

Hon. Sir J. G. Ward.

TRADE MONOPOLIES PREVENTION.

ANALYSIS.

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A BILL INTITULED

AN ACT to prohibit Trade Monopolies detrimental to the Public Interests. Title.

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

1. The Short Title of this Act is "The Trade Monopolies Prevention Act, 1906." Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation.
"Trade monopoly" means a trade monopoly as defined by this Act:

"The Chief Justice" means the Chief Justice of the Supreme Court:

"Trader" means any person or association of persons carrying on any business one of the purposes of which is to sell goods, and includes the agent or representative in New Zealand of any person carrying on any such business outside New Zealand:

"Article of commerce" includes, besides any article of commerce as generally understood, gas and electricity.

3. A trade monopoly exists in any of the following cases:— Trade monopoly defined.

(a.) Where, in respect of any article of commerce or the commercial supply of any services, there is any trust, combination, or association, corporate or unincorporate, or any agreement or understanding of any kind, whether express or implied, among any manufacturers of or traders dealing with such article of commerce or among any suppliers of such services, the effect of which is or is intended to be, or will probably be—

(i.) That the interests of the general public are injuriously affected by the enhancement of the price or the undue restriction of the output or supply of such article of commerce or such services ; or

(ii.) That the advantage of any manufacturer of or trader dealing with such article of commerce or any supplier of such services is promoted at the expense of the consumers or purchasers of such article of commerce or services, or at the expense of any other trader dealing with such article of commerce or any other supplier of such services. 5

(b.) Where a person or association of persons, whether within or without the colony, having the sole or chief control within the colony (either by being the sole or chief manufacturer or importer or otherwise) of any article of commerce or of any special manufacture or particular brand of any article of commerce— 10

(i.) Sells or offers for sale or consigns for sale any such article of commerce or the special manufacture or particular brand thereof, so controlled as aforesaid, to any trader subject to the condition that such trader shall not sell or deal in or that he will unduly limit his dealings in goods procured from any other source which will compete with the article sold or offered for sale or consigned for sale as aforesaid ; and such condition shall be deemed to exist where sales or consignments as aforesaid take place only to such traders as have made an agreement or promise (whether legally binding or not) that they will not so sell or deal in or will so unduly limit their dealings in competing goods as aforesaid, or only to such traders who in fact do not so sell or deal in or do so unduly limit their dealings in competing goods as aforesaid : 20

(ii.) Sells or offers for sale or consigns for sale any such article of commerce or the special manufacture or particular brand thereof, so controlled as aforesaid, to any trader upon such terms or conditions as would in their application or actual effect make it more profitable to such trader if he should not sell or deal in or should unduly limit his dealings in goods procured from any other source which would compete with the article so sold or offered for sale or consigned for sale as aforesaid : 25

(iii.) Sells or offers for sale any such article of commerce or the special manufacture or particular brand thereof so controlled as aforesaid subject to the condition or only to such traders as agree or promise that such goods shall be sold again at not less than a fixed price or scale of prices : 30

(iv.) Adopts any method of business similar to those above specified and having like effects. 35

4. It shall be *prima facie* evidence of the existence of a trade monopoly that since the commencement of the events constituting the alleged trade monopoly the article of commerce in question has been sold or the services in question have been supplied at uniformly higher prices than prior to such commencement, and that the profits made by any of the 40

Prima facie
evidence of
monopoly.

persons or associations of persons alleged to be concerned in such trade monopoly have since such commencement been much higher than before.

5 Trade monopolies are hereby declared to be illegal, and when a trade monopoly has been found to exist as hereinafter provided all contracts and transactions of any kind which shall have been or which shall thereafter be entered into in furtherance of such trade monopoly, or in furtherance of the continuance or attempted continuance of such trade monopoly, shall be deemed to have an illegal object.

Trade monopolies illegal.

10 6. A petition complaining of the existence of a trade monopoly may be addressed to the Chief Justice—

Petition initiating proceedings.

