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Copyright Act.

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Standing Comm. on Banking and
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HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

[illegible]

COPYRIGHT ACT

No. 1

THURSDAY, [illegible]

WITNESSES:

[illegible]

[illegible]

SESSION 1938

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 1

THURSDAY, JUNE 9, 1938

WITNESSES

Mr. W. B. Scott, K.C., Counsel for Non-Tariff Insurance Companies licensed to do business in Canada, Montreal.

Mr. J. A. Mann, K.C., Counsel for Insurance Companies, Members of the Canadian Underwriters' Association, Montreal.

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1933

ORDER OF REFERENCE

FRIDAY, June 3, 1938.

Ordered—That the subject-matter of the following Bill be referred to the said Committee:—

Bill No. 124, An Act to amend the Copyright Act.

Attest

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, June 9, 1938.

The Standing Committee on Banking and Commerce met at 10 o'clock a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Clark (*York-Sunbury*), Cleaver, Dubuc, Fontaine, Kinley, MacDonald (*Brantford City*), McGeer, Martin, Moore, Raymond, Stevens, Ward.

In attendance: Mr. J. T. Mitchell, Commissioner of Patents, Department of the Secretary of State; Mr. W. B. Scott, K.C.; Montreal; Mr. J. A. Mann, K.C.; Montreal; Mr. Roderick S. Kennedy, National Secretary, Canadian Authors Association, Montreal, and others interested in matters relative to the Copyright Act.

The Committee had under consideration on Order of the House dated June 3rd, referring to the Committee the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

Mr. Martin, sponsor of the bill, made a brief statement and moved that Mr. Scott be heard.

Mr. Dubuc suggested that owing to the absence of several members interested in the matter under consideration, the Committee adjourn its proceedings for a few days. It was agreed that the Committee proceed to hear representations from the witnesses present and postpone until a later date the consideration of said representations.

Mr. Martin's motion carried and Mr. W. B. Scott, K.C., counsel for non-tariff Insurance Companies licensed to do business in Canada, was called and examined. He filed copy of judgment in Underwriters' Survey Bureau Ltd., *comp.*, vs Massey & Renwick, *def.*

Witness retired.

Mr. J. A. Mann, K.C., Counsel for Fire, Autobomile and Casualty Insurance Companies, Members of the Canadian Underwriters' Association, was called and examined.

Witness retired.

The Committee adjourned at 1 o'clock to the call of the Chair.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons, Room 277,

June 9, 1938.

The Standing Committee on Banking and Commerce met at 10 a.m. Mr. W. H. Moore, the Chairman, presided.

The Chairman: Order, gentlemen; I am informed that we have a quorum. Bill 124, an Act to amend the Copyright Act.—Mr. Martin.

Hon. Mr. Stevens: Can we have the bill?

Mr. Martin: The bill in its present form will go through the process of considerable amendment insofar as the sponsors are concerned, and I content myself at the outset merely with a statement of what is intended, namely, to give to the Commissioner of Patents, with an ultimate appeal to the Exchequer Court, the right to deal with abuses with respect to the ownership of copyright.

May I say at the outset that there is no intention whatsoever of interfering with literary and artistic work. Those who are interested from that standpoint may be assured that any amendments which they have in mind will be carefully made, because there is no intention of touching that class.

Now, Mr. Chairman, Mr. Scott, who is a barrister and solicitor from Montreal, is here, and he has had this matter in hand and I would ask that he be heard in connection with the bill.

The Chairman: Will you make a motion to that effect?

Mr. Martin: Yes. I make a motion to that effect.

W. B. Scott, K.C., appearing for a group of non-tariff fire insurance companies licensed to do business in Canada, called.

Mr. Dubuc: Mr. Chairman, seeing the importance of this bill and that there are so many members missing from the province of Quebec, I feel like moving the adjournment. This bill is very, very important, and I should think that a great many would be interested in it. I know there is quite a number in Quebec, and, if I am in order, I would ask you to adjourn.

The Chairman: Gentlemen, what is your pleasure?

Mr. Martin: Mr. Chairman, there are two difficulties in the way. On Tuesday we decided to meet this morning. We knew that this would be an occasion that would take a considerable number of the members of the House away, but there was no intimation that a request for an adjournment would be made this morning. In any event, the evidence will be taken down, and no decision will be reached this morning. Therefore, no one will be prejudiced and, in any event, as the session is drawing to a close, we are anxious to get the matter before us in the House if it is at all possible, and I would ask, having that in mind—

The Chairman: That we simply take the evidence to-day and have an adjournment at the conclusion of the evidence until next week? Does that meet with general approval?

Some Hon. Members: Yes.

The Chairman: All right.

The Witness: Mr. Chairman and gentlemen, I quite realize that anything that has to do with adding any additional clauses to the Copyright Act is a

matter involving careful consideration and study. I shall in my remarks, therefore, try to make them as brief as possible consistent with an explanation of the purpose of this bill.

As you know, Mr. Chairman, section 14 of the Copyright Act, as at present drawn, contains provisions whereby a compulsory licence for the issue of copies of a work may be ordered by the minister. The minister who has charge of this Act, of course, is the Secretary of State, and in his discretionary powers, and subject to the fulfilment of certain conditions, he has the right to permit a licence to be granted to a person to publish works where the author has failed to supply the reasonable demands of the Canadian market, or where he has not printed the works for use in Canada.

By the Chairman:

Q. Who are you representing?—A. I should have stated that before, but I am representing, Mr. Chairman, a group of non-tariff fire insurance companies licensed to do business in Canada.

J. A. MANN, K.C.: Is it not non-board companies, but non-tariff companies? Non-board companies may be tariff companies, but are not members of the Canadian Underwriters Association. Is that not correct?

Mr. MARTIN: I think we have to accept his explanation of the companies he represents.

The CHAIRMAN: Do you think the names of the companies represented should be placed on the record?

Mr. MACDONALD: Does he represent a class?

The WITNESS: It is a class, yes, of non-tariff companies or non-board companies who are interested in this bill.

The CHAIRMAN: I think we will put the names of the companies he represents on the record.

The WITNESS: Canadian Mercantile Insurance, Commerce Mutual Insurance, Canadian National Insurance, Sterling Insurance Company, Union Fire, Accident and General Insurance Company, Economical Mutual, Waterloo Mutual, Perth Mutual, Gore District Mutual, Stanstead and Sherbrooke, New York Fire, Merchants and Manufacturers, American Equitable, Canadian Alliance, Sussex Fire, Fonciere Fire, Wawanesa Mutual.

I was saying that section 14 of the Copyright Act, providing for compulsory licence when the reasonable demands of the Canadian market have not been met, was inserted in the Copyright Act in 1921 by parliament; and in 1923 by sub-section 8 of section 16 of the Act, these compulsory licence features were limited only to the situation where it was a Canadian author. In other words, compulsory licences are entirely a domestic matter, and, therefore, we do not run into any international complications resulting from our own inventions. This is a Canadian matter for the Canadian parliament to deal with.

The purpose of the present bill, as Mr. Martin said a moment ago, is to enlarge upon these powers which parliament gave to the Secretary of State, or to the minister, in 1921. Heretofore, of course, the situation has not really arisen because any author has been only too happy to meet the demands of the Canadian market for his work.

The present bill arises out of an application which was made on the 28th of April, 1938, to the Secretary of State asking him to grant a compulsory licence in connection with certain fire insurance plans and maps.

Before dealing with that I want to endorse emphatically every word said by Mr. Martin a moment ago, that it is not the intention of the sponsors of the present bill, in any manner, shape or form, to interfere with any artistic or literary works, as such.

[Mr. W. B. Scott, K.C.]

By Mr. MacDonald:

Q. Does the bill as drawn interfere with such works?

Mr. MARTIN: Yes, I think it does.

The WITNESS: Certain authors made representations to us after the bill had been printed, and pointed out that possibly upon construction of the present wording it might happen. It had never entered our minds that that might be the case, but my friend, Mr. Cuthbert Scott, has been in correspondence with the Canadian Authors' Association, and before this bill is finally dealt with I think that we shall be able to satisfy them, at least I hope to be able to satisfy them, because, if the English language is broad enough, we are willing to do that.

In the second place, I want to endorse emphatically everything Mr. Martin said a moment ago, that it is not the purpose of the present bill to interfere with any litigation past, present or future in the courts, and we are entirely agreeable, if necessary, to have any clause inserted in the bill saying, "nothing herein contained shall affect any litigation or judgment of the courts—"

By Hon. Mr. Stevens:

Q. Do you include the future? You said, "past, present or future."—A. Insofar as a past judgment might have future effect.

By Mr. Martin:

Q. So that there will be no mistake, there is not any connection at all between this bill in its present form, or in the form of its proposed amendments, that is in any way affected by the judgment of the Exchequer Court?—A. No, sir.

Q. They are two different matters?—A. Two entirely different matters. That dealt with infringements of certain photostatic copies made by somebody. This arises out of an application made to the Secretary of State on the 28th of April, 1938, and which on the 5th of May, 1938, a month ago, he was obliged to refuse on the ground that under the wording of the present section 14, dealing with compulsory licences, he had no jurisdiction to deal with the matter before him, and was unable to pronounce any judgment upon the merits of the application.

By Mr. McGeer:

Q. Who brought the action in the Exchequer Court?—A. It was brought by the Underwriters' Survey Bureau Limited which is owned and controlled by the Canadian Underwriters' Association.

Q. Who was the action against?—A. The action was against Massey and Renwick.

Q. Who are they?—A. They are a non-board or non-tariff company doing business in Toronto.

Q. Are Massey & Renwick, Limited, using photostatic copies of plans owned by the Underwriters' Survey Bureau?—A. The judgment of the Exchequer Court held that Massey & Renwick had bought or procured photostatic copies of these plans.

Q. Owned by?—A. The photostatic copies were made by a company known as the Commercial Reproducing Company, and they were infringements of the copyright of plans owned by the Underwriters' Survey Bureau Limited and the member companies of the Canadian Underwriters' Association.

Q. And Massey & Renwick, Limited company were really producing these plans for the non-tariff companies?—A. No, sir; just for themselves.

Q. But the non-tariff companies were customers of theirs, were they not?—A. No, sir.

Mr. KINLEY: They were insurance people.

The WITNESS: Certainly they were not for any of the companies whose names I gave to the chairman.

By the Chairman:

Q. What is the business of Massey and Renwick?—A. They are insurance people. I did not represent them in those proceedings. Colonel Biggar represented them.

Q. They are insurance brokers?—A. They are insurance brokers and managers.

By Mr. McGeer:

Q. In any event, that decision precludes the non-tariff companies from doing the same thing.—A. Oh, certainly, sir.

Q. And this bill, if you could get a favourable decision under it, would give you access to those plans, or plans in an analogous relationship to them, would it not?

Mr. MARTIN: That is right.

The WITNESS: Upon paying for them.

By Mr. McGeer:

Q. So that this legislation is intended to cure the decision of the Exchequer Court, or to relieve you of the limitations imposed by that judgment as non-tariff companies?—A. I must confess I cannot see it that way. If you let me explain, for a minute, I think I can satisfy you that that is not so. The application to the Secretary of State was refused, first, on the ground that under the present section 14, these copies of these plans had not been issued to the public within the sense defined by the Act; and, in the second place, that even if they were issued or published and a compulsory licence could be ordered, the present section 14 provides for not less than 1,000 copies of any work or reproduction under a compulsory licence irrespective of the relation 1,000 copies bears to the needs or demands of the Canadian market for that work.

You will understand, Mr. Chairman, of course, that "book" under the Act is defined to include maps, plans, and so forth.

Q. The point I was making was this: supposing that the amendment as you propose it had been in effect and Massey and Renwick had succeeded on an application to have access to those plans of which they used photostatic copies, there never could have been an action in the Exchequer Court because the Exchequer Court would have had no jurisdiction over the authority given under this proposed amendment?—A. My friend, Mr. Scott, points out that Massey and Renwick had not applied for a licence and offered to pay a royalty.

Q. Quite true, because there was no legal power; but had this amendment that you propose been in effect they would have done that, would they not?—A. If parliament saw fit to pass this amendment, and if upon making out a proper case before the Commissioner of Patents. We are going to propose that the Commissioner of Patents be substituted for the minister, and that there be an appeal to the court. And if the final court, the Privy Council or the Supreme Court finally decided that under the circumstances existing in Canada attaching to the use of these fire insurance plans which have been in general use by everybody for fifty-eight years, there was an abuse by the publishing company which had gradually acquired plans which had been in open sale for thirty years and made by Goad and not made by them,—if the court should decide that that was abuse, then under this bill as amended it would be possible for a person to apply for those plans and upon paying the same market price at which they are supplied to members—

Q. So that this amendment proposes to at least open the way to make an application through the authorities named in the amendment to secure access to that which the Exchequer Court has at the present moment ruled is the property of the Underwriters' Survey Company, and not available to a competitor?—A. Yes, sir, and for this reason: the fire insurance business in Canada has been conducted since 1883 by two classes of insurance companies: first, the board or tariff companies, and, second, by the non-board or non-tariff companies.

By Mr. Kinley:

Q. The Mutual companies?—A. The Mutual companies. Prior to 1883 it was all a competitive business. Since 1883 it has been divided into those two classes.

In 1880 Charles Goad, an Englishman, came out to Canada and he started the idea of making these fire insurance maps. I do not know whether he took the idea from the British war office, the ordinance maps which are very complete and thorough, but be that as it may he did start in and from that time down to the death of Charles Goad in 1910—that is over thirty years—Charles Goad's plans were on open sale throughout the Dominion of Canada to everybody. They were bought by the tariff companies, by the non-tariff companies, by mortgage companies and by the municipalities, and so forth and so on. After 1910, after his death, he left three sons, and by various successive steps which would take too long to describe in detail here, the Underwriters' Association gradually acquired the right in this plan-making from the Goad sons. The Goad sons made them for a while, but gradually the Underwriters' Association got control of these plans by purchase, and so on, from the Goad sons, and they set up their own plan making department until 1931 when the final step was completed whereby the Underwriters' Survey Bureau Limited, which is a joint stock company, completed their chain of title to these plans, as was found by the Exchequer Court.

The life of these plans—I am not an insurance man, but I think any practical insurance man will bear me out in this, that the life of these plans is from twenty to twenty-five years. Goad died in 1910. These plans were all on open sale at that time. These plans were made from original surveys made by him. The life of these plans is known to be twenty-five years, so it becomes obvious that the situation really only became acute in Canada from 1930 to 1935. Of course, that varies to a certain extent with the growth in a municipality. You take a little village like Lennoxville, in the province of Quebec, there is not much new building there and not much increase in population, while in other places there is a big increase in the population.

By Mr. Martin:

Q. In the United States are these plans made available to the public?—A. In the United States the fire insurance business is conducted on exactly similar lines to what it is in Canada. These plans I may say, gentlemen, are just as necessary tools of the trade in the fire insurance business as law reports are for barristers or as a carpenter's tools are to his trade. I think any creditable insurance man will agree with me on that. And for the last 58 years every fire insurance company man in Canada, tariff and non-tariff, has and is still using these plans and is relying on them.

By Mr. Kinley:

Q. Who keeps them up to date?—A. The Underwriters' Survey Bureau.

Q. They own them and keep them up to date?—A. Yes.

By Mr. Martin:

Q. Would you mind going back to the point I raised and explain the situation in the United States?—A. In the United States the business is conducted in exactly the same way as it is in Canada and these plans are available to the general public, and I have here in my hand a letter from the Sanborn Map Company which I will read. It is dated at New York City, April 19, 1938:—

W. J. REYNOLDS, Esq.,
Corroon & Reynolds,
92 William Street,
New York City.

My dear Mr. Reynolds,—In answer to your inquiry of the 13th instant, and in accordance with our conversation of to-day, we wish to advise you that the Sanborn Map Company is a privately owned corporation engaged in business for profit supplying copyrighted map service throughout the United States.

We solicit orders from the entire fire insurance fraternity, including stock and mutual board and non-board companies and their agents. We also have many customers amongst municipalities, banks and mortgage companies, and public utilities.

Trusting this answers your inquiry to your satisfaction, I am,

Yours very truly,
(signed) R. W. HOLLAMAN,
President.

By Mr. McGeer:

Q. Supposing the Sanborn company should decide to quit business in the United States and you wanted to continue the service, you would have to purchase these rights, wouldn't you? You would either have to do that or you would have to go out and compile a new set of plans for yourself at very considerable expense?—A. Of course, I cannot speak for the whole of the United States, Mr. McGeer, but I suggest it would not be practical or advisable for any one or two, or ten or twelve companies in the United States to undertake to re-survey every city, town or village in the United States.

Q. They would have to do it every 20 or 25 years?—A. Not the original survey. That is the whole point. You start on your original survey and the main features are preserved more or less for all time, unless that city or town burns down. It has to be added to, and re-surveys are made and re-prints based on these revisions are issued from time to time; that is quite a different matter from starting in de novo. For instance, take the provinces of Ontario and Quebec alone, there are in existence at the present time 28,651 sheets of plans—28,651 prints of plans—of which only some 654 (it is in the 600's) have been made from original surveys made by the Underwriters' Survey Bureau Limited, or by the member companies of the association; that is, 654 only have been made from original surveys of the bureau and the tariff companies, and 28,671 are based on the original surveys made by old Charles Goad; so that for all practical purposes at the present time the whole thing is in the hands of the underwriters and a few insurance men associated with them. Making a re-survey is not a practical proposition; first from the standpoint of the time involved, and secondly from the standpoint of the expense involved; for any new group of companies to undertake a re-survey of every Canadian city, town or village, even in the provinces of Ontario and Quebec alone, leaving out the western provinces or the Maritimes. I haven't got any figures with me with respect to those provinces.

[Mr. W. B. Scott, K.C.]

By Mr. Kinley:

Q. Do you know the consideration that was paid for these plans by the underwriters? What consideration entered into the purchase of this copyright? —A. What did they pay?

Q. Yes.—A. I cannot tell you that, Mr. Kinley.

Q. It all goes into the cost of insurance, doesn't it?—A. Certainly, sir.

Q. Yes?—A. And, of course, if these plans are duplicated the public will ultimately have to pay for the cost of such duplication.

By Mr. Martin:

Q. Mr. Scott, you are saying by that, that it would not be possible for the non-tariff companies to make new plans—not duplicates, but new plans—because the cost would be prohibitive?—A. It would be prohibitive.

Q. That would mean that they would have to go out of business?—A. They would have to go out of business. If you take just Ontario and Quebec alone, there are 28,000 separate sheets—

Q. That is a plain statement.—A. Take 28,000 sheets and, say $10 a sheet; there is $280,000; and if you multiply that by 50 you see where you go to, because you would want about 50 sets for each city, town or village. Take Ottawa; there are 126 sheets. The Ottawa situation illustrates very emphatically how this situation has arisen. The Ottawa sheets or plans, the whole 126 of them, go back to the original surveys made by Charles Goad in his first work. They were revised by Charles Goad in 1909 and by his sons in one or two succeeding years. Revisions were brought out by the bureau in 1928, I think, and in 1932, and re-prints in 1925 and 1926. The point I am making there, sir, is that it is based on these original works of Charles Goad, his original surveys; and these non-tariff companies never realized perhaps that they were negligent—if you like—in that they did not realize until 1935 when this action was taken that for all time it was the purpose of the association to prevent these maps which were in general use from being generally used.

