

*Combines Investigation Act*

prohibition against continuation or repetition of an offence.

There is no authority granted to administer any aspect of an industry. There is no provision for exceptions, discretionary or otherwise, to the operation of the law in particular cases. We all know that this is in very vivid contrast to the situation that exists in the United States, and we know that where there is a federal statute it certainly takes precedence over provincial statutes. The struggle for the right of labour to organize provided a definite exemption from the terms of this legislation, and we know that in England during the struggle for the right of association the common law was used to try to inhibit the formation of the trade union movement; but in our law we now have a definite exemption for labour. There is also the question of exemption for co-operatives, and exemption for the fishing industry.

In order to establish an offence there must be proven a tacit agreement. It is not necessary that there be an overt agreement, but a tacit agreement or understanding among the parties concerned, which would be considered sufficient to establish agreement. We also have to prove that a combine will unduly harm the public. That is also something which the courts require our authorities to establish.

Are the courts qualified to do the job which is required in terms of the administration of this type of act? I would like to read a statement from the judgment by Mr. Justice Spence in the *Fine Papers* case. He said this:

Surely the determination of whether or not an agreement to lessen competition was "undue" by a survey of one industry's profits against profits of industry generally, and a survey of the movement of the prices in that one industry against the movement of prices generally, would put the court to the essentially non-judicial task of judging between conflicting theories of economy and conflicting political theories. It would entail the court being required to conjecture—and by a court, it would be nothing more than mere conjecture since a court is not trained to act as an arbitrator of economics—whether better or worse results would have occurred to the public if free and untrammelled competition had been permitted to run its course.

That is the main weakness of our situation, and you know, Mr. Speaker, in the amendments that were brought in a few years ago, in 1960, there are certain options open. The attorney general can have a case heard in the exchequer court and informed people believe—though it has never been tested in the Supreme Court of Canada—that by consent

there can be an agreement in a case to dissolve combines. However, none of these cases has ever come to the Supreme Court of Canada and therefore the jurisprudence is not established.

It seems to me that the bill of the hon. member, being well intentioned, deals with details, in terms of the policeman filling the gap, when actually what we lack is an important development in this very important aspect of economic policy. We heard a great deal, when the bill to establish the economic council was introduced, about indicative planning. With the combines act on our statute books I do not think we can say all our planning is indicative, but we have to do a great deal more thinking in terms of planning, of obtaining greater efficiency, in terms of providing a greater stability for our economy in our battle for markets against important combinations abroad. It seems to me with the liberal background we have in this, and which we must strengthen, we must look for development in new areas, new departures and new channels.

**Mr. Andrew Brewin (Greenwood):** Mr. Speaker, in the pleasant and relaxed atmosphere of Friday afternoon it is a very great pleasure to rise in support of this excellent bill introduced by the hon. member for Winnipeg North (Mr. Orlikow). The hon. member for York South (Mr. Gelber) said we should have an important and significant development in this field. The passage of this legislation would be an important and significant development.

I quite agree with the hon. member for York South in what I understood to be implied in his remarks, namely that the regulations of trade and the monopolistic tendency in trade by the federal government are unfortunately confined to the application of criminal law. It is an unfortunate thing perhaps that head 2 of section 91 of the *British North America Act* which gave, in effect, exclusive power to the federal parliament to regulate trade and commerce, has been so whittled down by judicial interpretation as to be practically meaningless and that this parliament is therefore restricted in its ability to cope with monopolies, and the efforts made to cope with them have often been ineffective by reason of this constitutional limitation.

Perhaps it is for this reason that Canada, according to those who have studied the matter, is one of the most monopoly ridden countries in the world. I think it was Professor Reynolds in a book called "Competition in