

APPENDICES.

APPENDIX A.

OPINIONS GIVEN BEFORE COMMITTEE BY B. E. MURPHY, ESQ., PROFESSOR OF ECONOMICS, VICTORIA UNIVERSITY COLLEGE, AS TO THE PROPOSED OPERATIONS OF THE P.A.T.A. IN NEW ZEALAND.

FROM the papers submitted to me this appears to be an inquiry under the Board of Trade Act into the business and operations carried on or proposed to be carried on by the P.A.T.A. The specific objects of the inquiry are whether such operations or proposed operations are or are likely (a) to become a monopoly, or (b) to institute unfair competition, or (c) to be detrimental to the public welfare, or (d) to amount to proper regulation in the public interest of the prices of goods or the rate of service.

There are no statistical studies available for evidentiary purposes of the operations of this or similar bodies or organizations in New Zealand, except the Report of the Cost of Living Commission of 1912, to which I refer later; but the operations of the P.A.T.A. in Canada and New South Wales have recently been the subject of investigation and report. These reports, in conjunction with the admissions contained in the documents of the P.A.T.A. itself are the sources on which this opinion is mainly based.

For the reasons hereinafter stated, I am satisfied that the P.A.T.A. (a) is avowedly a monopoly; (b) proposes to institute unfair competition by boycotting independent traders, excluding competing commodities from the market, and, generally, (c) will be detrimental to the public interests, and that in a marked degree; (d) does not contemplate proper regulation in the public interest of the prices of goods or the rate of service.

It appears from the papers submitted that the P.A.T.A. was formed on the 25th August, 1926, with the constitution therein set out. It does not appear to be incorporated under any statute. The most important section in the constitution from the point of view of the present proceedings is the objects clause, No. 3. Herein the objects of the association are set out as being (*inter alia*) discussion with a view to "concerted action," taking steps to deal with price-cutting (that is, preventing the reduction of prices by distributors), maintaining "fair" prices, and preventing the sale of commodities competitive with or substitutionary for those listed by the P.A.T.A.

This objects clause closely resembles that of the original English P.A.T.A., founded in 1896, as set out in McCrosty ("Trust Movement in British Industry," p. 249). The only variation appears to be that, whereas the English document refers to "extreme price-cutting" in subclause (b), the adjective "extreme" is deleted from the corresponding New Zealand subclause. To be sure, the New Zealand document adds to subclause (b) the ostensible object of preventing "excessive" prices. The whole history of this and similar combines, however, proves that this is merely "eye-wash." It would be interesting to know what price-level the P.A.T.A. would regard as excessive, in view of the statements of its protagonists hereinafter quoted.

As compared with the constitution of the Canadian P.A.T.A., there are a number of differences in the drafting of the objects clause. The Canadian clause, which was modified, doubtless, with an eye to the special legislation against trade combines in that country, is set out in the Canadian report on the P.A.T.A. at page 34. Where the New Zealand document employs the expression "concerted action" the Canadian uses the milder term "co-operation." The Canadian clause contains a proviso limiting action to what is "not detrimental to the interests of the public, whether consumers, producers, or others." The Canadian document does not contain the New Zealand restriction on "excessive prices." Finally, in the omnium gatherum subclause the Canadian document contains the proviso, "not detrimental to the public interests," which does not appear in the New Zealand document.

It may be of significance that the New Zealand constitution expressly omits those passages in the Canadian constitution which purport to safeguard the public interest. The fact that legislation against combines exists in both Canada and New Zealand of a type not found in England makes it incredible that the framers of the New Zealand constitution should have been unaware of the Canadian document and its contents. The deliberate omission of the safeguarding clauses from the New Zealand constitution raises a significant presumption as to the motives and intentions of the New Zealand promoters of the P.A.T.A., and their intention is a matter directly in issue. This seems to throw some light on the opinions of the New Zealand promoters as to the effect that their contemplated operations would have on the public welfare, and the scope and object of their policy.

It is necessary and legitimate in this connection to interpret the constitution along with the draft letter of application for membership, the draft agreement, and the covering letter of the 18th September, 1926, soliciting membership. Mention is made of the necessity for "drastic action," and the need to maintain prices and raise those that are "cut"—that is, are lower than the promoters, in their own interests, would like to see them. The whole series really forms one document, and admits in the most open, formal, and explicit terms an agreement or conspiracy (a) to fix prices, (b) to limit competition, (c) to boycott independent traders by cutting off supplies of all controlled articles, (d) to boycott independent commodities by refusing the right to sell them in substitution for listed articles—that is, to drive them off the market.