

Combines Investigation Act

One could make similar points on every one of these purported exceptions which, if established, would render a merchant safe from a conviction of having been guilty of loss leader selling. They are all matters of opinion, and in that sense I question very seriously whether it is fair to attempt to create a new definition of a practice with the certainty that anyone convicted of that practice is going to be found guilty of a criminal offence, an offence punishable on summary conviction. The whole thing is in the area of opinion. There are no criteria which are capable of being reduced to legal language by which you could measure the definition of loss leader.

I have come to the conclusion, as have the experts who have worked in this field before including the MacQuarrie committee, that it is not a subject which is capable of precise definition of a nature which would make it a proper matter for enactment in criminal legislation. It is not capable of that kind of definition which would warrant one in making it a crime. It is because we came to that conclusion, that there was really the greatest difficulty in the way of defining loss leader so as to make it a crime, that we were forced into the position of coming at it by this inverse approach which is contained in our amendment to section 34.

We are not making anyone guilty of a crime under this, nor are we restoring the practice of resale price maintenance. We simply say that if a supplier discontinues the supply, for any of the reasons outlined in the section, then if that is his reason he is not, on that ground alone, to be found guilty of the other crime which was created by the former government, namely that of resale price maintenance. We have not, therefore, created any crime because we are recognizing that in this field it is not possible to create such a precise definition that it would be appropriate to make the conduct complained of a criminal offence.

Now it does seem to me, finally, that what is done by this amendment really falls not so much within the realm of criminal law as it does within the realm of an attempt to regulate trade and business. This is exactly what it is. I have always felt that it is not proper for parliament to make detailed regulations with respect to looking into a merchant's stock to see whether he was overstocked or whether he had broken lines or whether it was a real end of season clearance, and so on, or a perishable article. I have always felt that kind of intrusion into the detailed running of an individual's business is not good criminal law. While I appreciate the intent or motive with which

this amendment has been designed, I must conclude with my customary modesty that it does not prevent any better definition of the loss leader practice than do any of those which we have had under consideration from time to time. We felt that none of those were proper matters to present to parliament. I have come to the conclusion that this is not an acceptable amendment. Under the circumstances I have outlined, we believe that our approach is the only feasible one by means of which the interests of the small merchant can effectively be protected.

Mr. Pickersgill: The minister complained or, if he does not like the word "complain", may I say that the minister observed that this amendment was brought in at the last moment when there might have been an opportunity for bringing it in in the committee. I have not looked up the matter, but I am sure the minister will recall that there was one occasion in the committee when we felt we had good ground to complain because the elections act was under consideration here in this place, when the hon. member for Kenora-Rainy River pointed out in committee that it was going to be simply impossible for us to put forward all the views we wished to put forward in that committee because we were constantly having to appear in the house when we wanted to be in the committee. He served notice on the committee and on the minister at that time that precisely this sort of thing was bound to happen because of the way in which this matter was being proceeded with.

But that is not the reason why this amendment was not brought forward in the committee. The reason this amendment was not brought forward in the committee was that we were concerned to get rid of this, as we think, iniquitous legislation altogether. Until further study is made of this problem and until a thoroughly satisfactory way of dealing with this loss leader problem—and I admitted this problem—can be found, we think the best course would be to leave section 34 alone. But since the government is going to persist in trying to make private law, we felt it was our duty as legislators to accept the facts, as the Leader of the Opposition said, or to accept the realistic situation in which we find ourselves and to do our utmost in order to see that if an attempt is going to be made to deal with this problem of loss leaders it should be dealt with positively and directly by public law enforced in the courts and not enforced by the private ukases of manufacturers.

The minister talks about some of the things in my leader's amendment as being