

*Combines Investigation Act*

price should be made an offence. I am curious to know why that limitation was imposed with respect to misrepresentations as to ordinary price of the article. So that we can bring the matter into focus for discussion I should like to suggest an amendment that would have the effect of striking out certain words in lines 31 and 32. The clause as amended would then read:

Every one who, for the purpose of promoting the sale or use of an article, makes any materially misleading representation to the public, by any means whatever, concerning such or like articles, is guilty of an offence punishable on summary conviction.

In other words, once a person makes a materially misleading representation to the public concerning an article, the offence is committed. It seems to me that this wording would go farthest to protect the small retailers and would more directly meet the difficulty with which we are concerned and at which this clause is aimed. Perhaps I should now formally introduce my amendment. I move:

That subsection 1 of section 33C of clause 13 be amended as follows: that the words "the price at which" and "have" in line 31, and the words "been, are, or will be, ordinarily sold" in line 32, be deleted.

**Mr. Howard:** Having prepared an amendment designed to achieve somewhat the same effect I feel it necessary to formally indicate support of the amendment moved by the hon. member for Ottawa West and for the reason he mentioned, that the offence should arise from materially misleading representations as opposed to such representations relating only to the price of an article. Perhaps I have said sufficient to indicate that this is a commendable amendment that will command our support.

**Mr. Fulton:** Mr. Chairman, this is a new point. Perhaps I should not comment any further than to say I am sorry it was not raised before when I might have had an opportunity to deal with it so as to dispel some of the misconceptions that there appear to be regarding this section. But it seems to me that if the amendment were accepted we would have something that really goes no further than the present provision in the Criminal Code dealing with the publication of false advertisements.

It was our intention here to go a little further than the Criminal Code goes but in one particular field only, the field of misrepresentation by misleading advertising with respect to pricing. We wanted to cover that as a special and separate field, as one of those provisions which we are now introducing to improve the situation of the independent merchant because this is one of the respects

[Mr. McIlraith.]

in which he is particularly vulnerable to unscrupulous practices especially by those who use the power of the purse as one of the main devices against their weaker competitors.

Thus it is frequently alleged in advertisements that if you come to my store you can get an article at such and such a price, and that the ordinary retail price is, let us say, a sum two or three times as much. It has been found on investigation—I have not had the opportunity to put this on record before—that in many of these cases the price advertised as the ordinary or average price bears not the slightest relation to reality, or is a grossly inflated statement of what is the ordinary or average retail price at which those articles are sold. Such advertisements, blown up as they are, usually have articles in them for which there would be a tremendous consumer demand if the impression was created that you could get them at one third of the ordinary retail price. So, you see, they have an attractive effect and on that basis the volume of sales of the merchant who makes use of this misleading and dishonest device is increased at the expense of those who do not resort to such misleading and dishonest practices.

It will be appreciated, I think, that this is a special type of misleading advertising; it is misleading advertising related to price alone; and so we have felt it was proper to have a provision in the combines legislation dealing with the matter, because of its relation to other subjects with which this legislation now deals, namely the provision designed to protect and improve the position of the independent merchant.

Another reason for having it in here in this form is that we do not police the Criminal Code; that is the ordinary provisions of the Criminal Code are not normally the responsibility of the combines branch to supervise or to enforce, and I think that it would be the subject of criticism if we took the ordinary provisions of the Criminal Code and put our officers in charge of supervision and enforcement. There would be a change in the normal division of responsibility for enforcement of the ordinary Criminal Code provisions. That is why we put it especially in here. As I say, I think the effect of the hon. member's amendment would simply be to make the section go no farther than the present provision of the Criminal Code, so that it would have really no special place in the combines legislation; it should be left to the operation of the ordinary section of the Criminal Code.

There are one or two additional technical arguments that I could make, but these are the basic arguments why we think it