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Trade Regulation

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given the strong presumption that the discrimination was based on adequate grounds,[66] and given the wide discretion of the legislature to select the classes to be regulated,[67] this argument would seem to fail.

In conclusion, any discussion of the constitutionality of this statute raises the conflict of two of the postulates of a legal order: stability versus change, the importance of the ability of the individual to rely on existing laws[68] as qualified by the necessity of the law in a constitutional society to develop with the times in order to adapt to new social conditions and conform to new ideas of the common good. In spite of John Marshall's famous remonstrance that "It is a Constitution we are expounding,"[69] the sanctity of private agreements and the vested rights they create seem, in this instance, paramount to a regulation as drastic and as severe as that promulgated by the Idaho legislature.

JUDITH L. OLANS

TRADE REGULATION

SALES BELOW COST

The Connecticut legislature recently amended the section of that state's sales below cost act, which had allowed proof of certain acts to be prima facie evidence of intent to injure competitors.[1] Prior to the amendment, this section provided:

> No retailer shall with *intent* to injure competitors or destroy competition, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer, and no wholesaler shall, with such *intent*, advertise, offer to sell or sell at wholesale any item of merchandise at less than cost to the wholesaler. Evidence of *any* advertisement, offer to sell or sale of any item of merchandise by any retailer or wholesaler at less than cost to him shall be prima facie evidence of *intent* to injure competitors or destroy competition.[2] (Emphasis supplied.)

This section was declared unconstitutional by the Connecticut Supreme Court of Errors in *Mott's Super Mkts., Inc. v. Frassinelli*.[3] The court found that the language of the section concerning proof of intent had the inevita-

[66] Madden v. Kentucky, 309 U.S. 83, 88 (1940).

[67] Barrett v. Indiana, 229 U.S. 26 (1913); Orient Ins. Co. v. Diggs, 172 U.S. 557 (1889); Barber v. Connolly, 113 U.S. 27 (1885).

[68] Slawson, supra note 39, at 233, points out that this reliance is especially necessary in the making of contracts, formal legal obligations into which the parties enter with full and careful regard for the legal consequences.

[69] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

[1] Conn. Gen. Stat. Ann. § 42-114 (Supp. 1963).

[2] Conn. Gen. Stat. Ann. § 42-114 (1958).

[3] 148 Conn. 481, 172 A.2d 381 (1961), noted in 36 Conn. B.J. 147 (1962).

ble effect of placing the burden of proving his innocence upon the alleged violator. The court held that this was a denial of due process of law.

The law is by no means settled in this area. At the time of this writing, of the thirty states[4] that have sales below cost legislation, fourteen have provisions making proof of a sale, offer to sell or advertisement prima facie evidence of intent to injure competitors.[5] The courts in deciding the constitutionality of these provisions have for the most part been evenly divided.[6] It is beyond the scope of this note to conclude which is the better view. Since the Connecticut court's view was expressed in the *Mott* case, it is apparent that the recent amendment to the Connecticut Sales Below Cost Act will have to be construed in light of that decision. The amendment provides that:

> No retailer shall for the *purpose* of injuring a competitor *or* with the *effect* of injuring a competitor or destroying competition, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer, and no wholesaler shall, for the *purpose* of injuring a competitor *or* with the *effect* of injuring a competitor or destroying competition, advertise, offer to sell or sell at wholesale any item of merchandise at less than cost to the wholesaler. *Repeated* advertisements, offers to sell or sales of any item or items of merchandise by any retailer or wholesaler at less than cost shall be prima facie evidence of the *purpose* of injuring a competitor or destroying competition.[7] (Emphasis supplied.)

The question arises whether by this amendment, the legislature has corrected the constitutional defect in the section.

It is first noted that the original section contains the statement that "No retailer shall with the *intent* to injure . . . ," while the corresponding phrase of the amendment states that "No retailer shall for the *purpose* of injuring . . . ." (Emphasis supplied.) Although the word "intent" has been replaced by the word "purpose" it is submitted that this substitution does not appear to have in fact changed the meaning.[8]

The amendment adds the phrase ". . . or with the effect of injuring . . ." to the original section. It is readily apparent that the meaning of the section has been changed since the statute no longer requires the element of intent. This type of provision is by no means new since twelve states have

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[4] 2 Trade Reg. Rep. ¶ 6623: Arizona, Arkansas, California, Connecticut, Hawaii, Idaho, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

[5] Arizona, California, Connecticut, Idaho, Maine, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, Tennessee, Washington, West Virginia, Wisconsin.

