 Bl. Comm. 158. Clark & Marshall, Law of Crimes, p. 724.

not a crime per se.(a) In a late case the Supreme Court of Kentucky has held that it is not criminal, at common law, however, for insurance companies or agents to combine to maintain rates of insurance.(b) The Kentucky court went no further, however, than to recognize that such an agreement did not amount to a criminal conspiracy.

The common law rule, then in regard to this matter, is that contracts or combinations in the form of trust or otherwise, in restraint of trade, are not criminal unless criminal means are used for accomplishing the end - i.e. through criminal conspiracy. Combinations and agreements tending to prevent competition, enhance prices, and create monopolies, are not even illegal per se, as being in restraint of trade, and therefore contrary to public policy, but each case, the courts say, must be treated separately according to its own facts and circumstances.

By the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209,(c) every contract or combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, is declared illegal; and every person who monopolizes, or attempts or combines or conspires with another to monopolize any part of such trade or commerce is made guilty of a crime. Under this act any combination imposing restraint is unlawful and criminal, whether reasonable or

(a) Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. 173.
(b) Aetna Ins. Co. v. Com., 106 Ky. 864, 51 S.W. 624.
(c) U.S. Comp. Stat. 1901, p. 3200.

unreasonable, and whether or not such combination actually raises prices. This new law, then, creates and punishes an offense previously unknown to the laws of the United States or to the common law, except when criminal conspiracy was involved.

Since the statute does not define specifically what acts shall be considered criminal, it will be necessary to run over briefly the most important cases which have arisen under the act and see how the courts have construed it, in order to determine the exact scope of the law. By far the greatest number of indictments have been secured within the last ten years. During Harrison's administration 3 indictments were secured, during Cleveland's 2, McKinley's none, Roosevelt's (7 years) 25, Taft's (to Nov. 1, 1911) 20.

The first suit brought by the United States under the Sherman law was the case of United States v. Jellico Mountain Coal Co.(a) Upon full hearing, on June 4, 1891, the court held the combination, composed of various coal mining companies and coal dealers in Kentucky and Tennessee, formed for the purpose of fixing prices and regulating the output of coal, to be in violation of the act, and enjoined the further carrying out of the agreement. The next suit was brought against the officers of the Whiskey Trust. In this case(b), the Court held that the combination must monopolize or conspire to monopolize trade or commerce among the states or with foreign nations and that a mere intention

(a) 43 Fed. 898; 46 Fed. 432.

(b) United States v. Greenhut, 50 Fed. 469.

of monopolizing such commerce did not constitute a violation of the law. The Court held that the statute does not make an intent to monopolize, or an increase of usual prices an offense. In another case(a), it was held that "the promise of a rebate, as an inducement for exclusive trading, certainly does not constitute an 'attempt to monopolize', when the purchaser is left at liberty to buy where he pleases, and when all other sellers of the article are left unrestrained in offering the same, or greater inducements." "Where the restraint is partial, either as to time or place, its validity is to be determined by its reasonableness, and the existence of a consideration to support it. The question of its reasonableness depends on the consideration whether it is more injurious to the public than is required to afford a fair protection to the party in whose favor it is secured. No precise boundary can be laid down as to when, and under what circumstances, the restraint would be reasonable, and when it would be excessive". In the case of United States v. E.C. Knight Co.(b) it was held that a monopoly of the production of a commodity within a state and not of its sale or commerce among the states was not a violation of the federal law, as a monopoly of production bears only an incidental and indirect relation to commerce. Therefore a suit against the American Sugar Refining Co., a trust controlling most of the sugar refineries in the United States, which purchased stock in four Phila-

(a) In re Greene, 52 Fed. 104.

(b) 156 U.S. 1.

delphia refineries and attained a practical monopoly of the production of sugar, would not be sustained to set aside these purchases as in violation of the Sherman law. In another case(a) it was held that an association doing business in Kansas City stock yards, partly in Kansas and partly in Missouri, which received stock shipments from other states, sold them and turned the net proceeds over to the owners, was not engaged in interstate but local business and therefore not subject to the Sherman act. Many combinations of this character were able to prove themselves engaged in local business when the federal laws were brought to bear on them, and interstate business when the jurisdiction of the state laws was invoked.(b) The Diamond Match Co. which bought outright the property of most of the concerns engaged in the manufacture of matches was declared in Michigan to be illegal.(c) In New Jersey the Trenton Potteries Co. which purchased most of the potteries manufacturing sanitary ware in the United States was held legal.(d) Montague says; "Federal legislation, applying only to interstate commerce, had been so narrowly interpreted that every manufacturing trust might reasonably hope to escape."(e) The states of New Jersey, Delaware, and West Virginia, by passing no state anti-trust laws, provided a refuge for trusts, as

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(a) U.S. v. Hopkins, 171 U.S. 578.
(b) Montague, Trusts of Today, p. 142.
(c) Richardson v. Buhl, 77 Mich. 632.
(d) Trenton Potteries Co. v. Oliphant, 58 N.J. Eq. 507.
(e) Montague, Trusts of Today, p. 152.

the Supreme Court of the United States had held in the Knight case that a monopoly of the production of a commodity within a state and not of its commerce was not a violation of the Sherman law.

An agreement among a number of dealers to raise the price of the commodity which they sell above the market price is not a violation of the Sherman law as being in restraint of trade unless such agreement is a scheme intended to control the market. It is usually stated that it is necessary to show a scheme to gain control of the disposition of some commodity, some cases going so far as to require that a design to get exclusive control must be shown.(a) An indictment for violation of the law must contain enough to negative the possibility that those concerned in the combination are free to act according to their own will in spite of the understanding between themselves.(b) A combination of railroads engaged in interstate commerce, formed for the purpose of maintaining "just and reasonable rates" is a violation of the law.(c) In the famous Northern Securities case, decided in 1904, the Supreme Court of the United States has held that a total suppression of trade or a complete monopoly is not necessary for a violation of the Sherman law, but that any combination which tends to create a monopoly in, or restrain

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(a) U.S. v. Patterson, 55 Fed. 605, and 59 Fed. 280 (Cash Register Case); U.S. v. Nelson, 52 Fed. 646; In re Greene, 52 Fed. 104.
(b) U.S. v. Nelson, supra; In re Conning, 51 Fed. 205.
(c) U.S. v. Trans-Missouri Freight Rate Assn., 166 U.S. 290.

interstate or international trade, is a violation of the law. Justice Harlan, in delivering the opinion of the court, stated the proposition in the following words: "That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation, it tends to restrain interstate or international trade or commerce and to deprive the public of the advantages that flow from free competition."(a)

In a recent case(b) the Supreme Court has held that the Act does not mean that <u>every</u> combination in restraint of trade is a violation of its provisions, but that such restraint in order to become unlawful must be unreasonable. The "rule of reason" is to be applied in the construction of the act. The late Justice Harlan presented a dissenting opinion in this case, in which he clearly and forcefully showed that the majority of the court were really reversing their former decisions by holding that the act was to be construed as meaning unreasonable restraint.(c) No doubt Justice Harlan is correct in his statement - Chief Justice White intimates it himself in delivering the court's opinion.(d) - for in the Trans-Missouri Freight Case the

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(a) U.S. v. Northern Securities Co., 193 U.S. 331, 332.

(b) Standard Oil Co. v. U.S., 31 Sup. Ct. 502;221 U.S. 1.

(c) Ibid, 31 Sup. Ct. 525, 532.

(d) Ibid, 518.

Court said: "While the statute prohibits all combinations in the form of trust or otherwise, the limitation is not confined to that form alone. All combinations which are in restraint of trade or commerce are prohibited, whether in the form of trusts or in any other form whatever."(a) The Court, in that case, further says: "It is now with much amplification of argument urged that the statute, in declaring illegal every combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, does not mean what the language used therein plainly imports, but that it only means to declare illegal any such contract which is unreasonable restraint of trade, while leaving all others unaffected by the provisions of the act; that the common-law meaning of the term 'contract in restraint of trade' includes only such contracts as are in unreasonable restraint of trade; and when that term is used in the Federal statute it is not intended to include all contracts in restraint of trade, but only those which are in unreasonable restraint thereof." The Court further says that to construe the act as meaning unreasonable restraint of trade would be "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, "we cannot and ought not to do."

(a) United States v. Trans-Missouri Freight Association, 166 U.S. 290, 326.

In the Joint Traffic Case(a) the Court, in speaking of this matter said: "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." Justice Harlan, in his dissenting opinion in the Standard Oil Case, quotes from Senator Nelson in his adverse report, made in 1909, on behalf of the Senate Judiciary Committee, in reference to a certain bill offered in the Senate which proposed to amend the anti-trust act in various particulars: "The anti-trust act makes it a criminal offense to violate the law, and provides a punishment both by fine and imprisonment. To inject into the act the question whether an agreement or combination isx reasonable or unreasonable would render the act as a criminal or penal statute indefinite and uncertain, and hence, to that extent, utterly nugatory and void, and would practically amount to a repeal of that part of the act.....And while the same technical objection does not apply to civil prosecutions, the injection of the rule of reasonableness or unreasonableness would lead to the greatest variableness and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case, and there would be as many different rules of reasonableness as cases, courts, and juries.(b) Justice Harlan further adds a page later; "In effect the

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(a) U.S. v. Joint Traffic Assn., 171 U.S. 505.

(b) Standard Oil Co. v. U.S., 31 Sup. Ct. 530.

court says that it will now, for the first time, bring the discussion under the 'light of reason', and apply the 'rule of reason' to the questions to be decided."

Thus it will be seen that the exact scope of the Sherman law has been a very uncertain quantity. The statute fails to specify what acts constitute restraint of trade, or monopoly. There is no settled or accepted rule at common law as to what restraint of trade or monopoly is, and since the statute itself does not make the definition, there is a great deal of uncertainty as to what is criminal and what is not criminal. The matter is left for the courts to construe, and their construction must necessarily be based on the common law doctrines. The following words of an English judge, in speaking of the matter, clearly shows the uncertainty of the common law rule: "It is an unbridled horse, which, when you have once mounted it, you know not whither it will go, or where it will land you."(a)

Many acts then, are of such a nature that large businesses are unable to know whether they are violating the law or not until the matter has been judicially determined by the Supreme Court of the United States, and even then that court has, as we have seen, recently reversed a long line of its decisions by applying the so called "rule of reason". Possibly the courts should have rejected the Sherman law, saying in the language of the Supreme Court of the United States; "It is the Legislature and not the Court which is to define a crime"(b), or as it has again

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(a) Spelling, Trusts & Monopolies, p. 224.
(b) 5 Wheat. 95.

said in another case: "If the Legislature undertakes to define by statute a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime."(a)

Another great fault with the Sherman law lies in the fact that it makes no distinction between agreements beneficial and those otherwise. It condemns equally the men who agree to adulterate their goods, limit their output, or maintain exorbitant prices, and those who make monopolies of a very small nature which are beneficial to the community, for the act makes it unlawful "to monopolize any part of the trade or commerce" among the several States. The Sherman act, in order to get at the bad agreements, makes them all criminal. It is as some one has recently said; "It is like putting the whole community in the pest house because some members of it have the smallpox." The "rule of reason" which has recently been applied by the courts in construing the Sherman law is no doubt economically sound, and it has literally been forced upon the courts. The number of cases arising under this law has been so great that if all combinations or agreements in restraint of trade were condemned outright, whether reasonable or unreasonable, business of all kinds would be so severely impaired that nothing short of a general calamity would occur. From a tabulation in Moody's Manual it will be seen that the life

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(a) U.S. v. Reese, 92 U.S. 214.

of 1198 holding companies with 8110 subsidiaries and $10,612,372,489 capital depends upon the decisions of the courts in construing this law. Judge Sanborn, in the case of Whitwell v. Continental Tobacco Co.,(a) states the matter in the following words: "Every sale and every transportation of an article which is the subject of interstate commerce is a successful attempt to monopolize that part of this commerce which concerns that sale or transaction. An attempt by each competitor to monopolize a part of interstate commerce is the very root of all competition therein. Eradicate it and competition necessarily ceases - dies. Every person engaged in interstate commerce necessarily attemps to draw to himself, and exclude others from, a part of that trade, and if he may not do this he may not compete with his rivals."

