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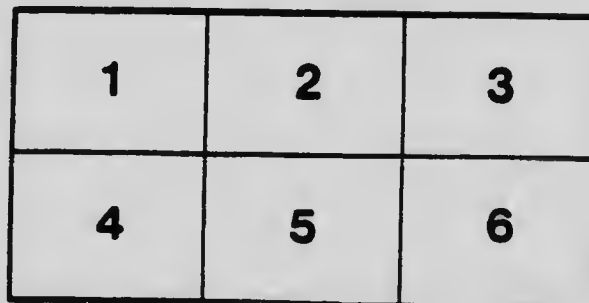
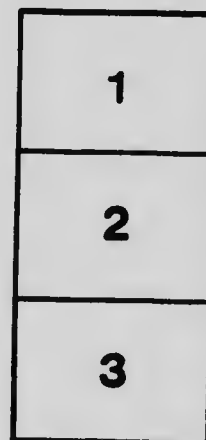
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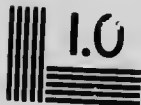
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ADDRESS



BY

E. F. B. JOHNSTON, K. C.
TORONTO

ON THE

SECRET COMMISSIONS ACT

AND THE

RIGHTS OF MANUFACTURERS,
WHOLESALE AND RETAILERS

GIVEN AT THE

CONVENTION OF THE WHOLESALE GROCERS' GUILD
FOR THE PROVINCE OF ONTARIO

AT THE KING EDWARD HOTEL, TORONTO, ONT.

APRIL 27, 1910

0 900691

PURPOSES OF SECRET COMMISSIONS ACT EXPLAINED

THE RIGHTS OF MANUFACTURERS, WHOLESALERS AND RETAILERS AS
EXPOUNDED BY E. F. B. JOHNSTON, K. C., AT CONVENTION OF
ONTARIO WHOLESALE GROCERS' GUILD—EVOLUTION OF
BUSINESS CONDITIONS AND WHY PRESENT CONDI-
TIONS WERE BROUGHT ABOUT—LEGAL COM-
BINES AND THOSE THAT ARE ILLEGAL

THERE was once in my native country a very old and very rheumatic and very lesty Presbyterian minister, and one thing he objected to was draughts in the kirk. One cold, raw day, by some unaccountable means, the officials had left the four doors of the church open. He spoke for half an hour or longer upon the elementary principles and the cardinal points of his discourse, and he suddenly discovered the draught was too much for him. Leaving the academic, he at once imported into his sermon more vigor than usual. Thumping the pulpit, and turning in wrath to the congregation, he said: "Elders and deacons, shut the north door, and see that ye shut the east door; dinna forget to shut the south door and the west door." And, dropping his voice, he went on with his discourse. Two old gossips were coming out when the service was over. One of them said to the other: "Maggie, how did ye like the minister to-day?" "Well," she said, "I didna quite follow his through his cardinal points and his elementary principles, but, my, he was grand on the subject of shutting the doors!"

If I am grand on that subject, if I can help you in any way to shut the doors against the enemy I shall feel that what labor I have spent in regard to what I have done will not have been spent in vain. I do not think I can say much to you on the subject of how to make larger profits—a subject I would like to talk to you about, and give you some information upon if I were qualified. But, you see, my position is the converse of yours; I am for small profits. I am for cheap food. I am, from the personal standpoint, for cutting prices, so as to get my goods cheap; and looking at it from that standpoint I have endeavored to see, being a consumer—not a very large one, it is true—I have looked to see how it would affect the general community and the prosperity of the trade and

commerce of this country if I, a consumer, had my way. Therefore, we have to look at it from both sides.

SPECIFIC REASONS DESIRABLE.

If, however, you give the consumer the absolute control of the trade and business of this country, you are out of existence. If you give the wholesale dealer, or the manufacturer, the absolute control of the business of this country, and it happens to fall into the hands of men who are not, perhaps, over-scrupulous—occasionally we do get these men—then you destroy the rights of the consumer; and therefore what I have endeavored to see for myself, without knowing the price of sugar, or the price of tea (the only thing I know is the price of tobacco), without knowing any of these things, do not want to say, as did the old magistrate who was accused of partiality in the disposal of a case. He said: "I resent the imputation, and I deny all allegations of improper conduct. I have been on the Bench for thirty years, and throughout the whole of that time I have invariably taken the middle course between right and wrong!"

Now let me say a few words of a general character. A few ideas will lead up to what I am going to say finally in regard to the matters that I have to deal with to-day. In this rapid age, we all think too generally. We draw too many general conclusions. The man who can sit down and work out concrete principles, who can give the specific reasons for the specific act, is the man whose opinion is worth more than the man who casts the whole thing aside upon a general assumption, and says it is good for this or bad for that. The general principles of all business are manifest to the minds of those who are engaged in them, excepting in my own profession. There you never know where you are at, because judges will say one day that the principle is so and so, and that is reversed next week by another set of judges. I think it would be wise to rather crystalize some ideas that I have upon the subject, and I assume that my invitation to address as large a jury as this is, is due to the fact that myself and my friends, Mr. Armour and Mr. Ambrose, were able to do some service in the interests of a depressed trade, in the interests, I may say, of, to some extent, a persecuted trade during the last ten or fifteen years.

In order to understand the exact position of matters, and in order to see just exactly where we are at in dealing with a subject of this kind, it is as well to ascertain what combines mean, what the Secret Commissions Act was intended to prevent, what indeed the criminal law of this country prevents, as I shall show you later on, I hope to your satisfaction. In dealing with that we have to see for a moment (I shall not detain you upon that point) what the origin of just such an organization as is represented here to-day meant.

