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?

✣

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