By Mr. Kinley:

Q. The premiums of non-tariff companies are less than those of the tariff companies?—A. Yes.

Q. Is not that because you use a lot of equipment belonging to these other companies? For instance, their adjuster makes a report and you accept it?—A. No, I think we have a reason for that, the non-tariff companies are able to do business more cheaply because in the first place higher commissions are paid by tariff companies than are paid by non-tariff companies doing fire insurance business in Canada—

Q. You do not re-insure, I suppose; you carry all your own risks and do not re-insure in outside companies. What is the difference whether they are Canadian companies or not?—A. Their overhead is less, and their commissions are less—these over-riding commissions.

Q. Let us suppose that I have insurance with you and insurance with a tariff company, and that I have a loss; would you not say, we will accept the adjustment of the tariff company's man—is not that what you usually do? Is that not why you operate at less expense?—A. I could not tell you—

Q. Is not that what they usually do; if you have a loss and if the tariff company sends their adjuster in on that loss, don't you usually say, we will accept that?

Mr. MARTIN: That is not true, is it?

The WITNESS: I do not know that it is so.

Mr. KINLEY: I know it is true. I have had some experience in this and I know it is true. They will say, what does your adjuster say, we will accept that. That is what they say many times.

By Mr. Martin:

Q. How many tariff companies are there which are distinctly Canadian? —A. There are only three, Mr. Chairman; only three tariff companies that are actually owned by Canadian capital out of a total of some 164 companies.

By Mr. MacDonald:

Q. Out of a total of 164 companies operating in Canada?—A. Yes, only three in the fire insurance business are wholly owned by Canadians; but in the non-board companies there are 71 out of 73 wholly owned by Canadian capital.

By Hon. Mr. Stevens:

Q. I suggest that there should be some way by which we could focus our attention on this amendment to the Copyright Act rather than getting into an argument about board and non-board companies. Do I understand the situation to be this, that you do not challenge the right of the owners of the copyright to all the privileges which are theirs by law?—A. Quite right, sir; certainly.

Q. Then, in the second place, do I understand your position to be this: That anyone—an insurance company or a mortgage company or a real estate company, or anyone else—who desires to purchase one of these maps should be permitted to do so as long as they pay for it at the same rate as is paid by other customers? Is that the whole issue in this thing?—A. Briefly put that is it, sir. And, if the committee will allow me—

By Mr. Martin:

Q. That is the definite issue, isn't it?—A. Yes. And if the committee will allow me, in a moment I will explain the reason why—

By Mr. Kinley:

Q. Well, it seems to me that you are asking for general legislation for a special purpose; you want to change the general law to accomplish one purpurpose?—A. That, sir, will be a matter for the courts after hearing the evidence to decide; whether under the circumstances now existing in Canada with reference to the conducting of fire insurance business it is an abuse for these board companies now to make these plans inaccessible by purchase, loan or otherwise to anybody engaged in the business.

Q. You are here now in respect to your company, which is also a public interest; I quite agree there is something in that. How far should you invade the rights of other people in order to do that? There is such a thing as property rights in these matters, you know.—A. For this reason, Mr. Kinley; I think it is perfectly obvious to anybody who looks into this; I think it is perfectly clear that if these plans are definitely and forever to be rendered inaccessible to any one not a member of the association for any consideration—that is, that they are not to be made available to the non-board, non-tariff companies—it will mean that they either have to go to the expense of preparing sets for themselves or go out of business entirely.

Q. Or, pay for the service?—A. I should like to make it a little more clear. The tariff companies are perfectly willing to supply these plans to any body who joins the association, but to join the association they say you have got to bind yourself to charge identical premiums.

Q. Yes?—A. And to pay identical commissions throughout Canada. And I suggest, sir, that this is the first time—and I have looked through all the books—this is the first time either in England, the United States or elsewhere, that any owner of a copyright—and I am not challenging this, Mr. Stevens—

[Mr. W. B. Scott, K.C.]

I am not challenging their ownership in this copyright—this is the first time that any owner of a copyright has sought to force persons who choose to purchase them to enter into a contract not to do certain things.

Q. And, what was that?—A. To quote identical premiums to the public.

Q. Didn't he say this; we have these plans for the use of those who are willing to help to pay for them and who join the association?—A. And who join the association; and agree in joining the association that they will charge an identical scale of rates to the public and pay identical commissions. That is the point, sir.

Q. Not necessarily higher commissions; uniformity of commissions; but not necessarily higher commissions?—A. No.

Q. There may be some virtue in that?—A. May I say this, Mr. Chairman, that this parliament has always taken the stand in its legislation, in the Criminal Code and in the Combines Investigation Act—it has always looked with a favourable eye upon competition in insurance. Section 498 of the Criminal Code specifically mentions insurance; as to its being an offence to agree or arrange with any other person to in any way prevent—it makes it an offence to prevent or lessen competition in the price of insurance upon person or property. The Combines Investigation Act also mentions insurance, particularly.

By Mr. Martin:

Q. I am rather anxious to get back on the line that Mr. Stevens sought to bring you to, let me do that by asking you another question. First of all, you do not wish to interfere with the copyright of these plans; that is right, isn't it?—A. Yes.

Q. Secondly, you are not asking in this bill to have any use of these plans? —A. No, sir.

Q. Certainly, you are asking merely that we put into the Copyright Act the provisions that are now extant in the Patent Act?—A. Yes, sir.

Q. Giving to the Commissioner of Patents the power; not, to give you the plans?—A. That is quite right.

Q. But merely to determine generally in respect to any copyright whether or not there exists an abuse of the copyright; is that right?—A. That is quite right, sir.

Q. And from that decision, as to whether or not there is an abuse, there is to be an appeal to the exchequer court?—A. Yes.

Q. That is the issue, isn't it?—A. That is the issue. And, I say that this bill is based upon the provisions of the Patent Act for this reason; that it is quite true there is a difference between copyright and patent in the ordinary case of copyright. Two people could set to work to write a history of Ottawa and arrive at the same result by independent means; whereas, in the case of a patent you can only have one valid patent in existence at the one time. But my submission is with regard to the peculiar set of facts attached to the history of these fire insurance plans which have been used by everybody for 58 years is that that is not so; that the use of these plans and the preparation of these plans, which have now been acquired by the Underwriters' Association, is for all intents and purposes a situation wholly analagous to that of a patent, because it is impossible on account of the prohibitive cost and the length of time it would take for anybody to reproduce these plans—

By Hon. Mr. Stevens:

Q. Who owns the copyright now?—A. According to the judgment of the exchequer court—

Q. I mean what is the name of the company who owns the copyright?—A. Well it has been decided to be the Underwriters' Survey Bureau Limited and the 164 or so member companies of the Canadian Underwriters' Association.

By Mr. MacDonald:

Q. Who was the defendant in that action?—A. Massey and Renwick Limited.

Q. Who was the complainant?—A. The Underwriters' Survey Bureau Limited, a plan-making company owned and controlled by the association, together with some 164 members of the association.

Q. Have you a copy of the judgment?—A. Yes, sir. It is printed in the Dominion Law Reports.

Mr. MacDonald: I think that should be filed, Mr. Chairman.

The Chairman: Filed, but not necessarily printed.

Mr. MacDonald: It seems to be a rather long document and it is probably not necessary to have it printed.

By Hon. Mr. Stevens:

Q. Am I right in this; there is a company who owns this copyright?—A. Yes, sir.

Q. What is the name of that company?—A. The Underwriters' Survey Bureau Limited.

Q. That is an incorporated body?—A. Yes.

Q. And it owns the copyright?—A. Jointly with some 164 members of the Canadian Underwriters' Association; or, the Canadian Underwriters' Association.

Q. Are these 164 individual companies named as part owners?—A. They were the complainants.

Q. I am not asking you about who were the complainants, I am asking you about the ownership of a copyright?—A. The judgment declared that that company and these named complainants, were the joint owners of that copyright.

Q. And they issue these plans for a certain sum of money?—A. Yes, I have their catalogue here.

Q. They set a published price and they issue them?—A. They issue them. Here are their prices, ranging from $10 to $15 and $28 and so on.

Mr. Kinley: Under the present law they can do that.

Hon. Mr. Stevens: Just a moment, please.

By Hon. Mr. Stevens:

Q. Of course, they are entitled to have something to pay for the cost of production?—A. To pay for the cost of production, and their overhead and so forth and so on.

Q. And your claim is that you should have the right to purchase these at the same rate as is made to these board companies?—A. As a matter of fact, when we appeared before the Secretary of State I had in my pocket orders in writing which were submitted to the Secretary of State, for plans for the cities of Montreal, Quebec, and so forth—different points throughout Canada—and my clients were willing to pay for these plans at whatever price the member companies paid for them.

Q. And your clients were refused the right of purchase?—A. We were refused the right of purchase, because under the present wording of section 14 these plans were held to be not issued to the public generally, not published to the public generally; they were only circulated among their member companies and amongst the agents who represented these board companies. Perhaps I might answer your question better by giving an illustration. An application was made by a company known as the Mississquoi & Rouville Fire Insurance Company, which was incorporated in 1934. This company applied for a plan for Noranda and the surrounding districts. They applied to Underwriters' Survey Limited for a plan comprising about three sheets covering the town and the surrounding locality, and Underwriters' Survey Limited undertook to supply these plans at

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a cost of somewhere in the neighbourhood of $15 a sheet and they went ahead and made 60 sets of plans. Of this number 22 plans had been distributed by the bureau company to member companies and to agents at Noranda—there were seven agents at Noranda—and 15 member companies. The remaining 38 were in stock and the bureau refused them, and, of course, that was their contention. They could have sold them to us. We could have taken the unused sets of plans, 38 in number, which they had covering Noranda and the district and which they had in their cupboard, but this they were not willing to do for companies not members of their association, unless we joined their association and undertook to quote identical premiums and to pay the same commissions as did member companies.

By Mr. MacDonald:

Q. With regard to this action, the judgment was that the copyright had been infringed, I take it?—A. Yes.

Q. Does this bill propose to amend the Copyright Act so that the court might have given a judgment in favour of your company?—A. No, sir; most emphatically not.

Q. Isn't that what it comes down to?—A. No, sir.

By Mr. Martin:

Q. Is not that the situation?

The CHAIRMAN: Let Mr. MacDonald finish his question.

By Mr. MacDonald:

Q. Was not that the purpose of the bill?—A. The purpose of the bill is this, that if the Commissioner of Patents and the final court of appeal should decide that the withholding of these plans, the refusal to sell these plans to meet the demands of the Canadian market, constituted an abuse, then the Commissioner of Patents could order that copies be sold at a fair rate of profit to the producer, or could permit the licensees to reproduce these plans to be issued to those desiring them at such rates as would be prescribed.

Q. Probably it would be fairer to say that if this bill as amended is passed then the complainants could not have taken this action against your companies?—A. Yes, sir; they could have taken that action.

Q. But they will not be able to take a similar action if the bill is amended?—A. Yes, sir. That action was taken because Massey & Renwick Limited had bought from the Commercial Reproducing Company of Montreal, who engage in the printing of all kinds of material of this sort—

Q. If you amend the bill then you could make your application to the Commissioner of Patents; is that correct?—A. Yes, sir.

Q. And he could order the holder of the copyright to provide you with plans.

Mr. MARTIN: Yes, if there is abuse.

Mr. MACDONALD: Just a moment. He could order the holder of the copyright to provide you with plans to deliver to you all the plans which were dealt with in the exchequer court?

The WITNESS: No, sir.

The CHAIRMAN: By paying for them.

The WITNESS: The complainant dealt with in the exchequer court was that they were infringing by making copies of this work.

Mr. CUTHBERT SCOTT: Perhaps I could answer that question. If this bill is passed it is not going to affect the judgment of the exchequer court in any way, because the defendants will still be liable for damages for infringement;

but in future if anybody wants plans and makes an application to the minister—assuming this amended bill passes—and satisfies the minister that there has been abuse; then, on payment for the plans on terms which the minister thinks fair and just, they will be able to get them.

By Mr. MacDonald:

Q. Is it not so that if the bill is passed that the plans the copyright of which you are infringing can be obtained by an application to the Commissioner of Patents?—A. No, sir; only if the commissioner after hearing the parties comes to the conclusion that a class of persons—the non-board companies if you like—have been unfairly prejudiced by reason of the refusal of the owner of the copyright to "purchase, loan, hire, license or permit use of the work."

By Hon. Mr. Stevens:

Q. You are not arguing at all that anyone should have the right, but only if there is a just complaint?—A. No, sir.

Q. This is a distinct infringement which anybody ought to be punished for?—A. Yes, sir; certainly. I go further; by this bill I do not say that anybody who goes to the Commissioner of Patents and says I want to publish this work should have the right to do so. I do say though that if he satisfies the commissioner at a hearing of all the parties and cross-examination of witnesses as well, that a class of persons has been unfairly prejudiced by the conditions attaching to the use of these plans, and if that case is made out, then the Commissioner of Patents and the courts have the right to say, in these particular circumstances we find that it constitutes an abuse to the public, and to this class of persons; and they will provide appropriate remedies.

By Mr. MacDonald:

Q. Going back to my question: The judgment of the exchequer court declared that you were infringing the copyright. That is true?—A. Yes, sir.

Q. Your clients?—A. They were not my clients.

Q. Well, are not Massey & Renwick your clients?—A. No, sir; Colonel Biggar represented them in that case.

Q. I see. Is there any doubt that if this bill is amended Massey & Renwick will be able to go to the Commissioner of Patents, and if they make out a satisfactory case they will be able to use these plans; is that correct?

Mr. KINLEY: By paying.

Mr. MACDONALD: By making payment; and the exchequer court will then not be able to say, as they said in this judgment, that that company are infringing a copyright; isn't that correct?

The WITNESS: I do not follow you.

Mr. MARTIN: Is this not the situation? What has happened? There has been an action in the exchequer court involving the ownership of these plans; that is the sum and substance of it—infringement.

Mr. MACDONALD: It is infringement of the copyright.

Mr. MARTIN: And the court has declared that these plans have been infringed. That is the judgment of the court. Now, this group comes to parliament and asks that this Act be passed. Now, what is this Act? This Act presupposes ownership in the parties adversely affected. It presupposes ownership, which is the sum and substance of the judgment; and all that they are saying is what common law presupposes, that a copyright does not mean the right to abuse the copyright. The fact that a man owns a copyright does not give him the right to excessive use or abuse; and the machinery here proposed

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is simply to ask that the Commissioner of Patents determine whether or not there is abuse, having in mind the interest of the general public. Now, that is all.

By Mr. McDonald:

Q. Is it not so that if this judgment had been directly opposite to what it is, these people would not be before parliament asking to have the Act amended?

Mr. Martin: That may or may not be, but that does not matter. Undoubtedly, this judgment has brought the problem before us, but it does not alter the situation.

The Witness: To answer that question, and I am glad you raised it, no matter if Massey and Renwick had won that case, or if they should win it in the Supreme Court, that will not make these plans available to the Canadian market. If Massey and Renwick should win that case, it will not make these plans purchasable at the catalogue price.

Mr. MacDonald: No, but Massey and Renwick have not infringed them, if they win the case, and any other companies can do the same as Massey and Renwick have done.

Mr. Martin: In any event, Mr. Chairman, we are dealing with a general principle, and it is true that the witness' evidence has brought the problem in respect of a particular case before us. But the principle involved, as stated by Mr. Stevens very succinctly, is this: are we going to allow to the owner of a copyright the right to use that copyright in a manner that might be regarded as abusive and as not in the interests of the general public? Also what steps are we going to take to arrest the employment of that abuse? Now, that is the issue, and whether or not we agree that Mr. Scott's companies should have these plans or not, I think we should determine whether or not we are going to accept that principle because it might apply to many instances other than the particular one before this committee.

Mr. Kinley: I might have a piece of property and it might be in the public interest to walk across it; but it is still my property, and I should think my right in that property should be preserved.

Mr. Martin: That can be taken care of by appropriation proceedings.

The Chairman: Supposing we allow Mr. Scott to finish his statement?

The Witness: I am not an insurance man, but it is perfectly obvious that if these plans which are now rapidly reaching the stage of obsolescence are no longer procurable by the non-board or non-tariff companies, that they have either got to join the association or discontinue business in Canada.

Of course, the business of the non-board companies has been increasing of recent years. It is now twenty-seven per cent of the total business in Canada, or $11,000,000, as against the tariff business of $29,000,000 or 68 or 69 per cent, according to the last published returns. Ten years ago the business of the tariff companies amounted to only some 15 per cent of the total Canadian business. It has now reached 27 per cent.

Mr. Kinley: You mean of the non-tariff companies?—A. The non-tariff companies, yes.

Q. Does that include the mutuals?—A. No. They come to about 4 or 5 per cent, including the American mutuals and Lloyds.

Q. Is there a case pending in the courts dealing with this very matter?—A. Yes; there was this case against Massey and Renwick, and there was a case taken against four or five other defendants, and those cases were left in abeyance pending the decision in the Massey and Renwick case. Those other cases are pending.

Q. You will be legislating these people out of court if you get this bill?—A. No, sir.

Mr. CUTHBERT SCOTT: If they have infringed in the past they would be liable to damages.

The WITNESS: The Patent Act provision is as follows:—

> Section 65:
>
> The Attorney-General of Canada, or any person interested, may, at any time after the expiration of three years from the date of the granting of a patent, apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder, and asking for relief under this Act.
>
> (e) If any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence or use of the patented article, or to the using or working of the patented process.

By Mr. Kinley:

Q. Is there anything in this Patent Act that says you must supply the public with the goods, that you cannot keep them back?

Mr. CUTHBERT SCOTT: If it is a process patent, there is, yes. There are two different types of patents.

Q. There is an obligation for him to put it on the market?

The WITNESS: Yes, if a man patents an invention and does not make that invention available to the public.

Q. Suppose I have an invention on an engine, do I have to give it to every man who makes an engine?—A. In certain circumstances, you do. If he makes out a case whereby public requirements are not complied with, he can make an application to the Commissioner of Patents in just the manner I have presented here.

By Mr. McGeer:

Q. Were you through with your presentation of the provisions of the Patent Act?—A. There is still the question of an appeal.

Mr. CUTHBERT SCOTT: Did I explain that to your satisfaction, Mr. Kinley? The Commissioner of Patents is here.

Mr. KINLEY: The public interest, of course, is paramount, but another question arises, and that is whether these non-tariff companies who do business cheaper are not using the services of the other companies for which they do not pay. Now, I know that usually the non-tariff man will come along and look at your policy and say, "What rate are you paying?" And he will go under the rate and get the business. I am in favour of that. I have insurance with both. But then you have a loss, and you come in and you say, "I have had a loss, and that is the first one." "Well," he will say, "we will accept the adjustment of the tariff men." The tariff men must pay for that. How many services do you have by reason of the organization set up by the tariff companies where you invade their rights and where you do not have to pay?

Hon. Mr. STEVENS: Mr. Chairman, if we are going to go into the whole question of the merits of non-board and board companies, then I think we should do it under a study of the Insurance Act. I have very definite views on the subject, and I know a little about it. I cannot bring myself to a discussion of that under this amendment to the Copyright Act.

