

The cardinal principle of present day combines seems to be to gather production into a group and to prevent buyers going outside it. They regulate production so as to keep up the price. A rebate is merely the ruse adopted to bring the operation seemingly within the *Mogul case*. Without it, the combination would not appear legal. With it the moving cause seems to be, but is not, the desire to get a rebate. It is the agreement and arrangement to unduly limit production or competition, or to unreasonably enhance the price that is the offence.

No doubt other reasons for the combination will be suggested, but an agreement which is void of the merits which appeared in the *Mogul case* can hardly expect similar absolution. And one essential difference in the treatment of that decision is this: that while no action may lie, as in it, yet the agreement may be, inter se, illegal and unlawful, and if found to exist, may be evidence of a statutory offence. (See *Mulcahy v. Reg.*, L.R. 3 H.L., at p. 317.) To found an action, the conspiracy must invade the legal right of some person and cause him damage. But under the Code (unless the definition of conspiracy in s. 516 governs all cases) that is not necessary, and a conviction may be secured for a conspiracy or agreement in breach of the statute, even though there is no evidence of any overt act which invades the legal rights of any member of the public.

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As we anticipated, knowing the opinion of the Bar in his own neighbourhood, Mr. Justice Mabee's appointment has found favour with those best able to judge of his fitness for a judicial position; and this opinion has, we are told, to the extent of his judicial work up to the present time, been already verified. The new judge is in the prime of life, a sound lawyer and a forceful man. We can well expect that he will make a strong and able judge.