

of the public and what are unlawful is a question which is left to the sole determination of the board.

Objections from the Provinces

A radical departure has been made by this legislation, in the fact that now no prosecution for an offence against section 498 of the Criminal Code can be commenced except upon the written authority of the board. It was this, more than anything else, which stirred up antipathy to the board on the part of the attorneys-general departments of the provincial governments. To take away from these departments what had been hitherto acknowledged as their prerogative and to place them in a position in which they could not initiate any action against a criminal combination, was a very decided transfer of authority. The act states that the attorney-general of a province may not now proceed against any combine under the criminal law without written permission from the board. The reasons for this change were given by the framer of the act, at a meeting of an association of business men in Ottawa last August, when he asserted that the Board of Commerce would stand between the public and the accused person and say, "There has been established in Canada a board which the Parliament . . . and the people behind them, at any rate, imagine will in time become quite expert, much more expert upon business matters than the ordinary criminal courts of the country can ever become, and there has been interposed, as a protection between persons accused of this offence, so peculiarly hard and so expensive to try, and the criminal dock, the preliminary investigation of the matter by this body." The argument was that, because criminal cases were formerly tried before separate judges, and these judges had no opportunity of getting together in conference and learning from one another, each case would be decided on its own merits, by judges who had had no experience in similar cases, with the result that even in identical or comparable cases the decisions differed widely. But when, under the present legislation, all cases come before one body, which lays down certain rules to bind it, in the course of time there will be evolved a court skilled in commercial law and commercial morality, which will be of great advantage to business.

How Action is Taken

To set the machinery in motion is a simple thing. Any British subject resident in Canada and of full age who thinks that a combine exists or is being formed may go before one of the commissioners (except the chief commissioner) and make out a *prima facie* case. When he has placed certain data before the commissioner and proved certain facts, if the commissioner is satisfied that there is reasonable ground for believing that a combine exists, or is being formed, he may order an inquiry and trial. If he is not satisfied, he may refuse to order an investigation, in which case the papers and documents bearing on the case must be placed before the chief commissioner and the latter may order an investigation, despite the commissioners' refusal, if the facts disclosed in the papers seem to warrant it.

If, after hearing the case, the board is satisfied that a combine exists, or is being formed, it may order the parties thereto to desist from the practices proved against them; and if they refuse to obey the order they are liable after ten days to a penalty not exceeding one thousand dollars and costs or to two years imprisonment. These, of course, are the maximum penalties—the fine might be a cent a day and the term of imprisonment might be a single day. It would seem as if the maximum fine or period of imprisonment were largely a threat for the purpose of deterring evil-doers from committing a breach of the law; but it is evident that it was not meant to be put into effect. In fact, a high legal and judicial authority does not hesitate to declare that he believes this maximum penalty is so great as to be unenforceable. If the board after investigation of case thinks criminal action should be taken, it may send

to the attorney-general of that province certified copies of the record and the facts, with a recommendation that prosecution be instituted.

Independent of Any Minister

The powers conferred upon the Board of Commerce are very broad, but we need not state them here. Usually an act reads, "This act shall be administered by the minister of —"; but there is no such stipulation here, for neither the Combines and Fair Prices Act nor the Board of Commerce Act reads that way. Both are administered by the Board of Commerce as an absolutely independent body. So far as the exercise of its powers is concerned, it is entirely independent, and, in the words of the framer of the act, "Nothing else would have possibly sufficed. If the members of such a board as this cannot be independent, they had better not exist." It requires only a careful study of these acts to see how far-reaching is the authority which has been delegated to this court. Of course, provision is made for appealing under certain conditions from the decision of the board to the Supreme Court of Canada on questions of law or of jurisdiction, but even here the granting of leave to appeal to that court is in the discretion of the board. Then, too, the Governor-in-Council may vary or rescind any order, decision or regulation of the board. Subject to these two provisions, every order of the board shall be final and "no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, or any other process or proceeding in any court" (Sec. 41). Note again, that "Any rule, regulation, order or decision of the board shall, when published . . . for three weeks in the "Canada Gazette," and while the same remains in force, have the like effect as if enacted in this act, and all courts shall take judicial notice thereof" (sec. 39).

It would seem, from the foregoing, that the legislation under which the board operates was intended to make this body independent even of Parliament and to give it more extensive authority than any similar body in any other country. What wonder, then, that appeal has been made to the Supreme Court to test the constitutionality of the legislation under which the board acts, to see whether it transcends the provisions of the British North America Act. It would seem to be a strange procedure that Parliament should create a body which is now "absolutely independent" of Parliament. There are also good reasons to doubt whether the Dominion Parliament has legislative jurisdiction to enact some of the provisions of these acts; for under the British North America Act it would appear that some of the matters in dispute come rather under the provincial sphere.

Misconception of Board's Purpose

From such a grant of power to the board what has been the outcome in the way of results? Has the board justified its existence? At the time the board was organized great hopes were entertained by the public that through its activities there would be the cessation of profiteering and a material reduction in the prices of the necessities of life. In justice to the board, it should be said that the legislation under which it was established makes no mention of any such possibility. The board was authorized to administer the Combines and Fair Prices Act, which is described as "An Act concerning the Investigation and Restraint of Combines, Monopolies, Trusts, and Mergers and the withholding and enhancement of the price of commodities." Nothing here stated or implied gives any indication that there should be a reduction of the prices of commodities for ordinary consumption. The commissioners themselves have interpreted their function as the control of profits, not the determination of reasonable prices. Despite this fact, however, the public had been led to infer that there would be a substantial lowering of the cost of living; and now that the cost of living has advanced there is general dissatisfaction on the part of the consumers. This increase in prices should