

*Patents of Invention*

Mr. ROBB: That was represented to me this morning by a gentleman who is opposing this measure.

Mr. STEVENS: There are points in connection with sections 38 and 44 of the old act which do not seem to be covered by section 40 of this bill. There ought to be a complete explanation of these two sections and their substitution for 38, 39, 40 and 44.

Mr. ROBB: I cannot do better than present to the committee a memorandum prepared by the commissioner, who has had a very considerable experience, not only in Canada but in other parts of the world, in the administration of patent acts, and who has given a great deal of study and attention to legislation respecting patents. It is true, as my hon. friend (Mr. Stevens) says, that the greatest changes in the bill are found in sections 40 and 41. The memorandum says:

The sections that have been struck out were enacted for the purpose of compelling the patentee to continuously manufacture his invention in Canada, supply it to the public at a reasonable price, and to prevent him from importing the invention into Canada. While they have served their purpose in some respects they have failed to do so in others. It is thought that the proposed clauses will better serve the purpose of these sections and will be free from some objectionable features attaching to them. There is no doubt that it is the general desire that the law should, while assuring the inventor an adequate return for his invention, enable the public without difficulty to obtain it at a reasonable price. In the latter respect, the law at present fails. The sections impose on the patentee the obligation of supplying his invention, but they do not give the public the right to compel him to do so. The only right of action that the public have, by reason of the default of the patentee, is for the cancellation of the patent, which is not satisfactory; as in the majority of cases the person requiring the invention is not in a position to manufacture it, the cancellation of the patent is of no benefit to him.

The law requires the patentee to furnish the invention at a reasonable price. Difficulty arises in determining what is a reasonable price. Failing agreement between the patentee and the would be purchaser, if action be taken and the court finds that the price asked is too high, the patent is cancelled, although the patentee might have honestly considered he was entitled to the price which he asked. The law requires the patentee to continuously manufacture the invention and forbids him to import it. There is difficulty in determining what constitutes manufacture and importation within the meaning of the act. In a recent case in the Supreme court four of the judges were of the opinion that the facts as established showed that the patentee had failed to manufacture and had imported, and as a consequence the patent was cancelled. A dissenting judge was of the opinion that the patentee had complied with the law in these respects and was in favour of sustaining the patent. Owing to these uncertainties it is frequently difficult to determine whether Canadian patents are in force or not, which reduces their value, as naturally there is hesitancy in investing money in the exploitation of a patent which may turn out to be void through failure of compliance with these requirements of the act. If the proposed amendments be adopted these difficulties and uncer-

[Mr. Stevens.]

tainties will be removed, as in the case of disagreement the court will fix the price at which the invention is to be supplied and the patent will not be forfeited unless the patentee fails to supply the invention at that price within the time also to be fixed by the court.

The amendments will involve modification of the present importation provision, which absolutely prohibits the importation of the invention on pain of nullity of the patent. The amendment, while not expressly prohibiting importation, will expose the patent to forfeiture if the manufacture of the invention is not carried on to an adequate extent in Canada.

The reason that has always been given for retention of section 38 is that over 75 per cent of our patents are granted to United States citizens and it was feared that were it not for the provisions of this section the patented inventions would be imported from the United States plants and Canada would get nothing in return for the patent. It is now thought that the proposed clause will safeguard Canada's interests in this regard. Any loss that might result from the relaxation of the importation provision, it is thought, will be more than compensated by the benefit to be derived from adherence to the international convention for the protection of industrial property, for which the amendment will open the way.

Then this answers the question of my hon. friend:

This convention was constituted in 1883 and is composed of the principal countries of the world.

Its whole spirit is shown in article 2 of the constitution which declares that subjects or citizens of each of the contracting countries shall as regards patents, trademarks, etc., in all other countries of the Union enjoy the advantages that their respective laws grant to their own subjects or citizens.

In some important countries, notably the United States, Japan and Germany, Canadians are at present under certain disabilities as compared with the citizens or subjects of these countries.

In 1900 Canada endeavoured to join the Union, but failed owing to repugnancy between its importation provision and article 5 of the convention which states that introduction of the patented invention made in a Union country into the country where the patent was granted shall not entail forfeiture.

By the proposed amendment this repugnancy will be removed and the way opened for joining the Union for which there is a very general demand. (For further information re the Union see appendix A attached hereto).

In amending the act in 1903, section 44 was enacted to provide for granting licenses in respect of certain patents covering inventions which it would be unreasonable to require the patentee to manufacture in the absence of a special demand. If the proposed amendment be adopted this section will be repealed. The amendment will apply to all patents without regard to the nature of the inventions covered by them.

Under the provisions of the act the commissioner may extend the limited time for manufacture and importation and may place patents under section 44 at his discretion.

The commissioner is moved to exercise this discretion by formal petitions more or less voluminous and supported by affidavit or solemn declaration. These petitions require careful consideration, orders must be made thereon and there is much correspondence therewith. In some years over 5,000 were dealt with in the Patent office. These petitions would be entirely done away with by the amendments as there would be no fixed time to extend and section 44 would be repealed.

Mr. STEVENS: As we proceed with the sections I wish the minister would be good