

*Combines Investigation Act*

This section was formerly section 412 of the Criminal Code and so far as we were able to determine no cases whatsoever had been instituted under this particular price discrimination section. Substantially what section 412 of the Criminal Code and this proposed 33A purport to do it to prevent one person from discriminating against a purchaser of his article by selling it at a lower price to one person than to another. Put in an uncomplicated way that is what it means. As I say, the intent of the words and the ideas behind them perhaps have more validity and sound pleasant. In my opinion there are two words in subparagraph (a), namely "and quantity" which permit price discrimination to be practised, and yet do not fall within the prohibition of this particular section. It reads:

Every one engaged in a business who

(a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to such purchaser, is available to such competitors in respect of a sale of articles of like quality and quantity.

This, of course, indicates that if a person allows a 10 per cent discount to one purchaser, then for the like quality and quantity of articles sold he must allow a 10 per cent discount to any other purchaser. If he gives a rebate to one of the dealers to whom he supplies articles, then for like quality and quantity he must allow the same rebate to another purchaser or to a competitor of the person who made the first purchase. These prohibitions are to ensure that manufacturers, wholesalers or distributors cannot and should not be allowed to pick and choose among retailers who sell their products and give one a price advantage over another in order that the one person will be driven out of business to the advantage of the one who is the favourite of the wholesaler or manufacturer.

I submit, though, that the words "and quantity" in paragraph (a) are the salient words in the case of a person who wants to engage in price discrimination. If the quantity of the product in the sale is different, it is very easy for a person to discriminate with respect to rebates, discounts, allowances or price concessions. The matter hinges on the different quantity of articles sold and thus there can be discrimination and the section can be evaded.

There is a similar provision in the United States law which was enacted about the same time as our statute but there is a difference in the United States law compared with ours. The United States law is commonly referred

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to as the Robinson-Patman act or amendment and it is found on page 75 of a book entitled, "Anti-Trust Laws and Amendments, 1890-1959", which is published by the United States government printing office. It contains the Sherman act, the Clayton act, the federal trade commission act and amendments, the export trade act and so on which compare with our Combines Investigation Act.

There is one section in their price discrimination law which I think should commend itself for consideration by the committee. I will not read the entire section because it is rather lengthy. Substantially it is the same as that part of our section 412 which I have just read and which will now be 33A. It provides that price discrimination shall not be engaged in and then it goes on to say:

Provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purposes sold or delivered.

The United States law provides that you shall not discriminate between competitors by way of price concessions, rebates, discounts or by giving any other advantage but it also says that if there has been a saving in cost in producing a different quantity of the article there can be discrimination through reflection of that saving in cost in the selling price to the individual.

For argument's sake, and I think this is quite correct, if a manufacturer has an order for the production of 100,000 articles he can produce them at a lower cost per unit than he can produce 5,000 articles of the same type. Normally that is so as far as distribution and packaging are concerned. A larger quantity of goods packaged and distributed results in a lower unit cost for packaging and distribution than for a small quantity.

The Robinson-Patman act of the United States says—I think it is called the cost justification factor—that under such circumstances you can reflect the saving in the cost of manufacture, production or distribution in the price at which you sell this quantity of goods. The saving you make in producing a larger quantity of goods can be reflected in the price at which you sell those goods. The United States law is to that extent different from our law.

We inquired about this matter in the committee when the minister and Mr. MacDonald, the director of investigation and research, were there as witnesses. As found on page 709 of the proceedings of the committee, No. 12, there is some discussion of this matter. Perhaps I should read it in its entirety to show what I am getting at. I hope