

continued existence of the agreement and of the objects of the association as indicated by their constitution and by-laws, that it was in effective and active operation according to the terms therein set forth. . . .

As sec. 520 was originally framed, it simply imposed penalties in respect of a conspiracy to commit some unlawful act "unduly" in transactions of the nature of those mentioned in clauses (a), (c), and (d). What was or might be unlawful was left to be ascertained by the general law of the land on the subject, the limited scope of which and the difficulty of its application is well seen by such cases as *Mogul S.S. Co. v. McGregor*, [1892] A. C. 25, *Bohn Manufacturing Co. v. Hallis*, 54 Minn. 223, and *Macaulay v. Tierney*, 19 R. I. 255. When this was further qualified by the word "unduly," it might seem that Parliament had defeated its own object, whatever it may have been, and had made the section unintelligible and innocuous by attaching a penalty only to a conspiracy to do an unlawful act unduly. The difficulty became partly evident to the legislators of 1899, when the word "unduly" was struck out of the sub-clauses (a), (c), and (d). This left the application of the general law untrammelled within its narrow limits; but in the revision of 1900 Parliament shewed that it meant to go further, and did so by striking the word "unlawfully" out of the section and restoring the word "unduly" to the sub-clauses referred to. Thus we are no longer thrown back upon the general law to ascertain what is (a) an unlawful limitation of the facilities for transporting, etc., articles or commodities which may be the subject of trade or commerce, (b) unlawfully preventing the manufacture or production of such article or commodity, or (d) unlawfully preventing or lessening competition in its production, purchase, etc. It is the conspiracy to do these things "unduly" which is now made unlawful and an offence within the meaning of the section. I agree with the construction which has been placed upon it by my brother Meredith in this respect, and the cases I have referred to are of no assistance, as they would not improbably have been different in their result had the law for the Courts which decided them been like ours. What is "undue" with reference to the acts which are the subject of the conspiracy, combination, agreement, or arrangement, is now a question of fact upon the circumstances of each particular case, and I am unable to say that my brother Meredith was wrong in holding that the conspiracy or agreement or combination, by whatever name it may be called, proved in the present case, was one to unduly prevent or lessen competition in the purchase, sale, or supply of anthracite coal, which is a subject of trade or