

There is, in addition, a very informal right of objection. I may go to the Trade Marks Office and ascertain that there is an application for registration in which I am interested. If I want to prevent its registration, I file a statement with the registrar. Under this informal practice, there may be an exchange of correspondence through the Trade Marks Office between the applicant for registration and the objecting party.

But in no case does the objecting party have an appeal against the allowance of the application.

The applicant, if the application is rejected, can appeal because he will be appealing from a refusal of his own application.

Under the bill, if there is a conflict in the Trade Marks Office, the interested parties are entitled to go to the Exchequer Court.

Mr. RICHARD: But under your proposed Act the procedure in section 38 will remain?

Mr. OSBORNE: The procedure in section 38 of the present Act will remain. If I may refer back to clause 36 which immediately precedes the clause we are considering: it will be found to deal with the right of the registrar to refuse an application in what I have described as the initial investigation. A ground on which he may refuse is that the application does not meet the requirements of clause 29 which contains formal provisions. He may refuse registration on the ground that the trade mark is not registrable under clause 12 which I have already explained. It defines what a registrable trade mark is, and provides that some marks cannot be regarded as being registrable. Finally, the registrar may refuse on the ground that the applicant for registration is not the person entitled to registration if a co-pending application discloses an earlier date of first use.

Now, clause 36 says that where the registrar is not satisfied that the application should be rejected, he shall cause the application to be advertised in the manner prescribed. It leaves it entirely open as to what manner will be prescribed.

Mr. CANNON: I hope, when making a ruling, the committee will consider the observations made by Mr. Jeffrey and myself.

Mr. OSBORNE: I think the committee of the House of Commons can rest assured that it will be given earnest consideration.

Mr. CANNON: There is one question on the matter of appeal that I wanted to ask. I see under clause 55 there is an appeal to the court from any decision of the registrar. Under clause 37, I think you said, the registrar can dismiss an opposition as being frivolous. Is there an appeal from that?

Mr. OSBORNE: Yes, there would be an appeal.

Mr. MACDONNELL: You said, as I understand it, that in one case, the objector had no right to appeal.

Mr. OSBORNE: That is under the present law.

Mr. CANNON: My point concerns the case where a man or a company is making opposition and files it, and it is rejected by the registrar as being frivolous. Now, there is no dispute engaged there. If he rejects it, is not actually filed, so there is no dispute, and no actual decision under the Act.

Mr. OSBORNE: I think, with respect, that the statement of opposition has been filed at that stage. Subsection 4 provides that if the registrar considers that the opposition does not raise a substantial issue for decision, he shall reject it, and give notice of his decision to the opponent. That is the decision that would then be subject to appeal under clause 55.

Mr. JEFFERY: I still do not feel that this committee realizes, under services, what a big new field is being covered, and I can see considerable dangers, and