

*Patents of Invention*

section is there any discretionary power given to him except to refer the petition to the Exchequer Court?

Mr. ROBB: Yes, that power is given.

Mr. BOYS: I would not call that discretionary power at all. A petition comes before the commissioner; the commissioner considers the petition, and if a prima facie case is made out he does nothing himself but refers it to the Exchequer Court. That involves the matter we were discussing the other night, in an effort to get away from responsibility. It seems to me nobody should be better able to dispose of matters of this kind in the first instance than the commissioner himself, who, with the years of experience behind him, should be well able to do it.

Mr. ROBB: Before my hon. friend presents the amendment will he read section 41?

Sir HENRY DRAYTON: I do not think we can go on now with section 40. I again want to understand what we are doing it for? From what I understand from the minister, the underlying reason for the changes in the act is that the Canadian patentee does not get equal rights in the United States, Japan and Germany—

Mr. ROBB: And some other countries.

Sir HENRY DRAYTON: Those are the countries the minister mentioned.

Mr. ROBB: I gave those notably. There are other places such as Brazil, Cuba and so on.

Sir HENRY DRAYTON: Those are quite important countries. What rights are withheld from us? What do we gain by this? What specific disabilities is the Canadian under in Japan or Germany?

Mr. ROBB: I will give an instance which came under our observation recently. Some fish were shipped down to Brazil; they had trade-mark designs exactly like this, and they refused to register this trade-mark in Brazil. Not only that, but they pirated the trade-mark and threatened to expropriate any Canadian goods that were sent down with that trade-mark. The trade-marks and patents are coupled together there.

Sir HENRY DRAYTON: What is the reason for that?

Mr. ROBB: We are not in the convention.

Sir HENRY DRAYTON: Is the Brazilian law the convention law?

Mr. ROBB: They are in the convention.

[Mr. Boys.]

Sir HENRY DRAYTON: Is the United States in the convention? Are Germany and Japan in the convention?

Mr. ROBB: Yes.

Sir HENRY DRAYTON: Do these sections just follow the American sections?

Mr. ROBB: I could not say as to that.

Sir HENRY DRAYTON: Is the sense of the sections the same?

Mr. ROBB: No, this is very different. The commissioner advises me that in the United States there are no conditions attached to the patent as regards manufacture and importation. They do the thing a little differently from the way we do it. We might as well be frank in regard to this. There has been a measure of protection under our Canadian law. In the United States it is wide open, and they give the protection through their custom houses. That is the difference in the law as between Canada and the United States.

Mr. STEVENS: Is the minister right in saying that the United States is a member of that convention? I understood that country was not a member.

Mr. ROBB: Not of the copyright, but of the patents and trade-marks it is.

Mr. BOYS: As suggested by the minister, I have looked at section 41. I cannot see how it can be coupled with section 40. Section 41 has reference to the revocation of the patent on the ground that the patented article is manufactured or the process carried on exclusively or mainly outside of Canada. Section 40 deals with the reasonable requirements of the public, and provides that if the article is being manufactured but is not being supplied at a reasonable price, relief may be afforded the public.

Mr. ROBB: Under section 41, if the reasonable requirements of Canada are not supplied, then the commissioner has the right to revoke the patent.

Mr. BOYS: That is section 40 and not section 41.

Mr. ROBB: No, section 41.

Mr. BOYS: I think possibly the amendment I want to suggest may be acceptable to the minister. I suggest that subsections (c) and (d) be deleted, and the following inserted in their place:

(c) If the parties do not come to an arrangement between themselves, the commissioner shall then consider the petition and shall have jurisdiction to hear and determine the matter.