

At this stage I would like to read to you an extract from the *Evening Post* of the 24th August, 1935, headed "Trade Piracy—Amending the Laws—Damages by Price-cutting," by the Associated Chambers of Commerce :—

This was an extreme and far-reaching prohibition to place on price-control and supply-control by importers, manufacturers, and distributors. England has no legislation like it, there is no prohibition of private price-fixation activities there, nor any need or demand for restrictive legislation. In view of this it is seriously open to question whether there was ever any need for the enactment in New Zealand of the Commercial Trusts Act or whether there is any need to-day for its retention on the statute-book. However, that question can be passed over, because the Government's Bill does not propose repeal of the Act, in whole or in part.

*No Defence possible.*

The fact is that the operations of the price-cutter, on the scale to-day practised in New Zealand, have been made possible only by virtue of the Commercial Trusts Act. The price-cutter respects no recognized retail prices, and since the present law forbids distributors from withholding further supplies from him the Act therefore gives him full licence to hold a pistol to the head of the distributor and to continue his price-cutting activities without hindrance. The Act, in effect, says to the wholesale trader: "The price-cutter is taking from you supplies of commodities which you have advertised extensively and for which you have built up a public demand. He is cutting the retail prices below the recognized level, merely as 'catch' lines, thereby giving but a passing advantage to the consumer, but destroying the trade in those lines by other retailers who sell at a fair price. This has reduced the demand for your commodities, denied you a reasonable profit, lowered your output, reduced the number of your employees, and seriously restricted credit facilities. Nevertheless, you may not protect yourself, you shall have no rights whatever over your own property, and you shall be compelled to continue supplies indefinitely to these trade pirates who have battered themselves on to your business until there be no business left for them to batten on to."

*A Measure of Justice.*

It is just this measure of justice which the Commercial Trusts Amendment Bill of the Government seeks to infuse into the Commercial Trusts Act. Much as many traders would like to see the Act wholly repealed or very greatly amended, the amending Bill in no way alters or removes the powers or penalties in any particular which are contained in the Act. The Bill leaves untouched all the provisions in the Act regarding the control of monopolies, and of operations resulting in the charging of prices which may be deemed to be unreasonably high. Of the fifteen sections of the Act, the amending Bill affects only two—namely, those relating to the giving of concessions in consideration of exclusive dealing, and to refusals to deal with price-cutters. The provisions and penalties governing these matters are still retained, the Bill merely making a modification which provides that, in any proceedings taken, it shall be sufficient defence if the defendant proves to the satisfaction of the Court that those actions by him are not prejudicial to the public welfare, to any industry in New Zealand, or to the persons immediately affected."

Now, Sir, the cry of those who want this amendment is that price-cutting, followed by ruination to manufacturer and wholesaler or to some one, cannot be prevented because of the Act. Price-cutting was very thoroughly considered in 1927 by a Committee of inquiry set up by the then President to the Board of Trade, who was yourself, to investigate the proposal that an association, known as the Proprietary Articles Trades Association, should be permitted to operate in New Zealand. The association was to be a similar association to that known in Australia and England whose mode of business was this: the proprietors of proprietary articles formed an association and the proprietors of these articles fixed their prices. If a retailer sold at less than the fixed price, he was not only refused a supply of the particular article "cut," he was cut off from the supply of the whole of the articles stocked by the Proprietary Articles Trades Association—boycotted. The reason why I am referring to this in so much detail is that I want to bring under your notice the result of the functioning of this Committee. Price-cutting was the ground on which it was contended that the Committee should operate in New Zealand. The Committee of inquiry consisted of four members—Mr. Collins, then of the Board of Trade; Mr. Montgomery, who had been lately Commissioner of Customs; Mr. Hayward, a manufacturer from Dunedin, and Mr. Reardon, formerly workers' representative on the Court of Arbitration. The report was the report of the three members—Mr. Hayward dissenting; and, in short, as I will tell you presently, they reported against the operating of the Proprietary Articles Trade Association in New Zealand, and on page xv of the report dealing with the question of price-cutting it says—

It is therefore necessary to examine (a) the extent and nature of price-cutting, (b) the extent of the detriment to manufacturing and trading interests arising therefrom, and (c) the justification or otherwise for the system of price-maintenance proposed to be adopted by the association.

It is abundantly evident that the price competition or cutting may be classified under two headings—

- (1) Price-reductions which have an explanation and justification based upon certain savings in costs of distribution or sale, economies, or advantages in buying and/or trading necessity arising from changes in demand or fashion or from financial reasons;
- (2) Price-reductions, which are designed either to eliminate competitors or to draw customers in the hope of selling other articles upon which a relatively high rate of profit is fixed.

I submit that it will be of some interest to the Committee to know what can be done legally by a trader without violating the provisions of the Commercial Trusts Act. You gentlemen well know that the Commercial Trusts Act is restricted as to the commodities that it deals with: it deals with food, coal, petroleum products, and agricultural implements, and there is a general impression created and disseminated that a wholesaler can do nothing in the way of controlling retailers in their retailing his article. I submit that the legal position is this—and it is not only my own view: it is the view of many lawyers who have considered this question :—

- (1) A trader is not bound to sell his goods to any one to whom he does not wish to sell them.
- (2) He can in the ordinary course of trade sell to A. at a lower price than he sells to B; he can sell to one class lower than to another.
- (3) He can in the ordinary course of trade differentiate in the prices charged for the reason that A. takes his whole supply from him while B does not.
- (4) He can impose on the purchaser an obligation to retail at a particular price, and if a retailer breaks an arrangement to sell at a particular price he can be restrained by injunction from doing so.
- (5) He can, if he finds that the purchaser is retailing at a lower price than that fixed, refuse to supply, and may further—
- (6) He can demand cash from one customer and give credit to another.