

article, which are not reasonable, when manufactured and sold. Paragraph (d) provides that it is an abuse if the patentee refuses to grant to others in Canada licences upon reasonable terms for the manufacture and sale in Canada of the patented article. That is a cause of complaint in connection with radios and other patented inventions.

Paragraph (e) of the same subsection (2) provides that it is an abuse if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, either in respect of the "purchase, hire, licence, or use of the patented article, or the using or working of the patented process. Paragraph (f) provides that it is an abuse if it is shown that the existence of the patent unfairly prejudices the manufacture, use or sale of any materials used in the production of the patented process or article.

Section 66 provides that the commissioner, upon being satisfied that a case of abuse of the exclusive rights under a patent has been established may exercise certain powers. Under paragraph (a) the commissioner may grant to others licences to manufacture, sell, or use the patented article. In granting such licences to others the commissioner, among other things, "shall endeavour to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights." Under paragraph (d) of section 66 we find that if the commissioner is satisfied that the granting of such licence to others to manufacture, sell and use the patented article fails to overcome the abuses complained of, then he may order the revocation of the patent, and thereupon the rights of the patentee are completely nullified and wiped out of existence. To this power to make an order for revocation of the patent only one condition is attached, namely, "that the commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement or engagement with any other country to which Canada is a party." The only condition that now applies is the fifth article of the Hague convention, namely, that the patent may not be revoked unless the grant of compulsory licences proves insufficient to prevent such abuses.

Section 67 of the bill, which is also held in abeyance, relates to the term of exclusive licence which the commissioner may grant, and section 68 provides that the commissioner shall consider the matters alleged in every application made respecting abuses, and shall serve notice of such application upon the

[Mr. Cahan.]

patentee or his representatives. Section 69 provides that in certain cases the commissioner with the consent of the minister may refer the whole proceedings to the exchequer court for judicial decision.

The English procedure, which we have adopted in its entirety, paragraph for paragraph and word for word, has proved very efficient in meeting each such abuse as it arises. I am convinced that the English procedure constitutes the most complete, effective and equitable procedure for dealing with alleged abuses of the exclusive rights granted to a patentee, which has yet been developed in any country. Decisions of the comptroller, the English authority who is almost identical with our commissioner of patents, are published the same as court decisions, and, in construing certain sections of this act, they would be available for the guidance of a commissioner in this country. They would not be binding, and the commissioner would not be obliged to follow them. But as existing conditions are such that we cannot adopt the American patent law, which provides that the rights of patentees may not be amended or revoked for a term of sixteen years, we have followed the constitutional practice of the United Kingdom, after which our own constitutional practice has been developed, and have adopted that procedure which is known to be consistent and in conformity with the provisions of the Hague conference, to which both countries are parties. We have adopted those provisions and now propose to place them upon our statute books.

After these proposals had been heard during nineteen hearings of a Senate committee, at which all parts of the country and all interests were represented, it was agreed by those opposing and as well as by those advocating the introduction of these provisions that they were the most fair, equitable and effective provisions which had yet been suggested.

I wish to add with regard to the customs law that there is nothing in our customs law at present which prevents the importation of articles into this country which would infringe the rights of a Canadian patentee, but, when they have once passed the customs they may not be used or sold in Canada except under licence from the patentee. The revocation of the patent, which is such a complete and summary remedy as now provided, will of course permit of the importation into Canada of the patented article and its sale and use in Canada without any restrictions whatsoever.

The real point at issue, Mr. Chairman, between the suggestion made by the hon. mem-