

*Combines Investigation Act*

price maintenance and fair trade laws you just naturally follow certain channels of thought. I do not think they could be expressed more lucidly than this gentleman has expressed them in this extremely interesting booklet.

When you start to consider fair trade laws, you are confronted with the difficulty of making laws which can be enforced. I feel that it would be preferable if we were not faced with the necessity of making fair trade laws. We would not be faced with the necessity if it were not evident that the government intends to put through this legislation abolishing resale price maintenance. If that legislation goes through, we feel that we must heed the advice of one of the witnesses who appeared before the committee when he pleaded with the committee not to throw out the baby with the bath water. We must consider what is the next step if this legislation is to go through against all the protests of the people in this house and in the country. If the government is determined to put it through, what then must we do to protect our economy?

In the system which has been followed in this country, we have at the present time, in my opinion, the best basis for fair trading and the best protection against loss leadering. We are now faced with the possibility that that system is going to be declared illegal. Therefore, when it becomes illegal we must proceed to build up other laws to take the place of the natural process under which we have operated for some time.

I have been interested in the evidence given before the subcommittee on study of monopoly power of the committee on the judiciary of the House of Representatives in the United States. On page 20 of serial No. 1, part 5, evidence is given by Stephen J. Spingarn, the federal trade commissioner. He was speaking on the difficulty experienced in registering convictions. He was speaking after a case had gone to the supreme court, I believe the case of the Standard Oil Company *v.* the Federal Trade Commission, in January of this year. He said:

Now, the issue in that case was whether when the federal trade commission brings charges of unlawful price discrimination, and further makes a showing that those price discriminations have resulted or will probably result or may even certainly result or may in fact have already resulted in substantial injury, serious injury, to competition or even destruction of competition, that it is nevertheless a complete defence to those charges for the seller to make a showing that he was meeting competition in good faith.

That paragraph alone, Mr. Speaker, shows how a simple thing can be used as a defence to a very serious charge. There is some further discussion, all of which I do not

[Mrs. Fairclough.]

propose to read, but Mr. Spingarn finally says that prosecution can really be successful only after it has been proved that the monopoly has actually been created. Then he goes on to say:

You would be locking the barn after the horse was stolen.

That is precisely one of the things that we fear. We fear that by the time legislation is worked out for the protection of business people in this country the horse will already have been stolen; that they will have faced economic disaster, have been defeated, and you cannot build up what has once been torn down.

There has been quite a bit of comment about section 498A of the Criminal Code, and the fact that it provides the means whereby businessmen can be protected. The section which is most frequently quoted sets out that penalties may be levied against any person or corporation who—and this is the part that I should like to quote:

(a) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

I believe this section has been in the act since 1927. I think I am correct in saying that never has any charge been laid under it. If the enforcement of that section could protect those who have suffered by reason of discriminatory practices, then why has it not been enforced before now? Cases have been brought before the courts under which certain corporations have been convicted and have been dealt with under the Combines Investigation Act, but at no time has any charge ever been laid under this section. I do not wish to express an opinion myself, because I am not a lawyer, I am not learned in the ways of the courts; but I know that among business people there has been comment to the effect that some of these investigations might well have produced circumstances in which charges could have been laid under this section.

It has become increasingly apparent that it is impossible to write laws which can be enforced against loss leaders. The most effective means heretofore, as I said before, has been the practice which is now followed, namely, the establishment of a reasonable resale price which protects the consumer and the merchant alike. If we wipe that out and we proceed to introduce, let us say, something in the nature of fair trade laws, we will go right back to the old system which