

the truth known may be represented on the board of investigators. In the first place, the parties who have preferred the complaint will be asked to name their representative, the parties complained against will be asked to name their representative, and these two representatives, chosen in this fashion, will be called upon to choose as the chairman of the Board of Investigation, a judge of some court. In the event of either of the parties failing to name an individual member of the board, or in event of the two members failing to agree upon a judge as chairman, then the government will make the appointment of the person needed to complete the board. In this way it is hoped to fashion a board of investigation composed of experts from both sides, who will have the power to examine into all facts having a bearing on the case, and to make their report. The essential feature of this measure is that it provides this means or getting at the truth before giving publicity to the facts. It has an important industrial and social bearing, its machinery is simple, and it has been constructed with a view to being absolutely fair and impartial to both sides. If, as a result of an investigation by one of these boards, it is shown that a combination exists and has operated in a manner adverse to the public interest, the measure provides certain remedies which may be applied; and I think it can be shown that by the machinery provided by this legislation any limitations or defects which are to be found in the law as it stands today will be supplemented or rectified.

It is now desirable to briefly outline the place which this legislation holds in the scheme of legislation already devised by this parliament to deal with the evil or possible evil which this measure seeks to remedy. This will occasion a brief historical retrospect. In the speech from the Throne it was stated that the legislation to be introduced was to render more effective existing legislation. If we omit such legislation as has to do with the control of railway rates or the like, and confine ourselves to that which has been aimed more particularly at combines, trusts, etc., this legislation will be found to be embraced in sections 496, 497 and 498 of the Criminal Code. These sections embody the legislation enacted originally in this parliament in 1889 for the prevention and suppression of combinations formed in restraint of trade. The next legislation is the combines clause in the Customs Tariff Act, assented to on June 20, 1887, as amended by an Act respecting the duties of customs of 1907, 6-7 Edward VII., Chap. 11, assented to on April 12, 1907; and lastly, there is an Act to amend the Inland Revenue Act, 4 Edward VII., Chapter 17, assented to August 10, 1904.

Many members of this House will re-

member the interest taken by the late Mr. Clarke Wallace in the subject of trusts and combines. When he was a member of this House he brought the question up, and at his instance a select committee of the House of Commons was appointed to take evidence on the question and to examine into the need of legislation on the subject. That committee did its work in a very effective and thorough manner. I think Mr. Wallace was the chairman of the committee, and great credit is due to him for the exceptionally able and thorough way in which the inquiry was conducted. A large number of witnesses were called and examined, and a report, a copy of which I hold in my hand, of between 700 and 800 pages, was presented to the House. The interesting feature of that report is that although the committee sat for only two and a half months, they were able during that short time, to disclose to the country the existence of some thirteen different combines. I will not read what the report has to say, but hon. members will find it worth their while to peruse this report and to see just what the results of investigation in this way are likely to be. No stronger evidence in support of the measure which the government is bringing down at the present time could be had than is to be found in this very report. After all, the essential work of that select committee was investigation. In their report the committee were able to put out something pretty substantial. Not only that, but an examination of the report will show that while the committee were at work, some combinations which were believed to be operating to the detriment of consumers in this country ceased their operations to avoid the publicity which an examination before that committee would entail. It was also shown by Mr. Wallace, when he spoke on the subject in the House the following year, that a combine which had existed during the time the inquiry was taking place, as a consequence of the publicity given through that inquiry, ceased to keep up its prices unduly. If we refer to page 5 of the report of this committee, we shall find that they found that a large combine existed among coal dealers in both Ottawa and Toronto. Speaking of the results of this investigation on the second reading of the Bill, Mr. Wallace said:

We find that these coal organizations are still in existence, we find the organization in Toronto and we find it in Ottawa, but in Ottawa public opinion has been brought so strongly to bear that coal which was sold at \$8.50 a ton during the whole winter of 1887 and 1888 was sold at about \$6 or in some cases \$5.75 a ton during the present winter (1889). We know that the price of coal in the United States was almost the same this year as last year, and that the cost of freight was almost precisely the same, and the fact of coal being sold in Ottawa for at least \$2.50 per ton or less shows either that the deal-

ers were very magnanimous or generous this year, or that they were robbing the public last year.

