

*Combines Investigation Act*

ment for two years or to both fine and imprisonment under the penalty clauses of this act.

Mr. MACKENZIE KING: Not because it is a monopoly.

Mr. CAHAN: Certainly, because it is a monopoly, and so defined as a combine.

Mr. MACKENZIE KING: Is there not the further circumstance that the monopoly must be shown to operate to the detriment of the public?

Mr. CAHAN: No. That is one of the contentions I am making; that is not necessary under this bill. I will risk considerable on that assertion. Each and every owner of a patent right by reason of the exclusive nature of that right is liable to indictment under the definition given in this section 2, subsection 7, clause (b) of this bill.

Section 45 of the Patent Act, 1935, provides:

45. Every patent granted under this act shall contain the title or name of the invention, with a reference to the specification, and shall, subject to the conditions in this act prescribed, grant to the patentee and his legal representatives for the term therein mentioned, from the granting of the same, the exclusive right, privilege and liberty of making, constructing, using and vending to others to be used the said invention, subject to adjudication in respect thereof before any court of competent jurisdiction.

That is, subject to adjudication as to the validity of his patent. Each patentee is granted by the law of this land, and by the laws of other lands with which we have entered into a convention, and has exclusive rights and privileges as provided by the terms of his patent, similar to the exclusive rights and privileges which are mentioned in our statute. Yet section 32, subsection 1 of this bill provides:

32. (1) If the owner or holder of any patent issued under the patent laws of the Dominion of Canada has made use of the exclusive rights and privileges which as such owner or holder he controls so as to contravene the provisions of section thirty-four of this act, such patent shall be liable to be revoked.

I should like to know how it is possible for him to exercise his patent right without infringement of section 34. I will admit that section 34 is confused drafting such as one seldom sees; nevertheless it will require clarification if we are to preserve the exclusive patent right of the individual holder of a patent.

Mr. BENNETT: And discharge our international obligations.

Mr. CAHAN: And discharge international obligations.

[Mr. Cahan.]

Mr. ROGERS: I might say that that matter has been looked into. An amendment will be offered when we reach that section.

Mr. CAHAN: Then, subsection 2 of section 32 provides:

(2) If the commissioner reports that a patent has been so made use of, the Minister of Justice may, on the application of the minister, exhibit an information in the Exchequer Court of Canada praying for a judgment revoking the patent; and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent, or otherwise, as the evidence before the court may require.

I will not proceed further with the discussion of that clause until the amendment is proposed as suggested. But section 34, which applies to the whole bill, provides:

34. Every one is guilty of an indictable offence and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years, or to both fine and imprisonment, or if a corporation to a fine not exceeding one hundred thousand dollars, who is a party or privy to or knowingly assists in the formation or operation of a combine within the meaning of this act.

What is the meaning of the provision in section 32 of the bill? When will an owner of a patent contravene section 34? Certainly, as the minister has suggested, these two sections require further clarification. I will admit that subsection 3 of section 41 provides that no prosecution under section 34 of this bill can be commenced otherwise than at the instance of the Attorney General of Canada or of the attorney general of a province, but so wide is the application of the provisions of the bill that its terms may be used for an entirely different purpose, namely for purposes of intimidation to effect other indirect purposes. A bill with such wide and extensive application as is given to this bill by the definitions which are to be enacted is an attempt to enable this government to investigate a wide range of subjects which are within the exclusive civil jurisdiction of the provinces and which only becomes subjects of investigation by parliament when those civil rights are made criminal wrongs by declaratory amendments of the criminal law of the country. Therefore either the object is to make civil rights criminal which have never before been deemed to be criminal in the history of our own criminal law, or it is an attempt to introduce into this act certain civil rights which are not criminal, ostensibly for the purpose of permitting an investigation by a commissioner or commissioner appointed by this government.

In fact, so complicated are the provisions of this bill that in my opinion it should have