It is very generally conceded that the Sherman act as it appears on the statute books today is incapable of full enforcement, for it is realized by both judges and juries that its full enforcement would destroy the business of the country. The United States is perhaps the only nation in which combinations or monopolies are condemned per se. In 1894, four years after the passage of the destructive Sherman law by Congress, and about the time the various state legislatures were passing anti-trust laws of great severity, the House of Lords recognized in an important decision that, although in the past all agreements in

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(a) 125 Fed. 452.

restraint of trade were prima facie void, nevertheless, modern conditions are such that there can no longer be any cast-iron rule making such agreements void.(a) Instead of condemning combinations and monopolies, European countries approve of and foster them, as being normal forms of business operations. Coercion, force, and fraud, whether in small or large business, are condemned by specific statutes, but business combinations are approved.(b) What is at fault with our American legislation on this subject is that we have attempted to make fundamental economic laws conform to an act of the legislative body, which is an impossibility. Ex-President Roosevelt has spoken of the Sherman law in the following words: "If is a public evil to have on the statute books a law incapable of full enforcement, because both judges and juries realize that its full enforcement would destroy the business of the country; for the result is to make decent men violators of the law against their will, and to put a premium on the behavior of willful wrongdoers."(c)

The Sherman law, in that it introduces an element of doubt and uncertainty,which risk of conviction the unscrupulous men are willing to take but those of good intent refuse to assume, undoubtedly favors the unscrupulous men over those of high motives. The law discourages

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(a) Montague, German and British Experiences with Trusts, Atl. Monthly, 107: 162.
(b) Ibid, p. 156.
(c) Ibid, p. 164.

the formation of good agreements but encourages bad ones. Furthermore, the law, in its operation, tends toward the formation of smaller concerns and businesses, thus greatly lessening the economies of production and distribution.

Another objection wihich might be brought against the law, although a political one, is that the enforcement of it is left to the discretion of executive officers, thus, according to Charles G. Dawes, former Comptroller of the Currency, leading to favoritism. To back up this statement he cites the Northern Securities case, in which no effort was made to hold the officials criminally, but in the packers case a few years ago such an effort was made. His contention is that the law should be so amended that the officials of the Department of Justice should not have this discretionary power.(a)

Many other objections are raised against the Sherman law as it now stands, nevertheless it may be safely said that in its intention to prevent monopoly and secure free competition, it correctly voices public opinion. The popular belief is that in the general field of industry, free competition is society's safeguard against injustice, and that the state should intervene here to assist in securing free competition. The belief is that competitive prices are fair, and monopoly prices are unfair.(b) As a

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(a) C.G. Dawes, Sherman Anti-Trust Law; No. Am. 183:189.

(b) Cf. F.C. Hicks, Competitive and Monopoly Price; Univ. of Cincinnati Studies, Series II, Vol. VII, No. 2, p. 9.

matter of fact the doctrine of competitive and monopoly price is at the root of the whole matter of anti-trust legislation. The public is convinced that competitive prices are natural and just prices and that monopoly prices are unreasonable. The fallacy lies in the fact that no distinction is frequently drawn between the control over a commodity and the control over the price at which the commodity is sold. Monopoly should be considered as the control, not over the commodity, or the control over the price at which it is offered for sale, but the control over the price at which it is actually sold. Professor Ely says; "Price is essential, and must be regarded as the fundamental test of monopoly."(a) Montague says; "Control of output and of prices has been seen to be the first aim of combination. So distinguishing a trait is it that a trust can best be defined as a combination which has attained that result."(b)

Such corporations as the United States Steel Corporation, American Sugar Refining Co., U.S. Rubber Co., American Steel and Wire Co., International Paper Co., and the American Tin Plate Co., producing from 60% to 90% of the putput of their respective commodities, have that practical monopoly which characterizes the trust. "Their ability at any moment to withdraw from the market, or to throw into the market such a preponderant part of the output, gives them the power, within certain wide limits, to

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(a) Ely, Outlines of Economics, p. 188.

(b) Montague, Trusts of Today, p. 71.

fix the price."(a) The Standard Oil Co. and the American Sugar Refining Co. fix the prices of their products from day to day, which are followed by smaller independent producers.(b)

As long as prices are not held up by trusts above those under competitive conditions, and as long as the standard of business efficiency is maintained, there can be no charge brought against them simply because they are large. There is nothing wrong with large corporations per se. J.P. Morgan should have the right, if he can raise sufficient capital, to purchase all the steel works in the United States and then buy up those abroad. By the adoption of progressive income and inheritance taxes, the accumulation of enormous wealth in a few hands, which may prove dangerous to the public good, may be checked, and if industries become so large as to be dangerous to the common weal they should be controlled by governmental authority, but should not be condemned outright as the Sherman law attempts to do. Everyone recognizes that the capricious control by trusts over the prices of commodities is subversive to the public good, but mere large scale production in itself is not detrimental. As a matter of fact trusts cannot hold prices up permanently. Two years of exorbitant prices brought the ruinous competition of the Spreckles onto the American Sugar Refining Co. in 1889. It was eighteen months in the case of the Wire Nail Pool of 1895.(c)

(a) Montague, Trusts of Today, p. 71.
(b) Ibid, p. 72.
(c) Ibid, p. 77.

Let us now examine the changes in price levels of various commodities - both "trust" and "non-trust" articles. The following plate (Plate 1), taken from the March, 1911, Bulletin of the Bureau of Labor,(a) shows the relative prices of all commodities in the United States, by years, from 1890 to 1910. This average of wholesale prices is measured by the prices of 257 representative commodities, which represent fairly accurately the average trend of all wholesale commodities in the United States. The curve shows that the average wholesale prices declined each year from 1890 to 1897, and that the 13 years from 1898 to 1910 has been a period of advancing prices, with only 3 years, 1901, 1904, and 1908, showing a decrease from the prices of the previous year. There has, therefore, been a great rise in general prices in the United States since 1897.

Plate 2 shows the relative prices of raw and manufactured commodities in the United States from 1890 to 1910.(b) From Plate 2 it can be readily seen that there has been more fluctuation in raw than in manufactured commodity prices. It is also evident that during the years of high prices raw commodities were higher than manufactured commodities, and during the years of low prices raw commodities were lower than manufactured commodities. Plate 3, a diagram of the average relative prices of raw and manufactured commodities, by months, January 1906 to December 1910,

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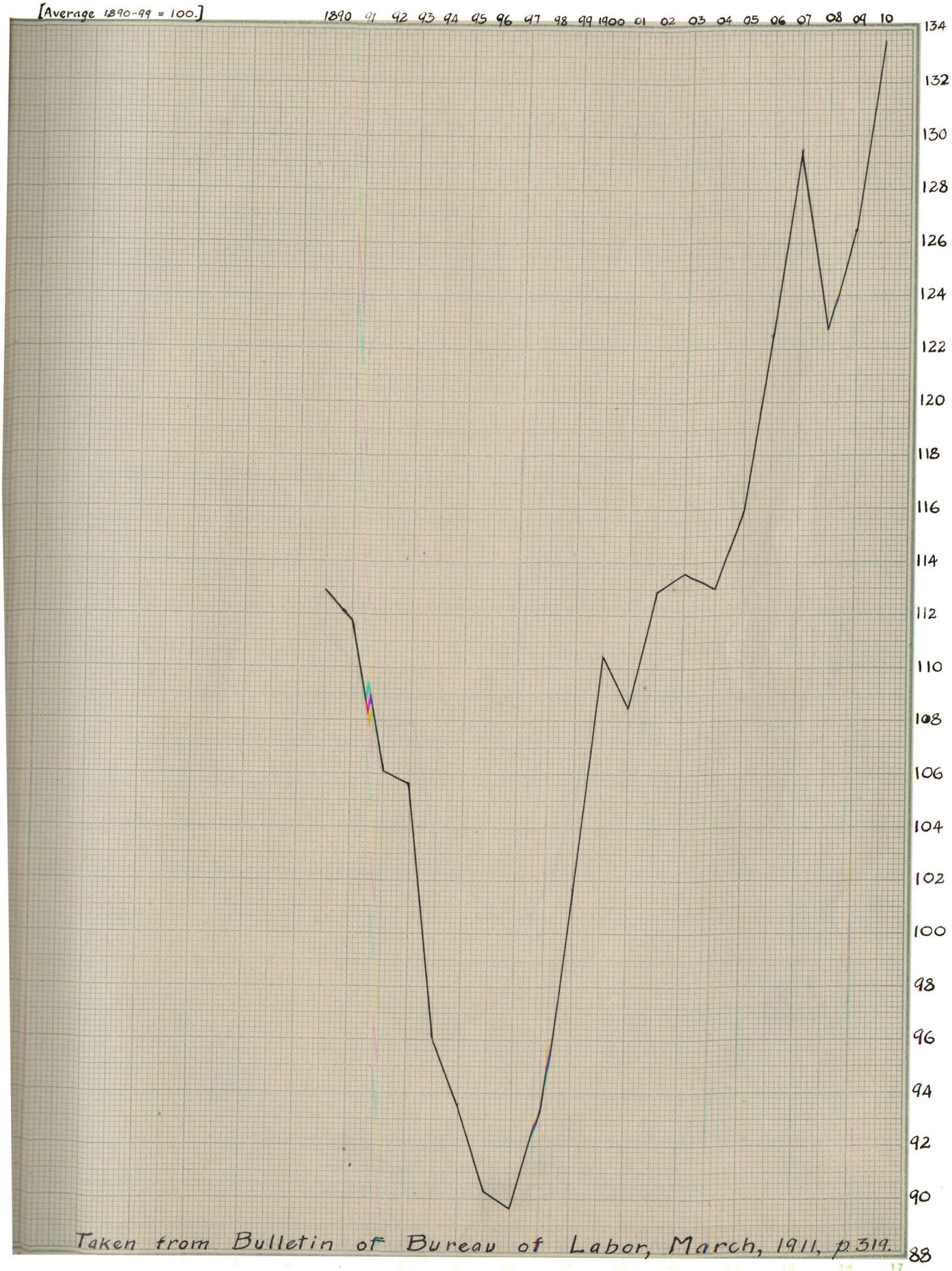
(a) Bulletin No. 93, p. 319.

(b) Ibid, p. 326.

PLATE 1.

Relative Prices of all Commodities, 1890-1910.

