HER MAJESTY THE QUEEN

v.

CANADIAN COAT AND APRON SUPPLY LIMITED et al[1]

Montreal 1966 Dec. 12-14 1967 Mar. 9, 14

Combines—Conspiracy to restrain trade in linen towel rental supply business—"Supply", "rental", meaning—Whether a service—Combines Investigation Act, R.S.C. 1952, c. 314, s. 32(1)(c), am. 1960, c. 45, s. 13.

The 22 accused who were in the business of supplying linen towels etc. to customers on a rental basis were indicted under s. 32(1)(c) of the *Combines Investigation Act* for conspiring between January 1st 1950 and September 30th 1960 "to prevent, or lessen unduly, competition in the rental or supply in . . . Montreal of . . . towels, uniforms, . . . ". The court found that they did conspire as charged with the object of establishing a virtual monopoly or at least to interfere with free competition in a most substantial or inordinate manner against the public interest, and therefore unduly, by arranging as to prices, allocation of customers, and method of distribution in 85% to 90% of the market for their products which was mainly in Montreal.

Held, the accused were guilty. They did "supply" the products in question within the meaning of that word as used in the *Combines Investigation Act*. "Supply" includes "rental". What the accused did was not a service outside the scope of the *Combines Investigation Act*. The offence was properly described in the indictment (see s. 492(1) and (2) of the Criminal Code).

Container Materials Ltd. et al v. The King [1942] S.C.R. 147; *Rex v. Elliott* (1905) 9 O.L.R. 648; *Weidman v. Shragge* (1912) 46 S.C.R. 1; *Regina v. Abitibi Power & Paper Co Ltd et al* 131 C.C.C. 201; *Howard Smith Paper Mills Ltd et al v. The Queen* [1957] S.C.R. 403; *Regina v. Electrical Contractors Ass'n of Ontario and Dent* [1961] O.R. 265, 131 C.C.C. 145; *Regina v. Crown Zellerbach Canada Ltd* [1955] 5 D.L.R. 27, [1955] 15 W.W.R. 563; *Stinson-Reeb Builders Supply Co et al v. The King* [1929] S.C.R. 276 referred to. *Regina v. Canadian Breweries Ltd* [1960] O.R. 601; 33 C.R. 1; 126 C.C.C. 133 distinguished.

PROSECUTION under *Combines Investigation Act.*

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[1] The other accused are: Canadian Silk Manufacturing Co. (Quebec) Ltd., J. P. Drolet & Fils Ltée, C. E. Durette Ltée, R. Forget Ltée, Hygienic Coat & Towel Supply Ltd., International Linen Supply Ltd., Hector Jolicoeur Inc., J. N. Jolicoeur Ltée, Roger Laverdure Ltée, Maple Leaf Coat & Towel Supply Ltd., The Montreal League of Linen Supply Owners Co., New Ideal Uniform & Overall Supply Inc., New System Towel Supply Co. Ltd., Roy Cleaners Ltd., Sanitary Towel Supply Co. Ltd., Sano-Wrap Towel Service Co. Inc., Toilet Laundries Ltd., J. P. Malo carrying on business under the registered name of A. Malo Enrg, Hyman Seltzer carrying on business under the firm name and style of Modern Supply Co, R. Parent carrying on business under the firm name and style of Parent Toilet Service, M. Levine carrying on business under the firm name and style of Progress Supply Co.

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Leon Lalande, Q.C., André Villeneuve, Q.C., J. J. Quinlan, Q.C. and *S. F. Sommerfeld* for The Queen.

Maxwell Cohen, Q.C., Philip F. Vineberg, Q.C., A. L. Steen and *Jean Filion* for accused.

GIBSON J.:—The indictment found against these twenty-two accused in this case, eighteen of whom are corporations and four of whom are individuals, to which all pleaded not guilty, reads that they stand charged:

That between the first day of January, 1950, and the 30th day of September, 1960, in the Island of Montreal and elsewhere in the Province of Quebec, did unlawfully conspire, combine, agree or arrange together and with one another and with

Canadian Wiper Corporation,

Central Overall Cleaners and Supply Co. Inc.,

J. Broderick Service Inc.,

Lucien Drolet and Paul-Emile Drolet carrying on business under the firm name and style of *J. P. Drolet & Fils Enrg.,*

J. P. Jolicoeur and Edmond Jolicoeur carrying on business under the firm name and style of *J. N. Jolicoeur Enrg.* and the said *J. P. Jolicoeur* carrying on business under the firm name and style of *J. N. Jolicoeur Enrg.,*

C. E. Pitsiladis carrying on business under the firm name and style of *Maple Leaf Coat & Towel Supply Company,*

Albert Shetzer and Sam Shetzer carrying on business under the firm name and style of *Sano-Wrap Towel Service,*

Albert Béchard,

J. E. Cloutier carrying on business under the firm name and style of *J. E. Cloutier & Fils Enrg.,*

R. Deschatelets,

Nicholas Sapena, carrying on business under the firm name and style of *Imperial Supply Company,*

C. Vorias carrying on business under the firm name and style of *International Linen Supply Company,*

or with some or one of them, to prevent, or lessen, unduly, competition in the rental or supply in the Island of Montreal in the Province of Quebec, of articles or commodities that may be the subject of trade or commerce, to wit, woven towels, uniforms, and related textile products, and did thereby commit an indictable offence contrary to section 32(1)(*c*) of the *Combines Investigation Act.*

This is the first trial of an indictable offence contrary to the *Combines Investigation Act* in the Exchequer Court of Canada since this Court was constituted a Superior Court

of Criminal Jurisdiction in 1960 for the purpose of trying certain offences contrary to that Act.[1]

The Criminal Procedure Rules of the *Criminal Code of Canada* in the matters relating to this prosecution were used because no special Exchequer Court of Canada rules concerning the same had been made by the time of this trial pursuant to the enabling power contained in section 87 of the *Exchequer Court Act*[2].

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[1] Section 41A, *Combines Investigation Act*, S. of C. 1960, c. 45, s. 19(1).

41A. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 31 or Part V, except section 33c, in the Exchequer Court of Canada, and for the purposes of such prosecution or other proceedings the Exchequer Court has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

(2) The trial of an offence under Part V in the Exchequer Court shall be without a jury.

(3) For the purposes of Part XVIII of the *Criminal Code* the judgment of the Exchequer Court in any prosecution or proceedings under Part V of this Act shall be deemed to be the judgment of a court of appeal and an appeal therefrom lies to the Supreme Court of Canada as provided in Part XVIII of the *Criminal Code* for appeals from a court of appeal.

(4) Proceedings under subsection (2) of section 31 may in the discretion of the Attorney General be instituted in either the Exchequer Court or a superior court of criminal jurisdiction in the province, but no prosecution shall be instituted in the Exchequer Court in respect of an offence under Part V without the consent of all the accused.

[2] Special rules governing the procedure to be followed in criminal prosecutions under the *Combines Investigation Act* may be made by virtue of the enabling power contained in section 87 of the *Exchequer Court Act* in so far as they are not inconsistent with the *Criminal Code of Canada* or any other Act of the Parliament of Canada (See section 424 of the *Criminal Code of Canada*).

Section 88(1) of the *Exchequer Court Act* provides that rules made under section 87 may extend to any matter of procedure or otherwise "not provided for by any Act, but for which it is found necessary to provide in order to ensure their proper working and for the better attainment of the objects thereof".