The bodies were called "guilds," an honest old name, but one which in the minds of some people who did not understand the position, savored somewhat of a combine. But it is exactly what every other trade and business profession are striving for to-day, and what you must strive for if you desire to retain your individuality and your concrete existence. It was founded upon common brotherhood, upon loyalty to each other; it was founded upon a system of faith and confidence that perhaps the world has never seen or experienced in these later days of trading and barter and exchange; and more than that, it was based upon the highest principles of morality and religion.

EARLY HISTORY OF GUILDS.

The very first guild that was organized was as far back as the days of King Canute, and that was purely a religious and moral guild. It was for the support and maintenance and assistance of all the infirm members; it was a looking after of those who were unable to look after themselves; it went so far as to provide for the burial of the dead. The first business guild was at Cambridge in England, a guild that to some extent dealt with trade relations. And just let me tell you from an eminent author what the principle underlying that guild was, and let us apply it to the present day concerns:

"If one misdo, let all bear it. Let all share the same lot." That was the motto on the flag of that guild. It was a banding together not for the purpose of injuring a human being, a banding together of men engaged in the same class of business for their self protection, for the self-existence of their own trade or calling and for the protection of each other. That implied a very high moral rectitude; that implied the greatest amount of loyalty you could expect one human being to exhibit towards another; that implied absolute confidence in each other.

The old German guilds were based upon somewhat of a similar foundation. They were national to some extent, at the same time they were bodies that did deal incidentally with some matters of trade, but it is when we come to the London guilds that we find the ends of the trade and business of the country being taken care of. These guilds were originally formed for the maintenance of peace, for the protection of property, the suppression of violence and matters of that kind, and I am citing now from a well-known author upon the subject. As trade began to change, with various interests cropping up, so did the guilds assume greater control over trade relations until they became actually the municipal government of such towns as Berwick-upon-Tweed, taking charge of the municipal administration controlling the markets and the police—taking practically the position—well, not quite the position of the Board of Control in the City of Toronto,

because they did better than that—they managed things so well that they continued to flourish for hundreds of years along exactly the same lines until they became what were called the Crafts Unions—where you had the capital on the one side in the guilds as they originally started, and the craftsmen on the other side looking after the details and doing the work which led to the establishment of the modern day trades unions.

I am not going to take up any further time upon that, excepting to read an extract to show the high character of the guilds in those days. The same foundation ought to underlie any body of men who seek to assume for themselves the rights and privileges which you have a right to assume and seek in protection of your trade.

“ The guild stood like a loving mother providing and assisting at the side of her sons in every circumstance of life, and cared for her children even after death ; and the ordinances as to this last act breathe the same spirit of equality among her sons on which all her regulations were founded and which constituted her strength.”

Having given you an outline of that, let us see what the conditions of trade are to-day, and how it is necessary that something—modernized, it is true—something along these lines must take place to-day ; not to hurt your fellow man, nor to prevent your fellow tradesman from getting on in the world, not to prevent his buying as freely as he can breathe the air of Heaven, but to so regulate and control trade and commerce and business along these lines that instead of being what some of you gentlemen were charged with being—violators of the law—you ought to have been credited with being protectors and defenders of honest law and honest administration.

EVOLUTION OF CHANGED CONDITIONS.

Look at it for a moment. We cannot trade individually ; that, of course, is out of the question. We have reached an artificial stage in the history of business, not only in this country but in all civilized countries, where the individual trader is out of the question. You start first with the mere exchange of one product for another. You have no division of classes, no division of responsibility ; it is simply one man with the other. By and by, as our wants increase—and they are increasing very rapidly all the time—and as the supply becomes larger, you create a totally different condition of things, a complex position. Let me illustrate. I can recollect things that happened over forty years ago, and I can recollect what was the condition of the country longer than that. And what was it ? In the original days of Canada the settlement was small, and confined to a very narrow area. I can remember the time when the shoemaker came round and made

the boots for the family. He was the producer, the manufacturer. I can remember the time when the woman used to come round and make the dresses for the women-folk of the family. I can also remember the days when it was no uncommon thing for the bagman to come round with his wares, to be followed, as the area increased, by the peddler.

Then you have the origin of the departmental store; the four corners—namely, the blacksmith's shop, the tavern, the general store and the other complement. That was caused by what? The general store was brought about not because the man wanted to take the whole business of the neighborhood, but by necessity, the demands of the people. Then you go on until the merchant came in with his specific line, the grocer, the dry-goods man as the case might be. Thus has the country expanded, and we have to consider not only the expansion, but let us look at it from the closer standpoint. It was not the expansion of the country so much as it was that the demands, the war, and the tastes of the people were becoming more varied and had to be supplied in some way or another. They could not be supplied by the general store or the man peddling his goods about the country.

Thus you create a different state of affairs. There was thus created a purely artificial condition. In all business, we have an artificial condition; we have an artificial condition at Ottawa. What have we got? We have got the revenue, the system of protection, and various other policies—but take protective principles, free trade principles, anything you like; they may be perfectly good under certain conditions, but when you come to a certain complex, artificial condition in the affairs of any country, to say nothing of the individual community, you have to devise something to meet the requirements of that condition, and that is how you get the wholesaler. Why? Because we have, as I said, a sparsely settled country. You had to reach the consumer through certain media. What was the best? It was not that the wholesaler arrogated to himself the right to charge what he pleased. He did not desire to cut in on the privileges of the retailer. He was the product of his times, and he came through a system of evolution; just as you find in the common life of the country to-day that the man who had his oxen and took his grist to the mill, to-day has his carriages and perhaps an automobile.