Mr. MARTIN: Hear, hear.

Hon. Mr. STEVENS: Because the thing narrows down, in my opinion, to this: it is the same principle as is involved in the question of the issuing of patents which are not used, or the issuing of patent rights in Canada which are

used to exclude goods from coming into Canada. There is the same general principle. The point with which parliament is concerned is this: if an owner of a copyright, by virtue of his ownership, is refusing to sell that or allow others to use that instrument, whatever it may be, to the detriment of public welfare, then if there is a danger of that, obviously it is the duty of parliament to provide the machinery which will enable public interest to be protected.

I think it is a mistake, frankly, for non-board companies to come here at all and talk about this. I think it should have been brought here as a principle involved in the administration of the Copyright Act. And, frankly, I am in favour of this bill for the same reason that I favour the curbing of the control of patents or the controllers of patents having to do with the exclusion of goods from this country, as I have discussed in parliament before, but which I will not bring in here. But it is the same principle, and I think if we get into a discussion on the merits of the board and non-board companies we are going to get into a field where we will have a very wide difference of opinion. If you are going to come to a just conclusion, you will have to explore a very widespread and intricate business.

I would suggest, Mr. Chairman, with due respect, that we confine ourselves to the principle that is involved.

Mr. KINLEY: The principle is an invasion of individual rights and how far it should go. He has a catalogue price there, the price that these plans were sold for in Canada during the last number of years. Now, the question is if they are sold at this price, is the turnover big enough so that they are not sold at a loss by the people who own them.

I think public interest comes first, but we have in this country a feeling that if a man is right he should not be overruled because four or five men want to overrule him. His right should be his right by virtue of being right and not by virtue of a lot of people wanting to take it away from him.

Mr. MARTIN: Mr. Chairman, I think we have finished with Mr. Scott, and we might go on to the next witness.

The CHAIRMAN: Have you finished with your statement, Mr. Scott?

The WITNESS: Yes. I might mention, as a matter of fact, that the membership in the Underwriters' Association is a changing membership, so that it is not always the same people who are members.

By Mr. MacDonald:

Q. Is it not an incorporated company which owns the copyright?—A. Since 1937. The bureau and the member companies, who are joint owners with the bureau, were incorporated by letters patent in 1937. Prior to that, it was an unincorporated body. Sometimes a company will be busy for ten or fifteen years and then they will retire and take their whole stock of plans with them.

By Mr. Clark:

Q. You mentioned the amount of business as $11,000,000 and $29,000,000. Does that refer to the premiums?—A. That is the premium income, yes, sir. The total for Canada is about $43,000,000.

By Mr. Kinley:

Q. Mr. Scott, the insurance business today is highly competitive?—A. It is competitive, yes, sir.

Q. Highly competitive?—A. It is competitive, and although it is not for me to suggest anything, I think it is a good thing it is competitive, for the public benefit.

Q. But it must be fair competition, everybody standing on their own legs?—A. Yes. The recent figures in the Blue Book show that for the last four or five years the fire insurance companies have been doing very well in Canada.

Q. They have?—A. Yes. The Blue Book shows that they have been doing very well; but the expense ratio of these British companies is a higher expense ratio than that of the non-board companies.

Q. You said that these non-tariff companies were Canadian companies largely?—A. I said 33 out of 71, sir.

Q. But all of them re-insure their risks?—A. I suppose.

Q. With foreign companies?—A. Well——

The CHAIRMAN: Have you any further witnesses?

Mr. MARTIN: No, I do not think so.

Hon. Mr. STEVENS: Mr. Chairman, I think it is a mistake to get into an argument about non-board and board companies; but I think in justice to the board companies, as their counsel are here, they should be heard.

I told Mr. Mann that personally I am inclined to favour the bill, but I will move that they now be heard.

Mr. MARTIN: Mr. Chairman, the Canadian Authors' Association is represented here, and that association wishes to make some representations.

The CHAIRMAN: Shall we hear the Canadian Authors' Association first, or hear Mr. Mann?

Hon. Mr. STEVENS: I think at this stage, if I might suggest it, having heard Mr. Scott, we ought to hear Mr. Mann.

The CHAIRMAN: Yes.

J. A. MANN, K.C., representing the fire, automobile and casualty insurance companies, members of the Canadian Underwriters' Association, called.

The WITNESS: Mr. Chairman, there has been quite a long discussion on this subject, and I am going to try, if it is humanly possible, to limit my remarks to the specific issue that it before this committee.

By the Chairman:

Q. Will you please tell us whom you represent?—A. I represent all of the fire, casualty and automobile registered companies in Canada who are members of the Canadian Underwriters' Association which is composed of three branches, namely, fire, automobile and casualty, numbering some two hundred companies.

The discussion up to this moment has centered itself solely and only upon plans. The question of the rates, rate manuals, specific ratings and rating works of the three branches of this association have been carefully untouched and unconsidered.

These ratings, rate manuals and rate books, speaking in general terms, were also the subject of the litigation to which Mr. MacDonald and Mr. Kinley referred.

By Mr. Martin:

Q. May I point out that in the memorandum, copy of which I think I gave you and which has been circulated among the members of the committee, at page 14 that point is specifically dealt with.—A. Which memorandum is that?

Q. A memorandum prepared by Mr. Scott.—A. Of course, I have had no time to examine that memorandum. You will appreciate that.

The CHAIRMAN: Gentlemen, I suggest we allow Mr. Mann to make his statements in his own way.

The WITNESS: Mr. Chairman, with the greatest respect for the tremendous ability of my very old friend, Mr. Stevens, I am prepared to say, and I am taking the liberty of saying it, that with the exception of Mr. MacDonald and Mr. Kinley, the point involved in this proposed amendment has never been touched, considered or even thought of before the committee.

The CHAIRMAN: It might have been thought of.

The WITNESS: Well, they did not express their thoughts. I am afraid Mr. Stevens, in his remarks, has completely over-run or over-shot the point entirely. My friends and the whole of the members of the committee, if they are advised, and if on the other hand they personally understand what copyright is, will admit that copyright is property; that there are two classes of works, works copyrighted which have never been published, and works which have been published. When I say "published," I mean exposed to the public for sale within the meaning of the provisions of the present Copyright Act of 1921.

The fire insurance plans and maps, as well as the fire insurance rates have been promulgated by the Canadian Underwriters' Association, the plans, through their plan department, which became incorporated in 1917, the rates by the rating committee of the association, automobile by the automobile branch, casualty by the casualty branch, and fire by the fire branch. These rates, rating material, rating manuals and plans have been built up at a cost of something in the vicinity of $15,000,000. The question of how much they cost may not matter, except from this point of view; that it will indicate to the committee why, during the course of fifty-eight years, as my friend, Mr. Scott, says, the non-board companies—and I use the words "non-board companies" as meaning companies who are not members of the Canadian Underwriters' Association—have consistently, and particularly since 1917, acquired copies of all plans and rating material, taken those copies to reproducing companies, had them photographed and photostated, and then used and took unto themselves the benefit of the gigantic expense that we incurred, that is, the Canadian Underwriters' Association.

My friend, Mr. Scott, has this disadvantage; that he was not in the litigation, and I am not going to speak of the litigation except in so far as it affects the principle of this bill. But the principle of this bill is an attempt to pirate or expropriate private property, and it is nothing more or less than that.

Up to March 1917, Charles E. Goad, himself up to 1911 when he died, and his sons up to 1917 when they practically ceased plan making, were making plans for the insurance companies, fire insurance companies, in fact, all companies, it did not matter whether they were board or non-board companies. And they were selling them in exactly the same manner as the Lloyd Map Company to-day, the William Bonnel Company, the Provincial Survey Company and the Canada Atlas Company which makes maps for insurance companies if they want to buy them to-day. The Canadian Underwriters' Association bought its fire insurance plans from the Charles E. Goad Company. My friend, Mr. Scott, if this were 1910 or 1911, could go to the Charles E. Goad Company and buy their maps exactly the same as they can buy them from four Canadian companies I mentioned, and from whom they can order and buy them to-day if they want to. And I just put before the committee an example of fire insurance plans made by these map companies, by original surveys—I hope they are not copies—almost identically the same as the maps and plans made by the plan department of the Canadian Underwriters' Association.

It is open to-day, Mr. Chairman, to the non-board companies to make their own plans, to go out and make original surveys, to chain the ground and to produce the identical thing, if they can get as skilful engineers as we have. And that is the distinction between the Patent Act and the Copyright Act. There is nothing in this world to prevent an independent lot of engineers going out and producing the identical thing that we produce, provided they produce it by original work and original labour.

In connection with the Patent Act, as Mr. Mitchell well knows, you cannot go and produce the same thing, whether you produce it by original labour or not. If you produce a thing that is patented and you use it, then, whether you produced it by original labour or not, you are infringing that patent. That is the distinction, because patent is a monopoly, while copyright is property. That is the distinction, Mr. Chairman.

By Mr. Kinley:

Q. Did you say that any person could buy a Goad plan up to 1910?—A. Up to 1917, and did buy it.

Q. And can buy it to-day?—A. They might get a licence for the publication of the Goad plans up to 1917. They bought Goad plans up to 1917.

By Mr. Raymond:

Q. Do you pretend that there is no abuse on behalf of the Canadian Underwriters' Association?—A. Absolutely not.

Q. If there is no abuse, you should not fear this Act because this Act will only apply if there is an abuse.—A. But, Mr. Raymond, here is the position: it has been stated before this committee that it is the general principle of this Act which is involved. But what I say is this, that the only works of any author or of any owner of copyright to which the public is entitled are works which have previously been offered to the public for sale. There never has been a plan of ours sold. There is no price on them; they are circulated solely and only for the purpose of the business of the Canadian Underwriters' Association membership.

By Hon. Mr. Stevens:

Q. Were they not sold up to 1917?—A. Not our plans.

Q. No; the plans that are the subject of this copyright. They were sold right up to 1917?—A. Absolutely.

Q. To the public, the insurance companies, mortgage companies, real estate agents, and so on?—A. That is what I said a minute ago. They were sold, and if my friend wants them he can make an application, if they were in existence up to 1917. If they want them, they can get a licence to publish them now. But I tell you, Mr. Chairman, that those plans up to 1917 were copyrighted. Ten or eleven years after the Goads decided to go out of business, they offered to the Canadian Underwriters' Association all their copyrights, and anybody can have any Goad plan he wants. Anybody can get a licence to print any Goad plan up to 1917. I make that statement frankly. But now you will realize this, Mr. Chairman, that I take a plan of 1917 and I re-plot that plan and I re-edit it and bring it up to date, to 1937 or 1938, and I complete the work, beginning with the skeleton of 1917, which becomes a copyrighted document. Just the same as I can take a book and I can edit that book and I can write notes from it and I can produce a new book entirely, provided I have the permission of the copyright owner.

I take it my friends will admit this. We all know, at least all lawyers know or should know, the case of the Queen Victoria pamphlet with regard to her very beautiful collection of bric-a-brac. She had photographed her collection of bric-a-brac in a beautiful volume, and she gave that to her friends and her relatives. It was sought to make publication of that, and the court said no; there has never been any publication within the meaning of the Copyright Act; this work has never been sold to the public, it has never been given to the public as a publication within the meaning of the Copyright Act or the then Act of 1842 of England; therefore there can be no publication of this work.

I take it that my friends are all aware of Charles Dickens' life of Christ which he wrote for the purpose of the education solely and only of his family and his children. Would anybody in this committee or anywhere else suggest

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that because he gave to his children and members of his family as an education the life of Christ, somebody should be able to go into his private boudoir and take the manuscript and force him to give it to the public?

By Mr. Martin:

Q. You are overlooking the fact that we have already stated we specifically intend to exclude literary and artistic works.—A. You mean literary and artistic works within the meaning of the Copyright Act?

Q. We are going to amend the Act that is now before this committee.—A. Could we have a copy of the amendment, and perhaps I could save a lot of trouble and labour?

Q. I think it would be a good idea.—A. I am talking of the bill as it is before the committee.

Q. Could you tell me from whom and on what terms the plans could be obtained up to 1917?—A. From the Charles E. Goad Company, and were?

Q. Pardon?—A. And were sold by the Charles E. Goad Company right up to 1931. The Charles E. Goad Company decided that they would not continue the map business after 1917. In 1911 they made a contract with the Canadian Underwriters' Association under which plans would be made and maps would be made. In 1917 they decided to go out of business and they decided to sell all their remaining stock, and they sold it willy-nilly to anybody that wanted to buy it. I venture to say my friends bought dozens of them. Mr. friend, Mr. Scott, has forgotten to say that while he represents Massey and Renwick—

Mr. Scott: I do not.

The Witness: Well, he represents a collection of non-board companies that Massey and Renwick launched as a brokerage house.

After 1917, until the supply of Goad plans were exhausted, anybody could buy them, anybody could buy them in Goad's catalogue. We started our plan department which went into operation on the first of January, 1918. We bought Goad's plans actually from their catalogue, and then we started to make our own plans. We sent our own engineers out. Goad's had nothing to do with it. We changed the plans in the field. We made our own plans, and we made them so that they would be available for purposes of reference to our members. We did everything necessary to the preparation of these plans, and these plans were completed by us, and we have never sold them. The way these plans are paid for is this: The members of the association decide they want a plan of a certain place. They apply to our plan department which is situated in Toronto and occupies two floors of a building on Victoria street, and ask them what it will cost to provide a plan—we will say for a place like Hamilton, or Lindsay, or Peterborough, for example—they ask what it will cost to make a plan for one of these places. The cost is determined, and we find out what member companies are prepared to pay for or to contribute to the cost of making these new plans. We will say that there are two or three companies, let us say three companies, who are interested in the preparation of the plans for this place, and when we are satisfied that there are a sufficient number of companies interested in such a plan we instruct our planning department to go ahead and make the plan. It may interest you to know what the making of such a plan involves by way of cost. The cost of making one of these plans is as much as $100,000. That is why we have to have assurance before undertaking the expense that there is sufficient interest to justify the expenditure and work involved. Now, the catalogue to which Mr. Scott has referred is nothing more or less than a compilation of the proportionate cost to the member of each sheet, or each volume of plans, which a member has the right to know. It indicates his share of the contribution to the plan department of the C.F.U.A. It is

an indication of the amount which the member of the C.F.U.A. is prepared to contribute to the cost of the planning department of the C.F.U.A. for the purpose of getting out one of these new plans. Now, reference has been made to these Goad's plans. Whether they are Goad's plans of Montreal, or Toronto or any other place, they are unpublished documents, and the exchequer court has so held—that they are unpublished documents.

By Hon. Mr. Stevens:

Q. They are made under the system that Goad introduced in 1889?—A. I might say, Mr. Stevens, that they are made exactly on the system of an engineering problem—which Goad I suppose adopted, and on exactly the same system as that used by the Atlas Map Company to-day in making up their insurance plans. Here is a collection of 10 or 15 Atlas Map Company's insurance plans. I cannot complain if they make these plans. I can't complain if these non-board companies want to take these Goad plans, and by the application of original labour, and at their own expense, have them revised and brought up to date. That is exactly what we have done. I would have no cause for complaint.

By Mr. Martin:

Q. Now, Mr. Mann, in reference to what you have just said, and what you have suggested throughout your evidence, is this not the situation; that if the facts are as alleged by you—assuming the passage of this bill, it will not act in a manner that is prejudicial to your interest. I think Mr. Stevens was right in allowing you to give your part of the case, having in mind the specific problem brought before us by Mr. Scott. Do you not think it would be more helpful to us if you were to address yourself now to the principle involved in this bill, and particularly with reference to the point that if there be an abuse that abuse should be corrected by the Commissioner of Patents and the exchequer court?—A. I am obliged to you, Mr. Martin, for that suggestion. I have to read within section 14 the provisions of the succeeding sub-section—"In the case of any work wherein copyright subsists, whether published or unpublished, that there has been an abuse of the rights conferred by this Act." I want to emphasize that, "whether published or unpublished" and, "that there has been an abuse"; and asking for relief. I would submit that if Mr. Martin is prepared to take out the words "or unpublished"—

Mr. MARTIN: Yes.

The WITNESS: Is Mr. Martin prepared to take out that "unpublished"?

Mr. MARTIN: Yes.

The WITNESS: We have gotten so far. You are prepared to take out the words, " or unpublished "?

Mr. MARTIN: Yes.

The WITNESS: And call them " published " works? I just wanted to know. It will save quite a lot of time probably if you will take out these words, " unpublished works."

Mr. MACDONALD: It would then read, " any published work "?

The WITNESS: Yes.

Mr. SCOTT: If I might offer a suggested wording which I think is appropriate: " Whether published or otherwise prepared, distributed or issued for business or commercial purposes."

The WITNESS: Yes. You see the skill which characterizes the work of my friend Mr. Scott. He says, " whether published, or otherwise prepared, distributed or issued for business or commercial purposes." If my friend Mr. Scott will limit that section to " published works " I will curtail my argu-

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ment and save the committee a good deal of time. Will you limit that to "published works," Mr. Scott?

Mr. SCOTT: No.

The WITNESS: I take it then, that you will see exactly the viciousness of this bill.

Some Hon. MEMBERS: Not at all.

The WITNESS: The viciousness of this bill, and I say that advisedly.

By Mr. Martin:

Q. Would you consider it vicious?—A. Would I consider it vicious? My friends know what they are doing now.

Mr. KINLEY: Mr. Martin said that he was prepared to take out the word "unpublished"; do you disagree with that?

The WITNESS: What my friends want to do is to invade the territory of private ownership voted on and accepted by the Berne convention, an amendment to the Berne convention, and the Rome convention; because what they are trying to say now is that if you have an unpublished work—if I write something that has to do with political or national matters and somebody can show that he has an interest in having it published and I have never published it—it is a private work—and it can be shown politically or in any other way that somebody is interested in having it published I can be forced to have it published. It abuses a property right that is mine in identically the same way as Mr. Martin and Mr. Scott are trying to do—

Mr. MARTIN: I am now going to suggest to you, Mr. Mann, that in section 1 of the Act we leave out altogether the words, "whether published or unpublished"—

Mr. KINLEY: I think, Mr. Chairman, that it was decided that we were not going to arrive at any conclusion to-day.

Mr. MARTIN: I am just doing that so that Mr. Mann and I can come closer together.

Mr. KINLEY: You have already declared yourself on that point.

Mr. MARTIN: That is what I am doing. I am going further now.

Mr. MACDONALD: If you take out the words "published or unpublished," you might just as well leave them both in.

The WITNESS: Just as well, Mr. MacDonald.

Mr. MARTIN: I am trying to satisfy him.

The WITNESS: You cannot satisfy me by leaving them out. If you take out the words, "published or unpublished" you refer still to the rights conferred by this Act. And the right conferred by this Act, the right of any man—any one of you here—the right of any one in the countries who are parties to these conventions to have their unpublished works held inviolate. I take it that my friend Mr. Martin will admit this; if he does not; at least I hope he will admit this; that if a big oil company or a big manufacturing company, or some life insurance company—to take a typical example—prepares a pamphlet on sales discussions and sales talks for its agents: Tells them to treat the prospect as always being right; treat him on this principle; discuss these points with him with a view to helping him to get business; talk to a prospect about his age, the number of children he has, the number of people there are in his family, and the benefits that may arise from his having insurance and so on. That pamphlet is intended for the use of the agent and it is got out for the purpose of assisting the agent in selling life insurance policies, then what my friend Mr. Martin suggests is that you have the right under this Act to go to the Commissioner of Patents and say I want you to give me the use of that pamphlet, and you take that way of getting it.

