

Dealing with the question of the activities of the Merchants' Association in securing control and fixing higher prices, the Cost of Living Commission in 1912 said this:—

The evidence before the Commission proves that the Sugar Co. have accorded preferential buying conditions to the Merchants' Association, and to favoured retail firms who buy through them, by which the company gives a larger discount to members of this association than to independent traders, who may buy in much larger quantities, but who will not join the association. *The object is to stifle competition in distribution and guarantee definite profits to wholesale dealers who are members of the association, as against other outside merchants.* Could these outside merchants buy on the same terms as these favoured individuals the price of sugar would probably be materially reduced to the public.

Mr. O'Leary: It is submitted that if this Bill is passed manufacturers, importers, wholesalers, and distributors will raise their prices *immediately* by, say, at least 10 per cent. If this were done no Court could easily hold this move was "prejudicial to the public welfare," because neither the Bill nor the Act defines these words, and they must hence be interpreted *according to the case or common law*. In the Flour Combine case (1927) Judge Sim stated:—

The price secured by means of a monopoly may be higher than would have been obtained under free competition, but that does not make the monopoly contrary to the public interest.

I give you that as an example.

The report of the Cost of Living Commission in 1912 states, at page lxvi:—

An isolated, highly protected, and sparsely populated country like New Zealand, so far distant from the world's markets, especially lends itself to the manipulation of trusts and combines. It is a comparatively easy matter for a few wealthy individuals in any given industry or business to secure control of the output, and by *slightly* raising prices to levy *secret taxation on the whole community*.

I submit that it would be quite easy for a manufacturer or a wholesaler to increase his overhead costs by paying directors larger fees and so on and pleading this in justification of higher prices. Moreover, importers who are only agents for foreign interests can so operate as to buy their supplies, leaving all the profit with foreign head office, and covering in New Zealand only importing and distributing costs. How can any independent trader hope to prove to a Court that the data on import costs produced by such an importer is incorrect?

My submission is this: that the Act is too lenient because no individual trader can sue under it for damages, although under the Australian and American statutes a private individual can sue for *treble damages*. The Australian and American statutes also provide for imprisonment for offenders. The New Zealand Act is deficient in these respects, and should be altered.

I have one or two further references which I would like to quote to you. Dr. Haslam, in his work "The Law relating to Trade Combinations," refers to the criticism made by Dr. Jethro Brown on the Australian Act. There are in this criticism some pertinent remarks.

Dr. W. Jethro Brown has advanced several powerful criticisms of the Australian Act The section which gave treble damages to an injured party afforded little protection to public interest, since the cost of litigation deterred an individual plaintiff from attacking a powerful combine, which had the means at its disposal to carry appeals as far as the Privy Council. Furthermore, the absence of a clear definition of unfair competition rendered the administration of the Act extremely difficult. The learned author considered the ordinary Courts incompetent to deal with the problem, since the average Judge lacked business experience.

The Bill would give rise to protracted litigation, and each set of circumstances would require a separate decision. The Crown Millers' Case (1927) was taken to the Privy Council, and took two years ((1927) A.C. 394). In deciding that case the Privy Council observed that the question of being contrary to public interests "is, of course, such as to lend itself to prolonged discussion."

You will have some knowledge of the protracted litigation that ensues when an attack is made on any combination in respect of this Act. [Made further reference to the length of time the Crown Millers' Case took.] It is perhaps out of place to quote American authorities in regard to length of time, but I might mention that in 1911 the Standard Oil Co. and thirty-three other corporations in the United States were convicted under the Anti-Trust Act. After five years' litigation the evidence and papers comprised 12,000 pages in twenty-three volumes, and the same is not unlikely if the suggested amendment is allowed to go through. If sections 3 and 4 are passed it will have a disastrous effect on trading in New Zealand. I do not suppose that any one would have the audacity to suggest that sections 3, 4, and 5 have not been broken time and time again in New Zealand, but if they are left in their present form there is the fear of prosecution, with its attendant penalties for any one who breaks that law; we say that if this amendment is made, the prospective law-breaker will start on his campaign with far greater confidence that the law cannot touch him.

[Mr. O'Leary informed the Chairman that the first witness he would call would be a Mr. Norrie, from Timaru. He was one of the persons against whom it is suggested that the legislation is directed.]

Mr. O'Leary: They [referring to the witnesses he would produce] are alleged to be price-cutters; they will show you, I think without doubt, that they are able to sell at those prices because of the efficiency of their businesses and their organization and their cutting-down of overhead costs. I shall then call Mr. Arthur Sutherland, who is a director of National Distributors, Ltd. His evidence should be of the greatest importance, as they supply 545 stores throughout New Zealand. These have grown from a little store established by Mr. Ben. Sutherland some ten or twelve years ago when he retired from the Railway Service. These stores gave the people of this country commodities—groceries, &c.—at a low price, and Mr. Sutherland has been enabled to do it not by vicious price-cutting, but because of the efficiency of their organization and the keeping-down of overhead costs.