

Combines Investigation Act

as loss leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;

My hon. friends have recognized by their amendment now before the committee that they also agree that the practice of loss leading is an undesirable and damaging practice. It is not open to them, therefore, to say that it is unreasonable for a supplier to discontinue supplies if the person supplied is using those articles for loss leading. We are on common ground there. My hon. friends must agree that it is quite appropriate for the supplier to discontinue supplies under those circumstances.

Mr. McIlraith: Surely the minister would agree that the amendment offered by the Leader of the Opposition provides that the courts should enforce a penalty on a person who practices loss leading, whereas the amendment with which he is dealing enables the supplier to enforce the penalty against that person.

Mr. Fulton: Not at all. I shall come to that matter when we relate this back to what happens when an inquiry is launched on the basis of a complaint that resale price maintenance has been indulged in. But the point I am making here is that my hon. friends, by their amendment, agree that this loss leading is an undesirable practice and should be eliminated. If they agree with that suggestion then they cannot say that it is unreasonable for us to provide for the discontinuance of supplies because of this practice of loss leading.

Mr. Pickersgill: What a *non sequitur*.

Mr. Fulton: My hon. friend says "What a *non sequitur*". The only inference to be drawn from that remark is that they were not sincere when they introduced their amendment which says that a company which engages in the practice of loss leading, as they defined it, is committing a criminal offence.

Mr. Pickersgill: I wonder whether the minister would permit a question?

Mr. Fulton: Yes.

Mr. Pickersgill: Does the minister really think that every practice that he considers undesirable should be made illegal?

Mr. Fulton: No, indeed. That is precisely my objection to the amendment of the Leader of the Opposition. This happens to be one practice that I consider undesirable, but I recognize that it cannot define with sufficient preciseness in order for one to be warranted in trying to make it a criminal offence.

[Mr. Fulton.]

The next ground upon which we say that a supplier would be entitled to discontinue supplying is when the person supplied was making a practice of using the article supplied not for the purpose of selling such articles at a profit but for the purpose of attracting customers to his store in the hope of selling him other articles. Is there anything unreasonable about that? If a supplier finds that the person supplied is using the goods supplied not to promote the sale of those goods but as a come-on device in order to get people into his store for the purpose of selling them other articles which is damaging the trade of other merchants who are trying to sell his goods, is there anything unreasonable or improper about the supplier discontinuing the supply of those articles to the offending merchant? I hear no voice raised in opposition or contrary assertion. I, of course, am satisfied that no one could hold that it is an unreasonable thing to make it clear that a supplier has the right to discontinue his supplies under those circumstances.

The third circumstance under which it is made clear that supplies may be withheld is that the person supplied was making a practice of engaging in misleading advertising in respect of the articles supplied by the person charged. Will anyone argue that it is unreasonable or improper to make it clear that a supplier can discontinue supplying if the person supplied was using the articles in question as a subject of misleading advertising in an unethical way or engaged in unethical and dishonest practices with respect to the goods supplied. Therefore we say that there should be no question but that the supplier would be right to discontinue supplying there.

The fourth circumstance in which it is made clear that a supplier has a right to discontinue supplying is when the other person made a practice of not providing the level of servicing that purchasers of such articles might reasonably expect from the merchant in question. The circumstance here is not that the person selling articles did not provide a level of servicing required by the manufacturer. That would not be a valid ground for discontinuing supplies. The circumstance justifying withdrawal of supplies is that the merchant made a practice of not providing the level of servicing that purchasers from him might reasonably expect him to supply. This is directed at another dishonest device wherein merchants hold out that they are sellers of goods with respect to which purchasers normally expect a certain level of services and do not make it clear that their low prices are on the basis that