

Combines Investigation Act

"Where, in a prosecution under this section, it is proved that the person charged refused or counselled the refusal to sell or supply an article to any other person, no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court that he and any one upon whose report he depended...Not only he; but, any one upon whose report he depended."

—had reasonable cause to believe and did believe. Just think of that as a defence! Think of the number of letters that might be written to a manufacturer by an aggrieved retail competitor, by someone who is angry or annoyed because he simply is losing out and claims that disparagement is involved, and who claims that things are being sold at less than a profit. And then the vendor says, "I am going to cut you off." He cannot cut them off now, under 34.

At page 561 Mr. Cohen stated:

I come now to my last point. That is a very interesting and novel idea which comes to us, for the first time, in this country—namely that there should be an option, if all the accused agree, except in one case, to go to the Exchequer Court of Canada for these proceedings under this act...

I do not say for one moment that persons as able as the President of the Exchequer Court of Canada—who once taught me evidence, for whom I have a great fondness, are not judges of the highest rank. I am not speaking at all *ad hominem*. I am sure that every member of the exchequer court would approach this act with as much objectivity, fairness, detachment and skill as they would approach any other piece of legislation. I merely suggest that the atmosphere of the tribunal is an atmosphere which may affect the approach to the kind of problems before them. The atmosphere of that tribunal is partially determined by its major preoccupation, in areas where such matters as restrictions on trade are legal. It is a tribunal without the usual attributes of criminal jurisdiction. It thinks of punishment in terms of other standards, but not in terms of the criminal law and imprisonment. It is accustomed to non-imprisonment sanctions, but not imprisonment sanctions.

I could quote at great length from the remarks of Mr. Cohen who was one of the clearest witnesses to appear before the committee. I think we may discuss these matters further when we come to the specific clauses of the bill.

I turn now to the minutes and proceedings of the committee on banking and commerce, No. 10, dated July 11, 1960. The witness appearing on that occasion was Dr. H. H. Hannam, president and managing director of the Canadian Federation of Agriculture. He presented the view of the farmer as a producer, a consumer and a businessman. He suggested that the farmer has a special stake in the combines legislation and that he is required to be an expert as a producer and as a distributor as well.

With respect to clause 14 of the bill, the clause relating to the resale price maintenance, he stated:

The Canadian Federation of Agriculture has consistently supported the principles of public policy embodied in section 34 of the present Combines Investigation Act. It is this section which makes it an offence for a dealer to set up his own

machinery or follow private policies for enforcing maintenance of the resale prices of the commodities which he sells.

This is what Mr. Hannam had to say at page 592:

Let us look at these five practices which provide defences for refusal to supply:

(1) The use of an article as a loss leader for purposes of advertising, not for the purpose of making a profit on the article. In our opinion this provision clearly opens the way to the establishment of resale price maintenance.

(2) The sale of articles not for the purpose of selling such articles at a profit but for the purpose of attracting customers to the store in the hope of selling them other articles. This provision in the amendments is in many ways similar in nature and intent to the previous one regarding loss leaders. Our objections to it are the same—that this should not be a matter for private determination; that it is extremely imprecise for purposes of legal interpretation, and that it will open up a road to resale price maintenance.

(3) Engaging in misleading advertising in respect to an article. We do not support misleading advertising, and believe that it should be a matter for continuous review and policing by public authority. If it can be proved by an official investigation that a retailer is engaging in misleading advertising, then prosecution should follow. But again, we believe that to place the policing of this matter in the hands of dealers can only open up another avenue to the achievement of what we are trying to avoid, that is, resale price maintenance.

(4) Inadequate levels of servicing for the purchasers of articles. We firmly believe that to permit the re-establishment of resale price maintenance because in the opinion of a manufacturer or other supplier his products are being inadequately serviced by a retailer or other seller, could result in the complete elimination of the existing prohibition on resale price maintenance, which prohibition has contributed so much to the freeing of price competition for countless commodities now marketed in Canada.

(5) Unfairly disparaging the value of articles supplied, in relation to their price or otherwise. This question of disparagement is, in our opinion, perhaps the most unsatisfactory of all... We would be inclined to think that any dealer desirous of enforcing resale price maintenance for his product would consider that any selling of that product below his suggested price, would constitute disparaging the value of the article in relation to its price.

It is quite clear that the representatives of the farmers do not seem to agree very much with the idea put forward by the Minister of Justice. Farther on, Mr. Hannam had this to say:

In conclusion: the farmers of Canada will be disappointed if parliament passes a bill whose effect proves to be the weakening of price competition between their suppliers—which is bound to aggravate further the unfair relationship now existing between the price levels at which the farmer sells and buys.

I should have liked to read more of the evidence given, Mr. Chairman, but I pass over a lot of it. It would have proved more clearly that our point of view expressed on second reading of the bill, when we spoke on the principle, is the real point of view of the