

enough to supplement the very excellent presentation he has just made by applying it to these sections and showing exactly how they will work out. May I ask this? Suppose a citizen of the United States has taken out a patent for an article in the United States and has then taken one out in Canada. The present act, as I understand it, by section 38 protects the Canadian in that the patentee from outside must manufacture in Canada and cannot simply take out his patent, or possibly sell it to someone else making a similar article, and then ignore altogether the Canadian market so far as manufacture is concerned. Or he might take out a patent and not use it, manufacture the article at home and sell it in Canada. Or it might be a machine, of which there are many; what comes to my mind is a machine such as the Goodyear welting machine. I do not know that it would be applicable to machines of that general type, for which a patent might be taken out in Canada and the article be manufactured over in the United States. Now as I understand section 38, it was especially designed to protect against such cases as that. If the minister as we proceed with section 40 can show that we have ample protection, then my perplexity will be largely met. I think we ought to read these sections very carefully, not merely the marginal notes.

Mr. ROBB: I think my hon. friend and I understand the law alike. If I understand it aright, under the old act unless the patent was manufactured in Canada it automatically became void, or if the invention were imported and not manufactured in Canada it became void. I will give my hon. friend an illustration of how under the old act a patent might become void in Canada. Suppose a person is manufacturing an article in Canada for which he has obtained a patent, and his property is destroyed by fire. It might take a year and a half to rebuild that property, and if during that period he imported from his United States factory the requirements to keep the business going, his patent in Canada would become void.

Mr. STEVENS: Does the minister argue that that obtains under the existing act, under section 38?

Mr. ROBB: Yes.

Mr. STEVENS: It seems pretty far-fetched.

Mr. ROBB: That was the explanation given to me by the commissioner and it was the judgment of the courts under the old act.

Sir HENRY DRAYTON: Under the old act?

Mr. ROBB: Under the old act.

Sir HENRY DRAYTON: That is the existing act?

Mr. ROBB: Yes but under the act as we propose to amend it the commissioner will have discretionary powers to determine whether in the case of such an accident occurring they should be compelled to manufacture in Canada within the period, or he may give them a reasonable time to rebuild. The powers are largely within the discretion of the commissioner, and I am sure hon. gentlemen will appreciate the fact that the commissioner is not going to give a ruling that in his judgment will be detrimental to

4 p.m. manufacturing interests in Canada.

At the same time it will afford a little leeway for importation of articles from other countries if there is actual necessity for it.

Mr. STEVENS: Would it not be better to maintain the compulsory provision, that is, make it obligatory on the parties to manufacture in Canada, but in the case of such an accident as the minister has mentioned, fire, deluge, or some act of that kind, the commissioner should have power to extend the period? But the principle is what I am after. I think we ought to retain as far as possible the principle of obligatory manufacture in Canada, making it imperative or obligatory upon the person taking out the patent to manufacture in Canada. If we remove that feature and give to the commissioner discretionary powers such as my hon. friend has just intimated, it is in my estimation altogether, too extensive a power to delegate to an official. Let it be the reverse. I think the principle of the old act is the better. However, if the minister wishes to proceed with the reading of the present section, we can probably bring these points out as we proceed.

Mr. ROBB: I was just going to say that the section really does provide for that, but in different language. If we leave in the old language, it prevents us from entering the Berne convention. If my hon. friends who are legal gentlemen will follow the section closely, I think they will find that though the language is somewhat different, all they desire is provided in this clause. ●

Mr. BOYS: The minister speaks of discretionary power being given to the commissioner under section 40. Under what sub-