

Mr. ROBB: Under the Patent Act as it stood in 1918, the Minister of Agriculture was the Commissioner of Patents and the Deputy Minister of Agriculture was the Deputy Commissioner of Patents.

In that year the Patent Office having been transferred by order in council to the Department of Trade and Commerce, by law the Minister of Trade and Commerce became the Commissioner of Patents and his deputy became the Deputy Commissioner of Patents. This was contrary to the intention of the government which, in making the transfer, intended to leave the administration of the Patent Act in the hands of the former Deputy Minister of Agriculture and Deputy Commissioner of Patents under the Minister of Trade and Commerce as a deputy minister but with the title of Solicitor of Patents.

In July, 1919, to carry out their intention, the government caused an act to be passed, chapter 64, providing for the appointment of the former Deputy Minister of Agriculture as Commissioner of Patents and that he should continue to be a deputy minister. My hon. friend will remember that. By that act the minister ceased to be commissioner and the position of deputy commissioner disappeared.

As all the powers and authority of the act were then by its terms conferred on the commissioner it was enacted by the act of 1919 that the word "minister" should be substituted for the word "commissioner" throughout the act. The powers were all vested in the minister but were to be exercised by the commissioner. As there has been no revision of the statutes since 1919 the substitution of the terms has not been made and according to the text of the Patent Act all the powers are conferred on the commissioner. In 1920, the bill, substantially in the form in which it has been recently introduced, was revised and put into form for parliament by the then Parliamentary Counsel, Mr. Gisborne, who decided that it was preferable to retain the text of the act as it stood without the substitution of the terms, and this accounts for the present form of the bill conferring all its powers on the commissioner instead of the minister. Of course it was understood that the commissioner was to be subject to the minister in the exercise of the powers given him. Having decided to retain the text of the old act, clause 5 should not be in its present form in the bill as the commissioner and not the minister is authorized and empowered by the bill to do the several things therein mentioned.

Sir HENRY DRAYTON: Trying to put what has been said into short, commonsense language, I suppose that the change is one which throws upon the commissioner, instead of upon the minister, the right to carry out the Patent Act; in other words, to exercise the functions which are given thereunder.

Mr. ROBB: Yes, but always subject to the minister.

Sir HENRY DRAYTON: So that although the powers are all given to the commissioner, absolutely, the minister has the right to tell him whether he shall exercise them or not.

Mr. ROBB: Does not my hon. friend think that is advisable?

Sir HENRY DRAYTON: I am merely trying at the moment to get at the facts. You have a general delegation of powers by parliament given to the commissioner, and then you provide that notwithstanding all this, the minister may take those powers from him at any time he likes, and the commissioner is to act only as the minister directs. Am I right in assuming that this is what the minister is doing?

Mr. ROBB: I think my hon. friend will agree that that is fair legislation.

Sir HENRY DRAYTON: I want the facts.

Mr. ROBB: The minister of the day is the person finally responsible to parliament.

Sir HENRY DRAYTON: I do not know that that is at all something we can admit. I wanted first of all to find out what the facts were before I started to debate the question. This is not an ordinary matter of administration, for the commissioner is charged with duties which are practically judicial in their character. He passes on matters of tremendous importance, and I wanted to find out whether, instead of having a particular specified officer entrusted by parliament with the discharge of highly technical and difficult duties, the act was going to provide that the minister at any time could interfere with that work and discharge these functions himself.

Mr. ROBB: Does my hon. friend argue that parliament should delegate to an official, a civil servant, if you wish to use that word, all powers of administration, removing them from the purview of parliament?

Sir HENRY DRAYTON: No, I am not going that length at all.