

Correspondence

The Reform of Combines Legislation

TO THE EDITOR:

The symposium on the MacQuarrie Report in the June-July number of the Canadian Bar Review was outstandingly good, and you are to be complimented on arranging it. But what struck me most clearly about it is that lawyers are years out of date in their understanding of the business system and in their economic theory. Only Professor Maxwell Cohen, in his excellent introduction, appears to have any real grasp of the social and economic problems involved, and only he seems to be acquainted with E. H. Chamberlin's *The Theory of Monopolistic Competition*, and Mrs. Joan Robinson's *The Economics of Imperfect Competition*. He asked the right questions and, although I disagree with some of the answers he gives, it is refreshing to find that at least a few lawyers realize that combines legislation may rest on "the mythology of the Canadian social order".

The remarks of the last writer in the symposium, Mr. Ian M. MacKeigan, illustrate the typical, outmoded economic theory held by so many lawyers, the public generally, and even some business men. He suggests that it is sound economic theory that, where prices are determined so far as possible by free competition in a free market, industry is most efficient, and so on. Now, where in the modern world is there a free market, save in stock exchanges and commodity exchanges? Every manufacturer has, to some extent, a monopoly of his own product, as the MacQuarrie Report acknowledges. Prices are not determined by free competition in a free market, as Mr. Taylor points out in the symposium, and as Professors Chamberlin and Robinson illustrate in their books.

If lawyers and others cannot be bothered with or understand the high economic theory of the two authors just mentioned, I would suggest that they read the book of E. G. Nourse, published by the Brookings Institution, *Price Making in a Democracy*, or Professor A. R. Oxenfeldt's book, *Industrial Pricing and Market Practices*. Mr. Donald D. Carrick might look at these books especially, because he seems to know only of A. R. Burns, *The Decline of Competition*, and one of the books of Stocking and Watkins. Of course, Burns is right when he says that the growth of monopoly is inevitable and there is no hope of preventing it by law. Nor is there any need to prevent the kind of monopoly mentioned by Burns and the MacQuarrie Committee, which is merely manifested by a restraint on free competition. Mere restraint of perfect competition does not necessarily mean that the public is harmed. Many restraints are beneficial, others are inevitable, and some are harmful.

As Mr. Taylor points out, the original idea behind the combines legislation was to prevent *bad* or *harmful* combines. As the legislation has been developed and applied, any combination of business men has now come to be suspect. It is intolerable that every combination should be suspect and that no assurance is given that even such combinations as a credit information pool, or an agency for research, will be given a clearance. Co-operation among businesses is frowned on because the combines legislation has fed the myth that arrangements of the most innocent kind may lead to price fixing or to agreements that work to the detriment of the public. If the public is harmed, let the person taking part in the combination be punished for the offence, not be kept in doubt about practices innocent in themselves.

I imagine that some lawyers would regard big companies as suspect for no other reason than that they have a certain amount of economic power. The ideal, they would say, is to have many small manufacturers and an abundance of independent corner-store grocers. This idea is completely unrealistic. It should be apparent that without large manufacturers we could not have large-scale production and without large retailers we could not have large-scale distribution. This kind of an economy is still competitive and prices are no higher than they should be. Canada does have competition, but it is different from the competition envisaged by the classical economists. Prices in Canada and the United States are not high, by any standard one cares to take, either in relation to wages or to prices in other countries. How can prices be anything but reasonable in order to clear out the large-scale production and in the face of competition for the consumer's dollar from all kinds of goods.

Certainly competition must be preserved, but not a mythological competition. The type of competition that exists in the world of large and small manufacturers, branded lines, chain stores, department stores, keeps prices in line. This is in part done by the countervailing power of the large buyers as opposed to the large manufacturers, as J. K. Galbraith describes in his *American Capitalism*. Here I agree with Mr. MacKeigan that some specific combines offences should be postulated, and disagree with Professor Cohen. But more than that, there must be, as the MacQuarrie Committee and others recognize, objective research into the Canadian economy, both to discover how it is controlled, and to prohibit only those business practices that are *actually harmful*, instead of prohibiting business practices most business men regard as not harmful, because no one knows what effect they do have, and under old economic theory they are considered to mar the classic purity of free competition.

