

*Combines Investigation Act*

The provisions of this paragraph shall not, however, prevent a cooperative society returning to producers or consumers, or a cooperative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

(b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;

(c) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

Sections 498 and 498A of the criminal code have been found by the judicial committee of the privy council to be within the legislative jurisdiction of Canada. I respectfully submit that if any other civil acts, matters or things are now to be declared criminal, such declaration should properly take the form of a criminal enactment by way of amendment to the existing criminal code. The criminal code should contain the material provisions constituting crimes in Canada, and providing the penalties for crimes. Bill No. 41 contains provisions in the nature of criminal enactments which are far more extensive than the provisions of the criminal code. The material provisions of the criminal code are extended by the definitions expressed in paragraph 2 of the bill, the material parts of which are as follows:

2. In this act, unless the context otherwise requires,

(1) "combine" means

(a) a combination of two or more persons by way of actual or tacit contract, agreement or arrangement having relation to any article or commodity which may be a subject of trade or commerce and having or designed to have the effect of

(i) limiting facilities for manufacturing, producing, transporting, supplying, storing or dealing, or

(ii) preventing, limiting or lessening manufacture or production, or

(iii) fixing a common price or a resale price or a common rental, or

(iv) enhancing the price, rental or cost of any article, storage or transportation, or

(v) preventing or lessening competition in or substantially controlling, within any particular area or district or generally, manufacture, production, purchase, barter, sale, storage, transportation, insurance or supply, or

(vi) otherwise restraining or injuring trade or commerce;

I suggest that in a consolidation of the existing law, as this act purports to be, if a combine is to be defined in new language it should be defined in language corresponding to the provisions of sections 498 and 498a of the criminal code, and that in fact the provi-

[Mr. Cahan.]

sions in section 2 of the bill are necessary only if it is intended to set up in respect of certain dealings a new criminal code, collateral to and to be administered separately and differently from sections 498 and 498a, which are the substantial enactments.

The bill proceeds in section 2 to define the words "merger, trust or monopoly," and to extend the criminal provisions of the existing act by enlarging these definitions so as to establish new crimes with respect to which the bill will provide penalties. Paragraph (b) of section 2 is as follows:

(b) a merger, trust or monopoly which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others; . . .

(4) "merger" means the combination resulting from the consolidating or amalgamating of the whole or part of the businesses of any two or more persons, or resulting from the purchase, lease or other acquisition by any person of any control over or interest in the whole or part of the business of any other person;

The new definition is of trust and monopoly, and reads:

(7) "trust" and "monopoly" mean one or more persons who, within any particular area or district or generally,

(a) substantially control any class or species of business, or

(b) have such control over the supply or distribution of or the demand for products of any class or species of business as to enable such person or persons to maintain, enhance or substantially modify or control prices of such products.

In the 1935 act, which is the existing law and which this bill proposes to amend, the definition of "combine" as contained in section 1 differed very materially from the definition in the present bill. I quote from the existing act:

(1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of,

(a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or

(b) preventing, limiting or lessening manufacture or production, or

(c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or

(d) enhancing the price, rental or cost of article, rental, storage or transportation, or

(e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or

(f) otherwise restraining or injuring trade or commerce, or a merger, trust or monopoly,