

the reservation of the power to control the prices of necessary products, whether by express agreement or fair implication, has been condemned as unlawful." In *Dolph v. Troy Laundry Co.*, 28 Fed. Rep., 553, moreover, one of the reasons for holding a contract between two rival traders fixing a scale of prices, legitimate, was that washing machines are not articles of necessity.

In discussing the differences between a monopoly of a necessary and that of a non-necessary (if we may be allowed such a term), one must look at the question both from the side of the monopolist and from that of the public. Of course, the object of a monopolist is to raise prices, and thus enrich himself at the expense of the public. Now, it is undoubtedly true that, as prices are raised in the two cases we are considering, the quantity of the non-necessary demanded by the public will fall off much more rapidly than that of the necessary. In other words, a man cannot make so much money out of the former, because his sales must be more limited than would be the result in case of an equal rise in the price of the latter. Therefore, the monopolist cannot gain so much at the expense of the public; but does it follow that the public's real loss is less by the same amount that the monopolist's gain is less?

We must not forget that the man who ceases to buy an article because of the rise in price, or one who does not buy so much as he did at the lower price set by competition, suffers a loss as well as the man who buys the same amount as before but at a higher price. In the case of the non-necessary, more people prefer to take the loss by going without the article than in the case of the necessary; that is, the same proportion of the loss does not materialize in the form of gain to the monopolist in the former as in the latter case.

We do not mean to imply that the loss is as hard to bear in the one case as in the other, or that it will be to the interest of the monopolist to raise prices to the same extent in both cases; but we do wish to point out that there is injustice to the public in the one case as in the other, and that the ordinary method of measuring the amount of the injustice by the amount of the monopolist's gain has a tendency slightly to exaggerate the difference in hardship to the public between the two kinds of monopoly. No doubt there is a difference, but it is a difference merely in degree.

Turning to the reports, we find that in *The Case of the Monopolies*, a monopoly of the manufacture and sale of playing-cards, granted to an individual by Queen Elizabeth, was held void at common-law. There would seem to be no reason for drawing a distinction on this point between a monopoly granted by the State and one acquired by an individual or group of individuals. Moreover, the maxim, "Competition is the life of trade" (a maxim which seems to measure with some degree of accuracy the extent to which the law takes notice of political economy), undoubtedly covers the manufacture and sale of both necessities and non-necessaries.

Upon the whole, it is much to be doubted whether the decision in the New York case would have been different if the "trust" had been for the manufacture of playing-cards instead of the refining of sugar. The particular case before the court was the monopoly of an article of necessity, and we must conclude that