

competitors would seem to be valid notwithstanding the provisions of subsection (1). The sole test of criminality is, has a trader carrying on business in competition with other traders given more favourable terms to a purchaser than he has accorded to the competitors of the purchaser. A trader making a sale on particular terms may, therefore, commit a crime, whereas his competitor making the same sale would not. It is difficult to express an opinion on the question whether the court will hold that legislation which takes the form of criminal law is colourable and is in substance an invasion of the provincial field. All I can say is that in my opinion the subsection is of very doubtful validity, and I incline to the view it is invalid.

Subsections (2) and (3)—

Mr. RALSTON: That is the opinion of Mr. Tilley?

Mr. GUTHRIE: Yes.

Mr. RALSTON: He has mentioned subsections (2) and (3). I suppose he means (b) and (c).

Mr. GUTHRIE: He calls them subsections (2) and (3).

Mr. MACKENZIE (Vancouver): He has done so two or three times in his opinion.

Mr. GUTHRIE: He must mean the lettering. He continues:

Subsections (2) and (3) prohibit engaging in policies of selling at lower prices in a particular area—

Mr. RALSTON: That is (b) and (c).

Mr. GUTHRIE: (reading)—

—in a particular area than elsewhere for the purpose of destroying competition or eliminating a competitor and selling at unreasonably low prices for a similar purpose. I think the court would hold that parliament genuinely determined that the commercial activities described in these subsections were to be suppressed in the public interest and would maintain the validity of the subsections. I am of opinion that the court would treat these subsections as separable. If the provisions of section 6 were embodied in three sections, they would clearly be separable and I can see no reason for making a distinction because they are in subsections. While the second and third subsections might not as between themselves be separable, they are I think separable from the first subsection.

I am sorry that I did not bring Mr. Geoffrion's opinion; I brought two of Mr. Tilley's, but Mr. Geoffrion's opinion is to the same effect. He also casts doubt on the same portions of these sections. I point out that neither of these learned counsel gives an opinion that the sections are invalid but at most that they are doubtful.

Mr. RALSTON: The law officers of the crown I understand give the opinion that this section 5 is invalid.

Mr. GUTHRIE: Yes, that is the opinion of the law officers of the crown.

Mr. JACOBS: Mr. Chairman, I have been in this house for twenty sessions and this is one of the most extraordinary statements that I have heard made by the Minister of Justice who is piloting a bill through and inviting the house to pass it. He has no confidence in it himself. I can see that, and apparently the gentlemen who were asked to give him advice have about the same confidence as the minister has.

Mr. MACKENZIE (Vancouver): It is a mockery of parliament.

Mr. JACOBS: Now is it right for the minister to invite members of the house to pass this legislation when we are told on the face of it that it practically is worthless? I cannot understand the attitude of the government at all. I remember the Prime Minister making the statement earlier in the session that the recommendations of the price spreads commission, when they finally made their report, would be backed up by legislative enactment but he presupposed, I am sure, that it would be within the jurisdiction of parliament to enact the legislation. Surely the Minister of Justice when he presents this bill as he does, with a black eye cannot expect us to pass it. It would be an affront to parliament to ask us to do this thing in the face of the opinions expressed by these learned counsel, by the Minister of Justice himself and by the law officers of the crown. I think the Minister of Justice would be well advised to ask the permission of the committee to withdraw this bill.

Mr. GUTHRIE: No, Mr. Chairman, I will not ask the permission of the committee to withdraw it at the present time. As I stated when the bill was originally presented to the house, it was drawn with the intention of complying as far as we possibly could with the recommendations of the price spreads commission. Had the opinions that we have obtained been definite opinions removing any doubt on the question that these clauses were invalid or ultra vires I would agree with my hon. friend. We have a report from a commission definitely recommending certain amendments to the criminal code, and rudely to brush them aside without presenting them to parliament would not be I think proper action on the part of myself or of the government. But as they are of only doubtful validity I thought I would submit them and have them discussed by this house and I stated so originally when I introduced the bill.