The man who had his home-made shoes fifty or sixty years ago, to-day has the finest patent leather the manufacturer can produce. Conditions have changed and in that change has grown up the body of men I see before me. In other words, your body is the result of evolution. It is not the creation of any corporation or any body of men to interfere with trade or commerce at all. The condition of trade has brought you into existence, and if conditions were changed, you would be without a calling.

GETTING TO THE CONSUMER.

Now you will bear in mind, as I said before—and let us get down to the concrete principles—you always had the producer, whether it was the home-made shoemaker, or the man who made the axe handle does not make any difference. You always had the producer. To reach the consumer in the early days was a very simple matter, but when you come to the condition of things you have in Canada to-day, and have had for the last forty years, the reaching of the consumer becomes a very complicated problem. You cannot compare London, or any of the big English cities, with Canada, because within an area of a few miles they have more consumers than we have in the whole Dominion of Canada. You had to reach the consumer in some way. You did it originally through the retailer. Then came the necessity for the wholesaler. Here is where a misconception has taken place in all the prosecutions that we have had in the courts in this country; an entire misconception.

The object and the very reason why the wholesaler came into existence was not that he should make money and increase the prices or eliminate competition, but to reach the consumer in a more direct and cheaper way than ever had been done before. He was created by the condition of things as they developed and as the process of evolution went on. The result is to-day we are dealing with the three classes. We are dealing with the manufacturer, the wholesaler and the retailer, and I am not going to argue for a moment on what has been declared by the highest court in the province and some of the highest courts in England, and which appeals to our common sense, namely, that our present system has been found to be, as an absolute fact, the best and cheapest method of connecting the bank of the manufacturer with the bank on the other side of the stream, the consumer.

RIGHT OF THE MANUFACTURER.

The manufacturer—let me say this in order that we may clear the way from a legal standpoint—the manufacturer has the absolute right to fix his price. It was argued in the cases I have referred to that by fixing his own price, and perhaps enhancing it, he was violating the Act. Not so. For instance, we have seen again and again, the result in argument by taking the case of Sir William Macdonald and his tobacco. He produces a certain article. He is the only man who knows what the cost of that article is to him; he is the only man who knows how much the cost should be to enable him to make a living profit. He fixes that price. If he fixes it too high he has got the American Tobacco Co. coming in with perhaps as good an article at a less rate. He has got other manufacturers coming in in the same way. The

same with the sugar refiners and canned-goods people. You may combine, but the moment you increase the price beyond the living profit, that moment instead of destroying competition (and the economic history of this country tells it) that moment you actually increase competition, because you encourage others to go into the business. We had the evidence of Mr. Robertson, who said the fault he had to find with the guild was that it increased competition, and there was a great deal of truth in the suggestion he made.

When you come to work it out, the moment you combine, or do anything that tends to enhance the price at all materially, that moment you find thousands of others ready to come into the market and supply the demand. So there is first of all the interest of the manufacturer, to have his profit; and he alone can tell, if he is an honest man he will tell, what the living profit should be. If he fixes it too high, he is met at once by opposition, and I care not what the merger may be, what the combination may be in even such an important body as the wholesale grocers of this country—controlling as you do a very large amount of the retail trade of this country—even you cannot control a situation so as to prevent competition.

CARRYING OUT OF AGREEMENTS.

These things must, however, be worked out in good faith. The manufacturer must depend upon the honesty of his agents. You are his agents. If he makes an agreement with you, he has the right to see that the agreement is carried out. Not only so; he has the right to so carry on his business that he may rely absolutely upon the fact that that agreement will be carried out—because according to the agreements he makes, so he cuts his cloth.

Now it is a matter of you gentlemen acting either individually or in combination. It is a matter of you handling certain products of this country. And to the extent to which you are able to make your trade relations perfectly honest in the observance of the contracts and all the rest of it, to that extent you are not only benefiting yourselves, you are not only benefiting the manufacturer, but you are reaching out towards the benefit of the consumer.

WHOLESALEMAN'S POSITION.

The wholesaler, as I said, comes next to the manufacturer in the ordinary course of proceedings. The wholesale trade has been in existence for years in this country. It is no new thing to control the sale of goods of any particular manufacturer. It is needless for me to say where the wholesale trade is of benefit, because it is apparent to everybody. You save money, you save time, you put your retail customers in a better position, you form local distributing centres, you carry many of these men along from year

to year who would otherwise perhaps go into liquidation ; and if the wholesale trade is carried out according to the practices and regulations of the Wholesale Grocers' Guild, with which I may say I am familiar, you are not only conferring upon yourselves the dignity of an honest calling, but you are protecting the retailer, and you are also reaching out to protect the consumer.

But, like all other agents, it is necessary we should be honest among ourselves, and in saying that I speak as if I represented to some extent, at any rate, the wholesale people for the time being. When we make our contracts, having regard, as I said, to the complicated economic conditions of to-day, these contracts must be rigidly observed. The moment you break the smallest pin-wheel of a machine, the machine is out of order. The moment you get grit—I don't mean political grit—into the delicate part of your machinery in a factory, that moment your machine becomes more or less affected. So here. The moment you get any misunderstanding the moment you have any difficulty arising from the non-observance of a contract or otherwise, that moment your machinery is not perfect and something will go wrong. In a guild, or in a body of men such as I see before me, an organization such as you have here—I should say one dishonest man will upset the calculations and the working out of the scheme of all the other members of the institution.

