poverty's issue—crime," that "would introduce more normal and more stable conditions in our business life, preventing the present oscillations between hothouse prosperity and trade stagnation," and that "would tend more to introduce peace and good-will in the world than a hundred Hague conferences or a thousand peace temples." Every word of this is true. Yet men linger under the spell of the notion that the way to improve trade is to choke it. White man, for all his boasted superiority, coddles his superstitions; and they are infinitely worse than any superstition of the "left-hind-foot-of-a-rabbit-caught-in-a-graveyard-in-the-dark-of-the-moon-at-midnight" type are.

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The Standard Oil Decision.

Commenting upon the Standard Oil decision, the Detroit Saturday Night emerges from a cloud of doubt, the settlement of which it refers to the legal fraternity, with this optimistic assurance:

> But to laymen and lawyers alike the most significant fact now is that the law is what Chief Justice White and his majority say it is, and that we need not here speculate on the fear that might have withered American trade and industry had Justice Harlan's opinion prevailed. What Mr. Roosevelt would call good trusts or combinations are not to be molested. Business, big and little, now knows, after twenty years of waiting, something definite about the Sherman anti-trust law; and has begun to go forward more buoyantly since learning it. It is something to know the rules of the game before you sit into it, no matter how harsh they may be.

But are the rules of the game any more definite now than before?

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Chief Justice White and his majority have not decided what "good trusts" are. All they have decided is that the Standard Oil Company of New Jersey is one of the "bad trusts." And while it is true that the opinion of the majority judges asserts that the Sherman anti-trust law applies to combinations in restraint of trade only if the restraint is unreasonable, the court has not so decided. An unnecessary opinion of its judges is not a final decision. If the majority had concluded that the Standard Oil Company of New Jersey is not engaged in restraining trade unreasonably, and had therefore decided in favor of that company, the decision would have imported into the Sherman law the doctrine of reasonableness. But inasmuch as the decision convicts the company of violating the Sherman law, the court, as a court, has not by its decision, as a decision, limited the application of the Sherman law to cases of restraint of trade unreasonably. What is said in the opinion of the Chief Justice about unreasonableness is *obiter dicta,* as lawyers call it, because it is not necessary for the purpose of the decision the court actually made. Didn't Judge Harlan concur in the decision? His remarks were to relieve him of the odium of seeming to be willing in a future case of "reasonable" restraint of trade to be with the Chief Justice. Other judges may possibly have disagreed with the Chief Justice in his *obiter dicta,* but have preferred to say nothing on the point of "reasonableness" until that question arises and must be decided in order to decide a case involving it.

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It is a fair inference, however, that if a case of only "reasonable" restraint of trade should come before the same judges, those who seemed to agree with the Chief Justice in his academic opinion in this case would join him in the other case in a decision for the defendant. It is as an index to the minds of the judges and not as a point decided that Chief Justice White's opinion has any practical value.

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But even if that opinion be taken as a decision conclusively interpreting the Sherman law, even if the law now is "what Chief Justice White and his majority say it is," does it let business, "big and little," know anything definite about the Sherman anti-trust law? Not a whit. All it lets anybody know, even at the best in that respect, is that trusts, "good trusts" and "bad trusts," will be acquitted if a majority of the judges in each particular case think them "good," and convicted if the majority think them "bad." For greater certainty, what about tossing a penny to decide that question?

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The Recall for Judges.

If the Recall may properly apply to legislative representatives who make laws, and to administrative representatives who execute laws, by what process of reasoning shall we conclude that it must not apply to judicial representatives who nullify laws?

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President Taft is opposed to this application of the Recall, but he gives no reason for distinguishing it from legislative or administrative applications, and the inference from his record and toryistic cast of mind is that he doesn't wish to. Being against the Recall in *every* application, he merely submits for the moment to overwhelming public opinion in respect of its other applications

in order the more efficiently to resist its application to judges, a use of it which has but recently come under discussion. Lacking those gymnastic mental qualities that permit his agile predecessor to advocate the Recall of judges for California while opposing it for Arizona, President Taft takes positive ground against it as a principle for all places.

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That it would deprive judges of dignity is one of his objections. This objection would have applied to abolishing the King's veto, which as Mr. Asquith says, is now "as dead as Queen Anne"; and it is a very appropriate objection for the additional reason that autocratic prerogatives of aforetime British kings are asserted by the American judiciary. Not alone do our judges veto laws; through their equity jurisdiction they make laws. It is for this double power, as well as the dignity of judges, that Mr. Taft contends in his denunciation of the Recall for judges. Like the great privileged interests whom he most directly represents, he finds that Privilege can endure the Initiative and the Referendum, which affect legislation alone, and a Recall that would affect administrators and legislators only, provided the judiciary remains untrammeled in its power over both administration and legislation.

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Governor Wilson, however, is not to be counted among those who oppose the judicial Recall from toryistic motives. This exception is allowed not because Governor Wilson is a Democrat, nor because he seems to be democratic, nor because, unlike Mr. Taft, he has come out for People's Power in respect of such electoral mechanism as direct primaries, direct election of Senators, the Initiative and Referendum, and the Recall except for judges. From an opponent, once, of the Initiative and Referendum, Governor Wilson has come to be one of its most effective advocates, and for right reasons. When opposing it as an author several years ago—a reference to which may be found in The Public of March 10, 1906 (volume viii, p. 827) he had not grasped the point that the Initiative and Referendum is not a substitute, but a palladium, for representative government. Believing now with all the rest of us who advocate the Initiative and Referendum, that when this reform is once in full operation it will be seldom used—probably never except on great and burning fundamental issues—because legislatures will then be as keen to represent the people as they now are to represent marauding interests, Governor Wilson frankly declares his change of opinion. But what he does not yet appear to see, is that the reason for the Recall for judges is the same as the reason for its application to other representatives of the people. Indeed he has distinctly put his objection on the ground that judges are not law makers but only apply the law to individual cases. If judges did determine only individual disputes, Governor Wilson's opposition would be quite unobjectionable. But our judges have built up a judicial system under which they exercise the kingly power of making laws at their own will by decree, of repealing statutes as unconstitutional, and of controlling administrative authority. Not as administrators of justice in private quarrels, then, is it that judges must be subjected to the Recall; but because they have usurped legislative power, administrative power, and people's power in respect of the laws of the land. As in Great Britain the king's law-making decree and his law-breaking veto are as dead as Queen Anne, so must it be in this country with the judicial usurpation of making law and breaking law. When that is done, no Recall for judges will be needed; until it is done, the Recall of judges will be as necessary, logically and in fact, for the defense of democracy against plutocracy, as any other application of the Recall.

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Defeat of the Illinois Tax Amendment.

The people of Illinois have lived many years under a Constitution which requires the taxation of all kinds of property. But this vicious system disturbed the big marauding financiers not a bit. Why? Because they dodged their taxes. It was as easy to them as sweating women workers is, or children. All they had to do was to see that the "right" men got into office as tax officials. But last year the Supreme Court of the State made a decision which puts those interests at the mercy of any taxpayer who may institute court proceedings against them. Quite suddenly, therefore, an amendment of the revenue article of the Constitution became "imperative immediately." So the marauding interests of Chicago called the roll, and the Daily News, the Tribune, the Record-Herald, the Commercial Association, and the Civic Federation saluted briskly, and answered, "Present, sir!" Since that time they have been active in carrying out orders from "higher up" to rush the adoption of the Wilson tax amendment.

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That amendment, taking its name from one of the shrewdest corporation lawyers of Chicago, because he was chairman of the tax commission ap-