[6] 2 Trade Reg. Rep. ¶ 6773 and cases cited.

[7] Supra note 1.

[8] "Purpose" is defined: "that which one sets before him to accomplish; an end, *intention*, or aim. . . ." Black, Law Dictionary 1400 (4th ed. 1951) (Emphasis supplied.) "Intent" is defined: "Intent in legal sense is *purpose* to use particular means to effect certain result. . . ." Id. at 947. (Emphasis supplied.)

included it in their sales below cost statutes.[9] The problem of whether intent is a necessary element for a violation of a statute, such as the Sales Below Cost Act, has been the subject of considerable litigation and the law is far from settled in this area.

The Supreme Court of Minnesota found constitutional a Minnesota statute which prohibited sales at less than cost for the purpose or with the effect of injuring competitors.[10] The court held that sales below cost which have the effect of injuring competitors may be prohibited regardless of intent.[11]

The Ohio Court of Appeals held constitutional a "weights and measures" statute which did not require intent as an element of proof of violation. The court reasoned that the legislature in its discretion could declare an act to be criminal without the necessity of proving intent where the act was destructive of the social order or where the proof of the intent element was extremely difficult or impossible.[12] It could be argued in support of the Connecticut amendment that the element of intent to destroy competition would, as a practical matter, be so difficult to prove that it should be removed if it is clearly shown that the defendant's conduct did in fact destroy competition or injure competitors.

The Supreme Court of Washington held constitutional a motor vehicle statute that did not require criminal intent as an element of proof of violation.[13] The court reasoned that although at common law intent was an element of every crime this was no longer so. When the common law was codified into criminal statutes intent was not made an element of those acts regarded as *mala prohibita*, while intent was retained as an element for those acts regarded as *mala in se*. It could be argued that sales below cost acts are strictly *mala prohibita* and that as such, the legislature in its own discretion may eliminate the need for the element of intent.

Although a case could be made to support the constitutionality of the statute without the element of intent, several courts that have decided this problem have held such statutes unconstitutional.[14] For example, the Supreme Court of Oklahoma in declaring the Oklahoma Sales Below Cost Act unconstitutional because intent to injure competitors was not required, held that such intent was an essential ingredient to the offense.[15]

It would appear that, in light of the *Mott* opinion, the Connecticut court would follow this latter view and declare the amendment unconstitutional. In the *Mott* opinion the court stated that:

> Proof of an intent to injure competitors or destroy competition has generally been held essential to proof of a violation of unfair

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[9] 2 Trade Reg. Rep. ¶ 6771: Arizona, Idaho, Louisiana, Minnesota, Nebraska, New Hampshire, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Wisconsin.

[10] McElhone v. Geror, 207 Minn. 580, 292 N.W. 414 (1940).

[11] Ibid.

[12] State v. Weisberg, 74 Ohio App. 91, 55 N.E.2d 870 (1943).

[13] City of Seattle v. Gordon, 54 Wash. 2d 516, 342 P.2d 604 (1959).

[14] For cases dealing with constitutional question, see generally 2 Trade Reg. Rep. ¶ 6771.

[15] Englebrecht v. Day, 201 Okla. 585, 208 P.2d 538 (1949).

> sales practices legislation. In the absence of proof of such an intent the act would operate as price fixing legislation and could be challenged on constitutional grounds.[16]

The court in concluding its opinion, stated that "It has been pointed out herein that for an unfair sales practices act to be valid, *proof of intent must be expressly or implicdly required.*"[17] (Emphasis supplied.)