EFFECT OF RETAILERS CUTTING PRICES.

Now about the retailers I shall say very little. That is a subject that, I understand, has been dealt with. But I will point out that the same principles should apply in the minds of the retailers to the wholesale man, as should apply in the mind of the wholesale man to the manufacturer. The retailer is everywhere in touch with the consumer. He is the man that has the last stage in the distribution of the goods, from Montreal, Toronto, Hamilton, Winnipeg or elsewhere, wherever they may be produced, and each one of these men is more or less dependent on the honesty of his fellows. Take two men in the village. What is the result? They begin cutting prices. They begin struggling for trade not upon an open and honest living profit basis. And what is the result? It does not need me to tell you that one and perhaps both of these men will go under.

Now to keep this state of affairs in check, generally, I may say before I go to the legal aspect of the matter, to keep these in check, it is necessary that you should have regulations, and I shall tell you later on how far you are entitled to regulate without violating the law. But you have to regulate for several reasons, and I have noted them here in a very simple and itemized manner. You have to regulate this body, and not only this body but trade conditions. First, as I have said, to prevent any dishonesty being

carried on, to stop the unfair dealing, to see that your system is carried out in its entirety and in every way to deal fairly and properly, to see that all your contracts are kept, and the contracts of your fellows, and to see after the cutting of prices, which has always been a sore spot with the wholesale man. To see that this is put a stop to and in order to effect these matters you have a perfect right, as I shall show you in a moment, to pass your regulations and to impose your penalties. If you cannot carry out your penalties. If you cannot carry out your system because your rules are not regarded, then you have a perfect right to say, "We will exclude so and so from our exchange," or guild as the case may be.

By reason of many of these violations happening, I am told by some of my friends among the wholesale grocers, the wholesale grocery trade became bad, profits were reduced below a living price, the whole system was disorganized and demoralized. They were carrying a lot of lines at a loss. Even the manufacturers were selling to the retailers over their heads at the same price as they were selling to you. They were depriving you of your market, the only market that was open to you, just as it would not be right for you to sell to the consumer at the same price as the retailer can buy his goods. In other words, they were selling your customers and wrecking your existence, taking away from you the only means of living you had, and as I put it to the court on more than one occasion, the fight you had to make was not for fair trade, the fight you had to make was not for high profits; the fight you had to make, gentlemen, was for your very existence. Hence the organization. Then you had your Guild, or Exchange, or combination. I like the name Guild, because the meaning of that word is plain. It signifies "payment." If you say "guild" it means your word is as good as your bond; that is the underlying principle of the whole transaction—honest, fair dealing.

PAYS TRIBUTE TO WHOLESALERS.

What was the aim, as evidenced by many witnesses at the trial, the aim of the guild? First, it was to stop the cutting of prices; second, it was to try and make men, some men, live up to their agreements, and let me pay you the highest compliment any man in Canada can pay to a body of men. Perhaps it has not occurred to you in this concrete form, but let me say as a truth; and take it home to yourselves as a compliment coming from, I may safely say, one who knows from the best evidence that was given: For twenty years this body of wholesale grocers stood upon their rights, and on that twenty years' record they were put upon their trial. The old, dusty letter books that were almost obliterated by age, the old letters where the ink had faded out, the documents and papers and books of account, where you could

write what you pleased on the covers—all these things were raked up against the Wholesale Grocers' Guild in the case of the King against Beckett and others ; and in all the evidence, with all the force the Crown had at its back ; with all the money that they could expend, with the assistance of able counsel and I don't know how many detectives besides, with ways that were dark and tricks that were vain, seeking to unearth evidence which had been left by a dead man ; with all that in the whole twenty years' record we only found three dishonest men in the wholesale grocery business of this country ! And yet they say " We are afraid the wholesale grocers will combine to the injury of the retailer and the injury of the consumer."

You have to build trade up, you are the gentlemen who have a great deal to do in the building of trade in this country. You have an example set you by two governments at Ottawa, by a system of protection, you have the theory of not cutting prices. Protection was passed for the purpose of doing what ? To prevent the prices being slaughtered by foreign manufacturers with their surplus stock.

You, in endeavoring to stop the cutting of prices in your own land, are charged with crime. Fortunately the judge did not look at it quite in that light. This is important to know, and I shall briefly notice it. When this organization was formed you took the precaution, and a very wise one, to say " We will not exclude any wholesaler. We shall not determine who shall be members, the trade or business of the man shall determine that. If he is a wholesaler, he shall come with us ; if he doesn't choose to come he can stay outside ; he shall receive exactly the same benefits as we have, without perhaps any of the responsibility." That was the distinguishing feature of your Wholesale Association. No man was prevented from getting his goods. The only test was this : If you gentlemen in Toronto, and Montreal, and elsewhere, you producers, employ us to act as your distributing agents you must not sell to our customers at the same rate as you sell to us.

It doesn't need any argument to convince anybody that that was common sense and fair play and the honest way of doing business and whether a wholesaler belongs to the association or not he would be entitled to get his goods at the same rebate, royalty, or otherwise, as you were able to as members of the guild, and he would save his admission fee and his charges for lawyer's fees.

What do we find with all this cry against the wholesale people? We find this singular fact. Not only were you generous enough, not only was the wholesale trade generous enough to say, " We won't exact membership as a test ; the test shall be a wholesaler or not a wholesaler." Men who never saw the inside of the Wholesale Grocers' Association room got their goods, got the same rebate and the same protection as you did. More than that,

men like Mr. Eddy, like Sir William Macdonald and others, had old customers who had grown grey in their relations, and as a matter of sentiment you respected that and never objected to their selling to a few men who were old friends of theirs, and they have continued to sell to them as retailers at the same rate as they were selling to you. I ask, where you could find a body of men who were as generous as that? It would be a crying shame if there was a law upon our Statute Book that would hold them responsible for any kind of a reasonable and proper combination such as this was shown to be.

