

*Mr. Kennedy:* I feel that if it were inhibited as I suggest it would be effective, because it could only operate in New Zealand through its servants and agents. Before concluding, I refer the Committee, if I am permitted, to a suggestion made at page 119 of the report of the Cost of Living Commission in New Zealand, and suggest that the clause be adopted. The clause suggested was intended to be an amendment to the Commercial Trusts Act. I submit, in conclusion, first, that the Committee should recommend in terms of the inhibition of the P.A.T.A. in New Zealand, and, second, I submit as desirable in the public interest an amendment to the Commercial Trusts Act as submitted.

*Mr. Myers:* Mr. Chairman and gentlemen of the Committee,—Having at the opening of the inquiry addressed you at some length, and the Committee having had the opportunity of hearing a great deal of evidence on the matters which it has to inquire into and consider, I feel that I can dispense with embroidery and with following my learned friend into the realms of forensic eloquence. That being so, I propose to refer to the evidence—or, rather, to the opinions—of Professor Murphy, upon whom learned counsel, particularly Mr. Gresson, and almost to the same extent my learned friend Mr. Kennedy, pin their faith. In the first place, I want to make the submission that Professor Murphy's evidence—I am not in the least questioning his ability as an economist—should carry very little weight with this Committee. Professor Murphy is giving his own opinions, and he tells the Committee with perfect frankness that that is the position, and he says that he is giving opinions on matters upon which there is very little economic authority; and he further says, and again frankly admits, that on the main question, which, after all, this Committee has to consider—the question of price-fixation and its maintenance—there is a conflict of opinion among economists themselves. In view of that, there are certain observations that I propose to submit, and which, I submit, are particularly cogent, for the consideration of this Committee. The first of those observations has reference to the wording of the statute under which this inquiry is made, and I want to point out, though it is scarcely necessary, that, after all, this is a judicial inquiry, and the Committee is inquiring judicially into the questions that have been submitted to it. Professor Murphy has said, and he has said with perfect frankness and candour, that the only interest he has considered is the interest of the consumer. The members of the Committee will remember that I cross-examined him quite shortly, but there were certain points which I wanted to elicit from him, and that was one. Let me turn for a moment to the statute. The statute—that is, the Board of Trade Act—uses the words in section 13, “detrimental to the public welfare.” After all, it is the public interest, or the public welfare—the terms are synonymous—that has to be considered in an inquiry of this kind; but may I respectfully submit to this Committee that, acting judicially, it is bound, or should be bound, by the definition which has been given to those very words by Courts, by which even the Court of Appeal and the Supreme Court of this country are bound. What I mean is this: that neither Professor Murphy nor any one else can, in the matter of an inquiry under this statute, give any meaning to the words that are used but the meaning which the highest Courts of the land bear in this very connection. Now, I referred in my opening to the Coal Vend case. Now, in that case the words there used were “detrimental to the public interest,” but obviously, as I have pointed out, “detrimental to the public welfare” and “public interest” are synonymous. Then, we have words under section 5 of the Commercial Trusts Act, “contrary to the public interest,” and a majority of the Court of Appeal in New Zealand reversing for the time being the judgment of Mr. Justice Sim, one would gather from their judgment to have assumed, contrary to the Coal Vend case, which they state did not apply, because they said the words were there, that it was the consumer, and the consumer alone, whose interests should be considered. Now, we have not yet seen the terms of the actual text of the judgment of the Privy Council. The position must be exactly as it was put by Mr. Justice Sim in the Supreme Court, because in the flour-millers' case the whole case for the Crown depended on section 5 of the Commercial Trusts Act. Consequently, therefore, the Privy Council must be assumed, in the absence of the text in the meantime of the judgment, to have found that the words “contrary to the public interest” meant precisely the same thing which is in the Australian Act, and in the Coal Vend case the Privy Council held that it is not the interests of the consumer only that have to be considered. Further, it was expressly held that it was not only the interest of the consumer, but it was the interest of the manufacturer and all other persons dealing or trading in the goods that had to be considered. Consequently, therefore, I respectfully and strongly submit that Professor Murphy—and he is followed by my learned friends—can carry no weight with this Committee when he comes and says that a certain practice is contrary to public interest, and admits that he has not considered the interest of the manufacturer or other persons who are dealing in the goods, but he has considered the interest of the consumer, and the consumer alone. Now, I am asking this Committee to consider not only the interests of the consumer, but the interests of other people concerned. Even if it were the interest of only the consumer that had to be considered, I might go even further and make the submission that, even so, the P.A.T.A. is entitled to operate.

*Mr. Collins:* Does not section 13 add, “the proper regulation in the public interest of the prices of goods and the rates of services”?

*Mr. Myers:* No doubt it is the public interest again, and the same words are used. It is in the public interest, Mr. Chairman.

*Mr. Collins:* Yes, the public interest.

*Mr. Myers:* Very well. My point is that, although I admit, of course, that the interests of the consumer have to be considered, my learned friends are wrong in following Professor Murphy in asking this Committee to consider the interest of the consumer, and the consumer alone.

*Mr. Collins:* You suggest that the words “public interest” have a much more comprehensive meaning.