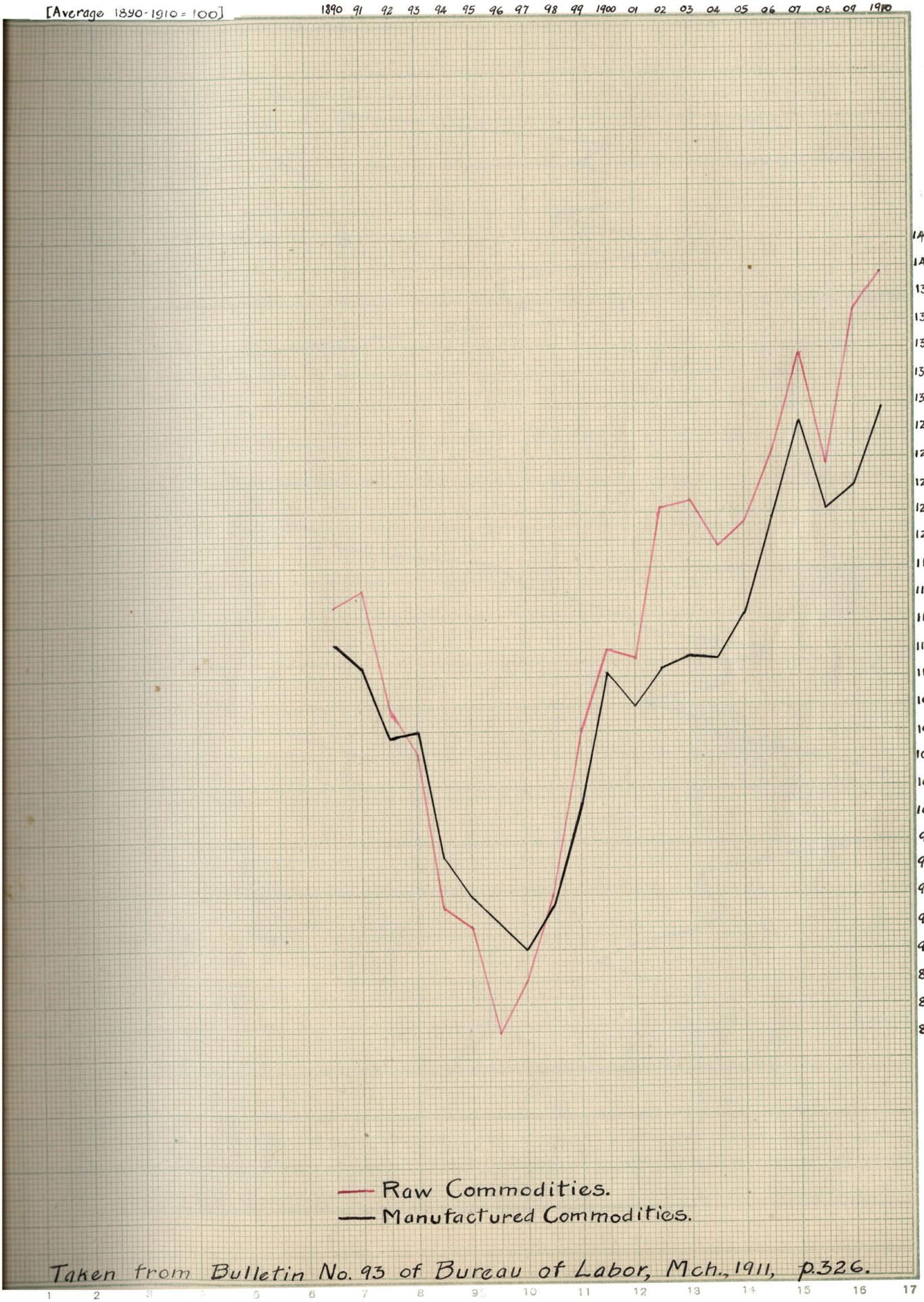


Taken from Bulletin of Bureau of Labor, March, 1911, p 319.

PLATE 2.

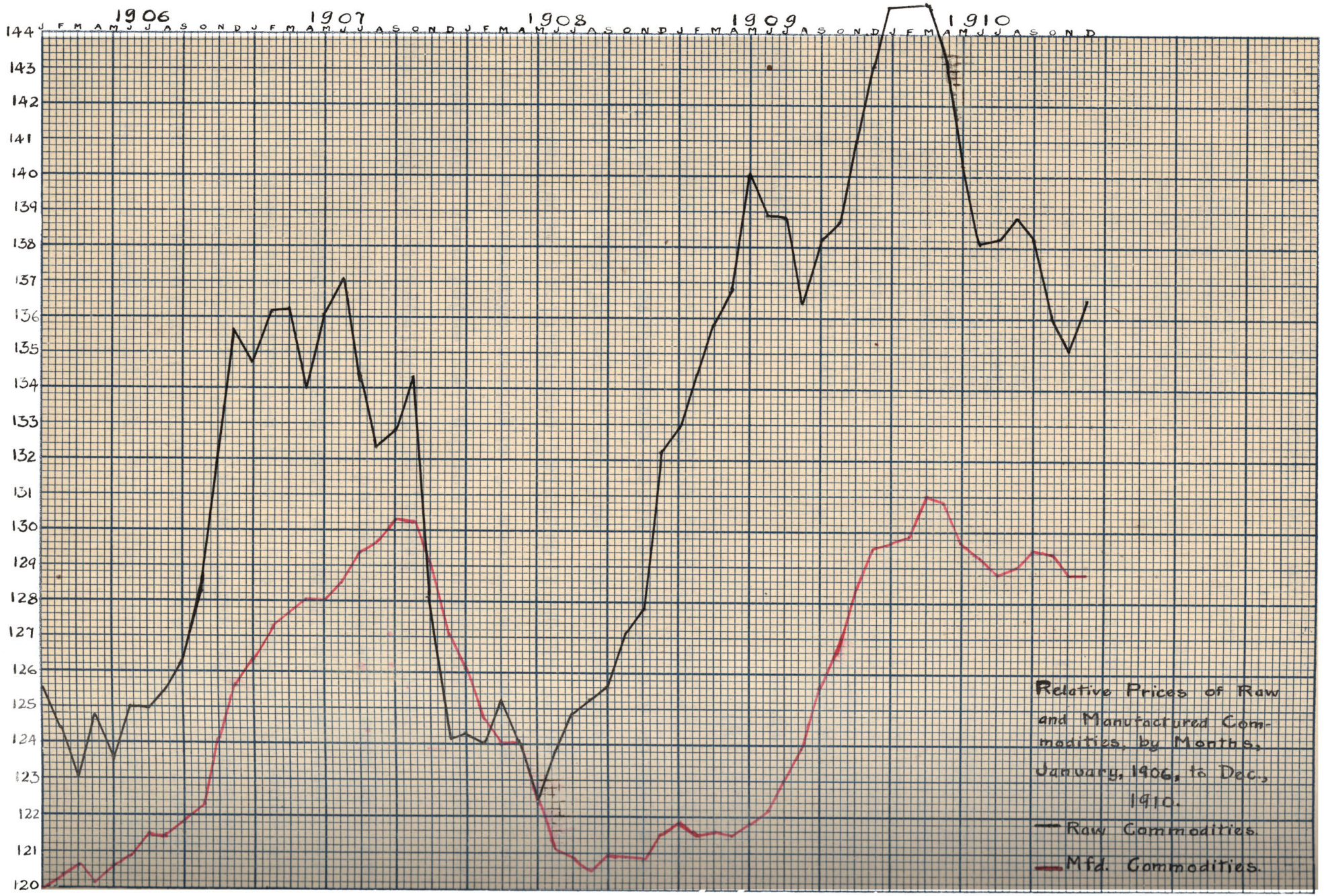
Relative Prices of Raw and Manfd. Commods., 1890-1910.

[Average 1890-1910 = 100]



Taken from Bulletin No. 93 of Bureau of Labor, Mch., 1911, p.326.

PLATE 3.


1906
1907
1908
1909
1910
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Relative Prices of Raw and Manufactured Commodities, by Months, January, 1906, to Dec., 1910.
Raw Commodities.
Mfd. Commodities.

more clearly illustrates this same principle. As a rule "trust" commodities are manufactured articles, and surely this much can be safely said, that manufactured commodities, in general, whether trust or non-trust, have been a great deal more stable in price than have raw commodities, and at the same time have failed to rise as high.

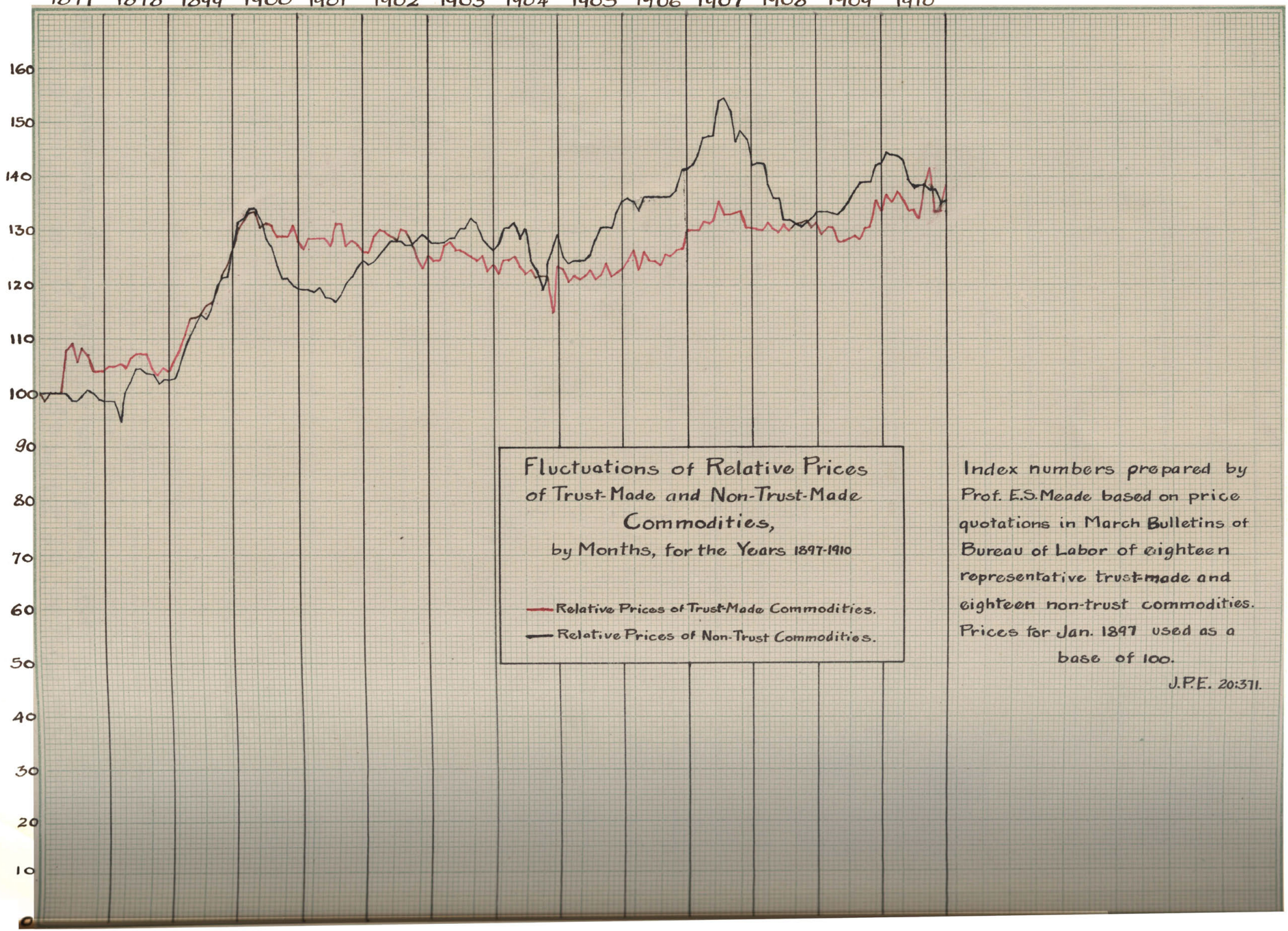
Prof. E. S. Meade, of the University of Pennsylvania, has made a comparison, by months, extended over fourteen years, between the prices of eighteen commodities in the production of which industrial combinations have been dominant and important, and the prices of eighteen commodities which are produced under competitive conditions.(a) The lists of the articles which he has selected are as follows:(b)

TRUST	NON-TRUST
Anthracite coal	Manila rope
American cement	Bituminous coal(Youghiogheny)
Refined petroleum	New Orleans molasses
Cotton-seed oil	Pig iron (Bessemer, Pittsburgh
Glucose	Bleached sheetings
News paper	Corn meal
Proof spirits	Yellow pine
Leather	Plain white oak
Wire nails	Print cloths
Steel rails	Glass tumblers
Raw linseed oil	Vici kid shoes
Pig lead	Sheet zinc
American fine salt	Flour (New York)
Plug tobacco	Cotton
Sulphuric acid	Bare copper wire
Granulated sugar	Wilton carpet
Cotton thread	Earthenware plates
Domestic parlor matches	Bleached shirtings

(a) Paper read before the Western Economic Society at Chicago, March 1, 1912. Published in J.P.E. 20: 358.

