

Combines Investigation Act

I should like to deal now for a moment with the argument which recurred again and again in the proceedings of the joint parliamentary committee. We heard from witnesses and from several members of the official opposition that we should keep this committee in existence and superimpose, like Ossa upon Pelion, this inquiry upon that of the MacQuarrie committee which, in turn, was on top of the royal commission on prices of 1949. The argument was that it was all very well to have these professors and other academic individuals give their opinion, but what we needed were some good sound statistics showing, among other things, that the best comparison to make was the simple comparison of the retail margin on price-maintained articles with that on non-price-maintained articles. It was contended that if we could just get enough of that and take time enough we would get at the root of this problem.

I suggest that such a study would be largely meaningless. The retailer's margin is only one of a series of costs involved in moving goods from the factory to the consumer. Differences in these margins will depend upon a variety of factors such as trade custom, the extent of selling and advertising assistance, the age and reputation of the brands under consideration, the relative amount of consumer recognition and preference, and the volume of turnover. To give a proper weight to each of these factors before arriving at what could be realistically regarded as comparable marketing margins would be a hopelessly difficult task, and anyone who suggests otherwise has not scratched the surface of a consideration of this subject. It is a task, may I also say, that has been wisely avoided by serious and competent authorities upon resale price maintenance, who affirm that the only meaningful analysis of the effect of resale price maintenance on the price of an article would be to compare the price of the article under resale price maintenance with the price of the same article under similar conditions of sale when the price was determined by freely competitive forces. In other words, compare things that in all other respects are identical under conditions that are identical but which differ only in that in the one case they are exposed for sale under resale price maintenance and in the other case under free competition.

The difficulty of course in this country is that such comparative conditions are rarely met with; for the practice of resale price maintenance where it exists is so universal as to leave no islands where free competition can make itself felt on the prices of products

which in other parts of Canada are price maintained. Indeed we all face a difficulty—and I think the MacQuarrie committee, the joint committee and the government have faced it—in that there is in Canada a relative dearth of comparable material of this and other sorts. It was very significant that in my view much the best brief presented to the joint committee was that of Professor Fuller upon behalf of the pharmaceutical association of Canada, a very honest and competent job, if I may presume to say so, in spite of the fact that I do not agree with many of its conclusions. But Professor Fuller was under the necessity of admitting under cross-examination that no single fact or figure in his long brief was from Canadian sources. He was critical that the MacQuarrie committee and the government had not examined to a greater degree figures available in the United States which formed almost the entire foundation for all his reasoning, and he was critical that we had not examined figures available in Great Britain. That was a pure assumption on his part. There was no evidence at all that the MacQuarrie committee either did or did not examine these other figures, but in so far as any observations he might have made referred to the combines investigation department I should like to place upon record that we have examined the figures in the United States and we have examined figures and material in Great Britain. I will be referring to some of those figures before I complete my remarks.

Mr. Fleming: Will the minister permit a question? When he says "we" to whom does he refer?

Mr. Garson: I mean the combines investigation branch of the Department of Justice. To support my point I can cite what the proponents and the opponents of our legislation before the committee praised as a very competent report. The British Lloyd Jacob committee investigating this problem in 1949 concluded that it was futile to attempt to compare margins on price-maintained lines with those on free price lines. Their report emphasized that much smaller sales effort was required from the retailer to sell the branded price-maintained product than to sell the non-branded free price product. At page 14 of their report they said, "There is therefore no comparison between the two classes of trade." Yet some hon. members opposite were anxious that we should sit at least until next spring and perhaps until next fall to gather all this evidence that in the opinion of the British Lloyd Jacob committee was largely meaningless.