

*Combines Investigation Act*

**Mr. Fulton:** Mr. Chairman, I think my first comment must be that in a matter of this importance, relating to a portion of the act on which my hon. friends have indicated in the past they are most concerned and with respect to which they have made their most vehement criticisms, it is unfortunate that an amendment of this type comes at this time when there was an opportunity given by the reference of this bill to the standing committee for detailed suggestions of this type to be discussed in an atmosphere and in a place where discussion would have been useful. The committee of the whole would not then have been confronted with the immediate necessity of taking a decision. I must say that I find it remarkable that we have been confronted with amendment after amendment at this stage which was not suggested in committee. I have refrained from commenting before because the circumstances were not as remarkable as these circumstances.

We have an amendment here which deals with a section of the legislation about which my hon. friends have in the past expressed the greatest concern. One would have thought that they would have found it appropriate to make such a specific suggestion as this in the banking and commerce committee. However, that was not done and I am not going to protest about the fact it is actually done here. My hon. friends are quite within their rights, whether or not it had been done in the other place, to move the amendment here and I merely draw attention to the fact that it was not done there.

We are, however, confronted with an amendment which would have a very far-reaching effect, and it is my responsibility to indicate, on short notice it is true, what my position is with regard to the amendment.

**Mr. Pickersgill:** Will the minister permit a question? Would the minister rather go on to the other sections of the act and come back to this after having had a little time to reflect upon it? This course would be quite agreeable to us.

**Mr. Fulton:** No, I do not believe it is necessary because I feel this amendment is so far-reaching that it has the effect of destroying the content of the legislation. I do not feel, really, that I have much difficulty in making up my mind with respect to the desirability of defining loss leaders. I am in entire agreement that that might be a desirable thing to do. I would suggest that those who have made a study of it so far have suggested it is a difficult, if not impossible, task to find the kind of definition which you would put into a statute making it a criminal offence to indulge in a practice such as this.

It is extraordinarily difficult to define this practice and there is a danger that whatever words you use you may be embracing a practice which, on reflection, you would wish you had not covered at all.

My first comment is that what this amendment seeks to do is to wipe out the legislation which has been before the house on second reading, which has been before the banking and commerce committee for a month, and totally eliminate the proposed amendment to section 34, and substitute for that a provision merely defining "loss leader".

Then, when you come to considering that amendment itself, the definition of loss leader, I find it would be very difficult to accept. It makes the sweeping assertion that a loss leader is confined to the practice of selling an article at a price below the cost of acquisition. It makes this an offence punishable on summary conviction. It is true the amendment goes on to set out what are not offences, and incidentally the form of words used is just as objectionable as the form of words we had in the draft bill of last year which came in for such criticism. However, it is not on that point really that my concern would rest because I was never in agreement with all the strictures that were heaped on us for having used this form of words last year.

What I would be concerned about would be subparagraph (b) of this amendment which provides that it is not an offence if the sales complained of occur in the course of end of the season clearance or sales of broken lines or sales of over-stocked articles or sales of perishable articles or in other similar cases when the purpose is primarily to dispose of the articles. I have very grave doubt as to whether this is valid criminal or quasi-criminal law. Who is to say what is the end of season clearance? That is not defined. Who is to say what is a broken line? How are you to establish that it was definitely a broken line or one that the person selling it merely wished to discontinue? Who is to define what is an over-stocked article? There may be many different impressions of what is an over-stocked article. We must remember that in order to avoid a conviction for a sale which he might not have regarded as a loss leader at all but genuinely the sale of an over-stocked article a merchant would have to establish that it was an over-stocked article. There is no criterion by which that may be established, so he may be convicted although he may have had a genuine apprehension that he was over-stocked. If the court comes to the opposite conclusion, then the court convicts him if he sells the article below the cost of acquisition.