(b) J.P.E. 20: 361.

PLATE 4.


1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910
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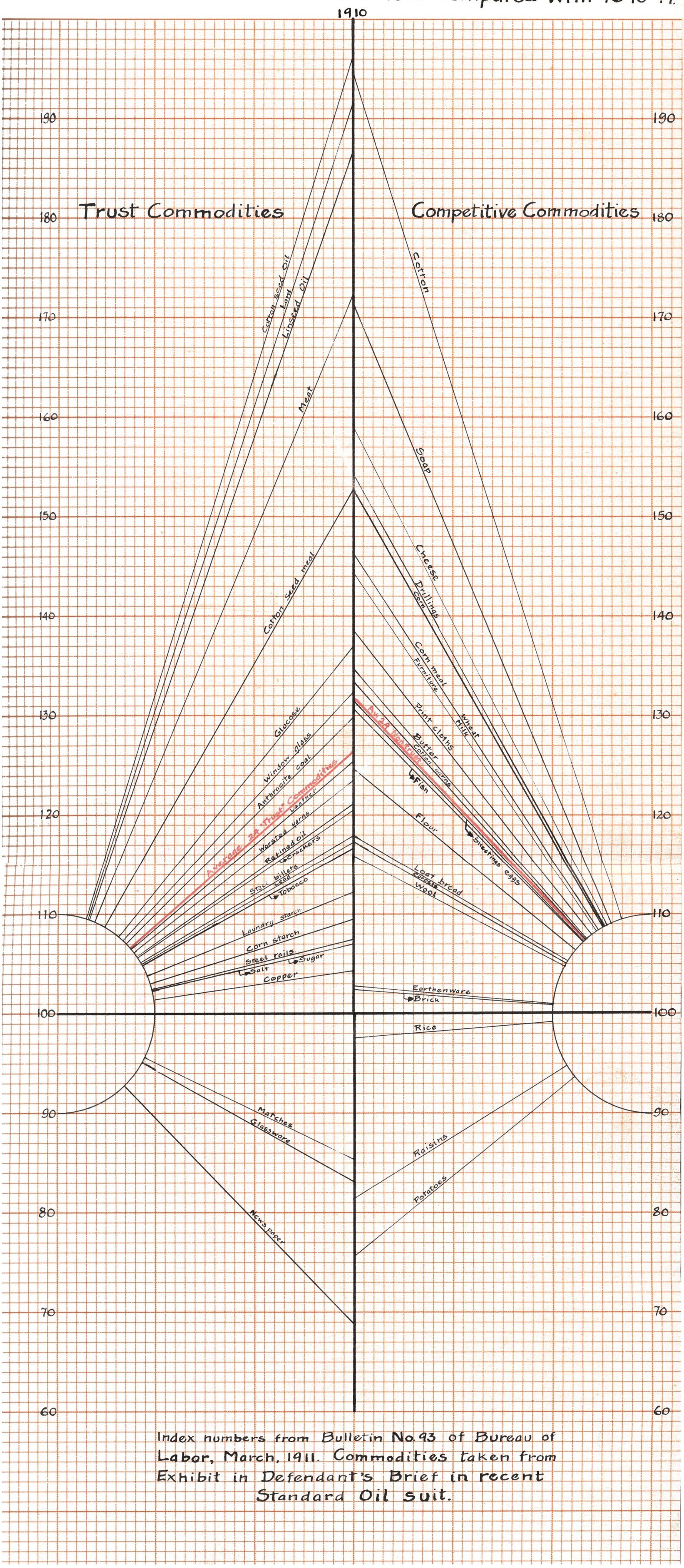
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
0
Fluctuations of Relative Prices of Trust-Made and Non-Trust-Made Commodities, by Months, for the Years 1897-1910
Relative Prices of Trust-Made Commodities.
Relative Prices of Non-Trust Commodities.
Index numbers prepared by Prof. E.S. Meade based on price quotations in March Bulletins of Bureau of Labor of eighteen representative trust-made and eighteen non-trust commodities. Prices for Jan. 1897 used as a base of 100.
J.P.E. 20:371.

PLATE 5.

Relative Prices of 24 Representative Trust and Non-Trust Commodities in 1910 Compared with 1890-'99.



Index numbers from Bulletin No. 93 of Bureau of Labor, March, 1911. Commodities taken from Exhibit in Defendant's Brief in recent Standard Oil suit.

It is Prof. Meade's opinion that the above named commodities are sufficiently representative as to show fairly accurately the trend of all trust and all non-trust prices. He has prepared index numbers showing the relative movement of the two classes of prices, by months, from 1897 to 1910, basing his calculations on the monthly price quotations of the Bureau of Labor and taking the prices for January, 1897, as a base of 100.(a) It is from these index numbers of Prof. Meade's that Plate 4 is prepared. Plate 4 clearly shows that the fluctuations in the prices of trust made commodities have been much less than in the prices of non-trust products. The line representing the trust products, besides being more stable, is, on the whole, much lower than the line representing the prices of the competitive commodities. During the years of high and low prices is the divergence of the two lines particularily apparent. Prof. Meade concludes from his investigation that "The advantage of the trust, on the points both of lower prices and of stable prices, is apparent and considerable."(b)

Plate 5 shows the relative prices of twenty-four representative trust and twenty-four representative non-trust commodities in 1910 as compared with the average prices of those commodities for the years 1890 to 1899, which is taken as a base of 100. The statistics are taken from the March, 1911, Bulletin of the Bureau of Labor. The

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(a) Meade, The Economies of Combination, J.P.E. 20: 361.

(b) Ibid, p. 363.

list of commodities is taken from an exhibit of the Standard Oil Co. in the recent government suit(a), but, nevertheless, it seems to be a representative list of articles, and therefore shows very well the general level of both trust and non-trust commodities. The list, although larger, includes about all of the articles chosen by Prof. Meade in his investigation just refered to. The average relative prices of the twenty-four non-trust articles in 1910 was 131.6, and that of the twenty-four trust-made articles 126.1, showing a difference of 5.5 in the index numbers in favor of the trust commodities. The difference in prices, for 1910, of the commodities chosen by Prof. Meade as representing the two classes of products, is practically the same as that of Plate 5 (b), and the average of the Bureau of Labor for all (258) commodities, for 1910, is 131.6, so Plate 5 cannot be far wrong. The points which Plates 4 and 5 illustrate are simply these; trust commodities, as a whole, have been much more stable and have failed to rise in price as much as competitive commodities.

Now let us examine the yearly prices of certain individual articles, in the production of which combinations have been dominant or at least very important. The following figures show the yearly prices of raw and refined sugar from 1879 to 1910:

(a) Cf. Meredith N. Stiles, The Trusts versus Competition, W.W.: 17: 11499.

(b) In Plate 4 the average prices 1890-1899 is used as base of 100, and in Plate 5 the prices for Jan. 1897 is base; therefore the discrepancy between the two sets of index numbers, but the <u>difference</u> in price levels between the two classes of commodities is in each case the same.

PRICES OF SUGAR NINE YEARS PRIOR TO FORMATION OF TRUST.

	96% centrif, raw. per pound.		Granulated, Refined. per pound.		Difference, per pound.
1879	6.93c		8.81c		1.88c
1880	7.88		9.80		1.92
1881	7.62		9.70		2.08
1882	7.29		9.35		2.06
1883	6.79		8.65		1.86
1884	5.29		6.75		1.46
1885	5.19		6.53		1.34
1886	5.52		6.23		.71
1887	5.38		6.02		.64
Aver.	6.43c	Average	7.98c	Average	1.55c

PRICES OF SUGAR NINE YEARS AFTER FORMATION OF TRUST.

	96% Centrifugals, Raw, per pound.	Granulated, Refined, per pound.	Difference, per pound.
1888	5.93c	7.18c	1.25c
1889	6.57	7.89	1.32
1890	5.57	6.27	.70
1891	3.92	4.65	.73
1892	3.32	4.35	1.03
1893	3.69	4.84	1.15
1894	3.24	4.12	.88
1895	3.23	4.12	.89
1896	3.62	4.53	.91
Average	4.34c	5.33c	.98c

Since 1896 the prices of sugar have been affected by changes in the tariff on both raw and refined sugar, but the status quo as to the differential in fovor ofthe Sugar Trust has been retained(a), and the difference between the prices of raw and refined sugar has been on a general steady decline, with the exception of three years, 1898 to 1900, inclusive, when the ruinous competition of the Arbuckle-Doescher syndicate reduced the difference to an extremely

(a) Taussig, Tariff History of the U.S. p. 350.

low and unnatural level. In 1899 the difference was as low as 1/2 cent per pound, which is the actual cost of refining.(a)

PRICES OF SUGAR SINCE 1896.

	96% Centrifugals, Raw, per pound.	Granulated, Refined, per pound.	Difference, per pound.
1897	3.56c	4.50c	0.94c
1898	4.24	4.97	.73
1899	4.42	4.92	.50
1900	4.57	5.32	.75
1901	4.04	5.04	.95
1902	3.54	4.46	.92
1903	3.72	4.64	.92
1904	3.97	4.77	.80
1905	4.28	5.26	.98
1906	3.69	4.52	.83
1907	3.76	4.65	.89
1908	4.06	4.94	.88
1909	3.40	4.76	.76
1910	4.19	4.96	.77

For two or three years preceding the formation of the American Sugar Refining Co. (Sugar Trust), in 1887, such ruinous competitive prices existed that 18 out of 40 refineries failed(b), and the trust agreement was literally forced upon the remaining refiners in order for them to maintain their existence. After the formation of the trust the price of sugar was raised considerably, but it was not raised above that of European countries.(c) Within two years, however, the competition of the Spreckles again reduced sugar prices to a ruinous level in spite of the existence of of the American Sugar Refining Co. The trust soon succeeded in buying out Spreckles, in February, 1892, and fair prices