Section 424 of the *Criminal Code of Canada* specifically enables the Exchequer Court of Canada to make rules of criminal procedure of its own and as stated the only limitation on such power is that such rules be "not inconsistent with this Act or any other Act of the Parliament of Canada".

Section 424 of the *Criminal Code of Canada* and sections 87 and 88 of the *Exchequer Court Act* must be read in the light of section 28(1) of the *Interpretation Act* which judicially interpreted has made the provisions of the *Criminal Code of Canada* both as to substance and procedure applicable to the trial of offences under the *Combines Investigation Act*. By section 2 of the *Interpretation Act*, section 28(1) of the same Act applies

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This would have been a protracted trial, which would not have changed the result, if counsel for the Crown and the accused had not, prior to this trial, agreed to the admissibility without the usual formal proof of many items of evidence.

In this matter, although about 5,000 documents were seized from the various accused and co-conspirators during the investigation prior to the preferment of this indictment, only approximately 767 were tendered and put in evidence at this trial. Counsel for the accused agreed that they could be introduced in evidence without formal proof for all purposes as for example, the origin of such documents, and that copies were proof and the original documents were not necessary, (while making all necessary reservations in respect to materiality and relevancy). And in addition, counsel for the accused, pursuant to section 562 of the *Criminal Code of Canada,* made six admissions of fact (at the same time reserving all proper objections as to relevancy).

The admissions of fact were as follows:

Admission No. 1

That each company or corporation accused or mentioned in the indictment as a co-conspirator is a legal entity with corporate existence and accordingly is a person as defined in the Criminal Code and that each company, corporation or individual accused or mentioned in the indictment as a co-conspirator, during the period covered by the indictment, unless otherwise stated, was engaged in the supplying and servicing of woven towels, and/or uniforms, and/or related textile products, and/or some of them, to persons using and serviced with such products on the Island of Montreal under arrangements whereby title to the said woven towels, uniforms and related products remained in such supplier,

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unless such application is inconsistent with the *Combines Investigation Act,* the *Criminal Code of Canada* or the *Exchequer Court Act.*

In so far as the criminal procedure for finding an indictment in the Exchequer Court of Canada is concerned, it is necessary if any prosecution under the *Combines Investigation Act* is to be taken in this Court in the Provinces of Ontario, Nova Scotia or Prince Edward Island to enact procedural rules concerning same under the enabling power contained in section 87 of the *Exchequer Court Act*—because the *Criminal Code of Canada* provides no machinery for finding an indictment when a prosecution is launched in the Exchequer Court of Canada in any of those Provinces, (see sections 485, 488 and 489 of the *Criminal Code of Canada*); the enactment of rules prescribing the procedure to find indictments in the Exchequer Court of Canada would not conflict with the said referred to provisions contained in section 88(1) of the *Exchequer Court Act,* section 424 of the *Criminal Code of Canada* and sections 2 and 28(1) of the *Interpretation Act.* (c f. also *Regina v. Beaudry* (1967) 50 C.R. 1).

and that:

(a) *Albert Bechard,* carrying on business under the name of *Albert Bechard.* Albert Bechard was a member of The Montreal League of Linen Supply Owners Company for the period covered by the indictment.

(b) etc.

[All other accused and co-conspirators are listed.]

Admission No. 2

That the photographic copies which are described herein are true copies of documents obtained or received by the Director of Investigation and Research under the Combines Investigation Act, the said documents having come from the possession of the accused or co-conspirators on premises used or occupied by them or from Banque Canadienne Nationale and Chesley Printing Co Ltd; and that the said Director had the photographic copies made from the said documents;

and that Counsel for the accused consent to the production of the photographic copies of the documents bearing the serial numbers listed in the attached list as evidence for the Crown in this prosecution.

a) *Roger Laverdure Ltée:*

1. Documents identified by the stamped code letters EPI followed by the hand-written initials L.P L. (being the initials of Louis Phillipe Landry, of the staff of the Director of Investigation and Research under the Combines Investigation Act), and further identified by serial numbers stamped at or near the bottom right-hand corner, as follows (all serials being inclusive of the first and last number):

2. etc.

[There follows a detail list indicating where all other documents were found and how such are identified.]

Admission No. 3

That each of the persons listed below was an officer, agent, servant, employee or representative of the company listed opposite his name during the period covered by the charge:

[There follows the detail of this.]

Admission No 4

That during the period covered by the indictment, the accused and co-conspirators did, or accounted for, 85 to 90 per cent of the volume of the business on the Island of Montreal of supplying and servicing those woven towels, and/or uniforms, and/or related textile products, and/or some of them, (hereinafter referred to collectively as products) to persons using and serviced with such products under arrangements whereby title to the said products remained in the supplier and servicer who from time to time picked up from such users soiled products which were replaced with clean products.

Admission No. 5

The accused by their respective counsel, without admitting that such acts constitute an offence under the Act, admit that from the 1st day of

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January, 1950 to the 30th day of September, 1960, in the Island of Montreal and elsewhere in the Province of Quebec did arrange together and with one another and with

(names of co-conspirators)

or with some or one of them, to prevent or lessen competition in the operation of their respective business (by arranging among themselves in respect of prices to be charged to their customers and in respect of customers) in the Island of Montreal in the Province of Quebec, which consisted in providing their customers with a continuous flow on a weekly, semi-weekly or daily basis of freshly cleaned, ironed, pressed, folded and ready-to-use linens, towels, uniforms and related textile products picked up and delivered regularly.

Admission No. 6

That Counsel for the accused admit that the documents attached to this admission come from the possession of the accused or co-conspirators and consent to their production as evidence for the Crown in this prosecution.

Instead also of calling certain expert witnesses for the purpose of describing the linen supply industry in Montreal and in the Province of Quebec in relation to its customers, and also the concept of a market generally, and the alleged relevant market of the subject linen supply industry, and subject to the objections of the Crown counsel as to the relevancy of parts of it, there were filed Exhibits D-1 and D-2 by the accused; and in like manner, on consent also, in rebuttal to Part IV of Exhibit D-1 instead of calling an expert witness to give such testimony, the Crown introduced Exhibit 6, the purpose of which it submitted was to answer certain economic opinion evidence contained in Part IV of Exhibit D-1, and especially in relation to the alleged particular market sought to be established by the facts adduced in this case.

In addition, certain verbal evidence as to market was adduced by the accused in defence.

As the jurisprudence clearly indicates, the purpose of the legislation, which this indictment alleges the accused violated, is to protect the public interest in "free competition". (See Duff C.J.C. in *Container Materials, Ltd. et al v. The King*[1]).

This judicial concept of "free competition" has a meaning which is not precisely equivalent to any other concept employed and understood by various experts in the social

[1] [1942] 1 D.L.R. 529 at p. 533.

sciences and other experts in their respective fields, as will be discussed later in these Reasons.

The test of illegality is injury to the public interest. But such injury relates only to the extent that the public interest in "free competition" is or is likely to be interfered with.

And the public interest in "free competition" is sought to be protected by the Courts in Canada by relying on the market to give the kind of business performance considered desirable.

Therefore, the structure of markets in Canada must be such as to enforce acceptable competitive behaviour. In other words, there must be limits to the permissible degree of market power or bargaining power in any individual or group of individuals.