CASE OF PATENTED ARTICLES.

There are some things, as I have said, in view of the general conditions of matters, I should like to point out to you as things that would be perfectly legal to do, and I have taken some little care to put them in a shape that cannot be objected to. In the first place, as I pointed out, it is perfectly legal for the manufacturer to fix his own price. If it is a patented article he must place it upon the market at a reasonable price, because he has been given a monopoly by the Crown to manufacture that patented article to the exclusion of everybody else, and the Crown says, having given you a seven-year monopoly, with a renewal perhaps for seven years more, you must meet the public requirements. There can be no competition in that patented article, and we will so enact by legislation that you shall not be allowed to charge an extortionate price for that particular article.

But even with the patent you do not destroy competition. Why, look at the condition of things in regard to sewing machines and bicycles. I have never had much use for a sewing machine, but I know something about bicycles. Ten years ago you paid \$125 to \$150 for a bicycle; you can get one to-day for \$40 or \$50, although it may be in part patented. Thirty years ago, you would give \$30, \$40 or \$50 for a hand sewing-machine that will cost you \$10, \$12 or \$14 to-day. And why? Notwithstanding the protection by patent there was the striving by others to enter the field against the patent, and so successful were they in some cases that the patent was not worth the paper it was written on, commercially speaking.

WHEN COMBINES ARE ILLEGAL.

But leaving the patent question out, you have the right to say to manufacturers;—"Fix your own price." And if the tobacco man, or the sugar man, or anybody else, charges more than a similar or a little inferior article can be bought for elsewhere, he will soon be out of business. Trade regulates itself. All we want is a good straight, stiff, honest backbone at the back of it.

MANUFACTURERS HAVE THE RIGHT TO FIX PRICES.

I say manufacturers have the right to fix the price. I say also the wholesale grocers have the right to combine honestly for self-preservation, and that is the very essence of the King and Beckett.

There is a sort of feeling generally amongst people that a combine is illegal. Nothing of the sort. A combine, as we understand the word ordinarily, is just as legal as anything else ; but you must not so combine as to produce the injurious effects mentioned in the Statute. You must not do it for the purpose, bear in mind the expression, for the express purpose or even the incidental purpose, of enhancing prices. You must not do it for the purpose of limiting competition, or to interfere with the cheap and rapid transportation of goods. But for the protection of your own trade, for your self-preservation, a combine of the closest and most vigorous character is just as legal as anything else. This is one thing you can do.

EXCLUSIVE SELLING AGENTS.

Another thing you can do. You can make your arrangements with the producers or the manufacturers to be their exclusive agents, and say to the manufacturer, " If you are going to employ people other than ourselves we won't act as your agents. Take the other people ; leave us alone." That is perfectly legal. There is some hazy idea that this is preventing other people from trading. Not at all. I have a perfect right to go to the Massey-Harris people and say, " You appoint me, or myself and the chairman, as agents in the County of York for the sale of your goods exclusively." I have a perfect right to do it. The chairman and myself have a perfect right to say, " If you sell through anybody else, even if you yourselves sell in the County of York, we won't sell your goods." It is perfectly proper and perfectly legal.

THE BREAKING OF CONTRACTS.

Then you have this further right. You have the right to say, " You shall not deal with a man who is a contract-breaker."

MANUFACTURERS NOT BOUND TO SELL TO EVERYONE.

I am not bound to sell my goods to every man who comes in. I am not bound to produce goods for any man who chooses to come along and say : " I want so many goods, and I am willing to pay for them." I have a right to ascertain the character of the man I am dealing with, and I have a perfect right to say I shall not sell to a man who has red hair or black, as the case may be.

Why should not I ? I control my own situation. No reason in the world why I should not. And if you find a man is not keep-

ing up his contracts, if you find he is not an honest man in respect to his contracts, you have a perfect right to say : " We shall not deal with that man," You have a perfect right to see that the agreements upon which you shape and mould your business are kept ; a perfect right to say these agreements are a part of the system. When you break any of the agreements you jar the whole system, it affects our business, our trade and our reputation, and you have a perfect right to see that these agreements are not broken.

REGULATE THE OBSERVANCE OF CONTRACTS BY PENALTIES.

And you have the further right (keeping within the lines I have indicated) to regulate these by penalties. No company could live unless it had some power to impose penalties, either under its charter or under the general law of the land. Take any company, I don't care what it is. In dealing with certain stock—I am speaking of share stock—in that company, a man does something that is wrong. If you had no control over that man your company could not continue to exist. The general law of the land applies to him, but you have just as much right, so long as you keep within the limits I am indicating, to impose your penalties upon that man within your internal organization and your internal powers as you would have if the general law of the land did not apply to the case in point.

MUST ACT IN GOOD FAITH.