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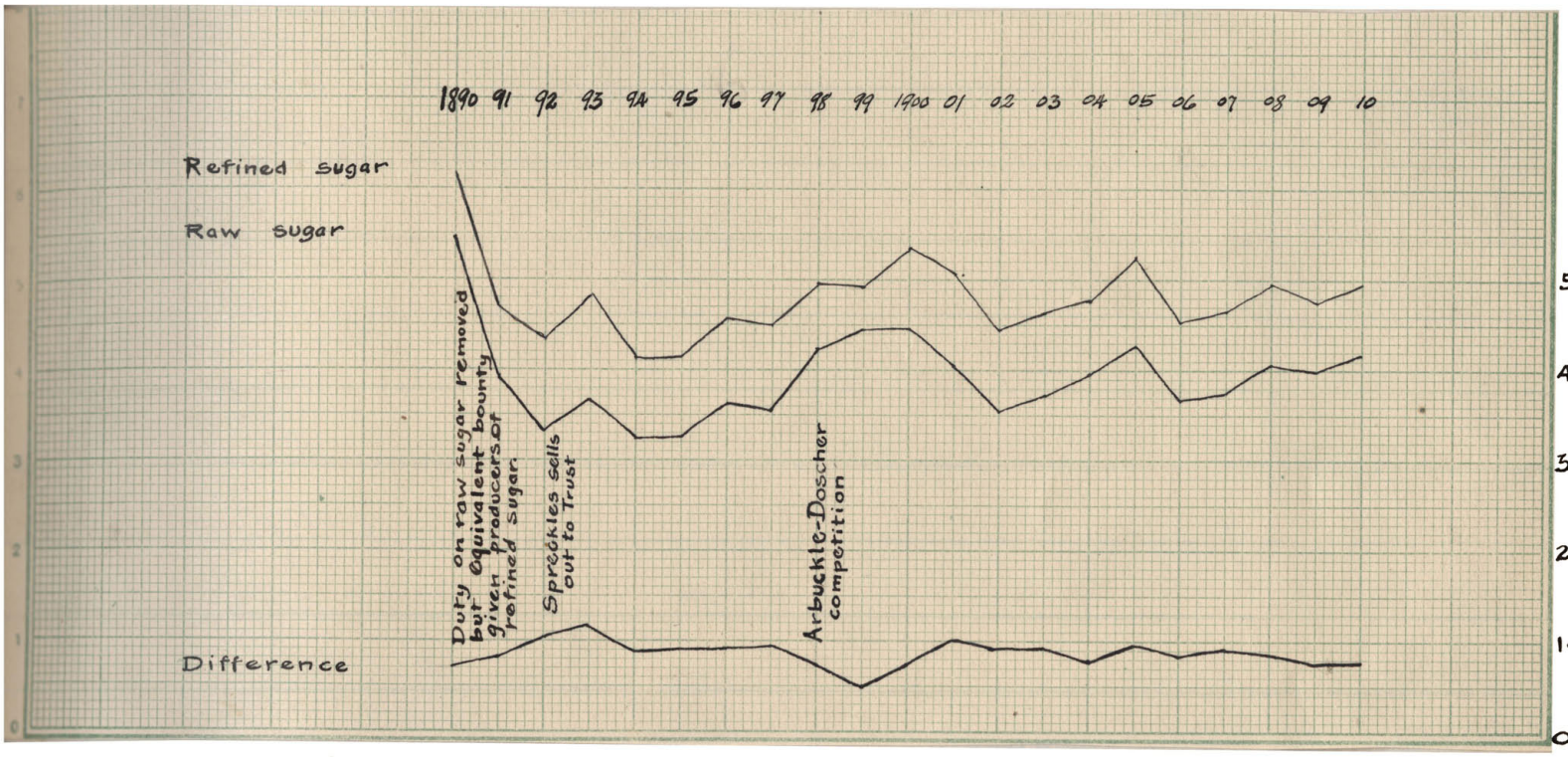
(a) Jenks, Do Trusts Make High Prices; R. of R., XLI: 345.
(b) Montague, Trusts of Today, p. 14.
(c) Ibid.

PLATE 6.



Showing the prices per pound of refined and of raw sugar, and the difference per pound between refined and raw sugar, by years, 1890 to 1910.

were maintained until 1898, when the Arbuckle- Doescher competition again brought on a period of ruinous prices of three years' duration. Since 1900 the Sugar Trust has maintained steady and reasonable prices, and has gradually reduced the difference between the price of refined and raw sugar. The Trust has profited by its experience experience in the 90's, and has not attempted to again maintain exorbitant prices. No doubt the great reduction in the difference between the prices of refined and raw sugar since the formation of the combination in 1887, has been to a large extent due to the fact that under combination the raw sugar and material can be bought more cheaply than when a large number of separate plants are competing for the product, and also because the inferior and poorly located plants were closed and the better plants enlarged and run to their full capacity. According to the testimony of Mr. James H. Post, before the Industrial Commission, the American Sugar Refining Co. has been able to purchase its raw materials on a large scale so much more cheaply than its competitors, that it has been able to receive an advantage over other producers amounting to 1/16 of a cent per pound on its refined sugar.(a)

Now let us examine the prices of news paper, the production of which has, since 1897, been dominated by the International Paper Co., the Paper Trust.

(a) Industrial Commission Report, Vol. I, Testimony, p. 153.

PRICES OF NEWS PAPER PREVIOUS TO FORMATION OF TRUST.(a)

	AVER. PRICE PER LB.	RELATIVE PRICE.
1890	3.82c	127.8
1891	3.40	113.7
1892	3.40	113.7
1893	3.18	106.4
1894	3.23	108.0
1895	3.08	103.0
1896	2.75	92.0

PRICES OF NEWS PAPER AFTER FORMATION OF COMBINATION.(a)

	AVER. PRICE PER LB.	RELATIVE PRICE.
1897	2.71c	90.6
1898	2.19	73.2
1899	2.09	69.9
1900	2.81	94.0
1901	2.26	75.6
1902	2.42	80.9
1903	2.53	84.6
1904	2.67	89.3
1905	2.42	80.9
1906	2.19	73.2
1907	2.49	83.3
1908	2.48	82.9
1909	2.05	68.6
1910	2.06	68.9

From the above tables it is very evident that the Paper Trust has not held up the price of news paper, as it has steadily declined since the formation of the combination.

The following table shows the prices of steel rails and steel billets, the principal products of the U.S. Steel Corporation, Steel Trust, and the prices of Bessemer pig iron, the principal constituent of these products, which is a competitive commodity;

(a) March, 1911, Bulletin of Bureau of Labor, No 93, p. 462.

IRON AND STEEL PRICES. (a)

	BESSEMER PIG IRON per ton.	STEEL BILLETS per ton.	STEEL RAILS per ton.
1890	$18.87	$30.47	$31.78
1891	15.95	25.33	29.92
1892	14.37	23.63	30.00
1893	12.87	20.44	28.13
1894	11.38	16.58	24.00
1895	12.72	18.48	24.33
1896	12.14	18.83	28.00
1897	10.13	15.08	18.75
1898	10.33	15.31	17.63
1899	19.03	31.12	28.13
1900	19.49	25.06	32.29
1901	15.94	24.13	27.33
1902	20.67	30.60	28.00
1903	18.98	27.91	28.00
1904	13.76	22.18	28.00
1905	16.36	24.03	28.00
1906	19.54	27.45	28.00
1907	22.84	29.25	28.00
1908	17.07	26.31	28.00
1909	17.40	24.62	28.00
1910	17.19	25.38	28.00

It will be noted from the above table that the price of steel rails rose from $17.63 per ton in 1898 to $28.13 in 1899, steel billets rose in price $14.19 and Bessemer pig iron $8.70 per ton the same year. It would seem at first thought as if the Steel Trust had willfully raised prices, but an investigation of the cost of production, made by the Industrial Commission, shows that the increase in the cost of production was really responsible for the great rise in prices.(b) The great and sudden advance in steel in 1899 was followed in 1900 by a very great and sudden decline, due simply to the changes in supply and

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(a) March, 1911, Bulletin of Bureau of Labor, No. 93, p.447-8.

(b) Industrial Commission Report, Vol. 13, Charts B & C between pages 766 and 767.

demand. An investigation of Engish prices of steel rails for 1899 reveals the fact that a similar rise in steel occured there. This fact further proves that the steel combination had nothing to do with the rise in this country, and also that the tariff had nothing to do with it, but that the rise was due simply to the economic law of supply and demand. The following table shows the prices of steel rails in the United states and England for the year 1899, by months:

PRICES OF STEEL RAILS IN 1899.(a)

	UNITED STATES.	ENGLAND.
January	$18.00	$22.44
February	20.50	23.24
March	22.00	23.04
April	25.00	23.64
May	25.00	24.90
June	25.00	24.90
July	26.00	25.50
August	31.33	30.96
September	32.00	30.36
October	33.00	32.76
November	35.00	32.76
December	35.00	34.02

In the steel industry there is usually no large stock of iron and steel held in advance, so in a period of expansion the demand is often greater than the mills are able to supply, and as the buyers are willing to pay the increased price, steel naturally rises. The price of pig iron usually follows the price of steel products, for any change in the demand for the finished steel products naturally very quickly influences the demand, and therefore the price

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(a) J.H. Bridge, The Trust, Its Book, p.

of pig iron.(a) In the case of pig iron there are usually very great fluctuations between prices and cost of production when steel and iron prices vary suddenly. This is due to the fact that the prices of iron ore are usually fixed for yearly periods, and consequently changes in the demand and prices of pig iron cannot be immediately reflected in the prices of iron ore, the controlling item entering into the cost of production of pig iron.(b)

Since the formation of the United States Steel Corporation, in 1901, which was the result of a threatened war between the Carnegie Steel Co. and the allied Morgan and Moore interests (Federal Steel Co. and National Steel Co.), the price of steel rails has been maintained continuously at $28 per ton. It is needless to say that such steadiness in price is highly desirable, and without a combination in restraint of trade of some sort such continuity in the price level of steel would be impossible. Of course it may be that steel prices have been held up unduly high, but as compared with other commodities, both trust and non-trust, such does not seem to be the case.(c) Plate 7 shows graphically by years, the prices of steel rails and pig iron, and the difference between these prices, for the period 1890 to 1910. It will be noted, although there have been marked fluctuations in the price of pig iron, a competitive commodity, yet

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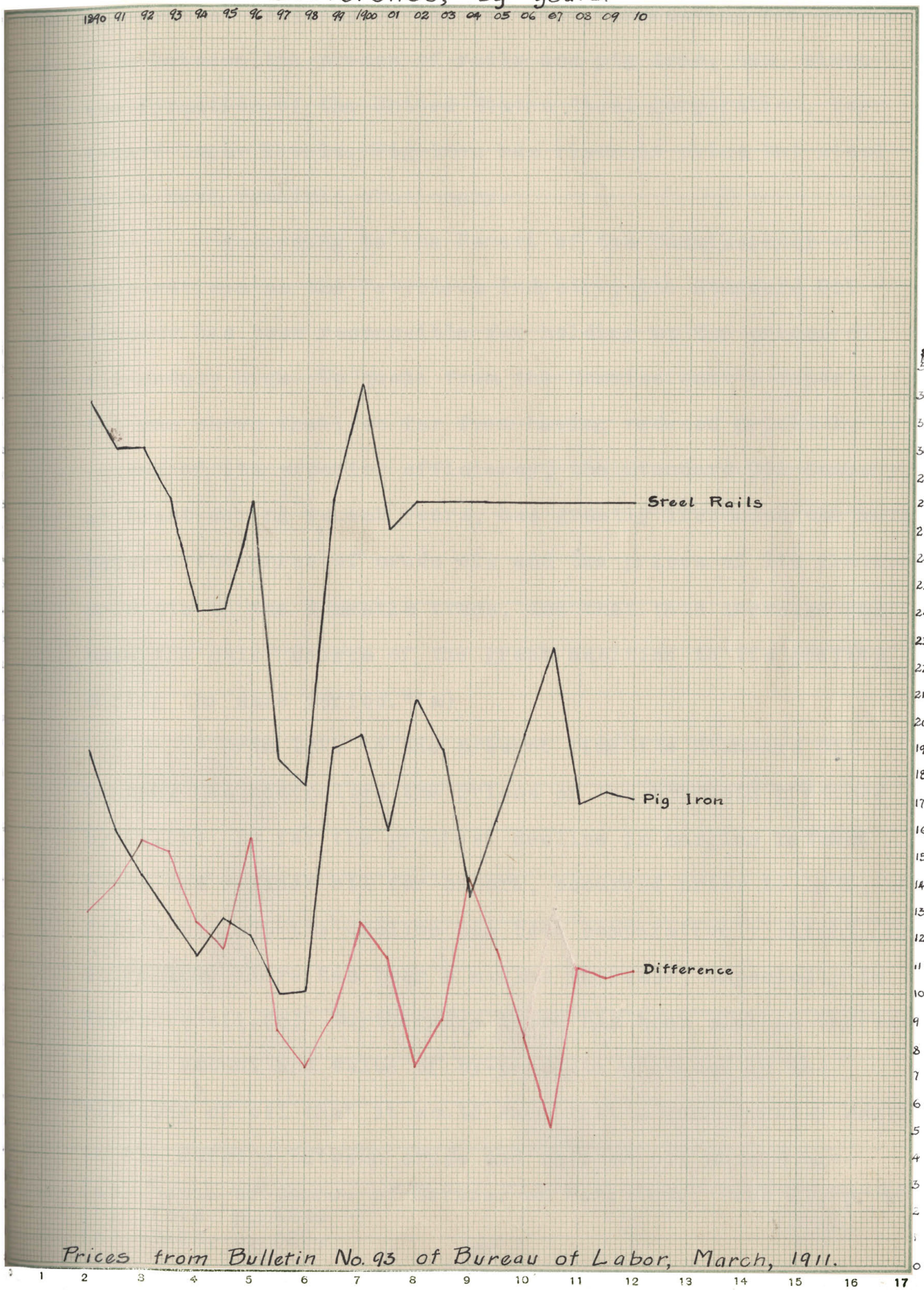
(a) Industrial Commission Report, Vol. 13, p. 766.