The Connecticut court could conceivably avoid the problem of actually declaring the section unconstitutional and still hold intent a necessary element. To achieve this result, the court could adopt the reasoning of the United States Court of Appeals in *Lynch v. Tilden Produce Co.*[18] The court in *Lynch* was deciding a case under an adulterated butter statute which provided in part that it was a violation to use a process with the intent or effect of causing the absorption of abnormal quantities of water, milk, or cream. The court held that whatever is effected is the consequence of a specific design and thus a rational agent's intent is behind every effect. As such, the words "intent" and "effect" as used in the statute are practically synonymous. The Supreme Court of Nebraska followed this line of reasoning in a case involving the constitutionality of a sales below cost act which was similar to the Connecticut amendment.[19]

This line of reasoning seems to openly disregard the intention of the legislature and, perhaps, should be avoided. The better view would seem to be to declare the amendment unconstitutional. This would permit the court to clearly determine the problem and leave no question as to the meaning that would be given to the term "effect."

It is next noted that the original statute provided that "Evidence of *any* advertisement, [or] offer to sell . . . shall be prima facie evidence of intent to injure competitors . . . ," whereas, the amendment provides that "*repeated* advertisements, offers to sell or sales . . . shall be prima facie evidence of purpose of injuring a competitor. . . ." (Emphasis supplied.) In comparing these two provisions, it is apparent that the only change made was the substitution of the word "repeated" for the word "any." Since it was precisely this area of the former section which was declared unconstitutional in the *Mott* case, the obvious question presented is: does the substitution of the word "repeated" for the word "any" correct the constitutional defect? In the *Mott* case the court in dealing with the prima facie evidence problem stated that ". . . the fact which is specified to be prima facie evidence of the fact to be inferred or presumed must be a fact which in common experience leads naturally and logically to the fact inferred or presumed."[20] The court then held that "[t]he fact that an article is advertised for sale or sold at less than cost to the seller does not, in and of itself, produce, naturally and logically, a belief that the advertisement or sale is intended to injure competition, or destroy competition."[21] In concluding, the

[16] Mott's Super Mkts., Inc. v. Frassinelli, supra note 3, at 487, 172 A.2d at 384.
[17] Id. at 491, 172 A.2d at 386.
[18] 282 Fed. 54 (8th Cir. 1922).
[19] Hill v. Kusy, 150 Neb. 653, 35 N.W.2d 594 (1949).
[20] Mott's Super Mkts., Inc. v. Frassinelli, supra note 3, at 490, 172 A.2d at 385.
[21] Id. at 491, 172 A.2d at 386.

court stated that "To fall within the prohibition of the statute, the conduct must have been predominantly motivated by an intent to 'injure competitors' or 'destroy competition' as distinguished from an intent to attract immediate patronage to the store in the ordinary course of business."[22] In comparing the language of the amendment with the language just cited from the *Mott* opinion, it would appear that the prima facie provisions have not been sufficiently changed to correct the defect in the statute. It could be argued that the word "repeated" is by no means clear and for purposes of testing the statute could mean any number greater than "one." Assuming a retailer made two sales below his cost and the state was able to prove this, it is doubtful that the court would accept this as prima facie evidence of the seller's intent to injure competitors. According to the court, the fact that one article is sold at less than cost does not in and of itself produce naturally and logically a belief that the sale was intended to injure competition. Therefore, why would a sale of two or more articles produce the opposite result?

In conclusion, it is believed that the amendment, if tested by the Connecticut court, might well be declared unconstitutional as a violation of due process of law because: (1) it does not require intent as a necessary element; and (2) it shifts the burden of proof to the defendant and in essence removes the presumption of innocence by having the "prima facie evidence of purpose" clause.

Fair Trade

The Kansas legislature recently repealed the Kansas Fair Trade Law.[23] Thus, Kansas joins the ranks of the five other states which do not have fair trade provisions.[24] Although the remaining forty-four states do have fair trade laws,[25] recent developments, both economic and legal, have done much to emasculate their effectiveness. It will be the purpose of this note to briefly examine these developments in an attempt to determine the future of fair trade law.

A brief inquiry into the history of fair trade is necessary to have a foundation upon which to commence an examination of the more recent developments.

It has been said that the fair trade movement began shortly after the *Dr. Miles Medical Co. v. Park & Sons Co.*[26] decision was handed down by the United States Supreme Court.[27] The Court in *Dr. Miles* held that a system of contracts between manufacturers and wholesale and retail merchants by which the manufacturers attempt to control not merely the prices at which its agents may sell its products, but also the prices for all sales by all dealers at wholesale or retail whether purchasers or sub-purchasers, amounts to restraint of trade and is invalid both at common law, and, in so far as it affects interstate commerce, under the Sherman Antitrust Act. Two years after this

[22] Ibid.