You have a further right—and this is perhaps the widest right you have—you have the right to do all things necessary to protect the interests of your business, provided they are done in good faith. Of course, if you once have malice against a man—say there is a man John Smith : " I have got my knife ready for him, and I am going to see he is cut off "—there you are actuated by an unlawful motive, a malicious motive, you have an ulterior object in view. But if you act in good faith, having the grounds for your action that for some reason or other it is necessary in the interests of your business—without exceeding the proper limit, without exceeding any legal rights at all, even if injury may come to a man through your act, that does not make your act illegal if it is done in good faith in the interests of the preservation of your business. I will illustrate what I say by reading an extract, to show you there is law upon the point. We have the law laid down by no less a Judge than Sir Glenholme Falconbridge, Chief Justice of the King's Bench, following the judgment of the late V. C. Strong :

"It would be dangerous to accept as a settled doctrine of political economy or proposition of law, that under any and all conditions, and at all times, every man or corporation should be declared to have an absolute and inalienable right to buy and sell, trade or barter, with any other person or corporation, without restriction as to quantity or price."

We have such a man as Lord Herschell, in England, in the Court of Appeal, saying :

"I do not doubt that everyone has a right to pursue his trade or employment without 'molestation' or 'obstruction' if those terms are used to imply some act in itself wrongful. This is only a branch of a much wider proposition, namely, that everyone has a right to do any lawful act he pleases without molestation or obstruction. If it be intended to assert that an act not otherwise wrongful always becomes so, if it interferes with another's trade or employment, I say that such a proposition in my opinion has no solid foundation in reason to rest upon."

That is the judgment of one of the highest courts in England. A well known and authoritative author, Eddy on Combinations, says :

"The right of a combination of dealers to advance their own interests by mutually agreeing to decline to deal with any manufacturer or wholesale dealer who should sell directly to their customers has been broadly upheld."

That is what I am contending for. So long as the objective point is the self-preservation of your business, is the interests of the business, although it may wipe other men out of existence; that is a matter of no consequence so long as it is done in good faith and not for any ulterior purpose.

And then we have the language of Chief Justice Falconbridge, who decided the case of the Guild. "The various cases of alleged oppression and 'driving out of trade' of persons who either openly, or by some ingenious device, aim to belong to the wholesale trade, and at the same time sell at retail, are thus easily understood. If this system were to be practised, it would injuriously affect and demoralize the trade, not only of the wholesaler, but of the retailer, and the consumer would certainly not be better off in the long run."

THINGS THAT ARE ILLEGAL.

I have told you the things that you may do. I will tell you now the things you cannot do ; and they are very few.

First, it is illegal to combine with manufacturers to fix prices. You leave the manufacturer alone, trusting to the tender mercies of your executive, Mr. Beckett, Mr. Blain, and a few others ; their work showed up fairly well at the trial. Let your dealings not be with the manufacturer as to fixing prices, because that is an illegal combination. It is illegal to exclude wholesalers from your organization if they desire to join, because you would have no right to determine who should be members, except by the broad test of qualification. You would be taking upon yourselves to personally discriminate, a thing which is not permitted in law.

Another thing you cannot do primarily, although you may indirectly, or rather, it may be the result of what you have legally done. You cannot enhance prices by combinations or agreements or arrangements. The law positively says that is wrong. As I pointed out, you may do a great many things that may have the effect incidentally of increasing prices, but you cannot devise a scheme for this purpose. It must have the foundation of necessity and the saving merit of being in your own interests and in the interests of your own self-protection.

Another thing you cannot do. You cannot by any means known to the law, although I am afraid it is sometimes done—you cannot coerce any man into your belief or your system or your method. Every man has the right to his individual opinion, to exercise his individual act ; and the moment you attempt anything that shows there is coercion against an individual, that moment you are within the scope of the law.

EXPOUNDS SECRET COMMISSIONS.

Having said that much, perhaps more than I should have said, let me call your attention to an Act that was passed a short time ago, and let us see where that leads us. If I am right, in what I have pointed out in regard to the condition of trade, the necessary incidents of it and the necessity for the present division you have got of your three classes, then we find the law protecting that state of affairs if honestly carried out. There was a great deal of trouble in regard to many commercial matters as between agents and contracting parties, and Parliament passed an Act dealing with that very subject, and that is known as the Secret Commissions Act of 1909.

Under that Act an agent means any person employed by another. The first section or two does not apply to the case which I understand will happen even in a well-regulated family like the Grocers' Guild. In the desire for business, and in the effort to

make big returns, and sometimes perhaps if the agent is paid by commission, in his self-interest he will go to the retailer and say "Here are so many packages; they will cost you \$12." The retail dealer says, "No, I won't buy them. I believe I can get them cheaper from another man." The agent says, "I will allow you a rebate," and he does it in this way. He says, "I will give you a dollar," or fifty cents, as the case may be, which would be a very high percentage upon a twelve-dollar lot of any particular article. He gives him the fifty cents, or the dollar, the man buys the goods, and gets his rebate in that surreptitious way. The agent, if his principal is honest, dare not return it to the principal, because he knows his principal is under a moral, if not a legal, obligation, not to sell at less than a fixed price. He returns it as his expenses, sends in the voucher and adds the fifty cents to the week's account. He has got the order, and thinks he has done an honest transaction. A great deal of wrong-doing may take place in that way, but when we come to the Act, whatever view may be taken of the earlier sections—I have some doubt myself as to how far they apply—but when we come to Section (c) of the Act you will find this, "Being an agent," that is, a person employed by another—"being an agent, knowingly uses, with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement that is false or erroneous or defective in any material part, and which to his knowledge is intended to mislead the principal."

WHAT THE PENALTIES ARE.

The man who does that is liable on conviction to two years' imprisonment, or to a fine not exceeding \$2,500, or to both. The agent violates his principal's contract by selling below the fixed price; he is cutting the price. He is not doing it in the interest of his principal, because his principal loses the fifty cents or the dollar, as the case may be—I am only taking this small amount to illustrate.