And the determination by a Court in Canada of whether or not a conspiracy (combination, agreement or arrangement) has as its object the prevention or lessening of competition in any particular market "unduly", within the meaning of section 32(1)(*c*) of the *Combines Investigation Act,* is a question of fact. (*See Rex v. Elliott*[1]*; Container Materials, Ltd. et al v. The King*[2]).

The legislation prescribing the offence charged in this case came into force on August 10, 1960.

Prior to that date, the prohibition against conspiracy in restraint of trade was prescribed in section 411 of the *Criminal Code of Canada* and its predecessor sections. In addition, prohibitions against combines by way of combination in restraint of trade were prescribed in sections 2(*a*) and 32 of the *Combines Investigation Act.* But, on August 10, 1960, section 411 of the *Criminal Code of Canada* ceased to be law and with minor amendments to its wording, it became section 32(1) of the *Combines Investigation Act* and it replaced the former combination provisions in the said Act.

The combination, prior to August 10, 1960, prohibited by sections 2(*a*) and 32 of the *Combines Investigation Act,* was a prohibition in essence against conspiracy or an offence which had such characteristics that the conspiracy principles were applicable.

[1] (1905) 9 O.L.R. 648, Osler J.A., at p. 661.
[2] [1942] 1 D.L.R. 529, Kerwin J., as he then was at p. 539.

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Section 32(1) in the present Act by its express words, prohibits any conspiracy, combination, agreement or arrangement in undue restraint of trade.

The relevant law which must be considered in relation to the offence charged in this case, sufficient for the purpose of this case, as I understand it, may be briefly stated in this way:

Specifically, the accused stand charged with a breach of section 32(1)(*c*) of the *Combines Investigation Act* which subsection reads:

> 32. (1) Every one who conspires, combines, agrees or arranges with another person
>
> . . .
>
> (*c*) to prevent, or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of an article, or in the price of insurance upon persons or property, or
>
> . . .
>
> is guilty of an indictable offence and is liable to imprisonment for two years.

It is a statutory defence if a conspiracy, combination, agreement or arrangement relates only to one or more of the following, namely, as recited in section 32(2):

> 32. (1) . . .
>
> (2) Subject to subsection (3), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:
>
> (*a*) the exchange of statistics,
>
> (*b*) the defining of product standards,
>
> (*c*) the exchange of credit information,
>
> (*d*) definition of trade terms,
>
> (*e*) co-operation in research and development,
>
> (*f*) restriction of advertising, or
>
> (*g*) some other matter not enumerated in subsection (3).

The matters enumerated in subsection (3) are, namely:

> 32. . . .
>
> (3) Subsection (2) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:
>
> (*a*) prices,
>
> (*b*) quantity or quality of production,
>
> (*c*) markets or customers, or
>
> (*d*) channels or methods of distribution,
>
> or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry.

Subsections (4) and (5) of section 32 are not relevant to this case.[1]

In essence, section 32(1)(*c*) of the Act prohibits conspiracies in restraint of trade, which if carried into effect, would prevent or lessen competition unduly; and again it is the public interest in "free competition" only that is relevant in the determination of whether or not the prevention or lessening agreed upon is undue so as to constitute an offence.

The evidence to prove such an offence usually consists of proof of a "device" or "devices"[2] that the parties to an agreement contemplate employing. The Court, in most cases, is called upon to weigh the intended effect of the "device" or the cumulative effect of all the "devices" that the parties to an agreement contemplate employing, and decide whether or not beyond a reasonable doubt the object of the agreement was to prevent or lessen competition "unduly", and so violate the subsection of the said Act.

Proof only of employment by the parties of one or more of the "devices" listed in section 32(2) does not constitute

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[1] It is also provided that even a case of a conspiracy in respect of which section 32(2) does not provide a defence, that the Court shall not convict if the conspiracy, combination, agreement or arrangement relates only to the export of articles from Canada. This is provided in section 32(4) which reads as follows:

32. . . .

(4) Subject to subsection (5), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of articles from Canada.

And finally, the defence afforded by section 32(4) is not available in the circumstances described in section 32(5) which reads as follows:

32. . . .

(5) Subsection (4) does not apply if the conspiracy, combination, agreement or arrangement

(*a*) has resulted or is likely to result in a reduction or limitation of the volume of exports of an article;

(*b*) has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not a party to the conspiracy, combination, agreement or arrangement;

(*c*) has restricted or is likely to restrict any person from entering into the business of exporting articles from Canada; or

(*d*) has lessened or is likely to lessen competition unduly in relation to an article in the domestic market.

[2] This is the word frequently used in the cases. See e.g. Idington J., at p. 25 in *Weidman v. Shragge* (1912) 46 S.C.R. 1.

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an offence, but the enactment of that subsection makes it clear that in some circumstances, except for that subsection, proof of the agreement of parties contemplating the employment of one or more of those "devices" might be proof that those parties had as their object the prevention or lessening of competition unduly so as to constitute an offence.

By reason of section 32(2)(*g*), however, (which provides that it is not an offence if the "device" contemplated being employed (and also, in some cases employed), relates only to some other matter not pertaining to prices, quantity or quality of production, markets or customers, or channels or methods of distribution, or if the conspiracy, combination, agreement or arrangement has not restricted, or is not likely to restrict any person from entering into or expanding a business in a trade or industry), it follows that as the statute now reads since the 1960 amendment, proof of any of the "devices" which are contemplated being employed (and also, in some cases, the employment of any of them), by parties to a conspiracy, combination, agreement or arrangement so as to constitute an offence under section 32(1)(*c*) must relate to one at least of the following: "(*a*) prices, (*b*) quantity or quality of production, (*c*) markets or customers, (*d*) channels or methods of distribution," and (*e*) if it does not relate to any of the "devices" listed in section 32(2)(*a*) to (*g*) and section 32(3)(*a*) to (*d*) of the Act, then it must be proven that the parties have contemplated employing (and, in some cases, employed) some other "device" which has as its result, that "the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry".

In assessing the quality and quantity of the evidence adduced for the purpose of establishing whether or not a particular agreement or conspiracy contemplates (or, also has as its effect in the relevant cases), the prevention or lessening of competition unduly within the meaning of section 32(1)(*c*) of the *Combines Investigation Act*, it is the meaning of the words "prevent", "lessen", "unduly" and "competition", as they have been determined by the Courts, only, that is relevant.

"Prevent" and "lessen" do not mean "extinguish". (*See Regina v. Abitibi Power & Paper Co. Ltd et al*[1].) Also, "prevent" is used in a sense of "hinder" or "impede". "In the French version the word is 'prévenir' which is also commonly used in the sense of 'empêcher'. In this sense the word 'unduly' is appropriate in connection with both 'prevent' and 'lessen'." (See *Howard Smith Paper Mills Limited et al v. The Queen*[2].)

"Unduly" is not a word of art and must be applied in all cases in its meaning as a word of the vernacular. It is not restricted in its application to those agreements only, which if carried into effect would give the parties to it the power to carry on their business virtually without competition, that is virtual monopolization situations. Instead, there are cases in violation of the law in which the object (or, in relevant cases, effect) of the agreement or conspiracy was not the quantitative prevention or lessening of competition to the point of a virtual monopolization situation. These latter cases are also within the statutory prohibition, as it was so succinctly put per Laidlaw J.A., in *Regina v. Electrical Contractors Association of Ontario and Dent*[3] (adopting the words of Manson J., in *Regina v. Crown Zellerbach Canada Limited*[4]) *viz,* "There are no words in the statute which put the Crown under the onus of proving a monopoly or virtual monopoly. I cannot subscribe to the proposition tha tany such onus rests upon the Crown.".

