Honourable senators, though "pooling" is sometimes called a monopolistic restriction upon competition, pooling and marketing were upheld as not being detrimental to the public in the following cases, in re: *Growers of B. C. Ltd.*, (1925) 1 D.L.R. 871; *Rex v. Chung Chuck*, (1929) 1 D.L.R. 756; *Saskatchewan Co-operative Wheat Producers*, (1926) 3 D.L.R. 810.

In a Quebec case, *Tanguay v. Lang*, (35 R.J. 444), the Quebec Superior Court upheld the validity of the Canadian Fire Underwriters Association, a body regulating fire insurance business. Again, because there was no illegal design to eliminate competition, judgment was rendered in favour of Famous Players (1932, O.R., p. 307.)

I now mention a last case. Once upon a time in a remote place there were two moving picture houses. One of the owners agreed to close his theatre, thereby eliminating competition and creating a monopoly in favour of the other theatre. This agreement was held valid, however, because there was no injury to the public. This was the case of *Rex v. Applebaum*, (1933) O.W.N. 576.

Section 498 of the Criminal Code, and the Combines Investigation Act as it now reads, cover the same field, but the latter is somewhat wider in scope. Under both Acts the test of criminality is whether there is detriment to the public. According to Mr. Ian Wahn, even monopolistic control is not *ipso facto* conclusive as to the existence of public detriment, and here I wish to cite Mr. Wahn's interesting article, *Canadian Law of Trade Combinations*, published in the *Canadian Bar Review* of January-February, 1945.

Honourable senators, by this analysis of our jurisprudence I have tried to show that so-called vertical combines are not considered by our courts as being in themselves illegal.

Let us turn now to the MacQuarrie Report, the recommendations of which have given birth to the present bill. During our lifetime we have all read many reports. Generally these reports have set forth the facts upon which the findings are based, but in this respect the MacQuarry Report is quite different. In section 2 of the beginning of this report there is a mere reference to "private sources". But the report nowhere refers to any particular brief, even where it seems that extracts from briefs are being quoted. Nor does it refer to any definite evidence. We may assume, of course, that the commissioners have ascertained or discovered some undisclosed facts, but there is nothing factual in the opinions expressed. I submit that the commissioners defend in abstract terms a very controversial theory of economics. I must add that, as a starting point, they refer—in section 3, on page 7—to "a system of control by private law or agreement". That seems to be the corner-stone of their thought. And in paragraph 3, on page 18, which is part of chapter III, entitled "The Committee's Views", we read:

> . . . resale price maintenance establishes a private system of law allowing no appeal to the courts of justice, as it is clearly shown in the British White Paper.

The report then cites an extract from the White Paper, which is a publication of the United Kingdom Board of Trade, issued in June 1951. In a moment I shall refer to that extract, but first I wish to examine the assertion that we should prohibit and condemn the fixing of resale prices by individual suppliers because agreements to fix such prices are in the nature of a "private system of law."

I cannot speak for the other provinces, but in Quebec our whole system of civil law is based upon what we call, in French, "le principe de la liberté des conventions". In English I would describe that basic principle, the corner-stone of our Civil Code and of the Code Napoléon, as the right to contract freely, to bind oneself legally by any agreement which, as it is stated in section 13 of our Civil Code, is not contrary to "the laws of public order and good morals." This principle is consecrated in the famous legal maxim, "La convention est la loi des parties", "Any valid agreement has the force of a law governing the contracting parties."

Under the principle of "la liberté des conventions", or "freedom to contract", any manufacturer has the right to dispose in the most absolute manner of the things manufactured by him. He cannot be compelled to give up such property. Those rights are laid down in sections 406 and 407 of our Civil Code. The owner may sell his goods or he may not sell them. If he decides to sell he may make the sale subject to a condition, provided the condition be not, as section 1080 of the Civil Code puts it, "contrary to law or inconsistent with good morals." I cannot emphasize that principle of our Code too strongly, for it is upon Liberty—with a capital L—that our whole legal structure has been built. Freedom to contract is the very soul of our civil law. Our ancient writers used to speak of "la faveur de la liberté," or "the benefit of freedom." In our system of law the presumption is always in favour of freedom. Restrictions or incapacities are the exception, not the rule.

To sum up: an act is lawful unless it is prohibited either expressly or as contravening section 13 of the Civil Code, which I have already quoted.