

*Combines Investigation Act*

way that they were so opposed. I think many years ago Adam Smith foresaw that businessmen, when they sat down to discuss things with one another, that is their relationship in the economy and whether or not they are able to increase their profits, whether or not they can increase sales, would discuss whether it would be desirable to do this by co-operation rather than by competition. The inclusion here of subsections 2 and 3 will merely allow for the spilling over into the conspiracy field of price arrangement of the degree of arrangement that is permitted in so far as statistics are concerned.

Another point deals with the argument that has been developed in the courts for a number of years concerning specific detriment, an argument which large corporations that have been charged under the Criminal Code say should be considered. Their argument is that the courts should consider the specific detriment of any conspiracy or agreement, but the courts have rejected this argument generally on the ground that it is not possible for them to do this because the law does not permit it. The courts say that if a conspiracy exists then it is, as such, illegal. We still talk in Canada today—this is the amazing thing to me—as if there were some benefit to be derived by society from price conspiracies, as though there were some beneficial results from corporations getting together to fix prices. The situation in the United States is quite different. Many corporations down there, because of the effect of the law, would no more think of entering a price conspiracy than they would think of picking pockets. It is somewhat in the same category today.

Last year, Mr. Chairman, a bill was introduced to amend this act. I cite it as a specific indication of the attitude of the government on this question of specific detriment. I should like to read a part from Bill No. C-59 of last year, section 32, subsection 2, paragraph (b), where it talks about prosecution for an offence under subsection 1, and so far as the accused is concerned states:

(b) also establishes that the conspiracy, combination, agreement or arrangement has not operated and is not likely to operate to the specific detriment of the public, whether consumers, producers or others.

We see here in the bill of last year a reflection of the government's attitude toward injecting this specific detriment argument into the law. The words are there precisely, "specific detriment of the public". Those words are not contained in the bill this year. However, I believe the government's attitude slipped out in the explanatory notes on page 6 of the bill, which read in part as follows:

The purpose of subsection 3 is to make it clear that, notwithstanding that certain practices come

[Mr. Howard.]

within subsection 2, the accused cannot avail himself of that subsection if these practices are accompanied by effects that are detrimental to the public interest.

The word "effects" is in there. There is a reference earlier in the bill to the things which the restrictive trade practices commission may find, and there is a reference to that in the explanatory notes. In the bill presented last year there was a particular reference in one section to what the commission should find, and again there was a reference to a finding of specific, substantial detriment to the public.

I submit that this is what the government desire to do, and they are so weakening the price conspiracy sections of the Combines Investigation Act through the introduction of these legalistic terms that prosecution will be practically impossible. The courts will be spending all their time, if a case comes to the courts, in listening to the arguments of opposing counsel about specific detriment; listening to such arguments as to what the price level might have been if the price conspiracy had not existed; listening to such arguments as to what the productive capacity might have been if there had not been a conspiracy; what the quality of the goods might have been; what the distributive channels might have been, all these theoretical arguments as to what might have occurred if the price conspiracy had not existed.

In my opinion, and in the opinion of every one of the astute and capable economists, in the opinion of Professor Cohen, who as a lawyer has had considerable experience in the combines field, the introduction of the specific detriment provision would emasculate the present Combines Investigation Act in so far as price conspiracies are concerned. We in the C.C.F. party are completely and unalterably opposed to the inclusion of subsection 2 and 3 in this bill because we believe it will do nothing but emasculate the act. Year after year the private interests of this nation have argued that the courts should look at specific detriment. The inclusion of these subsections is an indication of the influence, power and control these interests have over the government. I say that subsections 2 and 3 have no place whatever in this particular bill.

In so far as subsections 4 and 5 are concerned, as I say I have not had a chance to look at them as yet. If this is a reflection of the arguments used for putting this into the Combines Investigation Act in the first place, then at first glance I would be opposed to subsections 4 and 5. As I say, I have not had a chance to look at those subsections which the minister has just introduced but on the surface, in view of the expressions of opinion