

fee is not paid, then the patent expires. The result is that in the sixteenth year only six per cent of the patents in Great Britain are in force; that is, of the patents granted sixteen years previously; while in Canada, under our law 100 per cent of the patents are still in force seventeen years after they were first granted. Therefore any precedent that might be set in Britain is not half as dangerous, because only a small number of the patents are in force. And an application in Britain must be made at a certain time. I shall also mention later some of the conditions which attach to an application for extension of time in Britain.

I say we cannot possibly afford to pass this bill for the reason I have stated, of creating a dangerous precedent alone. I say, further, that there is no legal right whatsoever to grant any such extension. Our act is silent as to the extension of patents. We have already dealt with war conditions, and with the delay which has been caused by war. Bill No. 16, which was finally passed by the house last Friday, makes provision for that. I would argue that for us to pass this bill would be in direct contradiction of section 28 (a) of the bill which was passed by this house last Friday, and which, by the way, was fully debated, fully discussed, and gone into in committee.

As I say, we have made provision for some extensions necessitated by war conditions. It may be argued that in Britain, and also in the United States, there is power to extend the life of a patent. This is true, and I have already pointed out the situation in that respect in Great Britain, where there is less danger of precedent because of the expiry of eighty-four per cent of the patents before their term is at an end. According to the British law, the courts have power to extend the time under certain strict and prescribed conditions. In Terrell on Patents (7th edition), on pages 266 and 267 under the heading "Extension of Term of a Patent", the learned author says this:

The merit (to be shown by petitioner) required is that of great practical utility rather than that of exceptional ingenuity and it is to be judged by the benefit which the invention has conferred or is likely to confer upon the public.

In *Trantom's Patent*, 34 R.P.C. 28, at page 37, Sargant, J. said:

There is no doubt whatever that before the court can exercise its jurisdiction in favour of a petitioner, it must be satisfied that there has been some merit considerably greater than is sufficient to support the grant of the patent itself and having regard to the nature and merits of the invention in relation to the public. I think the court has to find, as a condition precedent to exercising its jurisdiction in favour of

the patentee, that there has been some considerable benefit given to the public by the inventor in respect of that invention.

It will be noticed that it is a condition precedent to exercising its jurisdiction that the court must find that there has been some considerable benefit given to the public by the inventor. That is a most important point, and nothing has been shown here, for instance, of anything of that kind.

In the United States there seems to be power vested in the commissioner of patents to extend the time under certain conditions again, but it appears from Walker on Patents, second edition, that the extension of time is restricted in favour of the original inventor. The author states on page 1177:

It was against the policy of the law, if not against its letter, to extend any patent in the extension of which, if granted, the inventor would have no property right. The right to an extension was given by the law chiefly with a view to the advantage of the inventor, and not of his assignee or grantee.

It will be seen that under United States law this company would certainly not be successful in getting an extension of time, because the original inventors are not applying for this extension, but only the assignee. In the case before us all the original inventors of all these patents are apparently private persons, and the company which applies for this act of parliament is simply the assignee. There seems to be good sense and logic in this. When the original inventor assigned his patent to the company he undoubtedly received consideration, and this consideration was based in part upon the fact that the patent would last for a certain time. Now, if the assignee is to receive further time, I would argue that for this further time no consideration is given to the original inventor, because he is not a party to this extension, and he seems to be absolutely ignored. Consequently there is no legal right whatsoever.

And now what about any moral or equitable right in this connection? I claim there is no such right, either moral or equitable, in any patent. I believe that a patent is a contract between the inventor and the public, and if it is such, there can be no alteration of any contract under the contract law, unless it could be shown that the parties to the contract were not of one mind, or similar circumstances which are not applicable here. I find my contention to be supported by Frost on Patents, where the learned author says on page 159:

A patent is to be considered as a bargain with the public, and ought to be construed on the same principles of good faith as that which regulates all other contracts.