In other words, what their Lordships held was that you may have contracts in restraint of trade—contracts which are unenforceable which may not be contrary to the public interest at all, but which may actually be in the public interest. On page 801 Lord Parker says :—

It was also strongly urged that in the term "detriment to the public" the public means the consuming public, and that the Legislature was not contemplating the interest of any person engaged in the production or distribution of articles of consumption. Their Lordships do not take this view, but the matter is really of little importance, for in considering the interests of consumers it is impossible to disregard the interests of those who are engaged in the production and distribution. It can never be in the interests of the consumers that any article of consumption should cease to be produced and distributed—as it certainly would be unless those engaged in its production or distribution obtained a fair remuneration for the capital employed and the labour expended.

I pause to point out that unless the cutting tactics of these cutting grocers and other traders can be prevented—and we know of no other way to prevent them than that which we are adopting—then those who are engaged in the distribution of the article will not be obtaining a fair remuneration for their capital and labour, and you will have the very state of things arising which is regarded as reprehensible by their Lordships of the Privy Council. And then, again, at the bottom of page 809, he says :—

In the present case, however, it was proved that the prices prevailing when negotiations for this agreement commenced were disastrously low owing to the "cut-throat" competition which had prevailed for some years. Even Isaacs J., who decided in favour of the Crown, was apparently of opinion that there was early in 1906, at any rate, some case for raising the price of coal considerably above its then selling-price of 7s. 6d. per ton. It can never, in their Lordships' opinion, be of real benefit to the consumers of coal that colliery-proprietors should carry on their business at a loss, or that any profit they make should depend on the miners' wages being reduced to a minimum.

So much for that. I also want to refer shortly to another case, and to some observations by their Lordships in the House of Lords ; and this also was a case where a contract had to be considered which was considered to be in restraint of trade in an essential article—namely, salt. The case I refer to may be shortly referred to as the Salt case, and is reported in 1914 Appeal Cases, page 461 (House of Lords), and in the Court of Appeal, 107 "Law Times," page 439. I refer to the report in the Court of Appeal because Lord Justice Kennedy makes some very interesting observations, which I propose to read. It is quite true that in the Court of Appeal his was a dissenting judgment ; but the House of Lords reversed the judgment of the majority, and their observations are very much on the same lines as those of Lord Justice Kennedy, whose views were upheld by the House of Lords. On page 447 of the "Law Times Report," Vol. 107, this is what Lord Justice Kennedy says :—

The doctrine of the invalidity of a covenant or contract on the ground of its being in restraint of trade rests upon what is called public policy. How is one to ascertain and judge of the interests of the public ? Do they consist solely in the cheapness of a manufactured article ? Or may the Judge consider the possibility, or even in some cases the probability, that unregulated competition may result either in destroying the production or the manufacture by making the trade unprofitable or ultimately in raising the price of the commodity to the loss of the buyers by leaving a practical monopoly in the hands of the most wealthy or most powerful of the competitors ?

In the same case, in the House of Lords ([1914] Appeal Cases, p. 469), Lord Haldane says :—

Unquestionably the combination in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative prices may in point of fact be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages and so cause unemployment and labour disturbances. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view.

And Lord Parker deals with the same subject at page 480 of the same volume, where he says :—

Some combination limiting output and regulating competition within the area, so as to secure reasonable prices, may have been necessary not only in the interests of the salt-producers themselves, but in the interests of the public generally. For it cannot be to the public advantage that the trade of a large area should be ruined by a cut-throat competition.

So that it will be seen that the view taken by the sub-committee in England to whose report I have already referred coincides with that which has been taken by the highest Judges in the land in England. It will be said against me that there was an inquiry in New South Wales, held by Mr. Justice Beeby, of the Arbitration Court, and it will be said that his report was against the P.A.T.A. As a matter of fact, I did not see the report until last night, when I saw it through the courtesy of my learned friend Mr. Gresson. We had been informed that the report had never been released by the Government of New South Wales, and that we were unable to obtain a copy. I do not know how Mr. Gresson's client obtained his. As I say, our information was that the Government there had not allowed the report to be released. Be that as it may, however, the fact is that, although that report must have been made in 1920 or 1921, the P.A.T.A. has been operating and is now still operating throughout New South Wales, and it has never been proceeded against. No steps have ever been taken against it by the Government, and one can only assume that the Government must have been advised by their legal authorities that the effect of Judge Beeby's report was erroneous—as I submit, with confidence, it is. It ignores—it does not refer to—the judgments in the cases to which I have referred. It is contrary to them. There is no reference in the report, nor, so far as I have been able to learn, was there any reference during the whole of the proceedings, to the report made in England, so that Judge Beeby did not have the benefit of perusing and considering that report, so far as I can learn.

*Mr. Gresson :* Perhaps that report had not then come out.

*Mr. Myers :* That may well be so. I do not suggest that it was anybody's fault. Mr. Gresson is quite right in saying that it might not have reached New South Wales at the time of their inquiry.