

He further stated that there was fierce competition between the large dealers and some retailers, and that the object of this agreement was to do away with that competition. . . .

It further appeared that in the present case defendants paid for the cod liver oil preparation 57 cents a bottle, and the offence was that they sold at 79 cents instead of \$1—that their profit was 22 cents a bottle instead of 43 cents. . . .

The effect of these contracts is, to fix the prices at which these preparations will be sold to the wholesale trade, and the prices at which the same articles will be sold by the wholesale trade to the retail trade, and lastly to fix the prices at which they will be sold at retail.

Competition, therefore, in these articles is not only affected, but entirely destroyed. The agreement exists not simply between the parties to this action, but affects the entire trade in the article. No one can buy an article for re-sale, whether wholesale or retail, unless he enters into one or other of these agreements, as the case may be.

Is this agreement contrary to the Criminal Code?

Section 516 of the Code defines a conspiracy in restraint of trade to be “an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.” Every one is guilty of an indictable offence, under sec. 520 of the Code, “who conspires, combines, agrees, or arranges with any other person, or with any railway, steamship, steamboat, or transportation company—(a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article or commodity which may be the subject of trade or commerce; or (b) to restrain or injure trade or commerce in relation to any such article or commodity; or (c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or (d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any such article or commodity, or in the price of insurance upon person or property.” . . .

[Reference to *Rex v. Elliott*, 9 O. L. R. 648, 5 O. W. R. 163.]

In the present case the evidence shewed that the commodities in question could not be furnished by defendants or by any one else unless and until they had signed the agreement in question.