Mr. MARTIN: Do you want my answer to that?

The WITNESS: Not until I have completed my question.

Mr. MARTIN: I know what your question is.

The WITNESS: How can my friend Mr. Martin suggest an answer before he has heard my question? They say, you are abusing this right, the right of distributing this pamphlet, which nobody will deny is subject to copyright under the provisions of the Act. They say, you are abusing the right; and then suppose some independent person is the author of a new document but not the owner of that copyright, together with the property right in that copyright, suppose he prepares a similar document for the Confederation Life, or the Manufacturers' Life or some other life insurance company; I do not think my friend Mr. Martin could suggest that that suggestion for a moment should be the subject of legislation, would you Mr. Martin?

Mr. MARTIN: To answer your question, if you put it that way: There is a difficulty naturally in your analogy; but, assuming away the difficulty, if that particular pamphlet were one which were in the possession of one company it would hurt the general institution and therefore create an abuse. I would certainly think that it would be in the interest of all companies and in the general interest of Canada that you should not permit it to exist.

The WITNESS: So then what you would say is this, that of the 60 or 70 civilized countries who have joined to sanctify the maintenance of private rights Canada should be singled out—with its 11,000,000 of population—should be singled out from the 60 or 70 countries to these conventions—and I have here the copyright acts of every civilized country in the world—and you think Canada should be singled out, and that legislation should be passed that would be in the public interest as against all of the other members of the convention, whereby private property could be taken because you say, and you are able to convince three other persons, that you are entitled to say to the owner of that private property that it should be given to somebody else.

By Hon. Mr. Stevens:

Q. Mr. Mann, would you explain this—I have listened to you very carefully—if you will turn to section 14, it says, "Any person may apply to the minister for a licence to print and publish in Canada and book wherein copyright subsists, if at any time after publication and within the duration of the copyright, the owner of the copyright fails:

(a) to print the said book or cause the same to be printed in Canada,

(b) to supply by means of copies so printed the reasonable demands of the Canadian market for such book, or plan, or map.

Now, for 30 years the Goad's plans were supplied to everybody; and, frankly, you know that?—A. I think a good many individuals have them.

Q. I think I bought them as far back as some time in the '90's. I know something about them. They were supplied generally, not to insurance companies alone, but to mortgage companies, real estate companies and so on?—A. Certainly.

Q. We used to use them for the purposes of our real estate office.—A. There were two classes of plans, if you remember.

Q. I know. I used to have one of these hanging for 30 years in my office.—A. There are insurance plans and—

Q. And they are renewed and revised from time to time? In Vancouver they had to be revised quite often.—A. Yes, Vancouver was growing very rapidly.

Q. That plan was published and generally used by the public. Now, do you claim that because in 1917 you acquired—when was it, was it in 1917 that you acquired the rights of the Goad family in that copyright—that from

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that point on you have the right to deny to the public who have been buying these plans a continuation of the service?—A. Just the very opposite. In the first place, are these really paid for? We acquired the copyright in 1931, not 1917. We acquired those copyrights in 1931.

Q. That makes it all the stronger.—A. I do not see that. It is the very opposite. If anybody wants Goad's plans they are available to them and they can get a licence to publish them. The minister is the person who is in a position to decide?—A. Can decide what remuneration ought to be fixed to compensate the owners for the use of those plans. Our association bought and used them. Any of Goad's plans made are published.

Q. You are trying to get away from my point? I may be stupid in putting it.—A. I have never said that you were stupid, Mr. Stevens.

Hon. Mr. STEVENS: You said it a while ago, that is why I am rather nervous in talking to you now.

By Hon. Mr. Stevens:

Q. Do you get this point? The circulation of these plans continued down to 1931. Everybody bought them freely, and without any interference, the copyright was maintained intact down to that time. You stepped in in 1931 and you secured control of these copyright plans?—A. Yes, sir.

Q. Then you say, from now on these plans—or supplemented service,—because, mark you, inherent to that map service was the continuity of the service, you know that? You know that that was an important part of the service, the people were able to get these amended plans, and, of course, they paid for them?—A. Quite.

Q. The very continuance of the copyright was dependent upon the adaptability of the plan to amendments on plans here and there from time to time as the years went on. Now, this was continued for forty odd years, from 1889, I think it was, until 1931; then in 1931 along comes another party, they buy control of it and they say to the public generally, your rights to this continuing service and to the use of these plans is denied—because the plans become useless unless the service is preserved and kept up to date; and you take the position that because you are the owners of the copyright now you can do what you like; you say to the other people, you can get something else, or you can make your own plans, we are going to take advantage of the work that for forty years was available to the public and we are going to deny to the public a continuation of that service?—A. It is a difficult thing for me to say that you are totally and completely wrong, but you are wrong.

Q. That is your opinion?—A. I apologize if I said you were stupid, it was never meant in that way.

The CHAIRMAN: I do not think you said so.

The WITNESS: I am not inclined to be as rude as that.

Hon. Mr. STEVENS: I don't care whether you said it or not.

The WITNESS: If I did say it I take it all back, I apologize.

Hon. Mr. STEVENS: However, that may be, it does not make me any more stupid.

The CHAIRMAN: The committee rules that you are not stupid.

By Hon. Mr. Stevens:

Q. In what respect am I wrong?—A. You are wrong in your lack of—perhaps I had better say, your apparent lack of knowledge of copyright law.

Q. That is all right, will you enlarge on that?—A. I say to you quite frankly now that I think you will be able to appreciate the situation. Goad's plans were the subject of copyright. Copyright represents property. It

represents property in an intellectual production. Goad's intellectually produced plans, wherever Goad's plans exist today, they are the subject of compulsory licences to publish. You can get every Goad's plan. But what I say about it is this, Mr. Stevens; that if there is a Goad's plan published in 1917 and the public is at liberty to copy it; it is at liberty to get it and it is at liberty to get a licence to publish it, if the owner of the copyright will not publish under the provisions of section 14. The public has no right to get that ownership of the 1917 plans upon which we superimposed the work of 20 years' labour at a cost of millions of dollars. It is entitled to get them, but it is not entitled to get the new work superimposed upon that work as a skeleton.

Q. Now, Mr. Mann, you are evading the issue; Goad's plans were kept up to date until 1931 absolutely up to date?—A. That is one point on which you are entirely wrong, Mr. Stevens, they were not.

Q. That is a question of fact.—A. It is a question of fact, you see? I think you will have to take my word for it, because I have made a very thorough study of the situation, and I am afraid you have not. The Goad's plans were not kept up to date, Goad's began in 1917 to close out, and they sold in 1928 and 1929 the things that existed in 1917.

Q. And you acquired them in 1931?—A. No, we acquired the copyright in 1931.

Q. That is what we are talking about?—A. You are talking about the plans and I am talking about the copyright.

Q. I am talking about the copyright?—A. The plans they had in stock in 1917 were the same plans they had in stock in 1931, I mean what was left of them, and they continued to sell those plans until 1931. Any plan bought up to 1931 was a plan which must have existed prior to 1917, because they made no more plans after that date, they only sold their stock-in-trade.

Q. Why would you buy their copyright if they were so useless?—A. I did not say they were useless. I was saying that in 1918, 1919, 1920, 1921, 1922 and 1923, and so on they were still selling off their stock of plans. I admit that they were much more useful then than they would be in 1938. If my friends wanted a stock of these plans why did they not buy them? But what we did do, and what my friends did not do, was we spent several millions of dollars in creating new works up to date. We decided to take our new works and photograph them and make copies of them for the use and convenience of members of our association. That is what I said.

By Mr. Raymond:

Q. Do you mean millions of dollars, or cents?—A. Millions of dollars.

Q. Millions?—A. Yes, millions; with all due respect to the members of the committee, possibly you do not realize just exactly what it costs to do work of this kind.

By Hon. Mr. Stevens:

Q. If I might give an instance, take the Encyclopedia Britannica?—A. Yes.

Q. It is published and revised from time to time. It is a copyright proposition. Do you suggest that anyone should have the right now to take over the copyright on a work of that kind and say we are going to revise and publish it for ourselves and nobody else will have any right to a continuation of the service other than the limited number of people associationed with us?—A. I don't think I follow you, Mr. Stevens. I think it is an entirely different thing.

Q. Let me put it this way—I seem to be incapable of making myself clear. —A. Oh no, sir; not at all.

Q. Here is a system of insurance maps—we will confine ourselves to that? —A. Yes, sir.

[Mr. J. A. Mann, K.C.]

Q. A system of insurance maps that have been in constant use for a period of 30 or 40 years—

Mr. MacDonald: Mr. Chairman, might I draw your attention to the fact that this is the King's birthday and the Royal Salute is being fired.

(The committee stood at attention while the salute was being fired.)

The committee resumed.

By Hon. Mr. Stevens:

Q. I am afraid, as far as we are concerned Mr. Mann, that we are approaching this thing from two different angles. I am not disputing—as far as I am concerned I need no persuasion on the point that your association have acquired the right of proprietorship in the copyright. I quite appreciate that. I do observe, however, that in the Act as it exists, particularly in section 14, it does provide that a person may apply to the minister, and so on; and then this amendment, as far as I can read it, simply provides that where there is a refusal—and in this case the Goad maps come into the argument—that where there is a refusal they should have the right to submit the case to the Commissioner of Patents and to take his arbitration on the dispute, and then if either one of the parties to the dispute is dissatisfied there is an appeal to the Exchequer Court. Now, what conceivable objection can there be to that?—A. Might I interrupt you? There is just one thing. Read the first three lines in section 14. Would you mind doing that?

Q. "Any person may apply to the minister for a licence to print and publish in Canada any book wherein copyright subsists, if at any time after publication and within the duration of the copyright—"?—A. Would you go a step further, sir?

Q. Yes?—A. "If at any time after publication"; isn't that an essential requirement of section 14?

Q. Absolutely. I admit it. What I argue is this; that these plans having been in common use for everybody for 30 or 40 years— —A. Which plans, sir?

Q. Goad's plans?—A. Goad's plans—which group?

Q. Goad's insurance plans?—A. Yes.

Q. Now, just a minute, I know what you are doing; you are discriminating between Goad's plans and your insurance plans. The point is, what is your system of insurance plans? I do not care whether you call them Goad's plans or what you call them. These plans have been in existence for some 30 or 40 years and they have been available for general distribution to the public, but at a certain time, in 1931, you acquired the rights in these copyrights and then you denied to a substantial proportion of the public the right to purchase on the same terms as others a continuity of that service. That is the dispute.—A. But, the other map companies are not denying it to these people. There probably are half a dozen of them in Canada.

Q. No, but, for instance, I have in my office a Goad's plan which I think has been there for some 35 years—since 1906 or something like that—why should not I have the right to a continuation of the service? As a matter of fact we have, because we had to be represented in both companies—that is where my experience comes in. But I do say this, I am very much in earnest about this question of principle; and I do say this that under the patents law or under the copyright law parliament must guard against the denying to the public the right of service— —A. I agree with you, absolutely.

Q. But I do not go so far as to say that there should be a statutory obligation upon the goodwill of anyone, but I do say that there is nothing unreasonable in this proposed bill, that where you get into a dispute with some other interests, some conflicting or competing interest, that the matter should be referred to a

commissioner—in this case to the Commissioner of Patents—and with an appeal to the Exchequer Court.—A. Yes.

Q. It seems to me that if that principle is admitted you do no violence to the principle of proprietorship at all and you preserve your rights subject to the provision of the Exchequer Court. I cannot see why you should object to it?—A. Might I put this to you, Mr. Stevens? Perhaps this would help. Are you saying this? Are you saying that, admitting that my plans have never been published and have not been given to the public for sale and are not intended to be so published, that you are entitled to take away from me the owner of the copyright the benefits that accrue to me by reason of that unpublished work? Are you saying that you propose to take away from the owner of the copyright the right conferred by this Act, which is the sole right to determine whether the owner of the copyright will publish or not; is that what you are saying?

Q. No, that is not what I am saying?—A. That is what I understood you to say.

Q. I do not think you did. I am just inclined to think that you are just as stupid as I am.—A. Maybe; that is your opinion there is no doubt about that.

Q. No, you don't think I said that at all?—A. Yes, I do. I asked you if you said that?

Q. I know you didn't, and I do not believe you.—A. You do not believe I asked it?

Q. No; I do not believe your refusal.

Q. That is not the instance here at all. If you start *de novo* in the publication of some new work, plan, book or anything else, then in the creation of a new work you get a copyright that is your property; but under the Act, if you publish that and it is circulated, then there enters into it a public interest and public right?—A. Yes, sir.

Q. Then parliament by its power and within its duty must safeguard those public interests and public rights. And what happened in this case, as I have repeatedly said, and I am going to reiterate it now, is this: here was a peculiar service, rendered for 30 or 40 years to the people of Canada. I think I am within the truth when I say there was no other similar service over that period of years?—A. Have you read the evidence of the Massey-Renwick case?

Q. No, I have not.—A. It would be enlightening.

Q. There may have been some similar services in recent years, but I say down during the long period of years as far as I know there were no other similar services. There may have been some small local services in the city of Toronto, but I am talking about the Goad system. Now, that service, having been given over all those years, and you having acquired it, which you have, then to deny the public, I say parliament must step in and provide some means, some referee or some arbitration power that will decide between the interests that will inevitably be affected. Copyright surely never intended that you, by acquiring a copyright that had been in existence for thirty or forty years, could stop the privilege that has been enjoyed all these years.—A. The House of Lords said it could, in the leading case of England.

Q. Well, I have studied this patent business in Canada, and I do not want to get into that realm but some of these days parliament will have to take notice of it. I do not say this disrespectfully about what the House of Lords may have said on the law, but I do say that insofar as things within Canada are concerned, not interfering with these international conventions, we have a right to protect the interests of our citizens and the public generally.—A. Yes, I agree with that.

Q. I do not say that with any disrespect to the House of Lords.—A. I agree with that. What I am asking this committee to do is to protect our citizens generally. I am glad you put those words in my mouth, because that is exactly what I am asking the committee to do; not to protect a class.

[Mr. J. A. Mann, K.C.]

Q. If you can show me wherein this bill will interfere with the rights of anybody, then I would think you had a case. But I cannot read into this proposed amendment any such situation. It may be that the wording of it might be changed, but the principle that is involved in this proposed amendment appears to me as merely the machinery by which to erect an arbitration body or forum that will intervene where there is a dispute arising out of a long-standing published and used copyright.—A. Mr. Chairman, I should address the chair, I have been addressing Mr. Stevens, because he and I have been having a nice little discussion for ten or fifteen minutes now. I do not see how, Mr. Chairman, my friend Mr. Stevens or anybody else can suggest there can be a dispute or an argument or anything deterimental to the public interest of Canada in connection with an unpublished intellectual production. How can there be a dispute?

Q. I do not argue that.—A. Then, Mr. Stevens, I must say this to you; that Goad's service ceased in 1917.

Mr. KINLEY: That is the point exactly.

The WITNESS: I was up to 1917. Anybody that wants to get Goad's service up to 1917 can get it. They cannot get it after, because it did not exist. Nothing has been published since, but there are a dozen other map companies doing the same thing.

By Mr. Martin:

Q. If that is the case, surely Mr. Stevens' argument is unanswerable. There can be no objection to this parliament through this committee giving the Commissioner of Patents the right to deal with abuses, or, whether there are abuses or not, with an appeal to the Exchequer Court. Confining ourselves merely to that principle, what earthly objection can be presented?

By Mr. Ward:

Q. I understood you to say that there were a half a dozen or dozen publishers in this country publishing plans that could be purchased by the non-board companies?—A. Yes, and have been. Here are some of them here. Why do they not keep on?

By Mr. Martin:

Q. Supposing there are 100, supposing this company can get all the maps in the world; addressing ourselves to this one principle that if there is an abuse there should be an opportunity of correcting it. Do you agree with that?—A. Yes. I agree that if there is an abuse it should be corrected.

Q. Then you agree with this bill?—A. No, I agree with part of it insofar as something belonging to the public is concerned, but I disagree with it in regard to something that the public has no business in or has nothing to do with, as the courts have already stated, and that is unpublished works.

By Hon. Mr. Stevens:

Q. You made a statement a moment ago which seemed to have a considerable effect on the minds of the members of the committee regarding an argument I made. Do you say that the service known as the Goad Map Service ceased in 1917 absolutely?—A. I do.

Q. And that there have been no issued plans that are attachable and have been utilized by those who had that service?—A. Well, Mr. Stevens, how could I possibly answer yes to the last part of your question, that there have been no plans since used or utilized by those who had that service? It would be stupid for me to say yes to that.

Mr. KINLEY: Any engineer could do it.

By Hon. Mr. Stevens:

Q. That is not stupid.—A. Stupid of me.

Q. I say it is not stupid of you nor is it stupid of me. Now, listen: these maps exist; they are in the insurance offices, mortgage offices and real estate offices.—A. Do you make that statement as a fact?

Q. I do.—A. That Goad's plans exist?

Q. Yes, because I have seen scores of them.—A. Of Goad's plans?

Q. Yes. And these plans have from year to year been serviced and revised.

Mr. KINLEY: By whom?

Hon. Mr. STEVENS: By the owners and operators of the Goad system.

The WITNESS: Oh, no.

By Hon. Mr. Stevens:

Q. Wait a minute. You say that since 1917 there has been no servicing of those maps?—A. I do not know. I say that since 1917 the servicing of the maps was the creation of a new plan system by the Canadian Underwriters' Association unpublished and unsold.

Q. Exactly. That is exactly the point at issue, Mr. Chairman, in this whole business. Therefore, why should that large section of the public who invested a very considerable amount of money—I have forgotten what these plans cost originally but they were of substantial value—why should these people who have had these plans all through the years, 30 years, be denied these plans because some other corporation buys the copyright? And why should we not supply some means of appeal or arbitration in connection with that denial?—A. May I ask this, why should this class that you appear to be enthusiastically supporting and who had these plans up to 1917, why should this class have not gone and got their engineers and built up their own plan department and serviced these Goad plans?

Q. I will tell you why.—A. There is no answer.

Q. Because they bought the service from the owners of the copyright which copyright you purchased?—A. We did not buy it until 1931—14 years later.

By Mr. Martin:

Q. Is it not a fact that these plans were, in the course of years, bought up bit by bit by the interests that you are so ably representing?—A. No, sir,

Mr. KINLEY: Mr. Chairman, I think that is the whole point at issue. It affects the expense of doing business.

The WITNESS: That is it.

Mr. KINLEY: The non-tariff companies are using a thing which they did not innovate, and they want to get it arbitrarily?

Mr. MARTIN: The commissioner of patents, if this bill goes through, could so hold. Is that not right, Mr. Mann.

The WITNESS: The commissioner of patents could, if that bill goes through, violate the principles of the copyright law of the whole world.

By Mr. Martin:

Q. I know, but, Mr. Mann, you have faith in the Exchequer Court and the commissioner of patents, and the Exchequer Court and the commissioner are not likely to do things which should not be done. Is the principle of this bill one to which serious exception can be taken?—A. I think so. I think the whole principle of the bill is wrong, absolutely and utterly wrong.