"Competition" in the cases under section 32(1)(*c*) of the *Combines Investigation Act* (and the predecessor sections and also predecessor alternative sections in the *Criminal Code of Canada*), as stated, is equated by the Courts with "free competition".

The question of fact in any particular case as to whether or not the agreement by the parties contemplates interference to prevent or lessen competition "unduly" (or, in relevant cases, also has that effect) in this meaning, (being one for the jury in jury trials and one which the Court without a jury must answer after properly instructing itself

[1] 131 C.C.C 201 Batshaw J., at pp. 251-52.
[2] [1957] S C R 403 Kellock J.
[3] 131 C.C.C. 145 at pp. 159-60.
[4] [1955] 5 D.L.R. 27 at p. 33.

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as to the law) is one which in all restrictive trade cases perhaps should be addressed to the hypothetical reagent appropriate to such cases.

In negligence cases, the appropriate hypothetical reagent is equated with the "reasonable man". That is the standard.

In patent cases, the appropriate hypothetical reagent is equated with the "person skilled in the art or science to which it appertains or with which it is most closely connected". (See section 36(1) of the *Patent Act*). In such cases also, the Courts have sometimes applied a standard for such a hypothetical person in determining whether or not an invention exists by asking whether it is or is not "beyond the expected skill of the calling" or "beyond the skill of the routineer".

In negligence and patent cases the standard of proof is that required in a civil case namely, more probable than not or the preponderance of believable evidence, whereas in restrictive trade cases such as this, the legal standard of proof is beyond a reasonable doubt. But other than that, there is no difference in respect of the question put to the respective hypothetical reagents in any of these cases.

In restrictive trade cases, the norm or standard of what is "due" will vary from case to case, being dependent on what degree of "market power" is proven by the evidence adduced.

(The "market power" referred to means the ability of one or a group of businessmen in a particular market at a particular time to control it.)

In Canadian jurisprudence there has not been established a hypothetical reagent in restrictive trade cases such as this; but perhaps the hypothetical reagent in cases under section 32(1)(*c*) of the Act should be equated with the respective norm or standard applicable to a person competing in each such respective category of market power in which none have conspired, combined, agreed or arranged with another person.

In any event, the question of fact that the Court has to decide in each case is whether or not the object of the subject conspiracy or agreement (or, in relevant cases, also the effect) is undue prevention or lessening of competition, in violation of the statute.

Idington J., in *Weidman v. Shragge (supra)*[1] commented on the difficulty the court has in obtaining the necessary facts and opinions to adjudicate correctly in restrictive trade cases saying "that the requisite knowledge of the social and commercial forces shaping the social structure does not lie in the daily path of the lawyer's life and that it cannot be well supplied by expert evidence".

Now, to digress, for the purpose of relating judicial concepts to the concepts used by economists and others who discuss and deal in restrictive trade cases such as this, three things are said:[2]

Firstly, some of the expressions, as I understand them, that are so used by economists and certain other persons, may be mentioned.

1. "Monopoly" means control over the supply and therefore over price; or exclusive possession of the trade in some commodity.

2. "Pure competition", a term frequently used by economists, means to them a situation in which no seller or buyer has any control over the price of his product—a fictitious situation.

3. The intermediate ground between "monopoly" and "pure competition" is sometimes broken down into

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[1] Page 20: This being a criminal statute we must try to find the vicious purpose aimed at in order to bring parties within its prohibitions

Page 21: The test must in each case be the true purpose and its relation to the activities specified in and by the words of the statute and a finding of an evil or vice answering to the descriptive word "unduly".

Pages 26-7: We must assume that an Act such as this is not placed on the statute book for an idle purpose. Its operation must not be minimized simply because of difficulties in the way of enforcing it. Its purpose is to crush out of existence an evil. Its success, if any, must depend on its administration. Its great risk of failure lies in the fact that the requisite knowledge of the social and commercial forces shaping the social structure does not lie in the daily path of the lawyer's life, and that it cannot be well supplied by expert evidence.

I desire to guard against the impression that each of many of the devices I have referred to by way of illustration, and others of a like kind that do exist, must necessarily be obnoxious to the Act. It is the purpose to which they may be put that is the test. If that purpose be to bring about what the Act is designed to frustrate, it is vicious. My endeavour herein is to point the attitude to be taken and the path or way to ascertain and identify in the concrete an evil which is incapable of concise and accurate definition.

[2] Chamberlin: *The Theory of Monopolistic Competition,* Harvard University Press, 1960.

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three categories, namely, (i) "duopoly",—where there are two sellers, (ii) "oligopoly",—where there are a few sellers, and (iii) "monopolistic competition".

4. "Monopolistic competition" is a category of market as described by economists. Monopoly and competition are not mutually exclusive alternatives. The actual situations in Canada are typically a combination of the two—composites of both competition and monopoly—called by economists, situations of "monopolistic competition".

Such is not only a matter of numbers in a market but also relates to differentiation of product.

Illustrative of the latter is that commodities are differentiated partly by their very nature, and partly in response to differences in buyer's tastes, preferences, locations, etc., and this is true not only within any broad class of product but also between one class of product and another. Heterogeneity from these causes is vastly increased by businessmen under "free enterprise" in their efforts to distinguish their commodity from others and to manipulate the demand of it through advertising. In other words, an essential part of free enterprise is the attempt of every businessman to build up his own monopoly, extending it whenever possible and defending it against the attempts of others to extend theirs.

But, it is only the restrictive agreements, conspiracies, etc., arising out of the former (the matter of numbers in a market—and in the typical "monopolistic competition" market that is usually the subject of a restrictive trade prosecution, there are relatively many) which are designed to increase the participants' own bargaining or market power in a particular market which interfere with "free competition" judicially defined that the Courts are concerned with in restrictive trade cases such as this.

Secondly, a rudimentary classification often used by economists, distinguishing markets according to number of sellers and whether or not their products are differentiated, as I understand it, may also be mentioned:

1. Markets with many sellers:
   (a) Pure competition,
   (b) Monopolistic competition.
2. Markets with few sellers:
   (a) Pure oligopoly,
   (b) Heterogeneous oligopoly.
3. Single-firm monopoly.

"Free competition" as understood by the Courts is not identified with "pure competition" as meant by economists as defined above. Instead, it is identified with "monopolistic competition" as meant by economists.

The typical and most frequent outcome of "free competition" in fact in Canada, is such "monopolistic competition".

And, in a typical case and in the majority of cases under section 32(1)(c) (and predecessor sections) which have arisen, the subject category of market power was monopolistic competition as so described. But that is not to say that cases have not arisen and will not arise where the category of market power was, and will be, oligopoly.

However, putting a label on the relevant category of market power in any case for decision is not important. What is important is the establishment in evidence of whether or not the object of the conspiracy or collusive agreement (or, in any relevant case, also the effect) was to deviate from the norm or standard in the subject market, in violation of the statute.

