itself criminal; it becomes a criminal offence only if competition is thereby diminished unduly or unreasonably.

Now, let it be noted that the amendment now before us abandons completely the principle so clearly embodied in our existing legislation. A combination or combine among various producers or retailers is an offence only if such "horizontal combine"—to use the expression currently employed—operates or is likely to operate to the detriment or against the interest of the public. On the contrary—and this, I submit, is quite illogical—in the case of any agreement or so-called "vertical combine" between a producer and any other person to sell such producer's articles at a so-called fixed or maintained price, such a vertical combine is illegal *ipso facto*. In the bill before us, clause 1, such vertical combine is declared to be illegal even though it is not shown to be in the least detrimental to the public. I submit that this is most illogical, and that it is contrary to the principles affirmed by our jurisprudence thus to discriminate against those who follow a practice which has become a well-established tradition, or custom of trade, sanctioned by our courts.

To support my contention, may I refer very briefly to a few typical cases. I am not trying in any way to be legalistic about this question. I want to lay before this house principles of justice and of common sense which form the basis of our liberal economy; principles which are as sound economically as they are well-recognized legally.

There is the American Tobacco case, which was decided in 1897 by Mr. Justice Dugas and is reported in 3 Rev. de Jur., 453. The trial judge was called upon to examine the validity of an agreement of the company with jobbers to sell at fixed prices and to sell only to retail dealers. He declared that this agreement was valid, since "the acts complained of in this case were only acts of ordinary business competition asserted by a manufacturer in disposing of his property as he saw fit."

Evidently, honourable gentlemen, the judge had in mind the provisions which are embodied in our own Civil Code, article 406:

> Ownership is the right of enjoying and disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations.

That is to say, any manufacturer or dealer, as owner of certain articles, enjoys the right to sell or not to sell such articles.

In other words, any manufacturer or dealer, as owner of certain articles, may sell or not sell such articles because, according to the principle embodied in section 407 of the Civil Code, no one can be compelled to give up his property. Any owner may dispose of what belongs to him in the most absolute manner; he may sell conditionally or unconditionally. Under our civil law there is nothing illegal in the condition stipulated by the vendor that a purchaser shall resell only at a certain price. Conditions are illegal only when they contravene section 13 of our Civil Code, which reads:

> No one can by private agreement, validly contravene the laws of public order and good morals.

Honourable senators, I come now to the case decided by Justice Pagnuelo in 1904, *Wampole v. Lyons,* (1904) 25 Que. S.C. 390, and I quote:

> That an agreement between a manufacturer and a retailer that the latter would sell at a fixed price was not illegal, or in restraint of trade, or contrary to public policy, provided the manufacturer had an interest in making the contract.

In 1909, a case originating before the courts of Quebec, *United Shoe v. Brunet,* (1909) A.C. 330, went to the Privy Council. The agreement, which was declared valid, concerned the lease of some machinery on the condition that only the plaintiff's machinery was to be used. Here it was held that there was no proof of restraint of trade.

I just wish to mention an Ontario case which is of special interest; *Rex* v. *Beckett et al,* (1910) 20—O.L.R. 40. In this case some manufacturers were selling at fixed prices and had agreed to sell only to wholesalers. The complaint was laid under section 498 of our Criminal Code. The accused was acquitted. The judge held that the proper method of distribution was from manufacturer to wholesaler, then to the retailer and then to the consumer. The judge was of opinion that if persons who belong to the wholesale trade sold at retail, such a system would injuriously affect and demoralize the trade of not only the wholesaler but also the retailer, and that the position of the consumer would be no better in the long run, and might even be worse. This will be the effect of the present bill in the opinion of several economists and of numerous people who have a practical knowledge of business conditions as they exist today.

I shall merely indicate now the volumes and pages of various judicial reports containing judgments which affirm the principle upon which I base my opposition to the present bill. Honourable senators, because detriment to the public was not shown, contracts were declared not to be illegal in the following cases involving some restrictions of trade: *McEwan v. Toronto General Trust,* 54 S.C.R. 381; *Stewart v. Thorpe,* 49 D.L.R. 194.