

no such remedy under United States legislation as the revocation of a patent because of prevailing abuses. To mention briefly just one authority, Walker on Patents, one of the leading United States authorities,—fifth edition—the author summarizes the law of the United States as follows at page 185 of that edition:

Patent rights are property, and the very essence of the rights conferred by the patent is the exclusion of others from its use. The owner of a patent is both legally and equitably entitled to the same protection for that property, that the owner of any other species of property may enjoy; and he cannot be constitutionally deprived of that property without due process of law. Due process of law includes the constitutional judgments and decrees of courts; but it does not include any act of Congress, or of any other legislature. Patent rights, once vested, are therefore incapable of being divested by act of Congress, except of course by the exercise of the power of eminent domain. Nor can Congress do indirectly, that which it is forbidden to do with directness. It cannot destroy nor seriously impair the value of the patent right, under the guise of altering or repealing the existing remedies applicable to its enforcement, any more than it can so treat any other kind of property.

That is the law of the neighbouring republic, but that is a law which we have declined to follow. The granting of a patent is a grant of exclusive rights, or monopoly rights if you wish to use that term. But in England there has been throughout its patent legislation a procedure prescribed by law whereby abuses might be remedied. In the present state of the English law those abuses can be remedied either by the grant of compulsory licence to others to compete in the same market, or if the grant of such compulsory licence proves unavailing then the comptroller can act arbitrarily and forthwith repeal and revoke the patent and all rights under it.

We, therefore, have followed the English act, which is entirely consistent with our international obligations. Section 27 of the English act is incorporated verbatim in sections 65, 66, 67 and 68 of this bill. I think perhaps the hon. member for East Kootenay was misled somewhat by a note of explanation in connection with this bill. When I prepared section 64 I incorporated in it all the provisions of section 27 of the English act which are now represented by sections 65, 66, 67 and 68 of this bill. But the committee on banking and commerce of the Senate thought it advisable to divide the English section 27 into several sections for purposes of clarity, and therefore they divided the new section which I introduced in one long column into

various sections which now stand as sections 65, 66, 67 and 68 of this bill. But the law clerk or other clerk of the Senate left opposite section 64 in this bill this statement:

This replaces section 40 of the present act.

What was intended and what did replace or purport to replace section 40 as the bill was first prepared, was a new section incorporating not only section 64 but sections 65, 66, 67 and 68. When the Senate committee divided the lengthy provision into sections, unfortunately they left as a note on the opposite page a statement to the effect that section 64 replaced section 40 of the act, and for that reason the error has proved somewhat misleading.

To all who have studied these matters, I believe it must be obvious that the amendment suggested by the hon. member for East Kootenay is entirely misplaced and would destroy sections 65, 66, 67 and 68 of the bill which, I suggest, are completely sufficient and efficient for the protection of every conceivable interest, public or private, so far as the law of patents may be effective.

Subsection (1) of section 65 is very wide indeed, stating that:

The Attorney General of Canada or any person interested may at any time after the expiration of three years from the date of the grant of a patent apply to the commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this act.

I have already explained that the term of three years is the period prescribed by international convention. It is the express provision of The Hague convention of 1925. Any abuse of the exclusive rights of the patentee may be the subject of petition. Then follow clear definitions in subsection (2) of section 65. Without quoting the whole of the paragraphs I shall endeavour to give their substance.

Paragraph (a) applies when the patent "is not being worked within Canada on a commercial scale;" that is to say, as defined in section 2 of this bill, the manufacturer of the article shall have a definite or substantial establishment or organization and operate on a scale which is adequate and reasonable under the circumstances. Paragraph (c) of subsection (2), section 65, provides that it is an abuse of exclusive rights of the patentee "if the demand for the patented article in Canada is not being met to an adequate extent and on reasonable terms." Those are the words used in the English statute. This paragraph covers not only the abuse of withholding supplies of the patented article, but also that of charging prices for the patented