"Free enterprise" in a condition of monopolistic competition as described, may lead to agreements or conspiracies and to various associative action between firms or individuals. Such agreements or conspiracies may interfere with "free competition" as judicially understood, and in any event, are clearly monopolistic as understood by economists; and if the parties to such contemplate the employment of any of the "devices" referred to in section 32(3)(a) to (d) of the Act—or in addition, (as in concluding words of that subsection), in a manner that is contrary to section 32(1)(c) of the Act, the parties to any such agreements or conspiracies are liable to be indicted.

"Free competition" as judicially understood, affirmatively may be stated, as a situation in which the freedom of

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any individual or firm to engage in legitimate economic activity is not restrained by (1) agreements or conspiracies between competitors, or (2) by predatory practices of a rival, contrary to the *Combines Investigation Act*. And "free competition" thus understood is quite compatible with the presence of monopoly elements, as understood by economists, in the economic sense of the word monopoly, for the antithesis of the economic conception of monopoly is not "free competition", as understood by the Courts, but "pure competition".

Thirdly, it is not monopolistic power as an analytical concept but monopolistic power in its collusive aspects in a particular market as described, injurious to the public—against the public interest that is the issue in a restrictive trade case such as this; or putting it another way, such monopolistic power against the public interest, in the cases, has been considered by the Courts as the antithesis of "free competition".

The elements out of which the Courts have built their ideas of such monopolistic power are: (1) restriction of trade, and (2) control of the market. These elements are not independent.

But in cases under section 32(1)(*c*) of the Act (and the predecessor sections in the Act and in the former alternative section in the *Criminal Code of Canada*), although there are references to control of the market as evidence of monopolistic power, (in its collusive aspects in a particular market as described) the Courts in Canada have focussed their attention, in the main, on the other element, restriction of trade, as the decisive consideration.

The sources of evidence of control of the market have however, been known. They are for example, the behaviour of prices and outputs, the relation of prices and costs, profits before and after the combination share of market controlled, existence of business practices such as price discrimination, price stabilization, etc.

But, notwithstanding this, the Courts in Canada when they have found monopolistic power (in its collusive aspects in a particular market as described) or an attempt at such monopolistic power in breach of section 32(1)(*c*) of the *Combines Investigation Act* (or any of the prececessor sections or former alternative provision in the *Criminal Code*) have not meant, in the main, control of the market,

but restriction of competition; or in other words, whatever is the public interest that has been interfered with resulting from monopoly in said collusive aspects (i.e., a monopolistic situation or an attempt to monopolize), has been evidenced to the Courts in Canada, in the main, by a limitation of "free competition".

So much for the concepts used by economists and others, and their relation to judicial concepts.

In the restrictive trade cases of the subject type which have been decided by the Supreme Court of Canada all have been of the class of cases where the object contemplated by the particular conspiracy or agreement was the virtual elimination of competition—a virtual monopolization situation; and in each the *per se* rule was applied.

And the said 1960 legislation retained the *per se* rule.

The alternative to the application of the *per se* rule is the application of what is sometimes called the rule of reason.

The application of the *per se* rule involves a presumptive conclusion that a specified course of action is in violation of the law, and therefore it carried with it a refusal to examine the effects. And the rule is predicated on the premise that the facts established in the evidence, that is the market situation or course of conduct complained of, permit a legitimate inference as to effects.

The application of the rule of reason requires an examination of the actual and probable effects of an alleged violation in order to determine whether in fact a violation has occurred. In other words, where this rule is relevant from the evidence and analysis as to the economic significance on the market of a course of action, the determination is made as to whether or not there has been a violation of the law.

The difference between the application of the *per se* rule and the application of the rule of reason is essentially therefore, a difference in the detail of evidence required in establishing a deviation from a standard or norm in order to permit an inference concerning effects.

But it should be noted (in relation to this understanding of the Courts that the public interest is what must be protected), that the difficulty in inferring economic effects from market situations or business practices lies in the fact that in a given case, in determining whether or not the

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public interest is being protected, that there may be two kinds of effects, namely (i) excessive market power concentrated in the hands of a relatively small group, and (ii) efficiency. This is so because on the one hand from our competitive free enterprise system there is expected a set of powerful motivations and drives towards increased output, product improvement and cost reduction, or putting it in general terms, towards increased efficiency in the use of resources. On the other hand, from the competitive system, also, there is expected a set of effective limitations to the growth of private economic power.

In certain cases, therefore, there may be these two kinds of effects, namely, efficiency and power—the one to be encouraged and the other to be rejected. And since both these aims are important, it is essential that the Courts serve and protect the public interest by keeping both.

The subject type of Canadian restrictive trade cases may be divided into two categories:

Firstly, there is the category of cases in situations where the object of the conspiracy, or agreement contemplated that competition be completely or virtually eliminated —that is virtual monopolization situations (See *Weidman v. Shragge* (*supra*); *Stinson-Reeb Builders Supply Company et al v. the King*[1]; *Container Materials, Limited et al v. The King*[2]; and *Howard Smith Paper Mills Limited et al v. The Queen* (*supra*)).

Secondly, there is the category of cases in which the object contemplated was something less than virtual monopoly, but in which on the respective facts of which cases, the Courts are able to reach a conclusion of undue interference with competition in violation of the statutory provision. Two examples of cases in this category are: *Regina v. Electrical Contractors Association of Ontario and Dent*[3]; *Regina v. Abitibi Power and Paper Limited et al.*[4] (The Court in both these cases held the Crown had proven that the object of the conspiracies was to prevent or lessen competition unduly in violation of the law, even though it was not proven that the conspirators had as their object a virtual monopolization situation. Laidlaw J.A., (as previously quoted) in the former case described why this second category of cases was contemplated by the statute when he

[1] [1929] S C R. 276.
[2] [1942] S.C.R. 147.
[3] [1961] O.R. 265.
[4] 131 C.C.C. 201.

used and adopted the words of Manson J., in *Regina v. Crown Zellerbach Canada Limited*[1], *viz*: "But there are no words in the statute which put the Crown under the onus of proving a monopoly or virtual monopoly. I cannot subscribe to the proposition that any such onus rests upon the Crown."[2])

In cases which fall within this second category of cases, the question of "unduly" or not, must be resolved case by case in the light of the particular evidence.

But in all cases, the justification for convictions of any alleged violations of section 32(1)(*c*) of the Act of course must always depend on valid inference beyond a reasonable doubt from proof of the facts adduced in evidence. Again, the effects sought to be inferred from the proof of such facts have to do, on the one hand with market power or limitation of competition, and on the other hand with efficiency.

So much for the relevant law, as I understand it.

The defence, other than the general defence in the plea of not guilty raises four specific defences, namely: that

1. the conspiracy in this case did not have as its object the prevention or lessening of competition unduly and did not "unduly" prevent or lessen competition;
2. the parties at all material times carried on business in a "service" industry which is not within the purview of section 32(1)(*c*) of the Act;
3. the category of "rental", as charged in the indictment and as mentioned in section 32(1)(*c*) of the Act, did not become a category in that subsection until August 10, 1960 and, therefore, although the accused are charged with conspiring within the period of over ten years from January 1950 to September 30, 1960, the charge in so far as it is predicated on finding "rental"

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[1] (1955) 15 W.W.R. 563 at p. 570.

[2] In this connection, with respect, the opinion of McRuer C.J.O., as he then was, in *Regina v. Canadian Breweries Ltd.* [1960] O.R. 601; 33 C.R. 1; 126 C.C.C. 133 would not appear to be correct.