[23] Kan. Laws 1963 ch. 291.

[24] 2 Trade Reg. Rep. ¶ 6017 (1963).

[25] Ibid.

[26] 220 U.S. 373 (1911).

[27] Herman, Fair Trade: Origins, Purposes and Competitive Effects, 27 Geo. Wash. L. Rev. 621, 625 (1959).

decision, the American Fair Trade League, an association of manufacturers of branded goods, was organized and attempted to secure federal legislation to sanction resale price maintenance contracts.[28] Although this group was active and several fair trade bills were introduced in Congress, no fair trade bill was enacted in this country until 1931.[29] In 1931, probably as a result of the general economic conditions of the country and attempts made to have the states instead of Congress enact fair trade legislation, the California legislature enacted the country's first fair trade act.[30] This initial act merely legalized resale price contracts, but in 1933 an additional provision was enacted rendering it unlawful for any person to resell a fair trade commodity below the fair trade price if such person had knowledge of the established resale price.[31] This latter provision has come to be known as the "nonsigner" provision.

Before discussing the legality of the fair trade acts, it is important to analyze the purposes of such acts.[32] The proponents of the acts urged that their enactment would help manufacturers, retailers, and consumers.

The manufacturers claimed that retailers were using brand-name items as "loss-leaders"; that is advertising a well-known product at a very low price to attract customers to the store. This, they claimed, caused other retailers to: (1) urge customers to buy another brand; (2) discontinue carrying the brand altogether; (3) request that the manufacturer sell them the brand for a lower cost. The manufacturers also contended that this resulted in a loss of prestige for the brand and hurt the manufacturers' goodwill since consumers were led to believe that the low price represented the product's real value.

The retailers argued that fair trade would aid them by preventing price wars which were extremely hard on small retailers who, because of slow turnover and high overhead, could not survive them. It was actually these small retailers, namely the National Association of Retail Druggists, who in 1931 were responsible for California's enacting the first fair trade act.[33]

The proponents further argued that fair trade acts would aid consumers by lowering the general price level. This, they claimed, would result from the curtailment of the use of "loss-leaders" which lowered the price of one product but, in order to make up for this loss, raised the prices of other products.

Whether the state legislatures actually believed fair trade would help manufacturers, retailers, and consumers, or whether they were pressured into enacting these laws because of strong lobbyists and a depression, is not at all clear. Judge Weiss in a recent opinion said:

> No small influence in propelling the fair trade movement is the

[28] Ibid.

[29] Ibid.

[30] 2 Trade Reg. Rep. ¶ 6017 (1963).

[31] Ibid.

[32] For the purposes of fair trade acts, see generally: Herman, supra note 27, at 628-44; Phillips and Duncan, Marketing, Principles and Methods 729-35 (3d ed. Irwin 1956).

[33] Wilcox, Public Policies Toward Business 412 (Irwin 1955).

> fact that it was spawned in the depths of the depression. All of us who were of mature age in that era recall that in many areas of the country, people had lost faith in the workings of our free enterprise, competitive economy. This climate of course proved fertile ground for a movement under the banner "Fair Trade"—with the obvious implication that those who opposed them were "unfair traders." A free pricing program was loosely characterized as being synonymous with "predatory price cutting," "cut throat competition," and "loss-leader selling,"—terms which easily lend themselves to emotionalism rather than logical analysis.[34]

On the other hand, proponents of the fair trade acts would undoubtedly claim that the laws were passed because of their genuine value to the economy. Regardless of the reasons for their passage, the fact remains clear that many were enacted.

