

Combines Investigation Act

lying purpose of the legislation is to provide proper machinery of investigation through which evidence may be obtained upon which the information may be laid for a criminal proceeding.

My hon. friend proceeded next to deal with the definition of a combine in the proposed bill, and as I understood him he drew a distinction between this and a similar provision in the combines act of 1935. I have read the two sections and it does not appear to me that there is the significant distinction which he sought to emphasize. As I recall it, his point was that in the act of 1935 it was necessary to prove that a combination was designed to operate to the public detriment.

Mr. CAHAN: Either that it did or was designed to.

Mr. ROGERS: Actually, in both the 1935 act and the present bill, the word "designed" occurs in the definition of a combination. I quote first from the bill now before the committee:

2. (1) (a) a combination of two or more persons by way of actual or tacit contract, agreement or arrangement having relation to any article or commodity which may be a subject of trade or commerce and having or designed to have the effect of—

And then follow a number of operations.

Mr. CAHAN: Quite so, but that did not apply. My contention was in respect to a merger, trust or monopoly mentioned in subsection (b).

Mr. ROGERS: But even here, as I understand, there is nothing to suggest that there must be design. And it is not found in the act of 1935. Certainly both in the 1935 act and in the present bill the word "designed" is related rather to particular operations, which were so to speak to constitute a combination in the sense given in the act.

Mr. CAHAN: No, certain operations which are deemed criminal in the criminal code and are summarized here.

Mr. ROGERS: But you proceed in each case to the clause which actually creates the offence, and in each case, as I have the act of 1935 before me and the bill before me, it appears that an offence is created when either a combination or a merger or a monopoly has operated or is likely to operate to the detriment of or against the interest of the public, whether consumers, producers or others. For that reason I am bound to say that I cannot follow the distinction made by the hon. member between the act of 1935 and the bill which is now before the committee.

[Mr. Rogers.]

Then my hon. friend proceeded to the definitions given in the present bill of monopoly and merger, and as I understood him he sought to leave the impression that the mere fact of a particular type of organization falling within the definition of one of these terms would of itself stamp that organization as of a criminal character. Surely that is not the intent of this section. Surely that is not a proper construction of these provisions; although in saying that I speak once more with great deference to the legal knowledge of my hon. friend. You have here a number of definitions of particular types of business organization. For example if this were confined solely to combinations it might mean that a number of distinct business units, industrial or commercial, could organize and agree among themselves to do certain things which would be criminal either under this act or under section 498 of the criminal code, but that these same identical industrial or commercial units could form themselves into another type of organization, a monopoly or merger, and by that means through the ingenuity of legal counsel, evade the provisions of the act. Surely the purpose of this is rather to prevent just that sort of thing occurring.

Mr. CAHAN: Is the purpose of this to make the organization a criminal organization?

Mr. ROGERS: No, the purpose rather is to bring it within the ambit of the act.

Mr. CAHAN: That is what I mean.

Mr. ROGERS: But a combination of itself is not declared to be illegal under this bill. It is only when it operates to the public detriment.

Mr. CAHAN: Well, when is it illegal under this bill?

Mr. ROGERS: A combination operating to the public detriment, a monopoly operating to the public detriment, a merger operating to the public detriment; all these become criminal only to the extent that they operate to the public detriment.

Mr. CAHAN: That is not in this bill. I will risk anything on that. The wording is, "has operated or is likely to operate to the detriment" According to the statement of my hon. friend, a monopoly once formed, if there is any likelihood of its operating to the public detriment, is criminal before it actually does so operate.

Mr. ROGERS: Only if so determined by the courts, that it is likely to operate to the public detriment. Surely that is a matter to