

for a civil action the standard of evidence required in a criminal action, then it is not fair.

**Mr. Hemens:** I do not think a court could operate on that basis, and that is why I say that I think you have to have a criminal conviction first.

**Senator Buckwold:** I think it is necessary to have some kind of right of claim for damages that may be caused as the result of restrictive practices carried on, and by which a man may be ruined. I would agree that you should have a decision somewhere along the line because a refusal to sell may break a man, and I think he should be entitled to compensation.

**Mr. Hemens:** I agree that if I injure you as a result of a crime that I have committed, you ought to be entitled to a remedy, but I think you have to convict me of that crime.

**Senator Buckwold:** I agree on that, but I was rather commenting on Senator Flynn's idea that we perhaps should not be involved in this whole matter. I think somewhere we have to be, and perhaps it should be in the area of the conviction on the criminal offence. But it could get down to the situation where refusing to sell to somebody and putting him out of business would be a criminal act.

**The Chairman:** Well, I can tell you now that under the bill it is not. Of course, if a group of people got together, then that might be something else.

**Senator Buckwold:** But if you refuse to sell to a man and he goes out of business—if you say to him, "I don't want you any more. Goodbye!" and he goes out of business and loses all his investment and later you are ordered to sell to him, and it is still not a criminal act as interpreted by our chairman, then I say that the man who suffers should have the right of action for damages.

**Mr. Hemens:** Well, failure to comply with an order of the commission, I suggest, could become a criminal offence.

**Senator Buckwold:** But we are not talking about the order here; we are talking about the refusal to sell to the man.

**Senator Cook:** There is no offence without a conviction.

**Mr. Snelgrove:** That is a reviewable offence.

**The Chairman:** The criminal offence is the failure to comply with the order. It is not what the commission dealt with that was criminal in its nature.

**Senator Cook:** It is the conviction that makes the criminal.

**The Chairman:** The failure to comply with the order.

**Senator Flynn:** The failure to comply with the order would probably be the basis for the civil action under common law if the damages are consequential upon the refusal to obey the order. It would be contrary to public order not to obey an order of the commission. I think there could be a civil action, anyway, but you

would have to go that far and you do not need a provision in this bill to say that you will have a civil remedy.

**Senator Buckwold:** Well, I am not a member of the legal fraternity, so, then, under this bill what right of damages—and perhaps the chairman would clarify this for us—has a claimant who has suffered from a restrictive trade decision? I will give you an instance: A man is a distributor for, say, Westinghouse and he makes his living out of this. Suddenly, Westinghouse decides that it does not want him and he is cut off. Later they are ordered to sell to him again, but for two years he is out of business. Is there any claim for the losses suffered by the plaintiff during that time?

**The Chairman:** Well, what I am telling you is that the bill provides that a person who has suffered damage as a result of any failure on the part of a person to comply with an order of the commission may sue, but he has to prove his damages.

**Senator Buckwold:** Then in that case, if they complied with the order, there would be no claim for damages, even if damages were suffered for a period of time.

**Mr. Bruce:** It depends on the reasons for the cutting off. In common law there might be an action for damages.

**Senator Flynn:** But we would be no better off if the action were taken and it was contested on the question of constitutionality. The court could find that it was beyond the competence of Parliament. You could drag it out for years and you would only find yourself involved in a lot of legal costs.

**The Chairman:** Well, we have had Mr. Hemens' viewpoint that if any person suffered damage by reason of a criminal act under Part V of this bill, he should be compensated or should have the right to seek compensation from the person who has caused that damage. Mind you, that is a particular right to a particular person. He has to prove the damages in relation to himself.

**Senator Flynn:** Returning for a moment, however, to the question of constitutionality, I believe legislation in some provinces for the protection of consumers provides such a remedy. It would certainly be within the competence of a provincial legislature to provide that in any case of intervention, even by the federal law, there would be a civil remedy.

**The Chairman:** Yes, and then you have this conflict. There may be a civil action in relation to the same subject matter in the province and also under this act.

**Senator Cook:** If a supplier were cut off because of an honest business judgment he would have no right of damages, even though it was later ordered that he be re-instated. If the order of the Commission were carried out, the supplier might sue. However, if he were cut off through malice he would not have any right, irrespective of that.

**The Chairman:** Except that in common law he would not have a civil right for damages caused by regional price maintenance.