

Canada Law Journal.

VOI. XLI.

DECEMBER 1.

NO. 23.

COMBINES.

There is no doubt that in any arrangement to limit trade, the prime factor is control. It may be control of the output, or the producers, or of the retail distributors, but everything centres on the device accepted to prevent competition.

There is nothing new about the matter to those in trade, but to lawyers it suggests novel developments in a subject to which little attention has been given.

Agreements in restraint of trade are familiar enough in respect to bargains not to compete within a limited area or for a prescribed time, but an essentially different problem is presented when the understanding is such that while all may compete anywhere or for any time, they agree to refrain from getting any advantage by the now classic "bargain price."

Our Criminal Code defines a conspiracy "in restraint of trade," (s. 516), as the agreement to do or procure to be done an unlawful act in restraint of trade. This leaves untouched a combination to do a lawful act which may be the foundation of a civil action, if it causes damages: *Quinn v. Leatham* (1901) A.C., p. 530.

Now, what is "restraint of trade?" The expression means the restricting of any one from doing as he pleases in trading. Hence, it involves a compelling; and when that may be the consequence of a perfectly lawful act, there is no ground for a criminal information unless the act producing the compulsion is unlawful.

The Code further provides (s. 518) that no prosecution shall be maintainable for conspiracy "for doing any act or causing any act to be done *for the purpose of a trade combination* unless such act is an offence *punishable by statute*. And the "trade combination" here spoken of is a combination "for regulating or altering the *relations* between any persons being masters or workmen, or the *conduct* of either in respect of his business or em-