

Combines Investigation Act

matters of opinion. But what is to let suspected offenders off in the minister's proposals? It is "reasonable cause to believe". If a private individual has reasonable cause to believe, he can take against some businessman punitive action which may put him out of business and that will be perfectly legal under the minister's amendment. If that is the case, we think it preferable, or to put it the other way, it is less objectionable to proceed in this way and make the best attempt we can make—and we do not think it is such a bad attempt after all—to define a loss leader. Of course, the extraordinary thing is that, although the minister says it is impossible to define "loss leader" he nevertheless uses the word "loss leader" in the legislation, in line 47 on page 8 of the bill as it was given second reading, the bill that is before us without the amendments printed in it:

(a) that the other person was making a practice of using articles supplied by the person charged as loss leaders,—

In other words, the courts are to decide without any guidance that someone believed or had cause to believe that loss leaders were in use and as a result some person might be denied supplies by private action.

Mr. Fulton: Might I just interrupt at that point?

Mr. Pickersgill: Yes.

Mr. Fulton: I think my hon. friend has missed the point. I said we did not think it was possible to define "loss leader" with sufficient clarity and precision so as to make it proper to make it a criminal offence.

Mr. Pickersgill: I quite agree.

Mr. Fulton: We have defined "loss leader" here. We have not left the court without guidance. However, it is not made a criminal offence.

Mr. Pickersgill: The minister is quite right. The situation is exactly as he says. This parliament in 1951, over violent objection from the minister and his colleagues when they were over here on this side of the chamber, made resale price maintenance a crime. Now by a vague "cause to believe" clause the minister is saying that you can get out of guilt for this crime if you have cause to believe something or other happened that he does not think can be defined as a crime, although it may be defined in some other way. In other words, what this legislation does is this, and it seems to me that the minister's intervention helped my argument because it indicated quite clearly that the minister really is intending to do precisely what we have said all along he was

intending to do, namely to provide an escape hatch for resale price maintenance and to make this crime no longer a crime in any practical sense. As I say, if this is really what the minister has in mind, may I suggest that the minister is still thinking along lines that are not much different from those along which he was thinking in 1951. I have been looking through this interesting volume of the debates of the House of Commons for the second session of 1951. On December 28, as reported at page 2450, in the debate on the bill to ban resale price maintenance, the minister said this:

There is, however, ample evidence to the effect that the small retailer will be hurt if the practice of resale price maintenance is eliminated. In the light of that evidence, we are left with the question, why is the government in such a hurry to hurt the small retailer?

I draw attention to these words. The opposition were complaining bitterly because this legislation was being put through by the government at that time.

Why are they in such a hurry to remove the only protection—

And I would ask you to bear those words in mind, Mr. Chairman.

—which the small retailer has against the power of the big interests, the monopolies and the large chain stores, and leave him at the mercy of cut-throat competition? No satisfactory answer to that question has yet been given; yet the Prime Minister, in taking part in this debate yesterday, said that the government was not willing to leave this matter over for any further or fuller investigation; that they were going to remove the protection from the small retailer and leave him to stand on his own feet. It is a callous, ill-considered and ill-advised course to follow, with much harm to be done to independent Canadian business.

If, in fact, what the minister said about resale price maintenance eight and a half years ago was justified—and I do not think for a minute that it was justified—it is hard to see why the minister has been three years in office without doing anything about it; and why now, after three years in office, he is refusing to do what he wanted the government of that day to do, namely to take direct action to deal with this problem of loss leaders but instead is trying to deal with it by a device which we believe will only have the effect of undermining that legislation and of making it virtually inoperative. Why is he seeking to do that?

We say that rather than let that happen it would be better for the government to do what the Minister of Finance, the Prime Minister and the Minister of Justice himself said should be done when they were sitting on this side of the house. They said that if resale price maintenance was to be banned there should be legislation to prevent loss leader selling. But obviously all this legislation is going to do is to allow a private law