

existing between the Empire Tobacco Company and the other manufacturers of Canadian and combination leaf in Canada, the consumer gets fair value for his money.

Nor can it be said that the terms of these agreements are illegal. Doubtless their object is to obtain for the cigarettes and tobacco manufactured by the two companies such an exclusive and extensive sale as to render it unprofitable for others to engage in the same line of manufacturing, but the means employed under these contracts do not transgress any statutory enactment, nor are they contrary to the well settled rules of the common law in reference to trade competition.

A criminal charge was laid by Mr. J. M. Fortier against the American Tobacco Company of the city of Montreal, and also against Mortimer B. Davis *et al.*, directors of the American Tobacco Company in the city of Quebec, for conspiracy in restraint of trade under Articles 216 and 520 of the Criminal Code. In the well considered judgments of the learned judges Chauveau of Quebec and Dugas of Montreal, it was held that the system of trade adopted by the defendants was not contrary to the provisions of the criminal law.

It is apparent that this contract system secures to the two companies certain advantages in their having exclusive facilities for the distribution of their manufactured products, or rather the exclusive enjoyment of facilities which should be common to all. It does to some extent prejudicially affect the other manufacturers of cigarettes and Canadian leaf tobacco in Canada, as it restricts the opportunities of the other manufacturers to reach the retail dealers and through them the consumers. The wholesale trade is the highway between the manufacturer and consumer, which practically all manufacturers are desirous of using. The manufacturers to whom this highway is not available have to secure other and more expensive channels to dispose of their goods at a reasonable profit. The manufacturer who is not able to avail himself of the wholesale trade distributing his goods is compelled to incur greater cost in distributing his goods to the retailer by the employment of a greater number of travellers and sales agents, the greater number of accounts which have to be kept, and the consequent increased clerical work; the larger number of collections which have to be made, and the greater risk of loss in connection with these accounts; and the increased cost of freight on small packages. The extra price at which he may be able to sell direct to the retailer as compared to that which he might obtain from the wholesale merchants, is not sufficient to reimburse him for the extra cost which he has to incur in being obliged to conduct his business in this way.

It did appear during the course of the inquiry, that trade contracts having in view somewhat similar objects as the contracts in question were in use in other lines of business. A consideration of the contracts would involve a very lengthy inquiry. All the parties interested would be entitled to notice of the proceedings, in order that they might have an opportunity to appear and explain the circumstances of each case and the conditions existing in the particular business affected.

Your Commissioner being of the opinion that an investigation of these contracts did not necessarily come within the scope of this inquiry, merely records the fact that such contracts do exist.

Your Commissioner made personal inquiries as to the working of the Statute of the Commonwealth of Massachusetts entitled 'An Act for the protection of traders,' referred to in the Order in Council hereinbefore mentioned, and which statute is in the following words:—

Section I.—No person, firm, corporation, or association of individuals doing business in this commonwealth, shall make it a condition of the sale of goods, wares or merchandise that the purchaser shall not sell or deal in the goods, wares or merchandise of any other person, firm, corporation or association of individuals: *Provided*, that nothing in this Act shall be construed to prohibit the appointment of agents or sole agents for the sale of, nor the making of contracts for the exclusive sale of goods, wares or merchandise.