

Combines Investigation Act

Mr. Crestohl: Could the minister give a practical example?

Mr. Fulton: I would say if a person felt they were going to get a bargain at about one third of the ordinary retail price and found they were only getting it at five cents less than the ordinary retail price that would be misleading them in a material fashion. But if it was merely said that there was a saving and the saving was five cents I think it would be questionable whether that was a material misrepresentation. To clarify, if somebody merely said there was a saving and if the person forms his own conclusion on that basis that there was a material saving, whereas the saving was only five cents, he would not have been materially misled because there was a saving.

Mr. Howard: If that is the intent of the word, would it not follow that the section is perhaps phrased somewhat incorrectly and would lead someone to form another conclusion? Here is the misleading representation to the public that is qualified as being material and the minister has just said that the effect upon the public from the point of view of being material is the connotation rather than the misleading representation being material. I wonder whether a readjustment of the words would not make it more clear.

Mr. Fulton: I think that this section compared, for instance, with section 303 of the Criminal Code, which deals with false pretences, makes it clear in what sense and with what effect the word is used, and it must be that the misrepresentation has a material effect.

Mr. Howard: Does the section of the Criminal Code to which the minister has referred have the same relationship between words as this one?

Mr. Fulton: No, in a sense this was an attempt to find a word which would be consistent with the general provision of the Criminal Code regarding false pretences. We did not want to go into the long provision of the Criminal Code which outlines what false pretences means. We felt that in this context the use of the word "materially" would convey to the courts the same import as is contained in the section dealing with false pretences in the Criminal Code.

The Deputy Chairman: Shall section 33C carry? Carried.

Clause agreed to.

On clause 14—*Defences*.

Mr. Pearson: Mr. Chairman, this, of course, is a very important clause in the amendments. It deals with resale price maintenance

[Mr. Fulton.]

and concerns also the practice of loss leaders as well as other business practices. On second reading and in the committee we explained at some length our objection to this clause. We noted that section 34 of the act prohibiting resale price maintenance was maintained. Perhaps that is a little surprising in view of the stand taken by my hon. friends opposite in the 1951 discussion of this subject. However, although it is retained, we feel that this particular clause, which amends section 34 of the act, would result in resale price maintenance coming in again through the back door by a system of private law enforced privately with private sanctions and really establishing a form of private resale price maintenance. When I was discussing this matter on second reading, Mr. Chairman, I had this to say, as found on page 4354 of *Hansard*:

If the government feels that some of the practices it is asking the manufacturer to prevent, asking the supplier to prevent, are really undesirable from the point of view of the public interest, then surely the only fair and honourable course of action to take is to make those practices illegal and let the courts decide when an offence has been committed. A system of private law, even if it is to be governed under the supervision of the courts, is not acceptable.

So far as we are concerned, it remains unacceptable. I appreciate, of course, the difficulty of legislating against loss leaders. The report of the MacQuarrie commission had a good deal to say about these difficulties and the report I have in my hand, the 1955 report of the restrictive trade practices commission, containing some 260 pages, is devoted to a large extent to explaining the undesirable results of loss leaders but also to explaining the difficulty in legislating against them. However, it seems to us that if the government is determined to have a section of this type in the act, if it is determined to amend the act in this way, it would be much preferable to have the section deal directly with loss leaders and include in it as effective a provision as can be made to make this practice illegal. I am not going to repeat all the arguments that were advanced in the committee and on second reading with respect to this subject. I will content myself at this stage by moving:

That all the words after "(5)" in line 39 of clause 14 be deleted and the following substituted therefor:

"(a) Every one who makes a practice of selling an article at a price below his cost of acquisition is guilty of an offence punishable on summary conviction.

(b) It is not an offence under paragraph (a) of this subsection to sell below the price mentioned therein in the case of end of season clearances, sales of broken lines, sales of an overstocked article, sales of a perishable article and in other similar cases where the purpose is also primarily to dispose of the article."