

Combines Investigation Act

The Chairman: Shall clause 33B carry?

Mr. McIlraith: This is a new clause. It is not just a reintroduction of a clause from other parts of the existing legislation. According to the explanatory note and to the evidence given in committee, the basis of it is the 1959 report of the royal commission on price spreads of food products. Without elaborating on the matter unduly I may say that the evidence in committee seemed to indicate that the basis for the creation of the new clause is the evidence that had come to the department from the grocery trade or the food trade. The difficulty is that the legislation is of general application to all the trade outlets and is not confined to one branch, namely the grocery trade or the practices in the grocery trade.

The difficulty in which I find myself here is in relating the general provisions of this section to all facets and types of the retail trade. It simply does not relate to some types of trade. In that connection I think I ought to place on record briefly two references made to the committee. I refer to page 27 of the appendix to the committee reports. That page contains a letter dated June 27, 1960 from the Canadian retail federation to the chairman of the committee and the part of the letter I wish to read is this:

A number of our member-companies have told us that after consulting with their solicitors they have failed to obtain a satisfactory interpretation of the language of section 33B which would direct them as to what course of action they must follow should this section become law. It would appear that it is not possible for a retailer to know what course of action he should follow or under what circumstances he may properly receive an allowance from the manufacturing supplier.

Again at page 39 of the same report there appears a letter from the grocery products manufacturers of Canada dated July 4, 1960. The letter is signed by the chairman of the board and by one of the directors, and the sentence to which I wish to draw the attention of the committee is the last but one of the letter. After referring to the bill generally, the letter goes on to say:

—the manner in which section 33B in particular is written creates so many difficulties in interpretation, implication and application, that it is most undesirable in its present form.

In the light of the objections expressed there I wonder if the minister has been able to give further consideration to the draughtsmanship of this particular section. I would think that this is perhaps the section to which the remarks of the hon. member for Davenport applied, as well as to other sections of the act. In any event it seems to me that a confusing situation arises with regard to the interpretation of this section, particularly

[The Chairman.]

when it is borne in mind that the cost of advertising in newspapers in different parts of the country differs so greatly, along with the methods used in different lines of trade. I think there is no background, no criteria against which the things can be judged. No such information has been gathered as far as I know by the commission with regard to any of these practices except in the food industry. I wonder if the minister could enlighten the committee in view of what I have said and the statements which I have quoted.

Mr. Fulton: I recognize that in the committee various criticisms were made of our proposed section 33(b). These criticisms were twofold, first that the section was uncertain in its application and, second, that since the reasons given in the bill refer to the findings of two commissions which had made studies specifically, it is true, in the grocery field, those findings were not applicable to the field of trade generally and that therefore our legislation should not be made applicable to the field of trade generally.

With respect, I am not able to agree with either of those views, at least not to the extent that I think the legislation is unsound or that it should not be proceeded with. It is a fact that it will be said of any new legislation that it is full of uncertainties. The original combines legislation was full of uncertainties, and so was the British North America Act. As long as lawyers exist there will be disagreement about the effects of statutes. As a lawyer myself I say that if there were no differences of agreement with regard to the interpretation of statutes there would be no need for lawyers—

An hon. Member: A good thing.

Mr. Fulton: But to make that as a criticism, and to say that legislation should not be enacted because its effects are not certain is to apply a particular argument to a general situation. It does not apply at all. Really what these people are saying is this: "We do not like this legislation. We think it is going to affect ourselves, and therefore we are going to criticize it on the ground that it is uncertain." With respect, I think this is the actual effect of the criticism.

With respect to the other branch of the criticism that this was drafted after looking merely at reports in the grocery field and that the legislation should not therefore be made applicable to trade generally, again I do not think this argument is a valid one. Certainly the two reports referred to—the report of the Stewart royal commission on price spreads of food products and the report of the restrictive trade practices commission on discriminatory pricing practices in the grocery