(a.) By the Minister of Labour or the Minister for Industries and Commerce :

15 (b.) By the Secretary of the Department of Labour or other officer of that Department :

(c.) By some trader alleging that he is injured by the existence of the alleged trade monopoly :

(d.) By any thirty or more respectable adult persons.

20 7. Every such petition shall allege the existence of a trade monopoly, and shall state the particular article of commerce in respect of which it is alleged to exist, and, so far as the petitioners are able, the persons or associations of persons concerned in the alleged trade monopoly, and the particular circumstances constituting the alleged trade monopoly. Every petition shall be indorsed with an address for service of the petitioners.

Contents of petition.

25 8. (1.) Presentation of a petition shall be made by delivering it in triplicate to any Registrar of the Supreme Court, who shall forward the same to the Registrar of the Court of Appeal of New Zealand (who shall be the Registrar of the Court hereinafter referred to as from time to time constituted, and is hereinafter referred to as "the Registrar"), and he shall file one copy of such petition and forward the others to the Solicitor-General and the Controller and Auditor-General respectively.

Procedure on presentation of a petition.

30 (2.) The Solicitor-General and the Controller and Auditor-General shall thereupon inquire as to the probability of the existence of the alleged trade monopoly, and may for that purpose call upon any person or association of persons alleged to be concerned in the trade monopoly, or whom they shall deem to be probably so concerned, to produce to them or any Crown Solicitor and Audit Inspector appointed by them for that purpose all or any books, papers, accounts, contracts, letters, or other writings in the possession or control of such person or association of persons directly or indirectly relating to the matters alleged in the petition; and every such person or association of persons that fails to comply with such requisition, and at the same time to deliver to the same persons a statutory declaration made by some person having full knowledge of the facts that a full discovery and production is made in accordance with the requisition, is liable to a fine not exceeding three hundred pounds.

40 (3.) The Solicitor-General and the Controller and Auditor-General, on completion of their investigation, shall indorse on the petitions sent them a memorandum stating whether they are or are not satisfied that there is a reasonable probability that the alleged trade monopoly exists, and shall forthwith return the petitions so indorsed to the Registrar,

who shall thereupon notify the petitioners of the effect of such memoranda.

(4.) If such memoranda show that both the Solicitor-General and the Controller and Auditor-General are satisfied of the probability of the existence of the trade monopoly, the said Registrar shall at once forward to the Chief Justice a copy of the petition with the indorsed memoranda certified under his hand, and the Chief Justice shall thereupon with all reasonable despatch take steps for the trial of the petition as hereinafter provided. 5

(5.) If the said memoranda show any other result of the investigation, no further proceedings shall be taken on the petition. 10

Procedure on trial
of petition.

9. With respect to the trial of petitions under this Act the following provisions shall apply :—

(a.) The trial shall take place before three of the Judges of the Supreme Court, to be named by the Chief Justice for that purpose, and upon the nomination by the Chief Justice of such Judges the tribunal for such trial shall be deemed to be constituted, and such tribunal is herein referred to as "the Court." 15

(b.) If any Judge so nominated is unable before the conclusion of the trial to act, the Chief Justice shall name another Judge who shall act in his place. 20

(c.) The trial shall take place at such place as the Chief Justice shall determine.

(d.) At least fourteen days before the day of trial notice of the time and place at which the trial will take place shall be given by the Registrar to the petitioners and to all persons and associations of persons mentioned or indicated in the petition as being concerned in the alleged trade monopoly; and such notices shall, save in the case of the petitioners, be accompanied by copies of the petition, which must be supplied for that purpose by the petitioners on the application of the Registrar. Any such notices may be sent by registered post, and in the case of a corporate body or association may be addressed to the secretary or other executive officer thereof. 25 30 35

(e.) The Court may adjourn from time to time and from place to place as is deemed expedient.