In 1933, Oregon followed California's example and enacted the nation's second fair trade act.[35] In 1935 eight other states followed and by 1941 forty-five states had enacted fair trade acts.[36]

One of the biggest single factors in stimulating the fair trade movement was the Supreme Court decision in *Old Dearborn Distrib. Co. v. Seagram-Distillers Corp.*, decided in 1936.[37] In upholding the Illinois Fair Trade Act the Court reasoned that the manufacturer had made a substantial investment in advertising his brand and that the goodwill thus acquired was a species of property that belonged to him. When his goods were sold, the manufacturer parted with his product but not with his goodwill. When distributors cut his prices, they impaired the manufacturer's goodwill and thus damaged his property. As a result, the Court held that since the primary purpose of the Illinois Fair Trade Act was to protect property, namely the goodwill of the producer, it was a valid act. The Court in upholding the "non-signer" provision determined that there was not an unlawful delegation of power to private persons to control the disposition of the property of others and thus not a violation of due process. The Court reasoned that the distributor was deemed to have assented to the protective restriction of the fair trade law since he was at least presumptively aware of its provisions and voluntarily purchased a product which he knew carried a "fair trade" price.

Until 1937 fair trade laws permitted resale price maintenance only when both parties were in the same state. But when parties were in different states such contracts were held to violate federal antitrust laws.[38] Since the great bulk of branded goods was transported across state lines, it became necessary to amend the federal law if resale prices were to be maintained.[39] The Miller-Tydings Act was passed in 1937 and amended the Sherman

[34] Olin Mathieson Chem. Corp. v. White Cross Stores, Inc., Trade Reg. Rep. (1963 Trade Cas.) ¶ 7091, at 78,622 (Pa. Ct. of Cm. Pleas Sept. 18, 1963) (dictum).

[35] 2 Trade Reg. Rep. ¶6017 (1963).

[36] Ibid.

[37] 299 U.S. 183 (1936).

[38] Wilcox, op. cit. supra note 33, at 415.

[39] Ibid.

Antitrust Act to provide that interstate contracts fixing resale prices within those states where intrastate contracts had been legalized, were exempted from the antitrust provisions of the Sherman Act.[40]

This appeared to solve most problems facing fair trade advocates until 1951 when the Supreme Court decided *Schwegmann Bros. v. Calvert Distillers Corp.*[41] The Court held that the Miller-Tydings Act applied only to parties to the contract and not to non-signers. This decision brought on a rash of price wars and in one day brand name retail prices were cut as much as thirty percent.[42]

These price wars gave the proponents of fair trade acts an excellent illustration of the need for Congressional action resulting in the 1952 enactment of the McGuire-Keogh Fair Trade Enabling Act. This act amended Section 5 of the Federal Trade Commission Act and in short, reversed the *Schwegmann* case by extending the exemption of the Miller-Tydings Act to include the non-signer's clause.[43]

This brief history of the development of fair trade brings us to the present state of the law in this area. At the present time, of the forty-four states that have fair trade acts, four have been declared unconstitutional by the states' highest court and of the remaining forty, seventeen have had their "non-signer" provisions declared unconstitutional by the states' highest court.[44] Of the remaining group, one state's "non-signer" provision was declared unconstitutional by a lower court, nineteen states' "non-signer" provisions were held constitutional by the states' highest court and one by a lower court. The remaining states have not had the statute tested by a court.[45] Since 1950 there has been a trend by state courts to invalidate the fair trade laws on state constitutional grounds.

The "non-signer" provision of the Arkansas act was declared unconstitutional on the basis that it denied due process of law.[46] Colorado's "non-signer" provision was declared unconstitutional as a price fixing measure and constituted an unlawful delegation of power to a manufacturer or producer.[47] Florida's "non-signer" provisions were held unconstitutional because they constituted an invalid use of the police power of a state for private purposes rather than a public purpose.[48] Kentucky's "non-signer" provision was declared unconstitutional as a legislative invasion of the broad constitutional liberty of the people to acquire and protect their property.[49]

It is noted, however, that the industrial states, namely California, Illinois, Massachusetts, New York, Ohio, and Pennsylvania, all have fair

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40 Miller-Tydings Act, 50 Stat. 693 (1937), 15 U.S.C. § 1 (1958).

41 341 U.S. 384 (1951).

42 Wilcox, op. cit. supra note 33, at 416.

43 McGuire Fair Trade Act, 66 Stat. 631 (1952), 15 U.S.C. § 45(a)(3) (1958).

44 2 Trade Reg. Rep. ¶ 6041 (1963).