(b) Ibid, p. 767.

(c) See Plate 4, supra.

PLATE 7

Price of Steel Rails and Pig Iron per Ton and Difference, by years.



Prices from Bulletin No. 93 of Bureau of Labor, March, 1911.

the general tendency of the red line, indicating the difference between the prices of rails and pig iron, has, since the formation of the United States Steel Corporation, been toward lower levels. Pig iron has risen in price but steel rails have remained stationary.

According to the Report of the Commissioner of Corporations on the Petroleum Industry, the Standard Oil Company has been responsible for holding up the prices of oil unduly high. To quote from the Commissioner's report; "It was shown that, so far from having reduced prices by reason of its superior efficiency, the Standard Oil Company, at least during recent years, has greatly increased the margin between the price of crude oil and the prices of its finished products in the domestic trade, and that this increase has been the chief source of the great addition to its profits during the same period."(a)

From 1879 to the present time the Standard Oil Company has controlled the prices of the products produced by it.(b) By far the greatest decline in margins between crude and refined oil for export, occurred prior to 1879, and following 1879 the decline has been comparatively slight, and since 1899 there has been a marked increase, especially in domestic oil.(c) Furthermore there has been such an increase in the amount and value of by-products produced in the refining of oil that it would seem that a much greater decline in the margins between crude and refined oil should have

(a) Rept. of Comnr. of Corpns. on Pet. Ind., Part II, p. 614.
(b) Ibid, p. 624.
(c) Ibid, p. 625.

occurred than has been the case. In 1889 there was twelve times as much paraffin wax produced as a by-product of oil refineries than in 1880, and seven times as much was produced per barrel of crude oil refined. About five times as much lubricating oil was produced in 1889 as in 1880. This has made possible a great reduction in the margin between crude and illuminating oil, and the Standard cannot justly claim the credit for all the reduction between 1879 and 1894.(a) In 1880 the value of the miscellaneous by-products from the process of oil refining was 2.7% of the total value, and in 1904 8.6%.(b) No doubt the Standard deserves some credit for the development of by-products and in the introduction of economies in handling oil, and in other ways, yet "It is unquestionably true that as great or almost as great economies would have been made in these directions under normal competitive conditions and in the absence of great combination."(c) The increase in the quantity and value of by-products has not been due so much to the improved methods of manufacturing and refining, but a great deal more to new demands for these products being developed. The naphthas have increased in importance tremendously of recent years. Formerly the refiner attempted to make the proportion of naphtha as low as possible, but now, because of the greatly increased demand for this product, their aim is to make its

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(a) Report of Comnr. of Corpns. on the Petroleum Industry, Part II, p. 630.
(b) Ibid, p. 633.
(c) Ibid, p. 74.

proportion as large as possible.(a)

The policy of the Standard has been to take advantage of its monopoly power to hold up prices unduly high, and not to give the American people the benefits of its economies of combination and large scale production.(b) The advantages which the Standard enjoys over independent refiners in the production and transportation of illuminating oil, due to its various economies of large scale production, amounts to from 1c to 2c per gallon.(c) If some way could be devised by which the consuming public, as well as the Standard itself, could share in this advantage, the desirability of the existence of the Standard Oil Company could not be justly questioned. The problem is, how can this be brought about? Surely it cannot be accomplished by such destructive legislation as the Sherman law which aims at combination, thus withholding from both the consumer and producer the economies of cooperation and production on a large scale.

The evils of small business units and competition which apply to the great majority of industrial and commercial activities can well be illustrated by the railway business. Previous to 1851 the roads now composing the New York Central in the state of New York were all separate lines, and the situation existing at that time is described by the secretary of the New York Central in the following words: "We had the roads between Albany and

(a) Rept. Comnr. Corpns. on Pet. industry, Part II, p. 633.
(b) Ibid, p. 74.
(c) Ibid, p. 71.

Buffalo. There was just about as much efficiency in operating ten roads as there would be in ten men trying to do a thing that one ought to do. Every board of directors had its own profit to make and its own schemes to advance. There was no obligation on the part of any one company to do anything for any other. Through lines of cars could be run only by very complicated and embarrassing arrangements. I can remember the time when conductors were changed at the end of each one of the roads of the old line between Buffalo and Albany. In some cases a ticket could not be bought through from Albany to Buffalo. The elements of usefulness and economy were very few. In regard to freight, there was no obligation on the part of any one of the roads to take a single pound of it from another. Except so far as they might agree with each other, it involved changing at each terminus."(a)

After the construction and consolidation in the fifties by which several trunk lines of importance were formed competition for the east-and-west traffic became more severe than ever, and "rate wars" of great magnitude between the roads connecting the Atlantic with the Mississippi Valley, were brought on. In 1869 the freight rates from Chicago to New York were reduced from their normal level of $1.88 per cwt. for first class and 82c for fourth class, to 25 cents per cwt. for all classes.(b) The greatest freight rate war

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(a) Windom Report of 1874, Evidence, p. 157. Senate Report 307, First Session, Forty-third Congress.
(b) Johnson, American Railway Transportation, p. 218.

occurred in 1876, when the railways went so far as to carry the traffic below cost. In 1881 the passenger fare from Boston to Chicago was cut from $18 to $5. In 1884 the Pennsylvania cut its emigrant rate to St. Louis from $13 to $1, to force other companies to restore a traffic pool.(a) Other wars, too numerous to mention, occurred whenever any road broke a pooling or other traffic agreement or refused to come into a pool, or to renew an expiring agreement.

Such disastrous results of unrestricted competition, it is needless to say, could not continue and the roads maintain their solvency. Even after pooling was declared illegal by the Interstate Commerce Act in 1887, traffic associations continued to exercise the function of maintaining reasonable rates.(b) The decision of the Supreme Court of the United States in the Joint Traffic and Trans-Missouri Freight Rate Association cases restricted the lawful cooperation among independent railways within very narrow limits and resulted in one of the worst rate wars and discriminations in recent years.(c) As a matter of fact the traffic associations were not permanently abandoned, in spite of these decisions of the Supreme Court. The agreements were simply so changed as to make them conform to the law. Cooperation in the classification of traffic and in the maintenance of rates is absolutely necessary from the very nature of the railway business, and while

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(a) Bolen, Plain Facts as to the Trusts, p.

(b) Johnson, American Railway Transportation, p. 232.

(c) Bolen, Plain Facts as to the Trusts, p.

under our present laws each railway must theoretically fix its own charges, its traffic managers must necessarily cooperate and make agreements with other lines regarding joint and competitive business.(a)

We have therefore seen wherein lies the great evil in unrestricted competition in the railway field. It is not only disastrous to the railways themselves, but also to the shippers, for the rankest kind of discriminations in favor of the few are sure to result. Furthermore, a railway enjoying a complete monopoly has to make fair rates because of the very nature of the railway business. Potential competition of various kinds always exists, water competition must be met, rates have to be made so low that the traffic will move, and more cannot be charged than the traffic can afford. Competition among producers is always a strong guarantee against excessive freight charges. Railways prosper just so far as the territory by which they are supported prospers, and they therefore find it expedient to charge such rates as will tend to stimulate their traffic(b

Since the decisions of the Supreme Court of the United States in the Joint Traffic and Trans-Missouri Freight Rate Association cases, railway consolidation has proceeded with very great rapidity. The only course left for them to do has been to consolidate in order to maintain their existence. This plan, although not strictly a system of traffic agreements, nevertheless practically amounts

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(a) Johnson, American Railway Transportation, p. 248.

(b) Bolen, Plain Facts as to the Trusts, p.

to the same thing. In either case the end sought has been the elimination of competition, and without some arrangement of such a nature to prevent unrestricted competition, the railway business could not be long maintained. It is interesting to note that the enormous decline in both freight and passenger rates which has occurred during the past twenty years or so has not been accompanied by a fall in profits (which would have no doubt been the case had unrestricted competition continued), but profits have actually increased considerably. The following table taken from the 1910 report of the Interstate Commerce Commission on Railway Statistics,(a) will show this to be the case.

YEAR	PER CENT OF STOCK PAYING DIVIDENDS.	AVERAGE RATE PAID ON DIV. PAYING STOCK.
1888	38.56	5.38
1889	38.33	5.04
1890	36.24	5.45
1891	40.36	5.07
1892	39.40	5.35
1893	38.76	5.58
1894	36.57	5.40
1895	29.94	5.74
1896	29.83	5.62
1897	29.90	5.43
1898	33.74	5.29
1899	40.61	4.96
1900	45.66	5.23
1901	51.27	5.26
1902	55.40	5.55
1903	56.06	5.70
1904	57.47	6.09
1905	62.84	5.78
1906	66.54	6.03
1907	67.27	6.23
1908	65.69	8.07
1909	64.01	6.53
1910	66.71	7.50

(a) Interstate Commerce Commission, Statistics of Railways in the United States, 1910, p. 56.

It is therefore very evident that competition, such as the Sherman law attempts to maintain, is not beneficial but actually ruinous, both to the companies performing the service and to the shippers, when applied to the railway field. Likewise in the industrial field world combination is often of great advantage, and any law which attempts to destroy monopoly per se and procure the unimpeded operation of competition on the ground of safe-guarding society against injustice, is bases on wrong premises. Such laws are based on the assumption that in all fields of activity competitive price is fair and monopoly price is unfair. It is true that in many cases normal competitive prices (measured by the expenses of production) are the only natural and just prices, but with the growth of the large modern industrial field it is found that often lower prices are possible when the articles in question are produced by monopolies than when produced under competition.

There are always certain inherent evils in combination which reaches such proportions as to amount to practical monopoly. The evils referred to are the temptations to raise prices, obtain discriminating rates from railways (which has now practically disappeared), fix destructive prices so as to crush any competitors which may appear, corrupt legislation, and depress individual initiative.