It is to be noted that there were no prosecutions in this connection. The result was brought about simply through the force of the report of the committee of the House of Commons influencing public opinion; and it is to be noted further that Mr. Wallace credits public opinion with the whole result.

A word as to the significance of the sections in the Criminal Code which come down to us from the legislation introduced in the House by Mr. Clarke Wallace in 1889. Gentlemen opposite may be inclined to assert that much credit is due to the party to which they belong from having been the first to enact legislation to deal with trusts and combines. I am prepared to concede high praise to the late Mr. Clarke Wallace for the earnest, and diligent manner in which he helped to bring this subject to the attention of parliament, and the country, and in particular for the able manner in which he presided over a special committee appointed by the House on his recommendation, to inquire into the nature, extent and effect of certain alleged trade combinations. This committee appears to have done its work expeditiously and thoroughly, and no stronger case could be made out for the desirability and advantage of investigation as a means of dealing with combinations and trusts, or of the effects of publicity in desiring to remove the evils incident to these large organizations than the work and report of this committee. It might have been expected that as a result of this inquiry and all that it revealed of the merits of investigation, and publicity alike, the government of the day would have seized the one obvious conclusion of the whole inquiry, and have brought in a measure making provision for the exercise, as future conditions might require, of these powers of inquiry and publicity which had proved so effective in the inquiry and publicity which had proved so effective in the inquiry just concluded. Instead of this, however, the government contented itself with the measure which has come down to us as part of the Criminal Code.

In regard to this measure, it is to be noted that in reality it enacted nothing new, but was merely declaratory of the law as it stood, and had stood for years before the question had ever been one of concern to the administration. This was very clearly brought out by the late Hon. David Mills, at that time member for Bothwell, and who subsequently became Minister of Justice, and I must add was as clearly, and candidly admitted by the late Honourable Sir John Thompson, the then Minister of Justice, who had charge of Mr. Wallace's Bill.

Referring to 'Hansard,' page 1437 of the debate which took place on April 22, 1889, it will be seen that Sir John Thompson spoke as follows in reference to the Bill:

I think it is, as the honourable gentleman (Mr. Mills) has said, most declaratory of the common law. . . . It frequently is the case to declare the common law with respect to matters which are offences. . . . I have said candidly to the honourable gentleman who has had charge of this Bill from the first that I think his Bill, as now framed, would add no new penalty, no penalty which could not already be enforced, and will not create any new offence.

So far, therefore, as the contribution by gentlemen opposite to legislation affecting trusts, combines, monopolies, and mergers is concerned, it might be well to keep in mind the words of the late distinguished Minister of Justice and Prime Minister that it added 'no new penalty, no penalty which could not already be enforced, and will not create any new offence.'

But if I were to go further and examine more closely the effect of this legislation, I would be forced to argue that it is at least questionable whether its existence on the statutes has not operated rather as a protection, or shield to individuals in their endeavours to make unfair exactions from the public and consumers through the medium of large organizations of capital in the nature of trusts and combines; that, instead of being a deterrent factor, it has actually served as an aid to the possible machinations of these powerful concerns. It has done this by succeeding in large measure in stifling investigation and publicity, the first of all essentials in arriving at the existence of improper practices and methods, and of effectively restraining them.

That Sir John Thompson was right in his opinion at that time was apparent when the subject came up for discussion some years later. The hon. member for East Grey (Mr. Sproule), in moving the first reading of his Bill of 1899 to amend the combines clause of the Criminal Code, said that he was seeking these changes:

For the simple reason, we are told, that it would be impossible under the existing law as it stands to secure a conviction of any persons guilty of combining in restraint of trade. It would put upon a prosecutor the onus of proving a great many things which it would be very difficult to prove. How can one prove what unduly enhanced the price or restrained trade. . . . The law has been on the statute-book many years, and efforts have been made from time to time to get the attorneys general of the provinces to prosecute under the Act, and several times applications have been made to private individuals to do so, and they all raise the same objection that it would be impossible to secure a conviction under the law as it reads.