Although the views I express would be generally accepted by my clients, manufacturers, they are my personal opinions, and strongly held.

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Books Received

The mention of a book in the following list does not preclude a detailed review in a later issue

Annual Report of the American Bar Association: Including Proceedings of the Seventy-fourth Annual Meeting held in New York, New York, September 17-21, 1951. Volume 76. Chicago: Headquarters Office, American Bar Association. 1952. Pp. x, 739.

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- The Australian Constitution: An Analysis.* By H. S. NICHOLAS, M.A. Second edition. Sydney: The Law Book Co. of Australasia Pty Ltd. 1952. Pp. xxxviii, 458. (No price given)
- Bailment in the Common Law.* By G. W. PATON, M.A., B.C.L. London: Stevens & Sons Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xl, 454. (\$14.25 net)
- Collected Legal Papers.* By OLIVER WENDELL HOLMES. New York: Peter Smith. 1952. Pp. 316. (\$4.00)
- The Conflict of Laws.* By R. H. GRAVESON, LL.D., S.J.D. Second edition. London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xxxii, 455. (\$7.50 net)
- A Digest of the Mercantile Law of Canada.* Originally compiled by WILLIAM HENRY ANGER, B.A., and the HONOURABLE MR. JUSTICE H. D. ANGER. Sixteenth edition by FREDERICK R. HUME, B.A., LL.B. Toronto: Cartwright and Sons Limited. 1952. Pp. vi, 530. (\$7.50)
- Eléments de Droit Constitutionnel.* By ROGER PINTO. Second edition. Lille: Morel & Corduant. 1952. Pp. 579. (No price given)
- Fourth Copyright Law Symposium.* Nathan Burkan Memorial Competition. New York: American Society of Composers, Authors and Publishers. 1952. Pp. xviii, 179. (No price given)
- Index to the Supreme Court of Canada Reports: 1876-1950.* By JOHN SOUTHALL, B.A., and GERALD SANAGAN, M.A. Toronto: Butterworth & Co. (Canada) Ltd. 1952. Two volumes. Vol. I, pp. vi, 470; vol. II, pp. 471-900. (\$25.00 the two volumes)
- Theft, Law and Society.* By JEROME HALL. Second edition. Indianapolis: The Bobbs-Merrill Company, Inc. 1952. Pp. xxiv, 398. (\$10.00)
- Trade Barriers Affecting Interstate Commerce in Alcoholic Beverages.* An Official Study by the Joint Committee of the States to Study Alcoholic Beverage Laws. 1952. Pp. viii, 42. (No price given)
- Trial of the Stauntons.* Edited by J. B. ATLAY, M.A., F.S.A. London, Edinburgh and Glasgow: William Hodges and Company, Limited. 1952. Pp. 328. (15s. net)
- Trial of William Palmer.* Third edition. Edited by GEORGE H. KNOTT and revised by ERIC R. WATSON. London, Edinburgh and Glasgow: William Hodge and Company, Limited. 1952. Pp. xiv, 353. (15s. net)
- Trial of the Seddons.* Third edition. Edited by FILSON YOUNG. London, Edinburgh and Glasgow: William Hodge and Company, Limited. 1952. Pp. xxx, 420. (15s. net)
- The Trial of Gustav Rau, Otto Monsson and Willem Smith (The "Veronica" Trial).* Edited by G. W. KEETON, M.A., LL.D., and JOHN CAMERON, D.S.C., LL.D., Q.C. London, Edinburgh and Glasgow: William Hodge and Company, Limited. 1952. Pp. 248. (15s. net)
- Trial Judge: The Candid, Behind-the-Bench Story of Justice Bernard Botein.* By BERNARD BOTEIN. New York: Simon and Schuster. 1952. Pp. 337. (\$5.00)
- Wurtzburg's Law Relating to Building Societies.* Tenth edition by JOHN MILLS, O.B.E., B.A., assisted by BRYAN J. H. CLAUSON, M.A. London: Stevens & Sons Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xxxv, 406. (\$8.75)