The WITNESS: I think I should like to develop three points. The first is that in the report of the committee, at page 38, about eighty per cent of the way down the page, you will find this sentence:

> We are all the more confirmed in this view by a recognition of the fact that considerable numbers of trade marks now registered in Canada would necessarily be held invalid if examined in the light of the manner in which they have been used commercially.

Now, I think that is reasonable notice, indeed, that we wanted this retroactive feature.

The second point I would like to develop is to read to the committee section 23 of the British Trade Marks Act of 1938:

> Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be and shall be deemed always to have been assignable and transmissible either in connection with the goodwill of the business or not.

Now, that section has stood in the British Trade Marks Act for fifteen years and there has been no complaint of it and no circumstance arisen which has shown the unwisdom of enacting it.

The third point I wish to develop is in reference to section 47 (2) of the bill, which reads as follows:

> (2) Nothing in subsection (1) prevents a trade mark from being held not to be distinctive if as a result of a transfer thereof there subsisted rights in two or more persons to the use of confusing trade marks and such rights were exercised by such persons.

In other words, the intent of that, Mr. Chairman, Mr. Fleming, is that if a trade mark has become non-distinctive by an improper assignment, then it can still be held invalid, but if the trade mark is still distinctive and still refers only to one source of goods, either manufactured or sold, then the public has in no way been mislead, and no harm will be done by validating the transfer subsequently. It seems to us that with this cloud on the title of so many well known and highly valued trademarks it is quite a proper suggestion that my committee should make to this committee and parliament, that that cloud should be removed. We realize the effect of ex post facto legislation, but in this case it seems that the greater harm would be done if the section were not enacted as it is now recommended, rather than if it is not.

Mr. FLEMING: There is certainly weight in what Mr. Fox has said. Normally, when parliament on very rare occasions is asked to enact retroactive legislation, it is with regard to some particular situation, the full particulars of which are known and disclosed, but to enact retroactive legislation in an entirely general manner does put us in a position where we may be doing an injustice to some third party in a situation where we would not wish to do it at all and which we cannot fully contemplate or foresee at this moment. I realize that weight has got to be given to the words of subclause (2), as the minister pointed out a moment ago, and I am sure we are all impressed with the provisions of the British Act which are directly comparable with these, and the fact, as Doctor Fox has stated, that there have been no complaints for fifteen years. I must say that I have a constitutional dislike of a legislative situation where I cannot fully see the effect of what we are doing.

The WITNESS: Mr. Fleming, I can, frankly, see no occasion where the section will work harm, but I can think of many cases where it would work harm if this provision were not in, because the way the matter arises is a purely adventitious attack on a trade mark, and when it comes into litigation at a future date somebody then goes back over history and says, "Oh, but you did