

of the section being to ensure within Canada that the patented article is produced in Canada. If, instead of being produced in Canada, it is being imported, that constitutes, except under the circumstances mentioned, not an infringement but an abuse of the patented rights.

(c) If the demand for the patented article in Canada, is not being met to an adequate extent and on reasonable terms.

That is not an infringement but an abuse of the patent. That means just what is said. When they introduced this clause in England, it was difficult to define what constitutes a reasonable term. Therefore those words, which are almost the words of the English law, are considered now in an endeavour to fix a given percentage of increase or a fixed rate of profit.

(d) If, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms—

That is, he has acted the dog in the manger and will not give a licence. That constitutes not an infringement, but an abuse having regard to the customs of trade.

(e) If any trade or industry in Canada, or any particular class of persons engaged therein, is unfairly prejudiced by the conditions attached to the patentee—

That is, the patentee will not do the fair thing in affording an opportunity to Canadian industry to utilize the fruits of his mind, his inventive genius, that constitutes an abuse.

(f) If it is shown that the existence of the patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilized by the patentee so as unfairly to prejudice in Canada the manufacture, use or sale of any such materials.

That goes a tremendous distance. That constitutes an abuse by the patentee of the exclusive rights conferred upon him. Then follows subsection 3:

It is declared with relation to every paragraph of the next foregoing subsection that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents, for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay.

That is all section 65 means and that has not been read to the committee. It is to ensure not only that the inventive genius of the individual shall be protected, but that so far as possible the invention is worked on a commercial scale in Canada without undue delay. That was before the Hague convention

in 1925. This house finally in 1928 ratified the Hague convention, believing that three years constituted what could be called "not undue delay." Therefore it must be taken that a period of three years, which is agreed upon by all the nations as being the proper time for the purpose of determining what is undue delay, is settled by international agreement.

We have section 65 dealing with this phase of a patented article or property, which is taken to be necessary in new countries and for that matter necessary in old countries, namely, the production of the patented article by the country that grants the patent. All those sections about importation, reasonable terms, prices and licences have reference to one thing and one only, namely, the production of the patented article on a commercial scale in Canada without undue delay.

Then we go to what the remedies are for the abuses, and they follow in the succeeding sections. Section 66 states:

On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the commissioner may exercise any of the following powers as he may deem expedient in the circumstances.

That is, the abuses being what I have indicated, the commissioner of patents, a judge, has conferred upon him the jurisdiction to deal with those abuses, not infringements. Let us see what he may do. The very purpose sought by the amendment suggested is provided for in this measure, only it is provided for in a series of steps which are to be taken to secure the end of the Patent Act itself. The first is compulsory licences; that is, the commissioner, when he finds these abuses and they are presented to him, may grant compulsory licences, willy-nilly on the part of the patentee, to persons who desire to carry on the manufacture of those goods in Canada to the end that the public may secure the benefits of the inventive genius of the patentee. I am not going into the details of that. Then we go to subsection (i) of paragraph (a):

He shall, on the one hand, endeavour to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights.

(ii) He shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in Canada.

That is the provision of the law.

(iii) He shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted—