Now, I do not know whether you wish me to make some remarks but I do not think there is anything more than that which I can say at the moment.

The CHAIRMAN: In that case, I throw the meeting open to questions by members of the committee. Please raise your hands since there are two rows of you and it is difficult to see you.

The WITNESS: I perhaps should have said that in reading the draft amendment and looking at the recommendations of the MacQuarrie committee it may occur to some of the readers that there are apparent differences between those recommendations and this draft. Now, or at a later time, as you see fit, sir, I would be glad if you wish me to do so, to indicate how I proceeded from the recommendations to the present draft that you have before you.

The CHAIRMAN: I think it would be very helpful if you did that right now.

By Mr. Fulton:

Q. Before that is done I think Mr. MacDonald might throw some light on an earlier matter. This is the form my question would take—and it is not covered in the report of the MacQuarrie committee: Why is it necessary to have additional legislation? On what ground is it felt that this present Combines legislation does not deal adequately with the practice under discussion? I refer you particularly to Section (1) (3) which deals with the question of fixing resale prices.

I would like to know why it is felt necessary? What experience have you had under that section? Have any attempts been made to deal with retail price fixing, and if so, what is the result of those attempts?—A. Mr. Chairman, the Canadian courts have not yet had occasion in any criminal case to adjudicate directly upon the validity of resale price maintenance as an individual and independent policy of a single manufacturer. Of course, resale price maintenance achieved by agreement among manufacturers or among a manufacturer and a group of dealers would ordinarily constitute a combine within the present provisions of the Combines Investigation Act if the restraint of trade resulting therefrom was undue.

Where there is no element of combination by the manufacturer with other manufacturers or with a group of dealers, and where his action in fixing or suggesting resale prices is really a unilateral independent action upon his part, then even though the courts have not clearly pronounced upon the problem it does not necessarily follow that the manufacturer's action in fixing or suggesting resale prices is necessarily legal.

Q. " . . . is necessary legal" or "illegal"?—A. Legal. In each case consideration would have to be given as to whether what was done was by way of arrangement. I stressed that point first—whether it was done by arrangement—and whether it was undue within the meaning of section 498 of the Criminal Code or against the public interest within the meaning of the Combines Investigation Act. Here, such matters might have to be considered as the competition of other similar products which were not price protected, the availability of substitutes, and the extent of the particular manufacturer's control of the market.

Now, I hope you will forgive me for reading this, but I think I can perhaps keep it in more precise form if I do so.

The provisions of the Combines Investigation Act that would come nearest to this question are apparently Section 2(1) (c), (e), (f), and possibly (d). There is no paragraph in Section 498 of the Criminal Code corresponding to Section 2(1) (c) of the Combines Investigation Act but there are provisions similar to (d), (e), and (f). I simply point out that to some extent there are overlapping provisions in those sections.