

*Combines Investigation Act*

Those words apply to all the branches of that section.

Mr. ROGERS: Surely that applies only to combinations.

Mr. CAHAN: But you are defining a merger as a combination.

Mr. ROGERS: Certainly my understanding of it is that the phrase used by my hon. friend attaches rather to the definition of a combination. Let me read it:

"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—

Mr. BENNETT: That is the old definition?

Mr. ROGERS: Yes. Then follow paragraphs (a), (b), (c), (d), (e) and the first part of (f), "otherwise restraining or injuring trade or commerce." Then follow these words:

—or 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.

Mr. CAHAN: It is a combination and, being a combination, these words "having or designed to have" apply to it. However, I beg my hon. friend's pardon for interrupting.

Mr. ROGERS: I am informed that there was a defect in the printing of the act of 1935, and that brings very close together clause (f) and what follows, as relating to the entire section. But surely it is a proper construction of this that the offence is created not by particular design but rather by evidence showing that a combination, as so defined, or a merger, trust or monopoly has in fact operated or is likely to operate to the detriment of the public.

Right Hon. R. B. BENNETT (Leader of the Opposition): Unfortunately that is not what it says. I do think this measure should be before a committee. I listened with extreme care to what was said by my colleague from St. Lawrence-St. George and by the minister. No one can take the second section of this bill without realizing that it never should be dealt with and disposed of in this way as it now stands. We had the act before 1935, and the interpretation or definition was entirely different from what it now is. If the minister will be good enough to look at his own explanatory notes he will find that there he gives the definition of a combine as it was in the old statute. That definition in the old statute is clear and plain. Just let us look at it. It defines the word "combine" to start

[Mr. Cahan.]

with. In this statute the word "combine" means a combination; that is the first part. Then, having relation to any commodity which may be the subject of trade or commerce; that is the subject matter with respect to which the combination must exist. Then it states how many people must combine; two or more persons, by way of actual or tacit contract. That met the sort of case that developed in the United States, where there was nothing in writing but just an understanding or agreement, as they called it. Then follow the words "agreement or arrangement," but they all refer to the words "having or designed to have the effect of."

Let us keep those words in mind. Under the old agreement they had to have the effect or they must be designed to have that effect; in other words the court, in construing the facts before it, might not have the whole thing in the one document, but by taking everything together, acts and documents, it might conclude that they were designed to have the effect.

There on the one hand they must have the effect or on the other hand they must be designed to have the effect, and what must they have the effect of doing or be designed to have the effect of doing? That is the next question, the relevant question, the important question, the gravamen of the whole. Under paragraph (a) they must either limit or be designed to limit facilities for transporting, producing, manufacturing, supplying, storing or dealing in a commodity of trade or commerce. That is the subject matter we must keep in mind. Or, under paragraph (b), they must have or be designed to have the effect of preventing, limiting or lessening manufacture or production of a commodity of trade or commerce. Or, under paragraph (c) they must have or be designed to have the effect of fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation of a commodity of trade or commerce. Or, under paragraph (d) they must have or be designed to have the effect of enhancing the price, rental or cost of article, rental, storage or transportation. Or, under paragraph (e) they must have or be designed to have the effect of 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 be designed to have the effect of otherwise restraining or injuring trade or commerce.

Mr. FACTOR: Stop there.