45 Ibid.

46 Union Carbide and Carbon Corp. v. White River Distrib's Inc., 224 Ark. 558, 275 S.W.2d 455 (1955).

47 Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

48 Miles Labs. Inc. v. Eckerd, 73 So. 2d 680 (Fla. 1954).

49 General Elec. Co. v. American Buyers Co-op., Inc., 416 S.W.2d 354 (Ky. 1958).

trade acts which have been upheld by those states' highest courts.[50] This seems to indicate that states which have a large urban population and primarily an industrial economy, regard fair trade acts as beneficial. It could be argued, at least, that these states with large cities would have a more competitive economy and would, as a result, need such legislation more than a rural agricultural state. This argument, however, would seem to be weakened in light of Judge Weiss' opinion in a recent Pennsylvania lower court case.[51] The judge upheld the constitutionality of the Pennsylvania Fair Trade Act. But, by use of extremely strong *dicta*, he attacked fair trade, claiming that it was a price fixing scheme which conflicted with federal antitrust laws and which denied consumers the benefit of price competition.

It is evident that this area of the law is far from settled and that no positive legal conclusions can be drawn. It was in this climate that the Kansas court in 1958, in deciding *Quality Oil Co. v. E. I. Dupont de Nemours and Co.*,[52] held the Kansas "non-signer" provisions unconstitutional as an unauthorized delegation of the legislature's power to private persons. The rest of the statute was declared free from constitutional objection. Three years later the legislature repealed the entire act.[53] It could be argued that the Kansas statute without the "non-signer" clause should have been left on the books. However, while the statute might be perfectly legal, it is questionable what value the provision would serve.

It is at this point that the economic aspects of the problem must be considered.

As a result of the fair trade acts, the manufacturer sets his prices in such a manner as not to affect the large department store or the small retailer too drastically. This action results in a general raising of the average price level since the large volume sellers would have to raise their prices.[54] Following such a general price raise, margins would be increased, but sales would drop and the marginal cost would become greater. At this point, large discounters could and would sell independent brands at low prices and would be able to attract customers. The retailers bound by the fair trade contracts would not be able to compete and would be required to either resign themselves to the fact of losing customers or meet competition by carrying independent brands.

The manufacturer, on the other hand, has a great deal to lose also, since his resistance to fair trade may result in his loss of those retailer's associations that back him. In addition, if he yields and sets prices, he may lose volume and thus leave himself open to competition from independents. Probably the most important reason for the failure of fair trade acts is the large rise in the number of the discount stores. During the last few years, these stores have become as common to the American way of life as baseball, and their existence completely emasculates the fair trade acts. For example,

[50] 2 Trade Reg. Rep. ¶ 6041 (1963).

[51] Olin Mathieson Chem. Corp. v. White Cross Stores, Inc., supra note 34, at 78,628 (dictum).

[52] 182 Kan. 488, 322 P.2d 731 (1958).

[53] Supra note 23.

[54] Wilcox, op. cit. supra note 33, at 421.

General Electric has spent a great deal of money hiring detectives to buy its products at discount houses. With this as evidence, the company brings court actions under the fair trade acts.[55] The result has been that General Electric has been awarded many judgments and the discount houses have paid many fines. The discount houses, however, go right back to selling at their original price claiming that the cost of the fines are much smaller than the value received from publicity of those suits which show them sacrificing themselves for the consumer.

The problem has really boiled down to fewer and fewer attempts by manufacturers to enforce fair trade provisions. As a result, the fair trade acts are of decreasing importance although still in effect in many jurisdictions.

It may be said in conclusion that:

(1) The legal validity of the fair trade acts is somewhat uncertain and the trend seems to indicate that they are being declared at least in part unconstitutional.

(2) Where the "non-signer" provision of the act has been declared unconstitutional it may be concluded that the act has become valueless since "non-signers" will be able to undersell those persons who are bound by the contract with the result that no merchant will bind himself for fear of losing customers.

(3) Even if the fair trade acts are found to be perfectly legal, must they not also be justified on an economic basis? In answering this question many economists feel these laws tend to destroy competition, breed inefficiency, raise prices, and cut down initiative.

BURTON M. HARRIS

[55] 33 Harv. Bus. Rev. 53, 61 (1955).