(f.) Subject to this Act, the Court shall have jurisdiction to inquire into and adjudicate on all matters alleged in the petition or having any relation thereto. 40

(g.) At the conclusion of the trial the Court shall determine whether any trade monopoly alleged in the petition or any other trade monopoly connected with the same subject-matter does or does not exist, and shall forthwith certify the same under the hands of the presiding Judges or the majority of them; and upon such certificate being given such determination shall be final to all intents and purposes, and such certificate shall forthwith be filed with the Registrar as a matter of record. 45

(h.) Upon such certificate being given as aforesaid the Registrar shall forthwith forward to the Minister of Labour and the Minister for Industries and Commerce, and shall also at all 50

times on request and on payment of the prescribed fee supply to any other person, a copy of such certificate certified under his hand, and such certificate shall be received in all Courts as conclusive evidence of the making of such certificate and the determination therein certified.

5 (i.) The Court shall have all the powers and authorities of the Supreme Court so far as they are applicable to the objects and subject-matter of this Act, and in the case of interlocutory applications any member of the Court may hear and
10 adjudicate thereon, but any order so made may be set aside or modified by the Court.

(j.) The Court shall, so far as possible, follow the procedure of the Supreme Court in civil cases as expressly or impliedly modified by this Act or the regulations thereunder.

15 (k.) Witnesses may be summoned and sworn in the same manner as nearly as circumstances admit as in a trial before the Supreme Court, and shall be subject to the same penalties for non-compliance with any summons and for perjury. The Court may admit any evidence it thinks fit, although not
20 admissible in law.

(l.) The Court may of its own motion order any summons to a witness to issue, and may examine any witness compelled to attend or any person in Court although such witness is not called or examined by the petitioners or any party before
25 the Court, and after any such examination any such witness may be cross-examined by the petitioners or any other such party.

(m.) No person shall be excused on any ground from attending and testifying as a witness or producing to the Court any books, papers, accounts, contracts, letters, or other writings in his possession or under his control relating in any manner to the subject-matter of the trial.

30 (n.) Any petitioner or party concerned in the alleged trade monopoly may appear at the trial personally or by counsel, and any corporate body or unincorporate association may appear by its secretary or other executive officer.

35 (o.) If the Court is of opinion that the publication of the whole or any part of the evidence is or will probably be an improper disclosure of the private business of any trader, it may hear the whole or such part of the evidence as aforesaid *in camera* in the presence only of such persons as it shall direct, and may prohibit the publication of any such evidence by any person present; and any publication in breach of any such prohibition will be a contempt of Court, and any person so
40 publishing the same is liable to a fine not exceeding one
45 hundred pounds.

(p.) Upon the application of any person in Chambers, *ex parte*, the Court may, if it thinks it desirable, hear any confidential statement on oath by such person or any other persons in reference to the matters before it, and the Court may use its discretion as to the disclosure to all or any of the persons concerned in the trial of the fact of the making of such con-
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fidential statement and of any other particulars in connection therewith.

- (q.) The Court may make such order as it thinks fit as to costs and expenses as between the petitioners or any of them and all or any of the parties brought before the Court as being involved in the alleged trade monopoly; and the Court, or any member of same after the Court is dissolved, shall certify in writing the amount of such costs and expenses and the parties by and to whom the same are payable, and such certificate when filed in any Court of judicature having civil jurisdiction to the extent of such amount shall be enforceable therein as a final judgment between the respective parties entered in that Court. 5
- (r.) Proceedings in the Court shall not be impeached or held bad for want of form, nor shall the same be removable to any other Court by *certiorari* or otherwise; and no proceeding, judgment, finding, or order of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of judicature on any account whatever, but shall have full effect and shall be observed, acted upon, and obeyed by all Courts of judicature. 10
- (s.) No proceedings in the Court shall abate by reason of the death of any person concerned in the proceedings, but the same may be continued and disposed of by the successor in office or legal personal representative of the person so dying. 25
- (t.) If any member of the Court dies, resigns, or refuses, or is unable to sit before the Court has completed its determination as aforesaid, the proceedings shall not abate, but the Chief Justice or, if he is such member, then the other Judges of the Court may appoint another Judge of the Supreme Court to take the place of the member so dying, resigning, or refusing, or being unable to sit. 30

Supreme Court to enforce prevention of continuance of trade monopoly.