In any event, that was a case where the accused was alleged to be a party, or privy to, or knowingly to have assisted in the formation or operation of a combine within the meaning of the *Combines Investigation Act*, to wit a merger, trust or monopoly. It had nothing to do with a charge of conspiring to prevent or lessen unduly competition.

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as an essential ingredient of the offence, is limited to one month and twenty days of the period alleged in the indictment;

4. the indictment does not describe the offence charged.

In brief, the evidence in chief was directed to establishing that the following devices were contemplated being employed and were employed by the accused, namely:

1. that there was agreement on prices;
2. that there was agreement on customers;
3. that the accused formed an organization called the Montreal League of Linen Supply Owners Company for the purpose of assisting in implementing the objects of their conspiracy; and it was most elaborate and effective, and it caused the inforcement of its rules on its members;
4. that collusively through the said League, also in furtherance of the objects of the conspiracy, there was acquisition of independent and other suppliers, and so control and abridgment of channels of distribution;
5. and that also in furtherance of the objects of the conspiracy, collusive efforts were made to eliminate independent suppliers in the industry who were not members of the said League.

The linen supply business in the Montreal area, speaking generally, during the material time, consisted of providing customers with cleaned, ironed, pressed and ready to use linen towels and other articles mentioned in the indictment, on a regular basis. The total yearly volume of revenue obtained by persons in the linen supply industry in Montreal during 1961 for example, amounted to about 13 million dollars of which the persons indicted (who also were members of the Montreal League of Linen Supply Owners Company) accounted for about 11 million. During the period covered by the indictment, namely, 1950 to 1960, the total revenue in this business was generally in escalation but it is a fair conclusion to state that during the whole of the relevant period the business was most substantial. During the period covered by the indictment according to Admission No. 4 the accused and co-conspirators did or accounted for 85 to 90% of the volume of this business on the Island of Montreal.

In 1950, there was incorporated by Letters Patent the corporation known as the said Montreal League of Linen Supply Owners Company. Only two of the 22 accused were not members of it in 1950 and all 22 accused were members in 1960.

The business of the members of the said Montreal League of Linen Supply Owners Company, at all material times, was not unduly concentrated in any single firm. The largest firm had approximately 10% of the total market. The next three or four firms each did about 7% of the volume of the League members' business. After the four or five largest firms, the shares of the market of individual companies diminished to about four or five per cent each. The contributions of individual one truck members was almost minimal.

In 1950, the members paid dues to this League in the sum of $10 per truck per month that each operated. In 1954, the fees charged were increased to $15 per truck per month, and in 1959 the fees were a minimum of $30 per truck per month with some other provisions for setting the fees. This resulted in the Montreal League of Linen Supply Owners Company having at various times substantial monies in the bank. For example, at one time in 1960, the amount in its bank account was $41,880.

This League adopted elaborate and coercive rules to govern its members. The rules are set out in Book I, page 2356 and following, of the documentary evidence filed as exhibits. The recital spelling out the reasons these rules were made, states that the Montreal League of Linen Supply Owners Company, having been formed as a corporation not for profit under the *General Corporations Act* of Quebec had as its purpose or purposes as follows, *viz.*, "to enable the members to act in unison in an effort to improve the general conditions of our industry and to promulgate and inculcate the principles of public service. Therefore, we have adopted and voted the following as a code of regulations for its Government".

There are then set out 18 rules which read:

RULE 1 "STANDARDS".

The purpose of this Association is directed to the end that the greatest possible degree of quality, efficiency and sanitation shall be maintained at all times by its membership.

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The following rules presume that all members of this Association furnish a reasonably good quality of goods, properly washed, ironed, mended and delivered to the customer in good order at the time and place mutually agreed upon. Any member found to maintain standard which reflect adversely upon the members of this Association for the Linen Supply Industry shall be called before the Board of Directors to show cause why it should continue to enjoy the advantages offered under these rules.

RULE 2 "RESPONSIBILITY".

Every member shall be held strictly responsible and accountable for all acts of his agents and employees in the solicitation of and or in the securing of business during the period of service of each employee or agent.

RULE 3 "TERMS AND DEFINITION RE NEW ORDERS".

An individual, Firm or Corporation, opening a business for the first time, or opening a branch of same, shall be considered as a "New Order" and all members shall be privileged to solicit same, subject to terms and conditions as hereinafter provided. A bona fide or valid "New Order" is an order for Linen or Towel Service secured from the customer in a fair and ethical manner, in accordance with the spirit and intent of these rules and in all other regulations of this Association, without misrepresentation, undue pressure, price or other concessions or other special inducement of any kind. Any supplier found taking "New Accounts" by price cuttings, gifts, money or any under handed method, such supplier will be heavily penalized; the penalty to be decided by the President and his Committee and such supplier cannot supply said customer. However a maximum of $15.00 is to be allowed new customer for advertising or flower.

RULE 4 RE "LOST CUSTOMER".

The supplier has 30 days to notify the Secretary re "Lost Linen Account" and 60 days to notify the Secretary on customer's own Washing Accounts. Any supplier who takes a customer from another supply member will have to give back this customer within 30 days after he has been notified by the Committee or a customer to the satisfaction of the supplier that lost the account. If this supplier does not settle this account within 30 days, he will be responsible to pay a minimum of $50 00 to $100 00 to the dollar of weekly collection Until this settlement is reached, 25% of the collection of the said customer is to be paid to the supplier that lost this account. Under all circumstances, the Committee will decide the validity of the claim and the settlement. To establish the amount that the supplier had taken from the other supplier, it is understood that he will take the value in the proportion of a 4 week collection of the previous supplier or the future 4 weeks service whichever is the greater. However, special cases will be brought before the Committee for their decision.

RULE 5 "TEMPORARY CLOSING AND SUSPENSION OF SERVICE".

A) Temporary closing of a customer's business establishment for the purpose of making alterations, repairs, etc, shall not affect the interest of the member serving this customer, provided there shall be no change of ownership of the business during the period of time in which the customer's establishment shall have been closed. Should there be a change of ownership during this period, this customer may become a "New Order" on the terms and conditions as hereinafter described.

B) Terms for temporary closing or suspended service shall be limited to a 3 month period from the date that service is suspended except in the case of season stops wherein this rule does not apply. Member companies must register with the Office of the Association, notice of temporary closing or suspension of service within 15 days after last delivery, in order to protect their interest in such customer.

C) Should a member's customer be compelled to temporary [*sic*] discontinue business due to a fire, this customer shall be deemed a closed order for a period of 3 months. However, letters of renewal must be made in order to protect his interest in the customer.

RULE 6 "SUPPLIER LOSING PART OF AN ACCOUNT".

In a business where two owners are operating, for example a grocer and a butcher, and if one buys the other and continues to own and operate both business [*sic*] and this proprietor wishes to be served by only one supplier where two are serving, supplier that keeps this customer will have to give back a customer of the same value to the supplier that lost his part. However the supplier that loses the customer must be satisfied.

RULE 7 "CONCESSIONS".

A) Club Concessions as defined: any Club, Eating Place or Drinking Place that comes under the jurisdiction of the Liquor Commission is considered the customer of the lessee.

B) Department Store and Industrial Plants & Institutions (1958) Concession as defined. Concessions are open to all for new business upon there being a change.

C) Grocer & Butcher Store Concession as defined: one customer, the rightful customer being the lessee.

