

Patents of Invention

Mr. McMASTER: I do not press my amendment.

The CHAIRMAN: The following is moved in amendment by the hon. member for South Wellington (Mr. Guthrie) as section 14 (a):

On each application for a patent a thorough and reliable examination shall be made by competent examiners to be employed in the Patent Office for that purpose.

(2) The Governor in Council may make regulations describing the manner in which an invention shall be examined, and such regulations shall be published in the Canada Gazette and shall form part of this act.

The question is on the amendment.

Mr. ROBB: Mr. Chairman, I am sure no one will see the objection to this amendment quicker than its mover, because no later than last night he criticized the department somewhat severely for taking on additional employees to deal with the business of the country. I am told that in Washington there are over 400 examiners employed, and on the same basis applied to our business it would involve an additional 100 employees and increase the civil government expenses about \$250,000 a year to carry out the purpose of the amendment.

Mr. GUTHRIE: As I understand, section 15 has been in force all these years, and I have been under the impression that the necessary examinations took place under it. I am merely asking to put in the present bill what we have had in force since 1887.

Mr. ROBB: But experience has taught us that it has been honoured mostly in the breach.

Mr. GUTHRIE: That is the difficulty. It is complained that Canadian patents do not have the same standing as American, for the reason that there is not that careful and thorough examination made in our Patent office before the patent is issued. I have heard patent solicitors in this country and in the United States make the same observation. United States patents are by no means absolute, but they are very seldom overridden by their courts as compared with the experience in our courts. The reason is that they are more carefully examined and tested before the patent is issued. This clause requiring examination has certainly been in our statutes since the act was passed, and I was under the impression that it was being carried out. If 400 examiners are required in a country like the United States, a country which has 120,000,000 people and the largest patent office in the world, I should think that from half a dozen to a dozen should do the work here. But I had thought that some examina-

[Mr. Robb.]:

tion was always made and that men were employed in the department for that purpose. If there is no examination now before a patent is granted I can well understand that the Canadian patent is not looked upon as a very valuable asset, because undoubtedly it could be upset in the courts.

Mr. McMASTER: I would like to support what the hon. member for South Wellington (Mr. Guthrie) has said. Perhaps I am wrong, but I cannot imagine what the value of a Canadian patent would be if it is issued without any examination as to its novelty or usefulness. I have heard that the present Patent office is understaffed and that they are not coping with the work in the way we would like to see the work done. At the same time, we are rushing from one extreme to the other if we do away with any examination whatsoever. I have had an opportunity of discussing this matter with a patent solicitor of standing and he tells me that it would be a very grave matter for the people who are engaged in the solicitation of patents, and also for the patentees, if the examination is done away with. I am as strong for economy as the hon. Minister of Trade and Commerce is, but if we as a civilized people undertake to grant patents it seems to me that should mean that in the opinion of competent officers the process or device or whatever is being patented possesses certain elements of novelty or usefulness; and I should be sorry to see the clause struck out altogether. I quote from the clause as it stands, chapter 69 of the Revised Statutes:

On each application for a patent, a thorough and reliable examination shall be made by competent examiners to be employed in the Patent office for that purpose.

I do not know that the law as it stands might not be modified, but certainly I cannot with equanimity see this provision entirely done away with. What would be the value of a Canadian patent if there is not this investigation? And just let me point out that if the patent has not had a preliminary examination, are we not going to throw an enormous burden on the courts? Are we not going to involve the courts in the trial of patent causes to an extent that they have never been burdened with before? It seems to me that is the result which would follow.

Mr. ROBB: We do not propose to diminish in any degree the examinations that have been held heretofore; we will have the necessary examination provided by order in council. But may I submit to the committee some references from the experiences of other countries? In France no attempt is made to examine for