Q. You have already said that if there is an abuse against the public that abuse should be taken care of. You have already said that, is that not right?—A. Yes. I think all public abuses should be taken care of.

[Mr. J. A. Mann, K.C.]

Q. What other agency is there to take care of this matter?—A. The author or owner of the unpublished copyright, himself. And that is provided for in the Act. If it is unpublished, how can there be abuse? If I own half a dozen things, surely I can do what I like with them as long as I do not transcend the provisions of the criminal law. If I own a half a dozen dogs or a stable of horses, can I not treat those horses anyway I like? And how has the public got a word to say to me as long as I do not transcend the provisions of the criminal law. Can you tell me how?

Q. I can, if you are conducting it in a way that is prejudicial to the public interest.—A. That is what I said, as long as I do not transcend some principle of the civil or criminal law.

Q. That is all we are trying to deal with here.—A. No, you are dealing with the right of property in which the public has no interest.

Q. Well, all right, if the public has no interest, the commissioner will so declare.

By Hon. Mr. Stevens:

Q. I come back to the Goad map system. There was established by the public a very definite interest in it which they paid for over thirty or forty years. What right have you or anybody else to buy up that copyright and say that all amendments to that Goad plan from now on are new productions and we are going to copyright them separately and those who have paid for that service all those years are now to be denied the continuity of that service?—A. I do not say that. I say I happened to be the one who did it, but anybody could have done it.

Q. My submission is that we should provide in the law against anybody securing that position or control over a copyright.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: What you are saying is that the owner of a copyright has no right to determine whether he will publish his own work.

Q. Oh, no. Let me put it another way. You are the one that is violating that principle.—A. Oh, no.

Q. Wait a minute. The principle in this copyright that we are talking about is that Goad owned it and published it for a long period of years?—A. Which copyright?

Q. The Goad map copyright.—A. I do not quarrel with that.

Q. Yes, but the public acquired an interest in it.—A. They have still got an interest in it.

Q. Not if you stop the service.—A. But what I cannot get into my head to save my life, and I cannot see how any intelligent man can get it into his head, is why somebody has got to be forced to—

The CHAIRMAN: Order, gentlemen.

Hon. Mr. STEVENS: Mr. Mann has implied that I was stupid; now he has said we are not intelligent men.

The WITNESS: I think you will have to forgive me because I have perhaps a little broader knowledge of the subject than some of you. I do not say broader than you have, but broader than some of you. I know the subject pretty well.

Mr. DUBUC: Is it not right that your case appears to be in two parts: one part which you have acquired and one part which you have worked? After all, I have been listening to everything and the asset that you have, or the property that you have is not in one piece, it is composed of two pieces?—A. Exactly, and I say the one I made by my original research the public has no interest in.

Q. But it is of no value unless you have the other one?—A. Yes. If you will take the schedule in the judgment that is before the committee you will find a very large proportion of the plans set out in that schedule which we have copyrighted. They never had anything to do with Goad's plans.

Q. The point is to see whether we are doing the fair thing to yourselves and to the public, to find out if what you use in two parts is an abuse. No citizen can object to that?—A. Yes, but what I am saying, Mr. Dubuc, is that any citizen to-day has the right to do identically what we did.

Q. We are looking for an abuse, we are not looking to see whether we have that right or not.—A. Then I say, how can there be an abuse? I say, how can there be an abuse of something by a person or a collection of persons in respect of an entity or a thing in which the public have no interest? And the public have no interest by the terms of the statute in an unpublished work. Understand what I say, an unpublished work. Goad's plans were published. Goad's maps up to 1917 were published, and the remainder of their stock they sold spread over a period to 1931. In 1931 there was nothing left. The public have an interest in them. Those maps existed in 1917. The public can get copies of them; if they can find the originals, they can get a licence. All I own is a copyright. But what I say is that the maps that I made—and when I say "I," I mean my companies,—the maps I made were original works, notwithstanding what the foundation of them was, and real complete revisions and remakes of maps and maps made entirely independently of Goad or anybody else. That is what I say the public has no interest in.

By Hon. Mr. Stevens:

Q. Which are useful only if used in connection with Goad's maps?—A. No, they have no relationship with them. That is what I have been trying to hammer into you for the last twenty minutes. Goad's maps have no relationship whatever to our plans—none whatever. The Goad maps have nothing to do with them.

By Mr. McGeer:

Q. As I understand what you have said, it is that up to 1917 Goad maintained a map service for all of the insurance companies in Canada?—A. I might correct that. In 1911 an agreement was entered into between the Goads and the Canadian Fire Underwriters' Association then whereby the Goads would supply the service of original maps for a period of six years, and that expired in 1917. There was some litigation between Goads and some of the companies in 1913 wherein some of the companies set forth that the Goads had entered into a contract with the Canadian Underwriters' Association and that the Goads had refused to sell to non-board companies the maps that already existed. I think that action was lost in 1914 and the companies continued buying maps.

Q. That apparently was an attempt to disrupt the service but which by agreement was continued?—A. To 1917.

Q. So that we come back to the original proposition, that up to 1917 the Goad company owned the copyright of the plans that they had developed, and maintained a service to the public or to all the companies in Canada which ceased in 1917? Is that correct?—A. Correct. Then they went out of business.

Q. In 1917 there was no Goad service on revision?—A. None.

Q. But everybody had possession of the Goad service maps that had been published and serviced up to that time?—A. Exactly.

Q. So that if anybody wished to keep up to date the maps that Goad had supplied up to 1917, it was a matter of individual or group responsibility?—A. Nobody could have said it better than you have said it. That is exactly what the position was.

Q. Now, under the provision of the Copyright Act, any person can apply and secure copies of the Goad maps that were published and serviced up to 1917?—A. Yes, sir.

Q. And you have no objection?—A. None whatever.

[Mr. J. A. Mann, K.C.]

Q. To that application being granted by the minister administering the Copyright Act?—A. Absolutely none whatever. They can take those maps and then re-service them in any way they like.

Q. The Canadian Underwriters' Association are a group of insurance companies that are in competition with other companies, among them being the non-tariff companies who are applying for this amendment?—A. Yes, non-board companies.

Q. Now, the dispute that now exists and that has been settled in the Exchequer court in your favour is whether or not your competitors, the non-board companies, had the right to have access, not to the Goad plans, but to the revisions of the Goad plans made by the Underwriters' Association for their own use in their own business?—A. That was it, plus the right to copy or reproduce even the Goad plans back to 1896 because we owned the copyright. But there was no question in the Exchequer court as to the right of the companies other than the board companies to demand and procure a licence from the minister to copy those plans of Goad's.

Q. I am afraid we are confusing the actual issue. What the non-board companies had done was to have infringed that copyright without the sanction of the minister under the Copyright Act?—A. That is it exactly.

Q. But what I am dealing with is this: that the non-board companies, under their Copyright Act as it is, have the right to apply for the use of those Goad plans which were published and serviced up to 1917?—A. Without a question of a doubt.

Q. And if they had made their application under this Act, they would have had all the service that Mr. Stevens has mentioned, provided their application succeeded.—A. Yes.

Q. They would have had all the service that the Goad Company had provided up to 1917?—A. Certainly would. Nothing in the world could stop them. The law is there all in their favour, and I doubt if we would have opposed it.

Mr. Martin: Except that a thousand copies would have to be printed.

By Mr. McGeer:

Q. That, of course, is all you could get, because I doubt whether the minister would be able to compel anybody to publish them. If he refused to publish, then all that the minister could do would be to authorize the person desirous of publishing the map to publish it himself. But I do not think there is any mandamus power here which would go so far as to say that the minister would assume the responsibility of saying, "You must publish." That is as far as this section goes. I suppose in addition to the maps serviced by the Underwriters' Survey Bureau, individual firms make their whole changes in revisions with reference to particular areas?—A. I know of nothing to stop them, nothing in the world.

Q. Is there anything to stop the non-tariff companies from taking the Goad maps up to 1917 and going out and doing exactly as you have done?—A. Absolutely nothing.

Q. In the way of producing their own maps?—A. Nothing in the world.

Q. I asked you that question because I think that is the distinctive difference between a copyrighted plan of this type and a patented article, the reproduction of which is exclusively within the possession of the patentee?—A. That is the exact distinction.

Q. And it seems to me that the real issue involved is pretty close to whether or not competitors should be allowed to take advantage of the industry and skill of each other.—A. That is exactly it.

Q. Which would in my opinion go a very long way towards destroying the benefit which the public gets from free competition. Now, there is a

two-fold purpose, I take it, in this particular amendment. One is to have access to the Goad maps which the Copyright law already provides for. The other is to have access to the revisions made by the underwriters who are the competitors of the non-board companies and who, of course, the Copyright Act has been careful to protect?—A. Exactly.

Q. So that this proposed amendment, if it is adopted, involves a complete change in the whole principle of copyright law.—A. The whole principle of copyright law.

Q. Namely, that of giving to a competitor access to the skill and industry of the one with whom he is competing.—A. His tools of trade. That is correct.

Hon. Mr. STEVENS: Will Mr. McGeer permit me to ask him a question, because I am very much interested in his analysis? Assuming something has been copyrighted—we will stick to Goad maps—and has been serviced down to a certain time and has been used by two classes of people, or, in fact, one class and the public generally on the other side: would you consider it an infringement of the principle of the copyright law, the principle to which you refer, to legislate against one group for purchasing the copyright and placing themselves in a position where they can deny all other persons, the public generally, from continuing the servicing of Goad maps?

Mr. McGEER: That does not happen here. I might agree with Mr. Stevens if that were so, but I cannot bring myself to believe in this instance that this is a proper presentation of the facts. Here is a service which starts out and continues up until 1917. Now, that service ends. No one can compel—nobody or no law that we have compels the continuation of a service or any other arrangement. Goad decides to quit. Now, we are not concerned as to whether he decided to quit because he was bought out or for some other reason. The evidence before the committee is that Goad decided to discontinue the service in 1917, and he discontinued the service. Now, everything that Goad had done up to that time was available to the non-tariff companies as well as to yourselves; that is, providing they could succeed under section 14 of the Copyright Act which reads that any person can apply to the minister for a licence to print and publish in Canada any book—which includes maps and plans—wherein copyright subsists, if at any time after application and within duration of the copyright the owner of the copyright fails to print the said book, or cause same to be printed in Canada—(*b*) to supply by means of copies so printed the reasonable demands of the Canadian market for such book. And then it goes on to give the details. But, applications could be made, so that even to-day the non-tariff companies could go to the minister administering the Copyright Act and say to the Underwriters' Survey Bureau, we want copies of Goad's map published up to 1917, and if the minister says that they are entitled to them, then you would have to get that skeleton basis upon which the tariff companies acted, with the same organization that the underwriters are using, take their own engineers and superimpose upon that foundation which Goad brought up to 1917, all the particulars that you have asked.

By Mr. MacDonald:

Q. Is that correct, Mr. Mann?—A. It is perfectly correct; and I go further, I state that to the extent that we have the Goad plans up to 1917 the non-tariff companies will have no difficulty whatever in arriving at a small nominal remuneration for their use and for the licence.

The CHAIRMAN: Order.

By Mr. McGeer:

Q. In addition to that you informed us that there were some number of companies compiling maps?—A. Yes, sir.

Q. And giving the same service?—A. Yes, sir.

[Mr. J. A. Mann, K.C.]

Q. How many did you say there were? Six?—A. Well, would you let me ask Mr. Reynolds, my assistant. I have four here; Lloyd's Map Company, Wilson and Balfour, the Provincial Insurance Survey, and the Canadian Atlas Company.

Mr. MARTIN: Just recently started.

The WITNESS: I do not know how recently they started. Lloyd's Map Company is not just recently started.

By Mr. McGeer:

Q. They could have access to Goad's maps up to 1917?—A. Oh yes, they could.

By Mr. Martin:

Q. Whom could you get them from?—A. There must be someone from whom they could get them.

Q. Whom could you get them from; not just somewhere from somebody?—A. You are asking me where you could get Goad maps. I cannot answer that. I could not tell you where you could get Goad maps.

Q. Of course not.—A. Mr. Stevens says he has some. The non-board companies must have some. I do not know whether the manager of our own survey bureau has some of them still or not. I do not know that.

Mr. TAYLOR: Mr. Stevens says they are all over the country.

Mr. MARTIN: In the hands of individuals. If I want to get one of those plans now how am I going to get it?

Mr. MCGEER: Let's get back to the point.

By Mr. McGeer:

Q. The Goad maps were sold to all insurance companies up to 1917?—A. Yes.

Q. The non-tariff, or non-board companies were in operation before 1917?—A. Yes.

Q. Is it possible that these companies doing business in Canada would not have in their files the Goad maps that were published from time to time up to 1917?—A. I can answer that, Mr. McGeer—I have just been informed—that the survey bureau has got practically all the copies in its possession, so if they want a licence for this service up to 1917 they could follow this section 14 of the Act.

Q. Well, Mr. Scott, I am informed by the owners that your non-tariff companies have in your possession the Goad maps that were published up to 1917?

Mr. SCOTT: Yes, we have them, but they are now becoming obsolete.

Q. (To Mr. Scott) Now, as a matter of fact, the question was asked whether you had these in your possession.—A. (Mr. Scott) Yes, we have them in our possession.

Mr. MCGEER: Under section 14 of the Act you could apply to the minister for leave to publish these maps with their own superimposed upon them and brought up to date by the work of the engineers and surveyors of the non-tariff companies. That is correct, isn't it?

Mr. SCOTT: Quite.

By Mr. McGeer (To Mr. Mann):

Q. Well then, consideration of this amendment comes down to one point and one point only; and that is whether or not the non-tariff companies shall

have the right to apply to the minister to have your non-published works, produced for your own business advantage.—A. That is it exactly. Right there you are closer to me in this case.

Mr. MARTIN: Of course, Mr. McGeer—would you allow me to interject?

Mr. McGEER: All right.

Mr. MARTIN: That might—for argument's sake, and only for argument's sake—apply to this problem. This bill is more far reaching than that.

Mr. McGEER: I quite agree. I am not dealing with that situation which is even more serious from the point of view of publishers and others.

Mr. MARTIN: Oh, no.

Mr. McGEER: I do want to point out, Mr. Chairman, that I believe we are confronted with an amendment which involves a complete change in the whole principle of protection which the copyright laws were designed to provide.

The WITNESS: Exactly.

Mr. MARTIN: Mr. McGeer might ask you a question then; I won't delay Mr. McGeer; surely copyright does not mean that the owner of a copyright—and I am not talking now of literary or artistic works, because they are not in the minds of the sponsors of this bill at all—surely the ownership of copyright does not permit any abuse in respect to the ownership of that copyright.

Mr. McGEER: I agree with you. I quite agree with you.

Mr. MARTIN: That is all we are seeking.

Mr. McGEER: But it is not abuse in the conduct of any business for a man to go and do something for himself which he copyrights and preserves because he has paid for it. Now, if in doing that he does something that somebody else cannot do, and as a result gets a monopoly—not as regarding his own industry but as regards the general situation—then, that is an abuse. Then, these non-tariff, non-board companies can do exactly what the underwriters are doing. There is nothing to stop them taking the Goad plans and superimposing upon those plans the changes in the various communities that come from time to time. There is no monopoly in the Underwriters' Survey Bureau that precludes the non-tariff companies from doing exactly what the underwriters are doing through their own survey bureau.

The WITNESS: Absolutely.

Mr. McGEER: What you are really putting up is this: I am writing a book and my co-competing author comes in and says well you have a very valuable manuscript there that would have been of great assistance to me if I could have had access to it because I am going to write a book on the same subject—we will say it is a history of Canada. Now, because I have prepared through research and through industry a history of the Dominion of Canada—

Mr. MARTIN: Will you allow me to ask a question?

The CHAIRMAN: Order, please.

Mr. MARTIN: I want to ask him a question.

The CHAIRMAN: With Mr. McGeer's permission.

Mr. MARTIN: That is understood of course. Every time I get up apparently I am called to order.

The CHAIRMAN: We want orderly discussion.

Mr. MARTIN: I am asking Mr. McGeer if he will permit me to ask him a question?

Mr. McGEER: Certainly.

Mr. MARTIN: I have said, Mr. McGeer, time and time again that we do not intend by this bill in any way to interfere with literary or artistic works, and that I am prepared to accept any amendment that will make that clear.

[Mr. J. A. Mann, K.C.]

Mr. McGeer: Now, Mr. Martin, I thought you were going to ask a question. You see, you are making a speech. I heard you the first time.

Mr. Martin: Might I ask a question?

Mr. McGeer: Yes.

Mr. Martin: If I give you the assurance that the bill can be so amended that it will indicate that it was not to apply to literary or artistic work, would that not take care of any objection you have?

Mr. McGeer: No, no, Mr. Martin. What I am saying is this; and I merely use the incident of authorship for the purpose of illustration; I heard what you said, that you were going to delete certain words, and my hearing is fairly good. What I am pointing out to you, gentlemen, is this; that the principle involved is abuse of the rights of individual enterprise which carry with them the right of ownership of property that comes from individual industry and enterprise. I have, we will say, written and copyrighted a history of Canada—or the author has. Someone else is doing the same thing. For some reason the first author who has prepared his history decides that he is not going to publish it until he is satisfied through further research work—and this amendment gives access to that industry and enterprise—because that is all the underwriters have done; they have said, Goad's are giving up the business from 1917 and we are going to join together and make our own service for our own use, if anybody does not wish to join our organization but wishes to form another organization he can take the Goad plans and develop his own revision. Now, this amendment goes a little further than that because in its wording I do not think the minister would have any privilege at all because it says: the rights conferred by this Act shall be deemed to have been abused if any business, trade or industry in Canada or any person or class of persons engaged therein is unfairly prejudiced by the conditions attached by the owner of the copyright. Now, that is a very different thing when it is applied to an unpublished copyright than it is when applied to one that is published and on sale. Where you have the publication on sale and some individual is denied the use of it the question of discrimination comes in between those who are given the use of it and those who are denied the use of it.

Hon. Mr. Stevens: Would Mr. McGeer permit a question?

Mr. McGeer: Yes.

Hon. Mr. Stevens: I pretty much approve of your argument up to this point. I am an individual possessor of a Goad plan down to 1917, for over 30 years, and it has been of great service to me in my business. These people buy the copyright, and then they say, we will copyright our own amendments and revisions and we will distribute them only to our members, and you, not being one of our members, can't get it. Your answer a moment ago to me was that it was open to me to make my own surveys and make revisions on the plans for myself. Now, I want to ask this question: is that a fair answer to the hundreds of individuals—quite aside from the non-board companies—there are hundreds of individual brokers, mortgage companies and real estate agents who make use of these plans—they are necessary to these hundreds of people in the conduct of their business. You say to these hundreds of people, go on and have your own surveys. We have ours, we have copyrighted them; you go on and make your own surveys. The point I want to make is this, that by exercising their right to purchase that copyright they also acquired the right of continuing the service.

