

Combines Investigation Act

an inquiry followed by a report and a conviction. There is no change in that situation whatsoever. Of course, there has to be an inquiry. That would be the case whether this amendment were here or not. So there is no interference with any access on the part of the merchant to the director, and no change in that regard at all.

The director, as I say, is not going to refrain from applying common sense to this situation just because this amendment is here. He will require to be shown that there is reason to believe that one of the practices outlined in the section was involved, and if that is not proved he will say that this section provides no defence. So it will be with the commission, so it will be with the minister to whom the commission will report, and so it will be with the courts. The courts are most certainly going to require that anyone who relies upon the defence of this section must show that he not only did believe but that he had reasonable cause to believe that one of the offensive practices was being carried on by the persons whose supplies are discontinued, and it is only if that can be established that the section is available as a defence.

So I say that when you examine what we have provided here as a reasonable protection for merchants against the unfair competitive practices of some of their competitors, and when you find it does not restore resale price maintenance, that it does not take away the common sense of the combines branch, either of the director or of the commission, and that it does not impose any criminal liability on persons in respect of practices that cannot be defined in legal terms suitable for inclusion in criminal law; when you compare all this with the amendment put forward by the Leader of the Opposition which flies in the face of every report by every agency, including those established by the government of which the hon. gentleman was a member, all of which conclude that it is not practicable to define the practice of loss leader selling and make it a criminal offence, I say to the committee that I am confident that in the light of that comparison they will agree with me that the amendment of the Leader of the Opposition should be rejected and that the proposal of the government should be adopted.

Amendment (Mr. Pearson) negatived: yeas, 20; nays, 59.

Mr. Howard: This clause has been kicked around somewhat and I think there has been a pretty exhaustive examination of it. However, I think there is one group of words which should be removed. We have already

[Mr. Fulton.]

debated their effect and intent to some extent. If they were removed I do not say I would support the clause in its entirety, but for the sake of ensuring the greatest possible degree of clarity I think the words that relate to reasonable cause to believe should be removed, and I should like to move, accordingly, as follows:

That subsection 5 of clause 14 be amended by deleting, in lines 43, 44 and 45, the words "that he and any one upon whose report he depended had reasonable cause to believe and did believe".

I think that removing the reasonable cause to believe business will make it more clear, and put more responsibility on the person who is charged to prove why he discontinued his supply to the other person involved.

Mr. Pickersgill: I must say I think this amendment commends itself to me.

Amendment (Mr. Howard) negatived: Yeas, 19; nays, 64.

The Deputy Chairman: Shall clause 14 carry?

Mr. Pickersgill: On division.

Clause agreed to on division.

Clauses 15 and 16 agreed to.

On clause 17—*Jurisdiction of courts.*

Mr. McIlraith: Mr. Chairman, I wish to raise a point I raised on second reading. I do not propose to reiterate any of the arguments made previously but I want to point out again to the committee that subclause 4 combined with the new section 32 (1) as adopted earlier today by the committee make it abundantly clear that where an offence or a prohibited act has been committed under this legislation the Attorney General of Canada at his discretion—and likewise the attorneys general of the provinces at their discretion—may proceed by civil proceeding instead of by way of criminal prosecution. That in my view raises a very serious constitutional issue because of the fact that the legislation against combines has been held to be within the competence of parliament because it is criminal legislation.

If we make it clear as I suggest we are doing by the adoption of clause 17 (4) that it is no longer criminal legislation but may be merely a matter that is to be dealt with by way of civil remedy and civil proceedings then we are raising a real constitutional issue that may very well jeopardize—I am sorry I cannot hear the hon. member who is interjecting—the legislation. We are raising a constitutional issue by the adoption of this clause combined with section 32 (1) in the form in which it has been approved by the committee. I merely wanted to point