He is using his principal's money for a certain purpose that is not proper, and in addition to that he is returning his voucher to his employer, which is false and intended to mislead his employer because he wants the employer to believe that the fifty cents was travelling expenses, or travelling allowance, instead of the rebate, which was an unlawful act.

It is well for the wholesale grocers to know this. But apart from that let us see what the statute says. We have a particular statute known as the Criminal Code, and I have summarized a section in order that it may read to you intelligently. Statutes are often passed which are not intended to read intelligently, because

if they did and any man could understand them, my occupation would be gone.

This is Section 415 of the Criminal Code, which I have summarized, "Any person being a clerk or servant who falsifies any book, paper or writing, or makes any false entry in any book, paper or writing, belonging to his employer, or that has been received by him on behalf of his employer or consents in the same being done, is guilty of an indictable offence," and liable to maintenance, food and clothing at the expense of the state for seven years.

I say that the agent who goes out, without the knowledge of his principal, and does these things for the purpose of cutting prices, will find himself in grave difficulty some day, if not under the Secret Commissions Act, at any rate under Section 415 of the Criminal Code.

Now just a moment with regard to the Secret Commissions Act, and see what was intended to be covered by it. The Secret Commissions Act was intended primarily, no doubt, to prevent violations by agent under contracts of various kinds. The consideration, of course, to the agent that is mentioned in the Act would be the man buying the goods. It is to the personal advantage of the agent that he sell the goods; it is to the personal advantage of the agent that he extend the business of his employer, because so will he be rewarded, not only here, but hereafter. Under that condition of things, to begin with, the account he returns to his employer, is absolutely false; and let me say, if the wholesale grocer stands in with his agent in the deal and knows it, and authorizes it, either expressly or impliedly, the agent is not responsible. But I am taking a case where the agent does it on his own account, and for the purposes which I have mentioned.

TO BRING ABOUT HONEST DEALING.

The object of this Act was manifestly this: to keep the agents and all persons dealing with them, honest. That is the first proposition. The principal, the wholesaler, is not there; he has to trust his agent, he cannot go round and control every act of his traveler, he cannot see that the law is carried out or if his contracts are carried out; he must trust his agent, and it was important that some safeguard should be given to the employer in regard to the conduct of his agent, so that if he did that which was illegal he might be reached in some summary way.

The second object of the Act was to prevent the rules and contracts and regulations of the employer from being broken. Otherwise there would be no check. An agent could go about and break all the rules and regulations you could put in force. Then the third object was apparently to prevent collusion between the

agent and the person he was dealing with, which was one of the most important elements of the Act.

Now you see how readily it could be done in the way I have indicated, and I am told that is the way it is done. I am advised that is the fact, and I am pointing out that that being the fact such a man is liable under the section; and if he is not liable under that, he is clearly liable under the section of the Code.

I have just a few words to say about the cases which have been decided in our Canadian courts.

DECISIONS RE COMBINES.

It is a matter I should like to speak to you about just for a moment. There is a great deal of misapprehension with regard to what has been decided by the courts in regard to combines. I am going to tell you briefly what has been decided in this country. In the Elliott case, the Ontario Coal Association, of Brantford, they had a list of members, and they refused to take in more members, although those seeking admission were on the same plane and belonged to the same class as the members who arrogated to themselves the right to control the coal situation. And the reason given on the by-laws was, they called them "eligibles"; and a man was only eligible up to the point when the company could not stand any more competition. In other words, as soon as they reached the high-pressure of competition the eligibles were shut out. They prevented other dealers from joining the association. The wholesaler could not get his coal, although he was in the same line of business as the members of the association.

The object was, under their articles and by-laws, to prevent anybody but the gentlemen who formed the combine, to prevent anybody, no matter how well qualified he might be, in the same line of business, and entitled to the same rights—to prevent these men getting the coal. The test of admission was not, "Is this man a wholesale coal dealer or a coal jobber?" The test of admission was this: if there were enough members to exclude competition nobody else, not even the proverbial Irishman, need apply; because he would be shut out. The whole object was to keep down competition, and therefore the courts very properly said: This is the worst kind of combine. It is a combine to make money, pure and simple, and therefore it is illegal.

Take the Clark case; a Manitoba case. There the retail dealers were combining. It was only such retail dealers as the directors of the company determined by ballot or otherwise that could get into the association. Every retailer couldn't get in—only the favored few. A by-law fixed the prices, mark you. They combined to fix the price, combined to determine who shall and who shall not be members of this close corporation. They determined

the price themselves, not as where the manufacturer determines it, in your case ; or as where any wholesale man coming along with a clean record is welcome to join your association. Not the case at all. There the dealer was not joining as a retail dealer carrying on business. That was not the meaning of the word "dealer." The word "dealer" as declared by the by-laws of that association meant "member," and a man who was not a member was declared not to be a dealer.

These people were dealing directly with the consumer, and the result was immediate. You hadn't to go through two or three channels, the price was at once fixed by these men, and at once myself and the million other consumers, whoever they might be, had to pay that increased price.

In your record of business, matters are entirely different. Strange that with all this talk about combines, you can buy sugar to-day cheaper than you could twenty years ago. Singular thing that you can buy better tobacco to-day cheaper than you could ten years ago, although I am told some of the producers are compelled to put it up a little lately owing to trade conditions.

CASE AGAINST THE PLUMBERS.

