

Right Hon. Sir J. G. Ward.

COMMERCIAL TRUSTS.

ANALYSIS.

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A BILL INTITULED

AN ACT for the Repression of Monopolies in Trade or Commerce. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Commercial Trusts Act, 1910, and shall come into operation on the first day of January, nineteen hundred and eleven. Short Title and commencement.

2. (1.) In this Act, unless the contrary intention appears,— Interpretation.

10 "Commercial trust" means any association or combination (whether incorporated or not) of any number of persons established either before or after the commencement of this Act, and either in New Zealand or elsewhere, and

15 (a.) Having as its object or as one of its objects that of (i) controlling, determining, or influencing the supply, or demand, or price of any goods in New Zealand or any part thereof, or elsewhere; or that of (ii) creating or maintaining in New Zealand or any part thereof, or elsewhere, a monopoly, whether complete or

20 partial, in the supply or demand of any goods; or (b.) Acting in New Zealand or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object or acting as aforesaid:

25 "Association" includes the union of any number of persons by or under any agreement or trust, whether temporary or permanent, and whether legally valid or not, and whether including any scheme of organization or common management or control or not:

“Member of a commercial trust” means any of the constituent persons of that trust, or any agent of that trust, and, where any such constituent person or agent is a corporation, firm, or association, includes every member or agent of that corporation, firm, or association : 5

“Person” includes a corporation, and as used in the foregoing definitions of “commercial trust,” “association,” and “member of a commercial trust” includes also a firm of partners or any other association or combination of persons. 10

Application of Act.

(2.) Nothing in this Act shall apply to any goods other than those specified in the Schedule hereto.

Illegal concessions in consideration of exclusive dealing.

3. Every person commits an offence who, either as principal or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward, or other valuable consideration for the reason or upon the express or implied condition that the latter person— 15

(a.) Deals or has dealt or will deal, or intends or undertakes or has undertaken or will undertake to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons either in relation to any particular goods or generally; or 20

(b.) Does not deal or has not dealt, or will not deal, or intends or undertakes or has undertaken or will undertake not to deal, with any person or class of persons either in relation to any particular goods or generally; or 25

(c.) Restricts or has restricted or will restrict, or intends or undertakes or has undertaken or will undertake to restrict, his dealing with any person or class of persons either in relation to any particular goods or generally; or 30

(d.) Is or becomes, or has been or has undertaken or will undertake to become, a member of a commercial trust; or

(e.) Acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods. 35

Illegal refusals to deal.

4. Every person commits an offence who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person, any goods for the reason that the latter person— 40

(a.) Deals or has dealt, or will deal or intends to deal, or has not undertaken or will not undertake not to deal, with any person or class of persons either in relation to any particular goods or generally; or 45

(b.) Is not or has not been, or will not become or undertake to become, or has not undertaken to become, a member of a commercial trust; or 50

(c.) Does not act or has not acted, or will not act or does not intend to act, or has not undertaken or will not under-

take to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

- 6 5. Any person who conspires with any other person to monopolise wholly or partially the demand or supply, in New Zealand or any part thereof, of any goods, or to control wholly or partially the demand, or supply, or price, in New Zealand or any part thereof, of any goods, is guilty of an offence if such monopoly or control is
- 10 of such a nature as to be contrary to the public interest.
6. (1.) Every person commits an offence who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or
- 15 influenced by any commercial trust of which that person or his principal (if any) is or has been a member.
- (2.) Every person commits an offence who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any commercial trust, whether he is a
- 20 member of that trust or not, sells or supplies, or offers for sale or supply, any goods, whether as principal or agent, at a price which is unreasonably high.
7. (1.) If any commercial trust, whether as principal or agent, sells or supplies or offers for sale or supply any goods at a price which is unreasonably high, every person who is then a
- 25 member of that trust shall be deemed to have committed an offence against this Act.
- (2.) If in any such case the commercial trust is a corporation, it shall itself be guilty of an offence against this Act; but the
- 30 liability of the trust shall not exclude or affect the liability of its members under the *last preceding* subsection.
8. For the purposes of this Act the price of any goods shall be deemed to be unreasonably high if it produces or is calculated to produce more than a fair and reasonable rate of commercial
- 35 profit to the person selling or supplying or offering to sell or supply those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.
9. Every person who aids, abets, counsels, or procures, or is
- 40 in any way knowingly concerned in the commission of, an offence against this Act, or the doing of any act outside New Zealand which would, if done in New Zealand, be an offence against this Act, shall be deemed to have committed that offence.
10. (1.) Every person who commits an offence against this Act
- 45 shall be liable to a penalty of *five* hundred pounds.
- (2.) If two or more persons are responsible for the same offence against this Act, each of those persons shall be severally liable to a penalty of *five* hundred pounds, and the liability of each of them shall be independent of the liability of the others.
- 50 11. Every such penalty shall constitute a debt due by the offender to His Majesty the King, and shall be recoverable, together with costs of suit, by a civil action in the Supreme Court, instituted by the Attorney-General for and in the name of His Majesty.

Illegal monopolies.

Sales at prices fixed by a commercial trust.

Sales by a commercial trust.

When prices are to be deemed unreasonably high.

Aiding and abetting offences against this Act.

Penalty.

Penalties recoverable by action in the Supreme Court.

Supreme Court may  
reduce penalty.

12. In any such action the Supreme Court may remit such part of the aforesaid penalty of *five* hundred pounds as it thinks fit, and may give judgment for the residue of the penalty only.

Injunction against  
repetition or con-  
tinuance of offences.

13. In any such action the Supreme Court may, in addition to the said penalty, grant an injunction against the continuance or repetition of the offence; but no such injunction shall be granted by way of interlocutory proceedings before final judgment in the action. 5

Joinder of parties,  
and causes of  
action.

14. (1.) In any such action claims may be joined for the recovery of penalties in respect of several offences, whether of the same or of different kinds. 10

(2.) In any such action several persons may be joined as defendants, whether in respect of the same or of different offences, and whether those offences are committed by the same or by different parties; and in any such case separate judgments may be given in respect of each defendant so joined. 15

(3.) In the case of any such joinder of causes of action or of parties the Supreme Court may give such directions as it thinks fit for the separate trial of any cause of action against any defendant.

Evidence

15. (1.) In any action for the recovery of a penalty or for an injunction under this Act the Supreme Court may, in proof of any fact in issue, admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not. 20

(2.) In any action for the recovery of a penalty or for an injunction under this Act no person, whether a party to the action or not, shall be excused from answering any question put to him by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document would tend to criminate him in respect of any offence against this Act. 25 30

Schedule.

## SCHEDULE.

### GOODS TO WHICH THIS ACT APPLIES.

Agricultural implements.

Coal.

Meat.

Flour, oatmeal, and the other products or by-products of the milling of wheat or oats.

Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).

Sugar.

Tobacco (including cigars and cigarettes).