D) Drug Store Concessions and Fountain as defined: the lessee being the customer.

GENERAL SUMMARY—The lessee is the customer whether he partitions off or leases out part of his store where there is one door.

RULE 8 "MERGING".

In the event of a merge of two companies where one supplier loses and another gains, the adjustment is to be left to the discretion of the Investigating Committee. Their decision will be final.

RULE 9 "SEASON STOP".

A) A business suspending its operation during a portion of each year shall be considered a "season stop".

B) Temporary closing of a "season stop" shall not affect the interest of the member serving, provided that there shall be no change of ownership or lessor. Should there be a change of ownership or lessor during the period of suspended service, the customer shall be deemed a "new order".

RULE 10 "EMPLOYEE CLAUSE".

It is clearly understood that no Linen Supplier will engage an employee of another Linen Supplier without the consent of the Linen Supplier losing the employee.

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RULE 11 "NON MEMBERED COMPANY".

A) No member of the Association shall purchase, sell or merge with a "non membered Company" in the Linen Supply Business unless such purchase, merge or consolidation shall first be sanctioned by the Board of Directors of this Association.

B) Territory or areas in which this rule shall apply shall be decided by the Board of Directors of this Association when and if such situation shall arise. The decision of the Board of Directors shall be final.

C) The same clause also apply [*sic*] to the Overall Trade.

RULE 12 "LOSING CUSTOMERS TO NON MEMBERS"

A member supplier losing a customer to a supplier outside the Association, the said member may report this loss to the Association. If any member has enough influence to take back this customer, then such losing supplier should be compensated at the discretion of the Committee. Time limit 6 months.

RULE 14 "RE VOTING".

Each Company shall have only one vote, irrespective of the number of people of said Company attending meetings or the number of trucks they pay for.

RULE 15 "CHAIN OPERATIONS".

A) Chain Operations shall consist of 8 (6—Oct/58) operations or more under the same ownership.

B) In the case of a new Branch, the signature of a Branch Manager shall not be recognized. It must be an authorized Purchasing Order by the Purchasing Department of that Chain Operation.

C) When one member shall have install his service in 8 or more operations of a Chain, he may then register the Chain with the "Secretary". The Secretary shall ascertain the name of members at that time serving the Operation. They shall thereafter control the prices of that Operation and shall be entitled to quote on any New Branch of that Operation whatever Chain Prices they agree on.

D) When it becomes advisable to lower prices to registered Chain Operation to below the price list, the Secretary shall call a meeting of all members then serving that Chain. At this meeting such members shall decide upon the price changes.

RULE 16 "REGISTRATION OF NEW CUSTOMERS".

A motion made by Roger Laverdure re Registration of New Customers and seconded by Norman Rill, that any supplier getting a new customer send a letter to the Secretary or to a specified person, and stating the name and address of said customer, the date the order was taken and the reference bill or contract number. Those in favour please raise your hands. Approved by Roger Laverdure, George Jolicœur of R. Forget, Edmond Jolicœur of J. N. Jolicœur, Lionel McKay of Toilet Laundries, H. Sacks of Central Overall, Lucien Drolet of Lucien Drolet & Fils, Mr. Parent, Mr. Nelson Lothrop of Sherbrooke Laundry, C. Lebrun of H. Jolicœur, Edgard Patenaude of New Ideal, Van Pitsladis of Maple Leaf Coat & Supply. S. Yaffe of New System abstained from the vote. It is further agreed that when a contract is obtained and a letter is sent in to the Secretary, it is not necessary to leave any goods in that particular

customer's business. It is clearly understood that this particular signed order must be a recognized authority of said establishment such as the Proprietor or Manager.

RULE 17 "UNFAIR TRADE PRACTICES".

The Board of Directors of this Association reserve the right to decide what shall be considered as unfair trade practices, when and if such situation shall develop by any active members of this association.

RULE 18 RE "CONVERSION OF WASHING ACCOUNTS TO LINEN OR INDUSTRIAL ACCOUNTS".

A) It is clearly understood that no supplier will convert a washing account belonging to any member; only the supplier that has done the washing for this customer has the privilege.

B) First registration to the Secretary's Office will give that supplier priority to work on the conversion.

C) On conversion of washing account where no member supplier is doing the washing, then this account upon registration to the Secretary will be protected for a period of 12 months. After 12 months this account will be open to any other supplier for conversion.

The evidence on page 1123 and following of the said Book I, filed, discloses the said League's price lists of charges to customers for supplying various of the types of products referred to in the indictment, which price lists were seized from various of the accused. All are identical.

At page 4341 of the same book, there appears the bill for the printing of these price lists which was sent to one of the accused only.

At pages 88-9 of the same book, there is a sample of one of many letters of complaints addressed by one of the accused to the said Montreal League of Linen Supply Owners Company, protesting that one of the fellow association members had cut prices to a customer which caused the former to lose that customer and requesting action to be taken to obtain redress for the complainant.

At page 3975 of the same book, there is a document setting out the regulations of the League to be followed by its members regarding the particular category of the business called the continuous towels in cabinets, and it reads in part: "Any cabinet supplier is entitled to go to any and all linen supplier customers and install cabinets where that customer is using the paper towels. However, if the linen supplier loses some linen business through this cabinet installation he must be compensated by the cabinet supplier within one week."

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The evidence also discloses that there were convention meetings, monthly meetings and sometimes weekly meetings of the Montreal League of Linen Supply Owners Company at which plans for the furtherance and continuance of their collusive agreement were formulated.

An example of such a convention meeting and the kind of matter decided at such, is shown by the minutes of the convention meeting contained in Book I, page 2367. These minutes refer, *inter alia,* to a discussion of "prices on long coats". It is there recorded that "After some discussion, it was decided to leave prices as they were."

An example of one of a monthly meeting and the kind of matter to be decided at such, is shown by a copy of the notice of which is in Book I, page 3325, filed. It is there recorded that the secretary served notice that "we will discuss our price structure".

The evidence also in Book I at page 2125, discloses a type of frequent complaint by one of the accused to the League, *viz.,* the complaint that one of the members reduced the prices of industrial towel service in order to obtain a contract from the Department of Defence Production in which the complainant submitted to the League that "we would expect to be compensated for every last dollar we may have lost, because of the indiscretion of the Management of Canadian Silk Manufacturing Company (Quebec) Limited" (one of the accused).

This documentary evidence filed in reference to this matter clearly indicates that during the material time the accused had as their object and were parties to price fixing arrangements for the supply of the type of products referred to in the indictment in the Montreal area.

The evidence in Book II also filed as an exhibit, discloses documentary proof of the agreements contemplated and put into effect by the accused as to customers.

For example, at page 2365 of Book II, there is a copy of the minutes of the convention of the Montreal League of Linen Supply Owners Company held at Grey Rocks Inn, St. Jovite, Quebec on October 20, 1955 and in part those minutes read: "We discussed registration of new customers". There then follows in Book II copies of various letters

from certain of the accused requesting reimbursement pursuant to the above quoted rules of the League, from fellow-accused members for accounts lost to such other persons. In this regard, for example, at page 1092, there is a copy of a letter which is an exemplification of the enforcement of Rule 4. And there are many of these in Book II.

In Book III also filed as an exhibit, there is documentary proof of the organization and operation of the Montreal League of Linen Supply Owners Company.

