

*Patents of Invention*

sponsibility of deciding the case and let an appeal be allowed in both cases to the Exchequer Court.

Mr. BOYS: There is one further observation I would make. If I understand the section rightly it is really for the benefit of the public that it is being enacted, and not for the benefit of the patentee. Well, analyze that situation for a moment. If a petition is presented it comes only from the public; it is a petition from the public to have the article supplied to them at a reasonable rate. The commissioner passes upon that, having heard, I presume, the evidence only of the petitioners. In other words, it is a prima facie case that has been made out; he does not hear the defence. Having heard what the petition sets out he is permitted to say to the public, the petitioners, "I do not consider that you have made out a prima facie case," and there is an end of the matter. The public have no chance to go further. Is that desirable? In one breath you say you do not want to give the commissioner the responsibility or the power except to refer a petition to the Exchequer Court, and in the next breath you give him the opportunity of deciding that a prima facie case has not been made out, and then you refuse the public the right of appeal. The proposed amendment provides that the commissioner shall reach a decision, whichever way he thinks right, in the first instance, and either party being dissatisfied may go to the court for relief, and there the matter shall end. If the minister wants to protect the public it seems to me he should accede to the amendment, because it is only in the interests of the public that it is intended. As a matter of fact the section itself is meant to protect the public, and if the commissioner is given in one instance the responsibility I have referred to, I do not see why he should not be given the dual power of both rejecting or admitting the petition and granting relief.

Mr. BRISTOL: Has this section as drawn been copied from any other act? I can see what is in the commissioner's mind as well as what is in the minds of my hon. friends. They want to have the commissioner determine the case one way or the other. As the section is now drawn, all that he determines is whether there is a prima facie case; and I think that is open to this objection. There are tremendously valuable and intricate patents to-day in connection with radio and electrical inventions of one kind or another, and if you are going to ask the Commissioner of Patents to go into the merits of any case he would have to have expert assistance and really

[Mr. Stevens.]

set up something like an Exchequer Court. But as I understand the section the idea is that the commissioner would say whether on documents submitted to him there was a prima facie case, and if he said there was, then it would go to the Exchequer Court to decide whether in fact there was a case on the merits. That court is equipped for the purpose and specially intended for the trial of patent cases, with the right of appeal to the Supreme Court. It seems to me that everything my hon. friends' desire to do could be accomplished if there was the same right of appeal from the commissioner's decision that there was not a prima facie case. Otherwise it puts this tremendous power in his possession, that in perfect good faith he might say that in his opinion there was not a prima facie case, and possibly enormous interests might be involved, but there would be no opportunity of proceeding to the Exchequer Court. It seems to me it would be perfectly right and proper if the person presenting a petition for a patent was thrown out of court by the commissioner on the ground that he had not established a prima facie case that there should be a right of appeal from the commissioner to the Exchequer Court. That is the only suggestion I should like to make. If you are going to throw the responsibility of some of these tremendously important cases upon the commissioner, then there will certainly be a very expensive procedure incurred, which is not in the interests of the patentee, who usually has not very much money to spend on securing a patent for his invention. He is usually up against very powerful interests who will go ahead and fight the case through to the Supreme Court. The amount of money collected by patentees for damages in the last ten years is less than a million dollars, while the value of the patents involved is hundreds of millions of dollars. Do not put more expense and difficulty on the poor patentee in protecting his rights. I do think that if his petition is thrown out by the commissioner on the ground that no prima facie case has been made out the patentee should be allowed to appeal to the Exchequer Court.

Mr. McMASTER: I think perhaps there is a way to meet the objections which have been raised by the hon. and learned member for South Simcoe (Mr. Boys) and also to prevent too great an accumulation of appeals. I have listened with a great deal of attention to what the hon. member for Centre Toronto (Mr. Bristol) has said, and with it I am in almost entire agreement. What I understand is desired by the minister is the avoidance of