Mr. McGeer: Of course, Mr. Stevens, I think this: that if the insurance business were carried on as an individual thing there would be a good deal of point to what you are saying. As a matter of fact we know that there are two large groups conducting the insurance business generally; that is, the board companies and the non-board companies; so that I hardly think that

in a case of this kind, as Mr. Martin has said, the amendment would be limited to this type of thing and would not include the other end of it where individualism comes in; because if the non-tariff companies cannot get this access to the industry and work and product of the labour of the board companies then you know perfectly well that there is nothing to stop their own surveys, and there is nothing to stop them developing their own maps, which they have already undertaken to do. They may have to do it now all the way from the start to avoid outright infringement of the law, as established in the recent case under the Copyright Act. But, they can do that thing. There is nothing to stop them. What I say is that this amendment goes a great deal further than the patent law. The patent law only gives the minister the right—

Mr. MARTIN: Yes, sir.

Mr. McGEER: The patent law only gives the minister the right to move when through a monopoly ownership a patent being abused somebody is denied the right to do the thing that he is anxious to do. Now, that is not the case here. I mean, these non-tariff companies do their own work. But in the case of a patent when a man has a monopoly on a patented article, then there is no way by which a prejudiced person can move—but I do say that we would have to be prepared in excepting this amendment completely to repudiate the whole principle of protection of the products of labour and industry which the Copyright Act was designed to protect and preserve.

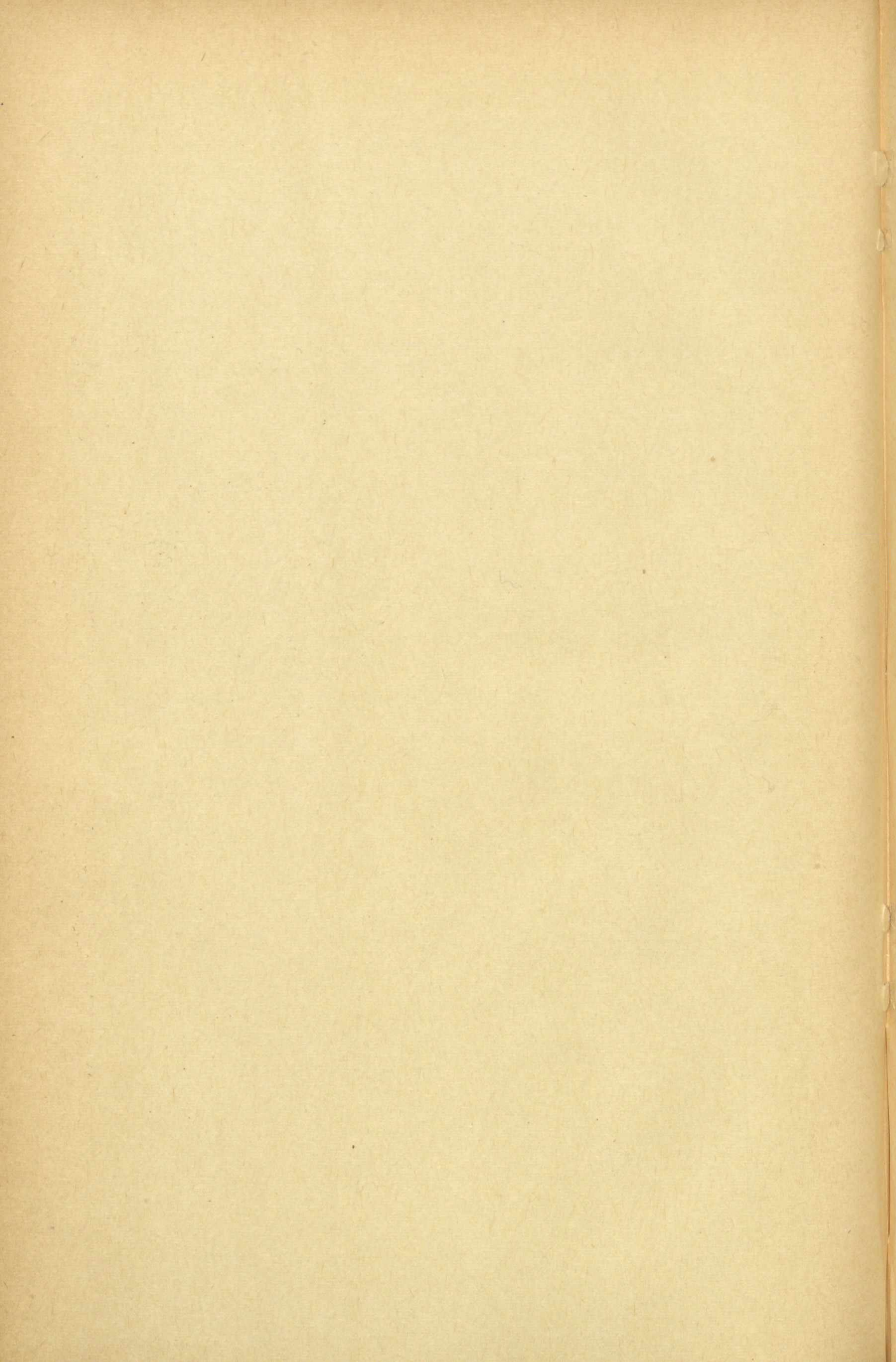
Mr. MARTIN: Not at all.

The CHAIRMAN: A motion to adjourn is in order. Mr. Stevens, what is your idea as to the next meeting?

Hon. Mr. STEVENS: I move that we meet on Tuesday, Mr. Chairman.

Mr. MARTIN: I think probably we had better leave it to the chairman to decide when we shall sit again.

The committee adjourned at 1.05 o'clock p.m. to meet again at the call of the Chair.



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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

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WITNESSES:

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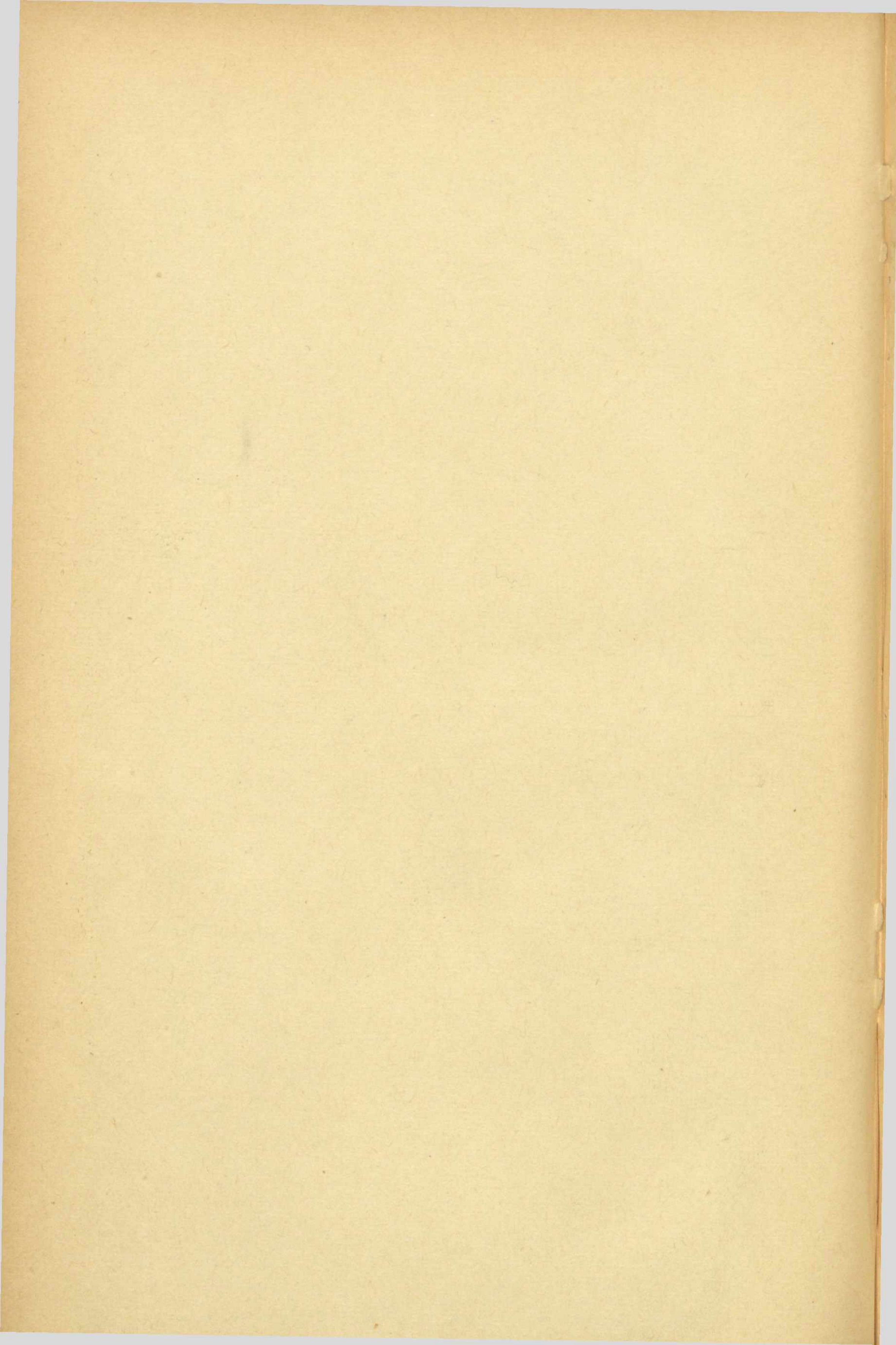

SESSION 1938
HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 2

TUESDAY, June 14, 1938

WITNESSES

Mr. Roderick S. Kennedy, National Secretary, Canadian Authors' Association, Montreal;
Mr. B. K. Sandwell, Editor "Saturday Night," Toronto;
Professor Pelham Edgar, University of Toronto, Toronto;
Mr. Ernest Fosbery, Ottawa;
Mr. J. A. Mann, K.C., Montreal;
Mr. W. B. Scott, K.C., Montreal.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

MINUTES OF PROCEEDINGS

TUESDAY, June 14, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Cahan, Clark (*York-Sunbury*), Coldwell, Fontaine, Hill, Kinley, Kirk, Landeryou, Lawson, MacDonald (*Brantford City*), McGeer, Mallette, Martin, Maybank, Moore, Perley, Raymond, Stevens, Thorson, Vien, Ward, Woodsworth.

In attendance: Hon. Fernand Rinfret, Secretary of State; Mr. G. D. Finlayson, Superintendent of Insurance, Department of Finance; Mr. W. B. Scott, K.C., Counsel for non-tariff Insurance Companies licensed to do business in Canada; Mr. J. A. Mann, K.C., Counsel for Insurance Companies; Members of The Canadian Underwriters' Association, and representatives of the Canadian Authors' Association.

The Committee, resumed consideration of the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

The following representatives of the Canadian Authors' Association made brief statements, viz:—

Mr. Roderick S. Kennedy, National Secretary;

Mr. B. K. Sandwell, Editor of *Saturday Night*, Toronto;

Professor Pelham Edgar, Victoria College, University of Toronto.

Mr. Robert Fosbery, member of the Royal Canadian Academy of Arts, also made a statement.

Hon. C. H. Cahan addressed the Committee on matters related to the Copyright Act.

Mr. J. A. Mann, K.C., was recalled and further examined.

At 1 o'clock the Committee adjourned until to-morrow, Wednesday, at 11 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, June 14, 1938.

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Members present: Messrs. Cahan, Coote (Wetaskiwin), Coldwell, Fontaine, Hill, Hushion, Kirk, Landeryou, Lawson, MacKinnon (Edmonton East), McGeer, Mallette, Martin, Maybank, Moore, Perley, Raymond, Stevens, Thorson, Vien, Ward, Woodsworth.

In attendance: Hon. Fernand Rinfret, Secretary of State; Mr. G. D. Finlayson, Superintendent of Insurance, Department of Finance; Mr. W. S. Steele, K.C., Counsel for non-tariff Insurance Companies licensed to do business in Canada; Mr. J. A. Mann, K.C., Counsel for Insurance Companies, Members of The Canadian Underwriters' Association and representatives of the Canadian Authors' Association.

The Committee resumed consideration of the subject-matter of Bill 12, An Act to amend the Copyright Act.

The following representatives of the Canadian Authors' Association made statements, viz.:

Mr. Frederick S. Kennedy, National Secretary.

Mr. B. K. Sandwell, Editor of Saturday Night, Toronto.

Professor Pelham Edgar, Victoria College, University of Toronto.

Mr. Robert Pinchers, member of the Royal Canadian Academy of Arts, also made a statement.

Hon. C. H. Cahan addressed the Committee on matters related to the Copyright Act.

Mr. J. A. Mann, K.C., was recalled and further examined.

At 1 o'clock the Committee adjourned until to-morrow, Wednesday, at 11 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons, Room 277.

June 14, 1938.

The Standing Committee on Banking and Commerce met at 11 o'clock, Mr. W. H. Moore, the chairman, presided.

The Chairman: Order, gentlemen.

Hon. Mr. Cahan: Mr. Chairman, when you open the committee for business, there are a few comments I would like to make which arise out of an experience of five years as a minister of the crown dealing with this subject when similar matters were up for consideration but no definite action taken; and I would like to explain that to the committee because that might be helpful.

The Chairman: Well, gentlemen, at the last meeting of the committee in which we discussed this matter there were present representatives of the Canadian Authors' Association. Unfortunately, we were not able to hear them at that time. They are now in Ottawa in annual convention and have asked that they be given priority of hearing this morning. I suggest that we hear the Canadian Authors' Association first and then proceed with the discussion of the bill. Is that the pleasure of the committee?

Mr. Kinley: Except, Mr. Chairman, that in view of the fact that a former secretary of state—

The Chairman: I think that Mr. Cahan agrees that the authors should be heard first. Is that correct?

Hon. Mr. Cahan: Oh, yes, undoubtedly. I do not think they will in the slightest be prejudiced by any bill that can pass this committee or the House, but just the same we should hear them.

The Chairman: I will call on Mr. Kennedy.

R. S. Kennedy, called.

The Chairman: Explain your position, Mr. Kennedy.

The Witness: I am National Secretary of the Canadian Authors' Association which is a body of some 800 members extending across the country and joined together partly to protect our interests in such matters as this and partly to assist each other in writing better and, perhaps, more work. I was present at the meeting on Thursday morning, and I listened attentively to the very strong and cogent arguments which were advanced by witnesses and by the members. The opening witness, Mr. Scott, started by informing you that they had no desire whatever to do anything to damage the interests of authors, writers of novels, prose, poetry and artists; and they have been most accommodating and considerate in that matter. We have had many pleasant conferences trying to get ourselves excluded from the working of this amendment. But that same gentleman used the words, "We will exclude genuine authors from this Act if the English language is broad enough to do so." Now, we claim to be expert in the English language, and we do not feel that the English language is broad enough to include everything in the world except these underwriters' maps which are the cause of this amendment—to exclude everything but them without mentioning them. I am as specific as I can be, and many learned

gentlemen whom I have consulted agree with our position, if I may call it so, and have done what they can to help us, but we are still not satisfied that there are no loopholes. But in the mimeographed amendment which was submitted to us for quite a brief glance there suddenly comes into my mind one item purely connected with a member of this association, Mr. Deacon, of Toronto, who published a literary and historical map of Canada, to whom those words can apply, because it is for purely commercial purposes, it is for sale. It is difficult to exclude everything except underwriters' maps, going around and around the subject.

We believe that the sponsors of the bill have done what they can for us. We ask you to consider this, that the Copyright Act is the magna carta of authors. Authors, like most owners of property, do not depend upon ordinary principles of common law and general usage for the protection of their property. Our property would be of no profitable use whatever if we could not have the Copyright Act to back us. Any profits from literature in practice depends on this Act. That is why we are so filled with this suggestion that for purely commercial purposes—a purpose that has been going through the courts and I believe is still before the courts or is about to go before the courts—for that specific purpose our magna carta should have a special exception made in it, because if a special amendment can be made to exclude copyright maps and plans from the protection of this Act somebody could come along a year from now with an amendment to exclude something else. It opens all kinds of loopholes.

Now, I will conclude by saying as strongly as I can that while we appreciate the efforts of the sponsors of this bill, we are strongly and unanimously opposed to the use of this bill instead of some other direct Act or some other amendment which would directly mention what is actually aimed at to get from one group of underwriters the use of plans for another group of underwriters.

We are in convention in Ottawa, right at the Chateau Laurier, and in order to show that we are unanimous in this matter I have asked to come with me several prominent persons who are members of our association and very active members. I have with me to-day Professor Pelham Edgar, professor emeritus of English literature at Victoria College, University of Toronto, an ex-president of the association, and a very active man; Mr. Leslie Gordon Barnard, our present president, the author of two books and innumerable short stories, and a gentleman who lives by what he writes and nothing else. If he cannot sell his work profitably and have the monopoly of his work he does not eat. We also have with us Mary B. Weekes, of Regina, author of many well-known magazine articles, and a series on the buffalo hunters which has been given on the radio recently. She is very prominent in western circles and is ex-president of the Regina branch. We have Mr. A. K. O'Brien, K.C., one of our honourary council, and the only reason he is not speaking for us to-day is that we want to appeal to you as authors who have no other help except the justice that you please to give us. Now, gentlemen, you are going to listen to innumerable complicated and, perhaps, learned arguments; you are going to hear the whole history of the Goad plans again reiterated, and don't forget that the authors of Canada depend on your sense of justice.

(Written submission by Mr. Kennedy printed as an appendix to this day's proceedings).

The CHAIRMAN: Now, gentlemen, are you ready to hear these representatives of the Canadian Authors' Association?

Mr. KENNEDY: Mr. Chairman, Mr. Sandwell, the editor of *Saturday Night*, would like to say a word to you.

The CHAIRMAN: Come up here, Mr. Sandwell, and don't say one word; we want to hear more than one word from you.

[Mr. Roderick S. Kennedy.]

Mr. B. K. SANDWELL, called.

The WITNESS: Mr. Chairman and gentlemen, I have nothing to add to what our national secretary has said, except to emphasize the point that we authors feel that any innovation of the copyright rights are defined in the existing statute, no matter how it may be limited, no matter how it may be curtailed, is a precedent to other innovations, and we feel we must resist any such innovation on general principles, whether it affects our particular type of work or not, because any innovation that does go through this year is likely to be followed by an attempt at innovation next year which will affect our type of product.

Mr. VIEN: Your first line of defense is on the Rhine.

The WITNESS: Thank you, Mr. Chairman.

Professor PELHAM EDGAR, called.

The WITNESS: Mr. Chairman and gentlemen, I am just speaking in confirmation of what has already been said. There has been absolute unanimity of opinion, and I think the case has been forcefully presented. I cannot think of any other aspect of the matter to present to you, sir, but I am strong wholly on personal and public grounds in my approval of the attitude my association is taking.

Mr. ERNEST FOSBERY, called.

The CHAIRMAN: Mr. Fosbery, for whom are you speaking?

The WITNESS: The Royal Canadian Academy.

Mr. MALLETTE: Are you principal of the Lower Canada College?

The WITNESS: No, a cousin.

