

Combines Investigation Act

by Mr. Hannam of the Canadian Federation of Agriculture and also by Professor Cohen. So that we have not indicated a determination to insist on any course when it has been shown that it should be modified.

Mr. McIlraith: I wonder whether the minister would permit a question before he leaves the second point raised by Professor Cohen?

Mr. Fulton: Yes.

Mr. McIlraith: The minister has summarized it as if Professor Cohen had made his criticism on the ground that the government was going too far. Does he not think that the words "there is a misconceived approach" mean something different from going too far? I apprehend that the meaning is different.

Mr. Fulton: I think Professor Cohen felt we had been carried too far in our concern and in our efforts to deal with the problem of loss leaders. I think that is very close to saying that we have misconceived the nature of the loss leader danger. His next criticism by way of summary was that he felt it was undesirable to resort to the Exchequer Court of Canada. It seems to me, sir, that here you have a complete exposé of the ridiculous nature of some of the reactions of my hon. friends opposite to the bill and the ridiculous basis upon which they have carried on the discussion. Here we have done nothing other than provide an alternative forum. We have not made it impossible to take people into the trial courts where prosecution and conviction is the proper course. We have simply provided an alternative forum which may be available to be used in appropriate cases.

My hon. friends have attacked this as though it were going to be the death knell of combines law in Canada. Their strictures on the proposal to use the exchequer court as an alternative forum are made, to use Professor Cohen's words, on an entirely misconceived basis as to the nature and effect of that amendment. Indeed, it is interesting to recall some of the discussion that took place in the committee just after it had risen at one point. Professor Cohen put it on the record at the next meeting. After he had made his strictures on the exchequer court procedure which, you will remember, were echoed by others on the basis that this was opening the door through which every big business would rush with the greatest of zeal to get into the exchequer court, one of the very experienced counsel in these matters pointed out that if the consent of the parties were necessary to get into the exchequer court, then in his view business would be more than eight to one against going to the

[Mr. Fulton.]

exchequer court. It is, therefore, certainly arguable that we have provided an alternative forum in which the attitude of the court and its dealings with business will be equally harsh, and possibly more adverse than if we only went to the trial court.

This is not my view. Personally, my view is simply that there are types of cases in which it is appropriate to go to the exchequer court and where that is the situation then, with the consent of the parties, we can take those cases to the exchequer court. In other types of cases, it is obvious the appropriate course is prosecution and conviction takes place in the trial courts, and in those cases that will be the course to be followed. It is for that reason that it is absurd to deal with this question of alternative procedure as though it were introducing some fundamental and fatal weakness into the combines legislation.

Then, Professor Cohen's last criticism in his summary was with respect to the new provisions making it compulsory, in cases where promotional allowances are offered, to grant them on a proportionate basis to all competing purchasers from the person allowing them. But at page 559 of the committee evidence, Professor Cohen dealing with this particular section said:

I have, as I say, no strong views. I think it has an intrinsic fairness about it.

Now, is that not a terrible criticism? He goes on to say:

I think it is going to be difficult to administer, and I think some of the results will be disappointing.

What then is this balance sheet as given by Professor Cohen, an authority much relied upon by my hon. friends opposite? He finds four points on which he strongly supports the bill and four points on which he criticizes the bill. The interesting thing about his criticism is that in one case he is not really criticizing us for the things that are in the bill, he is criticizing us because he feels we should have had an earlier and greater study, and should have introduced a legislative project making substantial revisions in the merger field which we have refrained from doing.

I think the best contribution I can make to the debate is this attempt to get the discussion into balance. I would remind the committee that an impartial review of the things that have been said about this legislation in the banking and commerce committee, and an impartial review of what is in the legislation itself, will indicate that there are areas in which there is difference of opinion. There always will be areas in which there are differences of opinion in legislation of this kind. Much of the criticism we receive, referring