10. The Supreme Court shall have jurisdiction to do all things to prevent the continuance of any trade monopoly found to exist by the Court hereinbefore constituted; and in particular, and without limiting the general jurisdiction hereby given,— 35

- (a.) The Supreme Court shall, on the *ex parte* application of any person, issue summarily an injunction against any person or association of persons found by the Court hereinbefore constituted to be parties to a trade monopoly, prohibiting the continuance of any acts in furtherance of such trade monopoly. 40
- (b.) The Supreme Court may, on the suit of any public officer, impose a fine not exceeding *one* thousand pounds on any person or association of persons who shall, after any trade monopoly shall have been certified to exist as above mentioned, do or be party to any act in continuance or furtherance of such trade monopoly; and may, in addition to or in place of such fine, issue an injunction against any such person or association of persons prohibiting the continuance of any acts in furtherance of such trade monopoly; and any such fine as aforesaid shall be recoverable by such public officer 50

as a final judgment in the Supreme Court, and when received shall be paid into the Public Account and form part of the Consolidated Fund.

- 5 (c.) Where the Supreme Court finds that the existence of any incorporated company or association promotes or favours the continuance of any trade monopoly which has been certified to exist as above mentioned it may, on the application of any public officer, order such company to be wound up, and thereupon the company shall be wound up as if an order for the compulsory liquidation of the same had been made by the Supreme Court under "The Companies Act, 1903," or may order the registration of any association under any statute to be cancelled, and the same shall be annulled accordingly.
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- 15 (d.) For the purpose of proceedings in the Supreme Court any trade monopoly shall be deemed to be the same trade monopoly as has been found to exist by the Court hereinbefore constituted where in the opinion of the Supreme Court it is substantially the same, and notwithstanding that the mode of operations has been modified.
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11. After the receipt by the Minister of Labour or the Minister for Industries and Commerce of a certificate that any trade monopoly has been found to exist, the Governor in Council may do any of the following things, that is to say :—

Powers of Minister.

- 25 (a.) May declare forfeited as from any date any license granted by the Commissioner of Customs under the provisions of any statute for the time being in force for the manufacture of any goods in bond; and upon a notice of such forfeiture being gazetted the license shall be null and void, and no new license shall be granted to the same licensee or in respect of the same premises unless the Commissioner of Customs is satisfied that the trade monopoly has ceased to exist and is not likely to be continued or revived.
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- 35 (b.) If it appears that such trade monopoly is facilitated by the duties of Customs imposed on any article, may place such article on the free list or so reduce the duty of Customs thereon as to give the public the benefit of reasonable competition in such article, but in any such event the Governor in Council may at any time thereafter cancel such remission or reduction of duty.
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12. Every person who conspires, combines, agrees, or arranges with any other persons, or with any railway, steamship, or transportation company—

Penalties for unlawful competition.

- 45 (a.) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article of commerce; or
- (b.) To restrain or injure trade or commerce in relation to any such article of commerce; or
- 50 (c.) To unduly prevent, limit, or lessen the manufacture or production of any such article of commerce, or to unreasonably enhance the selling-price thereof; or

(d.) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any such article of commerce—

is guilty of an offence, and liable on conviction to a fine not exceeding *one* thousand pounds or not less than *fifty* pounds, or to imprisonment for any term not exceeding two years ; and, if a corporation, is liable on conviction to a fine not exceeding *two* thousand pounds and not less than *two* hundred pounds. 5

Appointment of officers.

13. The Governor may from time to time appoint one or more persons to assist in carrying out the purposes of this Act, and may define their powers, functions, and duties. 10

Enforcement of fines.

14. Any fine imposed by this Act, the mode of recovery of which is not otherwise provided for, may be recovered summarily on information before a Magistrate.

Regulations.

15. The Governor may from time to time, by Order in Council gazetted, make such regulations as he thinks fit prescribing the procedure of the Court hereinbefore constituted, the payment of fees in respect of proceedings, and generally carrying into effect the purposes of this Act. 15