For example, at page 269, there is set out a proposal by the Committee of the League for new accounts, which proposal subsequently in substance was adopted. One of the items of such provided as follows: "Members will vote on guilt or innocence of accused in closed ballot. Member found guilty will be penalized as per penalties that have been set up with time limit to pay penalty."

There is also set out in Book III filed, the persons who were members of the League at various times between 1950 and 1960. For example, in 1950 there were 30 members; in 1960 there were 29 members and of these, 23 were members in 1950. Also, nine out of 12 of the alleged co-conspirators in this matter were members in 1950, while in 1960 there were eleven.

There is also in Book III, documentary proof of the sums deposited in the League's bank account at the Banque Canadienne Nationale at 334 St. Catherine Street East, Montreal from 1956 to 1960, *viz*:

In

1956	$ 23,760
1957	$ 22,000
1958	$ 19,820
1959	$ 29,000
1960	$ 39,800

There are also set out in Book III copies of invoices for dues; and copies of documents relating to the operation of the organization, as for example, specimen cards calling weekly meetings, notices calling monthly meetings, copies of the minutes of three conventions, memoranda re the committee to combat competition from other outside busi-

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nesses in the industry who were not members of the association and a memorandum indicating how to solicit accounts of customers of businesses in the industry who were not members of the League.

The evidence in Book IV also filed as an exhibit records the investigations made by the League of its own members and also of persons who were in business in the industry but not members of the League.

There follows the documentary evidence showing how the rules of the League were enforced against the members.

In brief, the evidence establishes that it was done in this way: For the purpose of investigation, the League hired a private detective agency during the material time, namely, J. Broderick Agency. Any member complaining about a fellow member could cause the League to hire this agency to send out a private detective to check on what that member was doing in the trade in so far, for example, as to the prices he was charging for supplying the products, as to whether he was soliciting another member's customers or as to any other matter which was considered in breach of the rules of the League. Thereafter, if any complaint was found to be well founded, the League enforced its appropriate rule against such non-conforming member.

The documentary evidence also shows what was done about new firms trying to enter this industry and about non-member firms already in this industry, namely: This same private detective agency was caused to be hired by the League on the agreement of the executive committee of it to investigate the customers of any new firm or person, not a member of the League, trying to enter the business of this industry, or of any established non-member firm, and to supply the details of the same to the League. Thereafter, the League at one of its meetings, acting on this information, caused one or more of its members to canvass the customers of such firm or person, and if they were required to do so, they cut prices, *inter alia,* for example, to acquire the customers from such non-member firm or person. Having done so, such member firms were reimbursed out of the League funds for the difference between such prices and the usual prices agreed to by the League.

In one instance, also, the documentary evidence discloses what was done when one new group of persons who began to operate in the industry and after being dealt with in this fashion by the League, refused to cease business. Briefly, this is what happened. The people who owned this new business in the industry were of Greek origin, and they had a substantial fruit and vegetable business in the Montreal area. According to the minutes, these people refused to cease business, when requested by the League. Thereafter, the League planned and did take certain steps to try to put them out of the fruit and vegetable business. Eventually that effort was also not successful; and the League then purchased the linen supply business from these people out of League funds in order to get them out of this industry.

The evidence also in Book IV, filed, contains many surveillance reports on members made by this detective agency, of the character mentioned. It also shows how the detective agency was paid for their services. The bills were made out to John Doe, the cheques were made out to cash and were endorsed by the J. Broderick Agency.

From this evidence and the rest of the documentary evidence filed, it was clearly established that the accused at all material times had as one of their objects of their conspiracy, arrangement of the market, and that they also succeeded in accomplishing substantial allocation of customers, and prevention of entry of any new firm into the market.

The evidence in Book V of the documentary evidence filed, proves in substantial detail the efforts made to eliminate independent suppliers in this market who were not members of the League.

The evidence also in Exhibit 3, filed after the filing of Book V, discloses a number of other pertinent documents. They consist of letters, bills and price lists from the premises of various accused in which the words "rental" and "supply" appear. The purpose of these apparently was to establish that these documents on their face indicate that the relationship between the members of the Montreal League of Linen Supply Owners Company and their respective customers was one of "supply" and "rental".

So much for a review of the salient parts of the Crown's evidence in chief.

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The defence adduced evidence *viva voce* relating to the alleged character of the relevant market in which the accused were engaged at the material times, and also documentary expert opinion evidence regarding such market, and the meaning of a market generally.

The Crown in rebuttal adduced documentary expert opinion evidence disagreeing with said defence documentary expert opinion evidence.

I have carefully reviewed and considered this evidence and the whole of the rest of the evidence in relation to the relevant law and the submissions of counsel and have reached the following conclusions, namely, that is to say:

A. 1. That the accused with their co-conspirators did conspire, combine, agree or arrange to fix prices, the allocation of customers in the market and the method of distribution of the products mentioned in the indictment;

2. that the products referred in the indictment are articles within the meaning of the word "article" as statutorily defined in section 2(*a*)[1] of the *Combines Investigation Act*;

3. that the market, in the main, was the Island of Montreal;

4. that the market was the section of the public on the Island of Montreal that needed and wanted not paper towels, or other substitute products, but cleaned, ironed, pressed, ready to use linen towels and other articles mentioned in the indictment and for whom paper towels and other substitute products were not satisfactory products; and

5. that the accused and co-conspirators did or accounted for 85 to 90% of the volume of that market;

and that:

B. 1. what the accused stand charged with concerns the "supply" of such articles within the meaning that the

[1] 2. (*a*) "article" means an article or commodity that may be the subject of trade or commerce;

word "supply" is used in the *Combines Investigation Act*; and that the word "supply" as so used and in its grammatical sense appropriate to the facts of this case, refers to what was done at all material times in this case, and it also includes the usual dictionary meaning of "rental";

2. what was done as described in this case was not a "service" as that concept is sometimes used when a generalization is made that the *Combines Investigation Act* is not legislation that touches and concerns "services" except these specifically referred to, as for example, insurance;

3. the Crown established an agreement or conspiracy by the accused in relation to the said products and market, having as its object the establishment of a virtual monopoly, contrary to section 32(1)(*c*) of the *Combines Investigation Act*, within the meaning of the ratio of such cases as *Weidman v. Shragge, (supra), Stinson-Reeb Builders Supply Company et al v. The King, (supra), Container Materials, Limited et al v. The King, (supra), and Howard Smith Paper Mills Limited et al v. The Queen, (supra),* but even if it did not, then, in any event, the Crown established an agreement or conspiracy by the accused, in relation to the said products and market, having as its object at all material times, the prevention or lessening of competition unduly within the meaning of section 32(1)(*c*) of the Act, in that the Crown proved that the object was to interfere with "free competition" in the said products in the said market above prescribed in a most substantial or inordinate manner against the public interest as those two latter words are meant judicially as referred to earlier in these Reasons; and

4. the expert evidence in defence, particularly Part IV of Exhibit D-1, which in the main was addressed to what share of the market was left to others than the accused and their co-conspirators at the material

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times, did nothing to rebut the proof of undue interference by the accused in violation of the law, adduced in chief;

and that:

C. 1. the words of the indictment are sufficient (see section 492(1) and (2) of the *Criminal Code of Canada*[1]); and the accused were not misled. (See Admission No. 5, quoted above.)

The verdict of the Court is that all the accused are guilty as charged.