You have made no attempt to enhance price. The effect, as I pointed out, might, under certain other conditions, have been to enhance, but the object was not to increase, and, as I say, the Clark case differed upon that particular point. Then there was another case—you will remember the plumbers' case. Well, we have no sympathy with the plumber. I tell you that much to start with. He did what was manifestly a very risky thing, not even the semblance of such a thing as was at any time done by or among the members of the Grocers' Exchange. I have no hesitation in saying of your combination, and I think it is a praiseworthy thing to say, that you have sense and honesty and courage enough to go out and say, "Yes, against all dishonest dealing, against the contract-breakers and the cutting of prices, we will combine."

But in the plumbers' case, when they got up steam, they got to this stage ; that the dealers in exactly the same class as the association members could not buy from the producers or the middlemen ; could not buy at all from them except at an advance. They could not even buy at the price the men in the association were buying at. But if the master plumbers, not being members (this is your case) had been able to go into the open market, being equally qualified with the members, and buy at the same price, there could have been no case against them. Instead of that, they formed a combination outside of that, and said : " Here is the supply house ; you must get everything from that supply house ; and in the meantime there was this supply

house enabling the members of the association to get their goods ; and at the end of certain periods of time they would divide up the whole business and make the profits. And so the court properly held that this was an evil combination, and one which ought to be punished by law.

In this matter we find the same principles that governed and were approved of in the Gage case, the Ontario Salt case, Gibbons and Metcalf, and a number of other cases. The same principles as were adopted by the Wholesale Grocers of this country governed in these cases, either here or in England. The courts said : " You have not violated the law, you have acted within not only the letter but the spirit of the law, and you shall not be punished for any of these things ; they are not a violation of any statute of the land." And that is the position ; that is how the matter stands.

ON BUSINESS INTEGRITY.

Let me say a few words in conclusion upon the matter of business integrity which is always important. As I pointed out in the beginning, general remarks are sometimes not valuable, general reasoning is not of great value to the people who hear it nor to the man who reasons. We have to get down to something like fixed, concrete principles, and see just where the generalities lead us to.

It is very well to say that the combination, or that the general conditions, or the exchange of trade, or whatever it may be, require certain general things to be done, but we ought to inquire first of all what are the real objects of such a combination or of such an association as this.

As I have worked it out in my own mind there are four things to be sought. Each one laudable, each one praiseworthy, each one something we ought to be proud of if we attain to. The first great object of an association of this kind, or of any guild, call it by what name you will, is to preserve the sanctity of an agreement. I care not what means you employ, I care not how hard it may press upon some people or their business ; remember that one of the great things to be sought for by any aggregation of men, whether in trade or commerce, or in the private walks of life, whether publicly, politically or otherwise,—the great thing is to preserve the sanctity of your agreements.

The second is, that in all organizations composed of honest men, doing an honest business, it is necessary to maintain loyalty to each other—no underhand dealing, no taking advantage in some concealed or surreptitious way, but that open, frank, outspoken loyalty, shown in words and in deeds ; the confidence that one man must have in another, and in the loyalty which his fellows show to him and to the objects of the institution to which he belongs.

Considering the condition of matters, do not look upon your business as a mere money-making concern ; because the man who spends his life gathering coppers together and storing them away and denying himself any little luxury he might otherwise have, that man is not pursuing the object of his life at all. That man is not living the life of a citizen. I say, therefore, that the third great cardinal principle is to look upon your business as a trust given to you to guard and watch and carefully protect.

In your hands lies the destiny to a great extent of a very large proportion of the trade and business of the Dominion of Canada, and as you carry on that business so you are stamping upon it the sacred character of a trust given into your hands ; or by taking another course you will have the demerit of having abused the confidence that has been placed in your power.

The fourth is, that you should seek in all your regulations and all your rules to not only advance your own interests, which is the bounden duty of every man to do, but you should to the utmost extent protect the interests of your fellows in business.

Those four cardinal rules, take them as your charter, take them as the foundation of all proper, honest trade and business, and you won't go far astray no matter what means you adopt to carry out those principles. By accepting these, you at once raise the moral standard of trade and business in this country. You elevate the tone and character not only of your own business, but of the whole business of the community. By so doing, you purify the channels of commerce from one end of the country to the other, and even beyond the limits of this country. In your dealings with the English and German and American markets the same principles will hold good, no matter what the class of people may be you are dealing with. Purify the channels of commerce ; you have nothing to dread and nothing to be ashamed of ; and by these means you will become in fact as well as in name, the merchant princes of the land. Your own lives will be better and higher in their ideals by pursuing a course such as I have indicated ; your citizenship will be loftier in its aims and purer in its objects, and your duty to the State will be more faithfully and more fully discharged. Private life is a reflex of our business dealings. Do not run away with the idea, do not let any of us run away with the idea that we can be pure in private life and impure in our public transactions.

And let me say that as you improve the character of your public calling, so will your political, religious and moral conduct add to the national reputation and integrity of the great Commonwealth under whose broad banner of liberty and fraternity you live in the enjoyment of all the benefits and privileges of free, individual right of thought and action.

EXPLANATION

MR. E. F. B. JOHNSTON, K. C., was Counsel in the suit known as *The Grocers' Guild Case*. This was a suit brought by the Crown in 1906, under the Criminal Code, against the Wholesale Grocers' Guild of the Dominion of Canada, for conspiring in restraint of trade. A sweeping verdict in favor of the Guild was rendered by Sir Glenholme Falconbridge, C. J., on March 7th, 1910.

In this suit Mr. Johnston was ably assisted by Mr. E. H. Ambrose, of Mewburn & Ambrose, Hamilton, and Mr. E. N. Armour, of Bristol & Armour, Toronto.