The argument is brought against the trust that many of them have adopted the policy of underselling in competitive markets in order to kill their competitors,

and then reimburse themselves for this loss by raising prices in the general market. As far as the prices of commodities in general, dominated by trusts, are concerned, it is evident from an investigation of Plates 4 and 5, and from the above discussion, that they have been both maintained at a lower level and have been more stable than have competitive commodities. But as far as individual commodities are concerned, it has no doubt been the case that local prices have been cut at competitive points, and that the trust in question has recouped itself off of the general market. The President of the National Salt Company has frankly admitted that this has been the policy of his company.(a) In the recent suit brought by the Government against the Standard Oil Company the charge of local price cutting was brought against the defendant, but the witnesses of the Government were able to specify only 37 towns in which instances of this were claimed to have occurred, while the Standard Oil Company at that time was engaged in selling refined oil by tank wagon directly to the consumer in more than 37,000 towns throughout the United States.(b) In many of these cases the evidence was based merely on hearsay and on the recollections of the witnesses, all of whom were competitors of the Standard, and consequently much of the evidence was proven incompetent, and otherwise inadequate because it did not determine whether such reductions were

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(a) Montague, Trusts of To-day, p. 84.

(b) Brief for Appellants, Vol. II, p. 175.

local or were due to the general declines in the Standard's prices.(a) But according to the Report of the Commissioner of Corporations on the Petroleum Industry, the Standard Oil Company habitually charges more for its products in towns where competition is absent than at competitive points.(b)

No matter how true or false the charges against the Standard of local price cutting may be, it is nevertheless the case that the temptation of so doing is always before a large combination which has a practical monopoly of any product, and it has without doubt been yielded to in some instances. But combinations should not be condemned per se because of this evil. Coercion, force, and fraud should be punished by specific statutes as they are in Germany and England, where such legislation has proved to be the solution of the trust problem. American anti-trust legislation, as typified by the Sherman law, forbids all combinations in restraint of trade, and until our laws cease to do that, and attempt merely to prevent specific wrongful or fraudulent acts, our trust problem will remain unsolved.

It has been shown that the trust has justified its existence on the grounds of being able to produce commodities at lower prices and of maintaining them at a stable level. Now if it can be shown that from the stand-point

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(a) Brief for Appellants, Vol. II, p. 174.

(b) Report of the Commissioner of Corporations on the Petroleum Industry, Part II, p. 64.

of business efficiency the trust is beneficial, its existence is urely justified. Profits are the only conclusive criterion by which to judge business efficiency. If, after an investigation of the profits of trusts and competitive concerns over an extended period, it appears that the trusts have earned larger profits than have competitive concerns, then have the former proven themselves to be a more efficient means of production, but if it appears that trusts' profits have been less, then it might seem desirable to break up these corporations into smaller units and allow these small units to maintain pooling or other agreements whereby the advantages of trust prices might be retained.

In the case of industries which are of such a nature that they do not lend themselves well to large scale production, mere combination and accumulations of capital are ineffective in their ability to undermine fundamental economic conditions. The history of the sole leather combination clearly illustrates this. The raw hides used in the production of sole leather have to be purchased in a market of world-wide scope, the bark used in its preparation is also a commodity which must be produced in a highly competitive market, and the finished product must be sold in the world market in competition with Canadian and European tanners.(a) Comparatively little capital is required to establish a plant. The process of tanning takes considerable time and the cost of labor is subordinate to the cost of the raw material. Under such conditions the small producer can

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(a) Dewing, Arthur S., The United States Leather Co. and its Reorganization, Q.J.E. 26: 68.

put sole leather onto the market on equal footing with the large tanner. The economic conditions of this industry, therefore, favor small-scale production.(a)

During the early 90's the competition among the sole tanners was so keen that a combination of about 110 tanners was effected, to attempt to put this industry upon a paying basis, and in 1893 the United States Leather Company was organized. This combination included about seventy-two per cent of the hemlock tanner leather, about forty-five per cent of the union, and about thrity per cent of the oak.(b what the tanners wished to do was to receive the benefits of combination which the sugar and oil producers had just done. Large savings were therefore anticipated. Preferred stock was issued to the amount of the actual property, determined by a fair inventory valuation. The preferred stock was to bear 8% cumulative dividends. An equal amount of common stock, representing the anticipated earnings of the company, was distributed with the preferred, and $600,000 of common stock was given to the underwriters for floating the company's bonds.(c) The result of the combination was disastrous. The United States Leather Company lost about one and one-third million dollars during the first year. Never were the earnings great enough so that the 8% dividends could be declared on the preferred stock. The following table, taken from ~~kke~~ Dewing's article in the Quarterly Journal of

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(a) Dewing, The U.S. Leather Co. & its Reorgzn., Q.J.E.26:69

(b) Ibid. p. 70.

(c) Rept. of Industrial Commission, v. xiii, p. 686.

Economics,(a) indicates the amount of dividends paid, the earnings, and the accumulated unpaid dividends from the beginning of the company's existence.

YEAR	EARNINGS	% PAID ON PREFD.	ACCUMULATED DIVS. ON PREFD. UNPAID.
5/1/93 to 4/30/94	-$1,340,494		
5/1/93 to 12/31/94	726,473		
1895	9,359,833	6	
1896	-2,017,037	1	$21.33
1897	3,237,372	4 3/4	25.33
1898	1,821,921	4	28.33
1899	4,947,601	5	31.08
1900	2,281,511	6	33.08
1901	5,888,455	6	35.08
1902	4,595,589	6	37.08
1903	1,086,095	6	39.08
1904	3,645,267	6	41.08
Total to Jan.1,'05	$35,573,080		
Time of reorganization 1905	6,178,457		$43.08
	$41,751,537		

The stock of the company was naturally of very character. The preferred stock hung around 50, but fluctuated considerably. The common stock had only a nominal value, and continued to fall still more as the unpaid dividends on the preferred stock constantly increased in amount.

(a) Q.J.E. 26 : 73.

The ultimate result, which it is needless to go into in detail, was that in 1905 the company reorganized into the Central Leather Company. The point is merely this, as is stated by Arthur A. Dewing, in his article referred to; "One of the most encouraging features of the combination movement is the powerlessness of mere accumulations of capital to undermine fundamental economic conditions."(a)

Other industries might be sighted of a similar nature, in that they do not lend themselves well to large scale production. In all such industries, large combination is useless, andif the industries in question are naturally not adapted to combination and large scale production, they will invariably end in failure. In such instances the business efficiency of combination is so poor that the existence of those trusts is not justified.

Professor E.S. Meade has investigated the net earnings of all the manufacturing holding companies - twenty-nine in number - which show any uniformity in their accounts. He has obtained the figures of the net earnings, by years, from 1902 to 1910, and reduced these to an index number with the profits of 1902 as a base of 100. The list of the companies taken in this investigation appears in the appendix, page iv. The results of the compilation of the index numbers are as follows:(b)

(a) Dewing, Arthur S., The United States Leather Company and its Reorganization, Q.J.E. 26: 72.

(b) Meade, E.S., Paper read before the Western Economic Society, at Chicago, March 1, 1912; The Economies of Combination, published in J.P.E. 20: 364.

1(o2	100
1903	103.5
1904	92.5
1905	104.6
1906	124.1
1907	134.8
1908	111.8
1909	122.7
1910	137.7

Professor Meade concludes from this that "An increase of 38½ per cent in the net earnings of these companies in nine years, including a period of extraordinary industrial expansion along every line, and considering also the fact that in many cases these combinations have enjoyed some monopoly advantage, does not conclusively indicate that in the industrial trust an agency has been discovered which is destined to revolutionize our ideas of efficient business organization." But, however, he has not compared these net earnings with those of competitive corporations. No statistics are available for the earnings of competitive companies, so it is impossible to prove that the business efficiency of one class of producers is greater than that of the other. Furthermore, if certain "trusts", in order to obtain the maximum net profits of monopoly price, or to escape prosecution under anti-trust laws, or for other motives, adopt a policy of maintaining prices lower and more stable than those of competitive producers, as is shown

to be the case in Plate 4, the advantages to the public of such a policy are so great that they should not be criticised too severely for the small earning capacity which they may show.

It goes without saying that if we are to reap any of the benefits of large scale production, combinations or agreements of some kind in restraint of trade, which the Sherman law condemns, are absolutely necessary. As will ne noted from the summary of prosecutions in the appendix(a), by far the greatest number of cases involving violations of the Sherman Anti-Trust Law, have arisen within the last ten years, and especially within the past four years. Large combinations and corporations have been and are still rapidly increasing in importance and number, and without doubt, if the Sherman law is left on the statute books as it is, the tendency will be for trust litigation to greatly increase. Such a state of affairs, of making hundreds and thousands of honest and high-minded men potential criminals, cannot but have a decided depressing effect upon all forms of business.

German and British legislative bodies have not condemned trusts but have encouraged them. Their courts have also recognized the economic advantages of combinations, although "the combinations there (in Germany), speaking generally, exert as great power over prices, over wages, and in other directions, as they do here."(b) In Great

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(a) Appendix, p. v.

(b) Montague, German and British Experiences with Trusts, Atl. Monthly, 107: 157.

Britain combination has gone very far. The thread "combine", composed of J.P. Coats & Co. and the Fine Cotton Spinners' and Doublers' Association, forms the strongest textile combination in the world. It is international in scope. "The justification of the trust movement", says Montague, "cannot be better established than by the trust movement in Great Britain."(a)

The recent application of the "rule of reason" by the Supreme Court of the United States has undoubtedly been a great step in advance toward the solution of the trust problem in this country. If a strictly literal interpretation were to be placed upon the Sherman law by the courts, all forms of business operations would be greatly hampered and depressed. Trust litigation would increas and business would soon come to a stand-still. The Supreme Court of Missouri, in October, 1911, made an extremely noteworthy and enlightened decision.(b) In this case the Court recognized that, although the defendant corporation, the International Harvester Company, was in technical violation of the anti-trust law of Missouri, nevertheless it had done no acts injurious or unfair to its competitors nor to the public by exacting unduly high prices, and therefore the execution of ouster judgment was suspended on condition that the defendant would discontinue its technical violation of the statute and continue its policy of fair treatment

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(a) Montague, Trusts of To-day, Atl. 107: 161.

(b) State v. International Harvester Co., 141 S.W. 672.

of both the public and its competitors. The Court thus recognized the economic advantages of combination, and permitted the corporation to exist as long as its business methods did not embody fraud, coercion, force, or other wrongful practices.

At present we are passing through a notable transitional period of constitutional development, and our anti-trust legislation, and the construction which, until but very recently, has been placed upon such legislation by the courts, is but another example of the fact that our law lags behind the economic and social progress of the people. Judicial control as a solution of the trust problem, is still on trial. The number of prosecutions under the Sherman law are now becoming so numerous that the Department of Justice has found itself unable to cope with the economic phase of trust regulation and control.(a) Furthermore, Judicial control under the existing law is essentially destructive even at the best. If the Sherman law were repealed and no substitution made for it, conditions would be in worse shape than they were before 1890. Monopoly, if unrestrained, is apt to produce greater evils than competition itself. Trust dissolution which has been attempted, although extremely annoying to large business, and in its purpose essentially destructive, is ineffective in its ability to get at the real evils.The recent Standard Oil and Tobacco Trust suits created much uncertainty and confusion in business circles, but after the decisions have been

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(a). James H. Brookmire, Monthly Letter, Dec. 23, 1911.

made, and the combinations disintegrated, it is now almost universally admitted that these combinations, although nominally dissolved, are as much units as they were before, and that competition is not by any means restored. Justice White, in the Northern Securities case, pointed out that the Hill, Morgan syndicate controlled the Northern Pacific and Great Northern before the formation of the Northern Securities Company, and that if this holding company was dissolved and the stocks returned to the original owners, the Hill-Morgan syndicate would continue to have the same degree of control over the two roads which it had while the Securities Company existed. What is needed is some means of trust control by which the evils inherent in combination and monopoly may be eliminated, and at the same time the advantages of large scale production be retained.(a)

, The provision for an Industrial Commission, created by the federal government, with more or less supervisory powers over trusts and monopolies engaged in interstate trade, is the only constructive method for the solution of the trust problem. It is to be expected that hereafter larger and larger proportions of production will be carried on on a monopolistic basis. Our industrial situation has become so large and complex that legislation is unable to adequately control it, and courts are not qualified to permanently administer our large corporations. Satisfactory regulation can be secured only by means of an expert administrative commission of the federal government.