Mr. Chairman and gentlemen, we have just heard from the authors. The authors earn their living by dealing with words; the artists with their paint brushes and etching needles, the tools of their trade. I have not the facility with words that authors have. I was very glad to hear the views of the artists so well expressed by the authors. I was in at some of the meetings between Thursday and to-day that had to do with adding something to the present bill to protect the authors, and the formal words which were drawn up seem to me to protect the artists; but I am one man representing over one hundred artists in Canada who are members of the Royal Canadian Academy of Arts, and through them all the artists interested in this matter; and I am not a lawyer. I tried over the week-end to have our lawyer in Montreal to consult and to receive instructions from the academy as to how I should proceed. In general, a week-end is a bad time for anything of that nature. However, I have here a very brief protest from the artists which I prepared for Thursday morning last before the proposed amendments were heard and when the bill was in the state first presented. The bill, even with the proposed changes, may, I suppose, be considered as more or less in a fluid state, and I feel it important that you have before you during your deliberations the views of the artists to whom copyright is a very important matter. I felt that before reading the protest this explanation was due to Mr. Paul Martin, M.P., who, I am convinced, is as anxious as the artists that their protection be in no way diminished. I expressed to Mr. Martin my feelings, just as the authors have, that any change was not desirable; it was not desirable to open the door no matter how specifically the artists were excluded from the change.

This is the protest:—

PROTEST BY THE ROYAL CANADIAN ACADEMY OF ARTS against the passing of Bill 124—An Act to amend the Copyright Act.

Mr. Chairman and Gentlemen:

I come before you representing the Royal Canadian Academy of Arts, and, as a member of the standing committee on copyright, to present the unanimous protest of the committee against the passing of bill 124.

The Royal Canadian Academy was founded in 1880 and since that time has been the national organization representing the artists of Canada. It consists of painters, architects, sculptors, etchers and designers, more than one hundred in all, chosen for outstanding work, and comprising in its membership practically all the outstanding artists in Canada of whatever school of thought, and with a membership extending from coast to coast.

We are advised by our lawyer whom we consult on all matters relating to copyright that, if the proposed amendment were to pass, an artist might be forced to sell the right of reproducing a work of art.

Gentlemen, that provision would open the door to very grave injustice to the artist. His name as an artist is the source of his livelihood and his works of art are the means by which he makes a name. They are his own creations, a peculiarly personal expression of his thought and his emotions, and, so, peculiarly his own property. This fact is recognized by the copyright law as it stands, in that, though an artist may not have applied for copyright, and may have sold the work of art to someone else, the right of reproduction is still vested in the artist. Now, gentlemen, no one should be given the right—on whatever pretext—to say to the artist, "Here is something that you have created; you *must* sell me the right to reproduce it so that I can make some money out of it."

And the injustice would not be confined to his being forced to sell something that he did not want to part with. In the transaction he would lose control of what use the reproduction might be put to; and, also, control of the quality of the reproduction.

Since an artist's livelihood depends on his name as an artist, and his works of art are the means by which he makes a name, it is naturally very important to him that any reproductions of his works should worthily represent them. Inferior reproductions might well constitute a gross libel on his work and, so, impair the name as an artist on which he depends for a living.

There are many other ways in which the amendment would be detrimental to an artist, but I will take up your time with only one. Let us suppose that a portrait painter had painted a portrait of your little girl, aged three or four, and to better express the vitality or the grace of the child had painted her playing with her toys or with a pet dog. Such pictures are often very popular. *You* might object to having this picture reproduced, but through the artist's inability to protect you, you might be subjected to seeing very inferior reproductions of it on soap wrappers advertising Bilkin's Baby Soap, or used in any way the reproducer thought would be profitable to him. An important part of the value of a work of art consists in exclusive ownership, and it would tend to impair the price an artist would get for his work if all works of art were liable to a forced sale of their copyright.

These are some of the reasons for the protest we have made against the passage of this bill.

The CHAIRMAN: Mr. Cahan, will you come to the platform please?

[Mr. Ernest Fosberry.]

Hon. Mr. CAHAN: Mr. Chairman, I am a member of this committee, although I regret that I have been unable to attend its meetings at all regularly. I thought it my duty to present to you, and the other members of the committee, certain matters which are material to this discussion, which came before me when for five years as a minister of the crown I had the supervision of the administration of the Copyright Act.

This particular controversy between two classes of fire insurance companies never came before me, but other similar questions did arise, and I felt it inexpedient to deal with them because, as the present Secretary of State (Hon. Mr. Rinfret) is well aware, for two years prior to my leaving office the International Convention on Copyright was postponed from year to year and I anticipated that these matters would be dealt with by an international convention, and perhaps relieve the Department of the Secretary of State from undue responsibility in the matter; but, owing to impossibility of agreement among the several governments' members of that convention, that convention has not met, and I do not know whether it intends to meet during the present summer or not.

Hon. Mr. RINFRET: I may say, on that point, that there is no indication that the convention will meet at any time. It has been indefinitely postponed.

Hon. Mr. CAHAN: Thank you.

The difficulty arises out of certain clauses of the present Copyright Act. In section 2, clause (C) of the Copyright Act a "book" is defined to include any "map, chart or plan separately published." "Literary works" is defined by section 2, clause (N) of the same Act to "include maps, charts, plans, tables and computations;" and our difficulty in the department arose out of these two definitions, and of the judicial interpretation that has been given to the word "publications" as used in the present Copyright Act, which decides that "publication" in certain cases is not publication to the public; that it may be limited by circulation among a certain limited number of persons; that such limited circulation is not "publication" within the meaning of section 3 of the Act. And the question arises, should the Act be amended with respect to the definition of "publication"? "Publication" in section 3, subsection 2, is defined as follows:—

> publication, in relation to any work means the issue of copies of the work to the public.

There is no definition as to what is meant by the "issue of copies of work to the public," except judicial interpretations in various decisions. Courts have held that the issue of "plans, tables and computations"; to use the exact words of the definition; that the issue of "plans, tables and computations" to a selected group of 50 or 100 or more persons engaged in the business of fire insurance, or in life insurance, or certain other groups to which I will make reference, does not constitute "publication"; although, this would enable the owner of a copyright to circulate plan, or a computation or a table among hundreds of his own clientele of a particular group. That would not be regarded as "publication" within the meaning of the Act. And this has enabled in this case a group of fire insurance companies, or their agents or brokers, to have access to, and to use, these "plans, tables and computations" with such limited publication, without being "publication" within the terms of this statute.

The same definition of a "literary work" applies to plans of cities and towns, not only as in the case of the controversy before the committee, but also for the use of life insurance computations, engineering formulae, arithmetical or trigonometrical formulae, or computations or tabulations which are of general public interest, and necessary to the technical and scientific development of, and the application of ascertained scientific principles. It was that phase of the case that came before me. Therefore, I think that one of the vital considerations for a committee studying this bill is to determine the applications and restrictions which should be applied to ascertain the meaning which is now determined by the word "publication" as used in this Act.

Really, the gist of the controversy as it came before me was as to what is "publication." The judicially determined and restricted application of the meaning of the word "publication" as used in the Copyright Act, enables any such group or association to impose any terms they see fit upon users of their copyright, such as compulsory membership of any such group or association, or the compulsory adherence to certain conditions of insurance, or tariffs for insurance; or to certain conditions and tariffs with respect to the use of scientific, medical and surgical knowledge as ascertained, and thereby secure a compulsory association or agreement in respect to the carrying on of such business of insurance, or such other professional work, as may amount to undue restraint of the business or of professional work, which restraint may not be in the interests of the whole body politic, the general people.

That is one of the considerations oftentimes imposed for a licence to use copyrighted "plans, tables and computations." Now, copyright is used in certain cases to compel compulsory membership in a group or association, and compulsory adherence to certain fixed tariffs or rates; whether they be rates imposed by fire insurance companies or whether they be rates or tariffs for life insurance companies, or whether they be tariffs for professional fees in certain surgical operations or in the use of certain medical processes.

In this particular controversy, if the issue of copies of any "plans, tables and computations" to members of a special group or association and their agents is deemed to be publication to the public and a definition is inserted accordingly in the terms of the Act, then the problem which has been raised before you is practically solved. But, proper and adequate compensation should be paid to the licensee of any copyright, even although it be a copyright of plans, or of tables, or of computations, or of scientific or trigonometrical formulae, or of medical or surgical processes. Then, it must be admitted that proper compensation should be paid therefor; and I think it must be admitted as well that in such cases if the meaning of "publication" is more carefully defined in such cases the amount of such compensation should be determined by the Commissioner of Patents, acting under the minister in accordance with section 30 of the Act as amended by section 8 of the Copyright Act of 1931; which is chapter 8 of the statutes of 1931. That amendment of section 30 now reads:—

> 30. The Commissioner of Patents shall exercise the powers conferred and perform the duties imposed upon him by this Act under the direction of the Minister, and in the absence or inability to act of the Commissioner of Patents the Registrar of Copyrights, or other officer temporarily appointed by the Minister, may as acting Commissioner exercise such powers and perform such duties under the direction of the Minister.

Therefore, if it comes to a decision as to the compensation which should be paid for the use of copies of such plans or computations, it should be a matter to be investigated first, I suggest, by the Commissioner of Patents. My experience as a minister of the crown is that a minister has no time whatever to deal with other than general policy. He would not have the time to conduct these investigations under the Patent Act, or under the Copyright Act; and therefore parliament in its discretion in the Patent Act provided that the investigation and first decision should be given by the Commissioner of Patents, who is also in charge of the Copyright branch, and that there should be an appeal from his decision to the Exchequer Court, and so on to the Supreme Court of Canada for final decision. That, it seems to me, should be the procedure in this case. If the Act is amended there should be an appeal in respect to any compensation or royalty as fixed by the Commissioner of Patents, and that first appeal should be, I suggest, to the Exchequer Court.

Mr. VIEN: Would you see any objection to an amendment being introduced with the limitations you have mentioned?

Hon. Mr. CAHAN: I see a great objection to the proposed amendment, and to the form of it. I am sure any minister or any deputy minister who has had to do with the administration of public statutes will admit that the greatest difficulty in administration is the confusion arising from amendments to public statutes which have been made without due investigation and due consideration of the bearing of such amendments upon other clauses of the Act.

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. CAHAN: And therefore, I suggest—

Mr. VIEN: The gist of the bill, if I understand it rightly—I was unfortunately absent last week and I speak with a great deal of ignorance on the subject—but the gist of the bill if I understand it rightly is to amend the Act wherein it is now provided that you cannot appeal—

Hon. Mr. CAHAN: Mr. Vien, if you will permit me. I am prepared to discuss the proposed amendment when it is before the committee. It is not before the committee yet, and I wish to make certain statements dealing with the matter generally, and not particularly.

Mr. VIEN: Certainly; pardon me, go on.

Hon. Mr. CAHAN: To sum up: On the point of amendment to the Act. An amendment to the Act, even to satisfy the promoters of this bill, should be confined to an amendment dealing with these three or four words which cover every controversy which came before that department in all the time I was there, five years. The controversy in regard to this section—that is, dealing with literary works—was that it includes, "maps, charts, plans, tables and computations." I can understand how a map may be an essential part of a literary work, as we commonly understand it; and charts, plans, tables and computations might on occasion similarly be considered. But, the real issue here is, how far any person or company should be protected by copyright with respect to charts, plans, tables and computations which are all of great public interest; how far the owner of the copyright should be able to use his copyright to promote private circulation of copies, circulation among his own clientele, even though it is circulated among hundreds of people, as it is in many cases other than this, and still claim that such circulating among hundreds of people is not "publishing" within the meaning of the Act.

As to whether there should be some restriction upon that is a matter for consideration, and I think the committee in considering this temporary solution of one phase of the question should consider some of the collateral questions which arise in connection with tables and computations. For instance, " plans, tables and computations" which are used exclusively by groups for the mere purpose of compelling those who wish to use these " plans, tables and computations " to become members of a group, to accept certain conditions of practice in their profession, and to impose certain common tariffs as a result of being a member of the group. You will find, if you study the question, and I do not pretend to have any special knowledge aside from the fact that I lived with the Act for five years and heard all sorts of delegations in regard to it; but I am convinced that the whole question comes right there, with regard to what should constitute " publication."

Mr. MAYBANK: That would involve, Mr. Cahan, for instance, would it not consideration of those publications by official advising concerns, such as the well known Bradstreet report, and that sort of thing?

Hon. Mr. CAHAN: It might, if they come within that definition of "plans, tables and computations."

Mr. MAYBANK: Yes.

Hon. Mr. CAHAN: There are all sorts of matters concerned there. Modern scientific progress depends upon the use of arithmetical, and trigonometrical and other data which is now in the sole control of particular groups and protected by copyright; because the issue to members of these groups is not deemed to be a "publication" within the meaning of the Act. I am just putting the case before you. I am not advocating, one way or the other. I am simply showing how it arises, and I think the committee must consider it, and to deal with it effectively must deal with all the collateral problems arising, and it is quite possible that this suggestion you have made may be a collateral problem which would come in. There are certain rights to be protected. My own view about it that large sums of money have been expended oftentimes in developing these formulae and mathematical computations; and those who are entitled by any statutory amendment to use these intellectual and scientific productions should be compelled to pay adequate compensation.

Some Hon. MEMBERS: Hear, hear.

Mr. THORSON: Your view I take it is that those persons who want to use these exclusive plans should have to pay adequate compensation, but that the owners of the plans should not be able to use their copyright rights in such a way as to restrain trade or unduly force other people into membership in organizations of those who own the copyright in these plans.

Hon. Mr. CAHAN: All I will say is this; I am not giving my own personal opinion. I intend giving that when it comes time for us to discuss this amendment. But I do say that five years of experience has informed me that there are complaints throughout the country, especially in scientific, engineering and other circles, that the Copyright Act is being abused for the purposes of enabling groups to establish what are really "combinations," not only in restraint of trade but in restraint of professional activities. That is a matter which it seems to me is most important, and I think the committee should consider it before reporting upon the bill. I think the bill, even in its present form, would not satisfy me. I think that the bill deals too generally with the root of the problem which arises, as I have suggested, and which affects other groups quite as important as the group dealing with fire insurance. So speaking personally I will say that my opinion is that amendments of this kind should be proposed, not to the House in the way this was proposed; they should be brought first to the attention of the Secretary of State who is surrounded by a number of men who have spent their lives dealing with copyright matters, and who are more or less familiar with the complexities and intricacies of copyright legislation and of the International Agreements on which we purpose dealing in such legislation. I think it should come in that way, and I think the promoters of such a bill should convince the department first, or attempt to convince the department. I am sure if the officials of the department may not be convinced they would give such special assistance as they could in placing the issue properly before parliament, and enable the promoters to see the implications of the issue which they have raised in all its bearings. That is all. For instance, if I am allowed to make a remark on another case, the bill before the committee at its last session was withdrawn. I was ill and could not attend; but I am absolutely convinced that if any of those parties who made their complaints had written a similar complaint to the Department of the Secretary of State, which is the department to which complaints should be made, the evils complained of would have been remedied. There is not any doubt whatever about it as to what department of government the complaints should be made. The old orders in council constituting the Department of the Secretary of State for Canada designated the Secretary of State for Canada as the medium to which such complaints should be made, and that department also has supervision and control of the Dominion Companies Act and the incorporation of companies by Dominion statute. The Secretary of State could have settled the

complaints in any case in twenty-four hours as I did once or twice, by simply calling the attention of the judge in charge to certain matters complained of, and then they were remedied at once. If they had been brought to the attention of the Chief Justice of the city of Montreal, which is the place where these complaints arose, the Chief Justice of the Superior Court of the city of Montreal would have settled these difficulties once for all within forty-eight hours after he heard of them, and no amendment to the Act would be necessary to secure proper administration, as the means are already available.

Therefore, so far as the alleged complaint that is mentioned in this case is concerned, it is not an administrative matter; it is a matter of legal definition by statute and of the judicial interpretation of that definition. There lies the gist of the matter, and if it is necessary in the public interest—and after all parliament must consider the general public interest—that an amendment should be made, amendments to two or three clauses of the Copyright Act would remedy this whole controversy without bringing in to any extent such associations as the Authors' Association and others. They should not be disturbed, and it is admitted, of course, that they should not come within this proposed amendment.

Thank you, gentlemen.

I hope I did not intrude, but as a member of the committee I felt that I had a perfect right, if not a duty, to present to you, sir, and my colleagues on the committee, the fact that this is not a new problem. It has arisen from year to year, and is only related to particular clauses of the Act.

Mr. VIEN: Mr. Chairman, I tried to follow the honourable gentleman and I appreciate the point that he has developed; but my difficulty is to find that this is the point raised by the bill. The committee has not been requested to revamp the Copyright Act or to change the underlying principles. In section 14 it is provided that any person can apply to the minister " for a licence to print and publish in Canada any book wherein copyright exists, if at any time after publication and within the duration of the copyright the owner of the copyright fails to print such a book or cause the same to be printed "; and (*b*)—and that is the point, and I think it is the only point—" to supply by means of copies so printed the reasonable demands of the Canadian market." The complaint of the sponsors of the bill is that the people they represent are part of the public of Canada and are not properly supplied by the owners of the copyright, in this case the Goad plan. Therefore the question which arises, is, should not this section 14 be amended so as to provide that the owner of a copyright should be compelled by some procedure or other to sell to another applicant the object of the copyright under reasonable terms and conditions. Therefore I cannot see that there is such a vast principle involved as has been urged by the honourable gentleman. It might be my own density and ignorance of the matter, but my view is that it should not be necessary to buy a thousand copies or to print a thousand copies to have the right to use the principal object protected by copyright; that there should be some smaller procedure indicated whereby the applicant can obtain his relief. If I am mistaken I should like to be shown.

Hon. Mr. STEVENS: What is before the chair?

Mr. THORSON: Are there any more witnesses to be heard, Mr. Chairman?

The CHAIRMAN: We shall find out. Mr. Stevens asks what is before the chair. As I understand it, Bill No. 124, An Act to amend the Copyright Act, as indicated, is not before the chair.

Hon. Mr. STEVENS: Not yet.

The CHAIRMAN: The matter before the chair, submitted by the House, is the subject matter of the bill.

Mr. THORSON: Exactly.

The CHAIRMAN: The bill has not had a second reading.

Hon. Mr. STEVENS: That is what I want to make clear.

The CHAIRMAN: It has been referred to us to study the subject matter.

Mr. THORSON: Therefore the principles involved are before us rather than—

The CHAIRMAN: The bill itself.

Mr. THORSON: —the actual bill.

Mr. MAYBANK: And of all of its collateral problems are likewise, it seems to me, included.

The CHAIRMAN: Yes, I think that is so.

Mr. THORSON: The principles involved.

Mr. VIEN: Does it follow that we are not going to report the bill?

Mr. THORSON: Certainly not.

The CHAIRMAN: I think it follows.

Mr. VIEN: We cannot report the bill?

The CHAIRMAN: The bill is not before us.

Hon. Mr. RINFRET: I think I made it very clear the government did not desire to pronounce on the principle of bill 124, so that the proper procedure is to discuss the matter on which—

Mr. THORSON: And the principles involved.

Hon. Mr. RINFRET: It is not expected that this particular bill be reviewed, but that a bill might be drafted by the committee after the committee has disposed of the principles. I think that is quite clear.

Mr. VIEN: I had not understood that.

Mr. THORSON: It is quite clear.

The CHAIRMAN: Are there any other witnesses with regard to it? Unfortunately, Mr. Martin, who is the sponsor of the bill is not present. He is unavoidably absent, as a matter of fact.