(a) W.D. Foulke, An Interstate Trade Commission, J.P.E. 20: 409.

The repeal of the Sherman anti-trust law and the passage by Congress of specific statutes condemning fraud, coercion, and force by corporations engaged in interstate or foreign commerce, would be a great step in advance toward the solution of the problem, and should be done immediately. The following practices should be declared illegal by law, and should be punished by severe penalties:(a)

1. The cutting of prices in special localities, while in other places they are maintained at full rates.
2. Discriminations between different classes of goods on a general price scale.
3. The refusal to sell to general dealers, save on their agreeing to boycott rival goods.

Any person damaged by any of the above practices should be given the right to sue for and recover heavy damages, and the proper officers should be required to prosecute the offenders, and not merely have the matter left to the discretion of the officials of the Department of Justice as it is now.

Uniformity of anti-trust legislation in all jurisdictions is highly desirable, and should be encouraged as much as possible. As far as state corporations engaged in interstate or foreign commerce are concerned, Congress now has the power of regulation over them. An Interstate Industrial Commission, already referred to, should be created, having as one of its functions the registration of, and the granting of licenses to all companies engaged in

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(a) Cf. Industrial Commission Report, vol. I, p. 35.

interstate or foreign commerce. An annual franchise tax should be imposed on the gross interstate earnings of all corporations, with a very low minimum rate, gradually increasing in amount as the earnings increase. The commission should have charge of the collection of this tax. The commission should have the powers of investigation into the books and papers and management of all such corporations. It should be given the powers of compelling the attendance of witnesses and the production of records.

Any person believing himself unjustly injured by oppressive practices should have the privilege of complaining to the commission, which shall investigate the matter and determine whether or not the complainant is entitled to damages. Of course the parties to the controversy should have an appeal to the federal courts, but the findings of the commission should be prima facie evidence of the facts of the case. Uniform accounts should be required of all industrials, and regular reports should be made to the commission, which should be given the power of examining the records of the company to verify the reports. Trade agreements between corporations should be permitted, subject to the approval of the commission, and such agreements should be enforceable in the courts by or against the parties to them.

By such a plan as the above, much greater publicity will be secured, and in this way the public will be enabled to see what and where the abuses are, in order that they may know what remedies to apply. Later it may be found

expedient for the commission to be given the power of fixing maximum and minimum prices for monopolistic corporations, but greater publicity is the first reform which should be secured. The mere heckling of combinations by means of the Sherman law can result in nothing but injury, and says Montague, "Until American anti-trust legislation ceases to prohibit all combination in restraint of trade, and seeks merely to prevent specific wrongful practices, which through fraud, coercion, or force violate legitimate business competition, the trust problem of America must continue to embroil politics and business."(a) Not until this solution is adopted can we have "bigness without badness."

(a) Montague, German and British Experiences with Trusts, Atlantic Monthly, 107: 164.

A P P E N D I X .

The following is the list of the commodities priced in the March Bulletins of the Bureau of Labor, for the years 1902-11, on which Prof. Meade's index numbers, from which Plate 4 is complied, are based: See page 19, supra.

TRUST COMMODITIES.

Anthracite coal.- Stove. Average monthly selling price per ton f/o/b/ New York Harbor. From 1903 on, price at tide-water New York Harbor.

American cement.- Portland. Price per barrel in New York on the first of each month. Original quotation from the New York Journal of Commerce and Commercial Bulletin.

Refined petroleum.- 150° fire test, water white in barrels, packages included. Price per gallon in New Yrok on the first of each month. Original quotation from the Oil, Paint, and Drug Reporter.

Cotton seed oil.- Summer yellow prime. Price per gallon in New York on the first of each month. Original quoattions from the Oil, Paint, and Drug Re porter.

Glucose.- 41° mixing. Price per 100 lbs. in New Yrok on the first of each month. 41° and 42° mixing in 1901 to September, 1905; 41° and 42° September to December, 1905; 41°-43° in 1906 to 1907; May to December, 1907, 42°, and on to date. Original figures New Yrok Journal of Commerce and Commercial Bulletin.

News paper.- Price per pound in New Yrok on the first of each month. In 1897 prices for rag and wood paper. From 1898 on prices for wood. Original figures from New York Journal of Commerce and Commercial Bulletin.

Proof spirits.- Average weekly price per gallon, including tax in Peoria, for first week of each month. In 1904, 1908 to 1910, price for first Tuesday of each month. In 1904, 1908 to 1910, price for first Tuesday of each month. Original figures from Peoria Herald-Transcript.

Leather.- Sole, oak, dressed backs, heavy. Price per pound in New Yrok on the first of each month. Original quotations from the Shoe and Leather Reporter.

Wire nails.- Monthly averages computed from weekly market quotations. Quotations from Iron Age.

Steel rails.- Average monthly price per ton at mills in Pennsylvania. Original quotations from the Annual Statistical Reports of the American Iron and Steel Association.

Raw linseed oil. City, in barrels. Price per gallon in New Yrok on the first of each month. Original quotations from the Oil, Paint, and Drug Reporter.

Lead, pig.- Common, domestic. Price per pound in New York on the first of each month. Original quotations from the Iron Age.

Salt, American fine.- Price per barrel in Chicago, based on a weekly average for the first week of each month. From 1901 on, prices for medium salt. Original figures from the annual reports of the Chicago Board of Trade.

Plug tobacco.- Price per pound in New York on the first of each month. To September, 1906, price for "Horseshoe", from September, 1906, on, for "Climax".

Sulphuric acid.- 66°. Price per pound in New York on the first of each month. Original quotations from the Oil, Paint, and Drug Reporter.

Granulated sugar.- Price per pound in New York on Thursday of the first week of each month. Price includes import duty of 40 per cent ad valorem to July 24, 1897; from July 24, 1897, to date 1.95c duty per pound. Original quotations from Wallet and Gray's Weekly Statistical Sugar Trade Journal.

Cotton thread.- 6 cord; 200 yard spools. J.&P. Coats. Price per spool, freight paid, on the first of each month.

Matches.- Parlor and domestic. Price per gross of boxes (200's) in New York on the first of each month. Original quotations from Merchants' Review.

NON-TRUST COMMODITIES.

Manila rope.- 3/8 inch and base sizes. Price per pound f.o.b. or factory in New York on the first of each month.

Bituminous coal.- Pittsburgh (Youghiogheny). Price per bushel on the first Tuesday of each month. Cincinnati afloat.

New Orleans Molasses.- Open kettle. Price per gallon in New York on the first of each month. Original quotations from the New York Journal of Commerce and Commercial Bulletin.

Pig iron.-(Bessemer Pittsburgh).- Monthly averages computed from weekly market quotations as given in the Iron Age.

Bleached sheetings.- 10.4 Wamsutta S.T. Price per yard on the first of each month.

Corn meal.- Fine yellow. Price per bag of 100 pounds in New York on the first of each month. Original quotations from the New York Journal of Commerce and Commercial Bulletin.

Yellow pine.- Long Leaf, boards, heart face sidings, 1 inch and 1 1/4 inch. Price per M feet in New York on the first of each month. Original quotations from the New York Lumber Trade Journal.

Plain white oak.- 1 inch, 6 inches and up, wide. Price per M feet in New York on the first of each month. Original quotations from the New York Lumber Trade Journal.

Print cloth.- 28 inch 64 x 64. Average weekly price per yard for the first week of each month.

Glass tumblers.- Table, 1/3 of a pint. Price per dozen f.o.b. factory on the first of each month.

Vici kid shoes.- Men's, Goodyear welt. Price per pair on the first of each month.

Sheet zinc.- Ordinary numbers and sizes, packed in 600-pound casts. Price per 100 pounds f.o.b. LaSalle, Ill., on the first of each month.

Flour.- Wheat, winter straights. Price per barrel in New York on Tuesday of the first week of each month. Original quotations from the New York Produce Exchange's Annual Reports.

Cotton.- Upland middling. Price per pound in New York on Tuesday of the first week of each month. Original quotations from the New York Journal of Commerce and Commercial Bulletin.

Bare copper wire.- Quarterly quotations only to 1901. From 1901 on, price per pound in New York on the first of each month for No.8, B.&S. guage, and heavier.

Wilton carpet.- 5 frame Bigelow. Price per yard on the first of each month.

Earthenware plates.- White granite, 7 inch. Price per dozen f.o.b. Trenton, New Jersey, on the first of each month. From 1902 to 1905 price per dozen to purchasers of bills amounting to $8,000.

Bleached shirtings.- 4-4 Wamsutta XX. (o) Price per yard on the first of each month.

The above taken from E.S. Meade's article on "The Economies of ~~Xxxxxxxxx~~ Combination; J.P.E. 20: 369-72.

The following is the list of the 29 holding companies, or so-called industrial "trusts", referred to on page 42, used by Professor Meade in his investigation of the net earnings of industrials and in the compilation of his index numbers.

American Agricultural Chemical Co.
American Can Co.
American Car & Foundry Co.
The American Cotton Oil Co.
American Hide and Leather Co.
American Locomotive Co.
American Malt Corporation.
American Smelting & Refining Co.
American Type Founders Co.
American Woolen Co.
Merican Writing Paper Co.
Chicago Pneumatic Tool Co.
Diamond Match Co.
Eastman Kodak Co.
General Chemical Co.
International Paper Co.
International Steam Pump Co.
National Enameling & Stamping Co.
National Lead Co.
Pennsylvania Steel Co.
Pittsburgh Coal Co.
Pressed Steel Car Co.
The Pullman Co.
Republic Iron & Steel Co.
The Union Bag & Paper Co.
Union Switch & Signal Co.
United Fruit Co.
United States Steel Corporation.
Virginia-Carolina Chemical Co.

SUMMARY OF CASES UNDER ANTI-TRUST LAWS.

President Harrison's Administration.

Four bills in equity.

Three indictments.

President Cleveland's Administration.

Four bills in equity.

Two indictments.

Two informations for contempt.

President McKinley's Administration.

Three bills in equity.

President Roosevelt's Administration. (7 years)

Eighteen bills in equity.

Twenty-five indictments.

One forfeiture proceeding.

President Taft's Administration (To Nov. 1, 1911)

Seventeen bills in equity.

Twenty indictments.

CASES DECIDED UNDER THE SHERMAN LAW OR RELATING THERETO.

Abner-Drury Brewing Co. v. Leonard	25 D.C. App161.
A. Booth & Co. v. Davis,	127 Fed. 875 131 Fed. 31
Addyston Pipe & Steel Co. v. U.S.	78 Fed. 712 85 Fed. 271 175 U.S. 211
Agler v. U.S.	62 Fed. 824
Alexander v. U.S.	201 U.S. 117
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The Amalgamated Copper Company,	7:329.
The Standard Oil Company,	7: 413.
The American Sugar Refining Company,	8: 23.
United Dry Goods Combination	8: 89.
American Telephone and Telegraph Company,	8: 171.
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The Mackay Companies	8: 417.

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