Mr. THORSON: Do counsel representing the parties on the opposing sides of the principle wish to say anything in addition to what they said the other day?

The CHAIRMAN: Is it your pleasure to hear evidence first from counsel supporting the act to amend the Copyright Act which is not before us?

Mr. THORSON: Exactly.

The CHAIRMAN: As I recall it, Mr. Mann was speaking when the committee adjourned. I do not know whether Mr. Mann has finished or not.

Mr. MANN: Mr. Chairman, I had a very few words to say at the last meeting.

The CHAIRMAN: Shall we allow Mr. Mann to finish his statement?

Mr. THORSON: I believe we should allow Mr. Mann to finish his statement. Then, if Mr. Scott has anything to say we should hear from him as well.

Hon. Mr. STEVENS: I believe, Mr. Chairman, I should like to suggest as I did the other day, that we should try to focus our attention on the Copyright Act rather than disputes between bodies or between opposing interests. Let us try to focus our attention on the reference, namely the Copyright Act.

Mr. KINLEY: You cannot get away from the bill.

Mr. THORSON: You cannot get away from the controversy that brings this matter to our attention.

Mr. KINLEY: And the practical application of it.

J. A. MANN, K.C., called.

The WITNESS: Mr. Chairman, you and the other members of the committee were particularly patient with me last Thursday when this proposed bill was before the committee; and it has been suggested that perhaps as a result of zeal or over-enthusiasm that I gave voice to expressions that were, I assure you, not in the slighest degree intended.

[Mr. J. A. Mann.]

Mr. Thorson: Pass on to something else.

The Witness: The Hon. Mr. Cahan has taken out of my mouth a great deal of what I had intended to say this morning; but as Mr. Thorson has remarked, it is a very difficult thing to dissociate oneself from the actual controversy which brings about the proposed bill which, I think, as you have stated, is not before the committee.

At the last session of this committee I believe there was a misunderstanding as to the question of the production, publication and sale of the original Goad plans. I thought I had made it clear and I tried to make it clear, and I shall try to make it clear again that Goad's plans were on sale to the public up to 1931. Goad published insurance maps with a great many other types of maps and in competition with a great many other map companies, up to 1917. In 1917 they decided to go out of business, and they did go out of business and did not publish any more maps, but they had a very large stock. From 1890 to 1925 the non-board companies purchased over 6,000 of Goad's maps, and my friend Mr. Scott quite frankly the other day stated that they had all the old Goad maps. What happened was that Goad's in the perfect freedom of action which I think they have, went out of the map producing business in 1917 and the Underwriters' Association, the Canadian Underwriters' Association, instead of employing another map company or another atlas company to make their maps decided to form their own plan department, and they formed their own plan department in 1917. From that date on, for 21 years, they have proceeded to make their own maps; but in contradistinction to what the Goad's did, the Underwriters' Association furnished their maps only to the members of the Association; whereas Goad's had sold them to all members of the public. I take it nobody would gainsay it was within the freedom of action and liberty of the members of the Association to contribute to a map department of their own and to make their own maps, and to confine the use of those maps to their own members. As far as Goad's maps are concerned which ceased to be compiled after 1917, they have always been available to the public. They are available to-day to the public; and under the provisions of section 14 of the Copyright Act, the public may get copies of all the Goad's maps.

Now, sir, what we did was not to force, or suggest that the non-board companies must come into the Canadian Underwriters' Association. We exercised our liberty and freedom of action and made our own plans. The Canadian Underwriters' Association owns the plans that they made from 1917 on, and they are original works made from original surveys, original signs, symbols and fire reference numbers, and they are copyrighted for the use of the Canadian Underwriters' Association. The non-board companies—

By Mr. Maybank:

Q. May I interrupt you there. You went ahead as a group of individuals and made your own notebooks, your own maps for your own use. Did you formally seek copyright or did you rest simply in the inherent copyright?—A. We rested, undoubtedly, on the common law copyright which exists to-day, I believe, as a question of law, and which has become statutory copyright by the Canadian Act of 1921. There has always been, and I believe I can state it without much fear of contradiction, the admission that in unpublished works there is inherent common law copyright.

Q. That is what you relied on for your protection?—A. We rested on that up to a given period. Later on we began to comply with the terms of the Act, and in addition to the common law copyright and in addition to the copyright law, to register our copyright. The courts, as you gentlemen all know, have decided that we have existing copyrights in all those maps and plans and rates and rate-schedules and rating manuals.

By Mr. Vien:

Q. To-day, a document or plan of this kind covered by copyright must be made available to the public upon certain terms and conditions, must it not?—A. No, Mr. Vien. The copyright in a work which has never been published, or in the terms of the Berne Convention, which has never been issued to the public, has vested in it the common law copyright, and there is nothing in any law in any part of the civilized world that can compel the owner of an unpublished work to give it to the public, because it has never become public property. Therefore the provisions of this Act do state in the clearest terms that copyright shall always subsist until publication, and that is a reiteration of the common law copyright which has existed in England for hundreds of years.

By Mr. Woodsworth:

Q. May I ask, are you resting your case on the common law copyright or on this later arrangement of registered copyrights?—A. That is a question that I can answer in just a very few words. Up to the 1st January, 1924, our own plans which had been made for the previous seven years, were protected by the common law copyright, because they had never been published. We never exposed them to the public—

By Hon. Mr. Cahan:

Q. Where does the common law copyright subsist in Canada? In what province is there common law copyrights? In the province of Quebec?—A. No, in the Dominion of Canada, Mr. Cahan.

Q. I cannot find anywhere reservation of common law rights with regard to copyright in the statutes. I think you have to resort to the statutes. We made a reservation in the criminal law with regard to common law, but we have not made it, I think, in the Copyright Act, and I think you have got to come to the Copyright Act for your protection.—A. Quite right, sir. But what I said was this: you will remember that the copyright law never existed in England until 1911. Then, the English Act of 1911, sanctified in statutory form the common law copyright that existed at the time of the passing of the Act.

Q. Not after the passing of the Act?—A. It became the original Copyright Act, sanctified.

By Mr. Thorson:

Q. It became a statute ?—A. It became a statute. We had identically the same thing. We said in our Copyright Act, if copyright exists on the coming into force of the Act this copyright shall remain and be copyright under this Act.

Hon. Mr. CAHAN: That is clear.

By Mr. Vien:

Q. To all intents and purposes, practical purposes, we can take it for granted that we are dealing here exclusively with statutory copyright?—A. You are dealing here, Colonel Vien, exclusively with statutory copyright with reference to these plans.

Q. Yes. Now, I have another question to ask you which will enable me more closely to follow you. The Goad plans have never been properly published under the Copyright—A. I said the very opposite, sir.

Q. It has been published?—A. Yes. I think Goad's plans have been sold to anybody who chose to buy them up to the time Goad's decided to go out of business. At that time there was a large stock on hand, and they continued to sell them by way of trade and publish them to the public right up until the

time that the stock was exhausted in 1930 or 1931; and I said, up to 1925—I have not time to pursue the Goad's registration further; but I said up to the year 1925 the non-board companies had purchased over 6,000 copies of Goad's plans. Now, when I say 6,000 plans, I mean 6,000 volumes, and some of these volumes contained 100 sheets. London, Ontario, contained 75 sheets; the volume on Toronto 100 sheets; the volume on Montreal 100 sheets. So you can see it probably runs into many, many thousands of sheets of Goad's plans which the non-board companies have acquired up to the time Goad's went out of business, and thereafter up to 1931—

Q. Therefore the question of publication does not arise?—A. In respect of Goad's plans, in no way.

By Mr. Woodsworth:

Q. With regard to your own plans you claim exclusive rights—I just want to be clear.

Mr. THORSON: Why not let him go on?

By Mr. Woodsworth:

Q. I want to be clear on this. I want to follow this as a member of the committee. I want to ask you a question with regard to your own plans. You claim exclusive rights on the ground of statutory copyright?—A. Yes.

Q. In order to do that you have to claim that your plans are published?—A. Unpublished.

Q. How can you claim copyright privileges if they are not published? That is the point.—A. Because the statute to which I am referring distinctly says that copyright shall remain at all times until publication.

Mr. VIEN: What section?

Hon. Mr. STEVENS: Mr. Chairman, can we not hear Mr. Mann?

Mr. THORSON: Can we not have a statement first?

Hon. Mr. RINFRET: Is not the complexity of this case based on the fact that the original plans have been published, or portions of them have been published, and therefore we are dealing with the two phases of the question, unpublished illustrations and published originals?

Mr. THORSON: Can we not have a statement on exactly that point, and after Mr. Mann has made his statement questions may be asked him?

The CHAIRMAN: Is that the pleasure of the committee?

Mr. MAYBANK: I suppose questions may be asked from time to time to get clarity?

By Mr. Vien:

Q. I understood Mr. Mann to state that the Goad's plans have been published up to a certain time, and that when they ceased to be freely offered for sale to the public, the underwriters having acquired—no I am wrong.—A. Yes, you are wrong. I do not want to contradict, I mean you are in error. We did not acquire any copyrights until 14 or 15 years afterwards.

Mr. THORSON: Let us hear what happened.

Mr. MACDONALD: At last Thursday's meeting this was gone into in detail. A lot of the members were not present. For the benefit of those who were not present I think Mr. Mann should state the present position with regard to the maps.

The WITNESS: I shall be very glad to do so. I have been trying my best to state the position of the Goad maps and the Canadian Underwriters' maps. The Goad maps and the Canadian Underwriters' maps are two different maps

altogether, as was suggested a moment ago. Mr. Scott, who represents the proponent in this committee, said quite frankly last Thursday that they had the Goad maps. I am informed that there are thousands and thousands of the old Goad maps—

Mr. SCOTT: I shall answer you later on that.

The WITNESS: I understood you to say they had them, but I do not imagine they have them all, but we have large quantities, enormous quantities of the old Goad maps. What I say is this, as far as the Goad maps were concerned, which were preserved by copyright, by Goad, by registration under the previous Copyright Act, the Act of 1875, which were preserved by registrations, we have no objections to offer to an application for a licence to publish Goad's maps. What we do say is this, the roads divided in 1917. Goads did what they had a perfect right to do; they decided not to continue further their map making business. They left the field free to the other map making concerns who were in Canada, and we, the Underwriters' Association, instead of entering into a contract for the continual supervision and revision and servicing of maps from the date that the Goads went out of business officially, decided to invest a very large sum of money into an organization to run a map making department. We incorporated the Underwriters' Survey Bureau Limited, a map-making organization organized for making maps for the members of the Canadian Underwriters' Association without any profit and without any intention of selling them to the public, and to use them upon the instructions of the map departments and the map committees and plan committees of the association.

By Mr. Vien:

Q. How do you style this work that you have so registered?—A. How do we style it?

Q. Yes. I understand that you have brought up to date the former Goad plan?—A. That is in some respects correct, but in other respects you are under a misapprehension.

Q. Would you tell me this: under what name to-day is your copyright exercised?—A. Under the name of Underwriters' Survey Bureau Limited.

Q. How do you style the body of the copyright that you own?—A. Fire Insurance Map of Montreal district No. so and so or section so and so, Fire Insurance Map of Toronto, Ottawa, Kingston, Belleville, Brockville, Quebec.

Q. But you no longer style it as the Goad plan?—A. The Goad plan has entirely disappeared from our plan; they are not Goad's maps; they are our maps.

Mr. THORSON: Mr. Chairman, Mr. Mann has been doing his utmost to tell us in chronological order just exactly what has happened. May we not hear this in chronological order so that we shall know exactly what happened from the commencement? I understand that Mr. Mann has got on to about 1931. May we not hear the whole thing without interruption, and in chronological order, so that we can have the matter in one piece and then ask Mr. Mann any questions we may desire to ask him, without interruption.

Mr. WARD: In order that we may get exactly what Mr. Thorson asks for —the whole story in chronological order—I think we should ask occasional questions.

By Mr. Ward:

Q. At this time, can you tell the committee what percentage of your present maps are composed of the original Goad plans; what percentage have you added to them since 1917?—A. I can only answer that by saying this, that that is a very difficult question to answer.

Mr. SCOTT: I gave that information yesterday.

[Mr. J. A. Mann.]

The WITNESS: I think not Mr. Scott; I do not think anyone could give that figure in this world, if I understand the question. You say: what percentage of our maps are new material and what percentage are Goad's material?

You will easily see how difficult that question is to answer. Let us take the city of Montreal and suppose there was a Goad's map of the block bounded by McGill street and three other streets in Montreal, you will quite easily realize that a Goad's map in 1925—eight years later—in no way represented the buildings, the fire risks, the fire hydrants, the fireproof walls or nature of heating or nature of lighting, the conduits and so on eight years later—it could not possibly be the same thing. What we did was this: there were four different types of plans in existence; those were before the exchequer court in the recent decision—first of all there was the original Goad's maps, a copyright of which we bought in 1931 when we took over the plans and the stock in 1931—that is seven years ago—or four years before the losses began. The second type of maps were maps, the skeleton of which was a Goad's map not of date later than 1917, on which had been superimposed necessary material indicating necessary reconstruction, fire protection and so forth. The third type of map was a map, the skeleton basis of which was a Goad's map existing at not later date than 1917, on which had been superimposed so much by stickers and painting and that sort of thing by our artists and colour operators that the map had become so cumbersome that it had to be entirely reprinted. So what we did was to make complete reprints of what in the aggregate represented a skeleton of Goad's map of date not later than 1917 based upon chain work and field work for the following eight or nine years, and then making a complete new sheet by printing, lithographing and colouring processes.

That was map No. 3. Map No. 4 is a map which is an entirely new document, has no skeleton basis of any plan of any sort; it is a map by original surveys, original painting, original artistic work, and is a completely new document altogether.

Now, what I say is this: Goad's maps, as they existed to 1917 from away back in 1880 or 1883 or 1884—those maps were protected in the Copyright Act in existence prior to the present Act of 1921, which became effective the 1st of January, 1924; they were protected by registration; all the certificates of registration are extant and are filed in the exchequer court in that litigation which is now before the supreme court. They were protected in that. Then, I say that under the law of copyright, as I view it and as I have so advised the underwriters and others, if I take a work that existed in 1917 in skeleton form and I build onto that work for a period of 1, 2, 3 or 10 years new material, other original surveys, original labour, original art, then I come to the end of eight years and I have a work which is an entirely new work, which is a new copyrighted work. No doubt you will realize, Mr. Chairman, that as the tremendous growth of this country took place in the form of buildings, fires burned down a brick building and a stone building took its place with all the fire-proofing information and regulation and new information with regard to fire insurance, and other districts grew up where before there had been fields and trees; small towns grew up requiring the making of a survey of those towns. Take the town of Noranda. That was the map that was the subject matter of an application to the Hon. the Secretary of State for a licence which was refused—a copyrighted map made from the original survey of the town of Noranda. Noranda did not exist as a town in the days of the Goads. We sent our chain men, our engineers, our surveyors up and we made an original map of the town of Noranda. Now, you will readily realize how little relationship that map had to a Goad's map that was not compiled after the year 1917. But let me assume that there had been a Goad's map of the town of Noranda showing a small wooden town hall, a fire station and some

mine buildings—let us say there was a Goad's map in existence in 1917. Let us say, that the cost of making those original surveys is not warranted by the few maps that would be required and the association members decide that they do not need to print a new re-surveyed map of Noranda, but take a Goad skeleton map, and you have the few mill buildings that are there, and we come to 1933 and we find another town there: the wooden buildings are pulled down and replaced by brick buildings, the sheds are down and replaced by three and four storey buildings; so we have to make surveys and examine every one of those buildings through knowledge of the ground, through our office, our colouring department, our engineering department. We take the skeleton map of Goad and we plot onto that skeleton map everything that exists in 1933 in Noranda, and that exists in 1917, and we wipe out all that did exist in 1917 on that particular skeleton, then I say that in law—and I am perfectly certain the ex-secretary of state will bear me out in this—that I have produced an original literary work. That is the work I say I want to protect.

Mr. WARD: Mr. Chairman, this is just evidence that Mr. Mann and his association have a very clear idea of the amount of new work they have done. Mr. Mann, can you not tell us what percentage—5 per cent, 10 per cent, 12 per cent or 15 per cent—what percentage of the maps that you now claim rights over were original Goad's maps?

The CHAIRMAN: Mr. Mann says he cannot give the percentage.

Hon. Mr. RINFRET: The original work can be procured.

The WITNESS: The original work can be procured.

Mr. WARD: It is a very important question.

The WITNESS: I have here the assistant general manager.

By Mr. McGeer:

Q. The point that I think might be brought out if I asked a question would be this: Is there anything to prevent anybody else from going into Noranda and making an original survey and producing their own maps?—A. Nothing in the world.

Q. Have you any monopoly?—A. In no way.

Q. Any monopoly of the right to produce the work?—A. In no way.

Q. Is there anything that would have prevented the non-board companies from taking the Goad's maps which were sold up to 1917 and building upon them this new document which you have mentioned has been developed by re-surveys and by changes and alterations?—A. Absolutely nothing, Mr. McGeer.

Q. Because, as I understand it, the non-tariff companies up to 1917 furnished the Goad's maps and they were their property and could have been used for a number of new surveys if they wanted to make them?—A. If they wanted to make them. Not only that, but you said up to 1917; I say right up to 1925. I gave you an estimate a few moments ago.

Q. I think, probably, that is not altogether correct, because I understood you to say there was no servicing of Goad's maps after 1917?—A. No, I say that Goad's maps of dates during and prior to 1917 were sold to everybody right up to 1925, and perhaps later.

Q. There is no controversy about that. The point I want to get at is who supplied the non-tariff companies with the information that was necessary to keep the Goad maps up to date after 1917?—A. Well, the answer to that—

Q. You did not supply them?—A. No. We never supplied anyone.

Q. So if they got any information to keep those maps up to date it must have been as a result of their own survey?—A. Well, it was either as a result of their own surveys if they made any—

Mr. SCOTT: In the province of Quebec and the province of Ontario the agents act for both board and non-board companies.

The WITNESS: Some of them.

Mr. SCOTT: And down to 1934 when the association began to get greater control than they had before, those serviced plans that Mr. McGeer is referring to, Mr. Chairman, were supplied to every agent in the province of Quebec and in the province of Ontario—some 9,000 in number. They acted for both the board groups and the non-board groups, so they got all those serviced plans.

Mr. THORSON: Up to 1925.

Mr. SCOTT: No, up to the present time. The contention has arisen, because in the west different rules appertain from in Ontario and Quebec. The custom is now the separation rule, where the companies' agents—

The WITNESS: Here it is not in effect.

Mr. SCOTT: No. The association has tried to put it into effect in the provinces of Ontario and Quebec and have not succeeded. There is the condition of these agents representing the public in placing insurance, both the board and non-board companies, and inasmuch as they were agents for the board companies at the same time as they were for the non-board companies they have been serviced with all those plans. If they suddenly take those plans off the market all the companies, non-tariff companies, in the province of Ontario and the province of Quebec are either without agents or without plans.

By Mr. McGeer:

Q. There was no service offered by the non-tariff companies. It amounts to that. But as a result of the dual agency the non-tariff companies got this service without paying a cent for it?—A. Exactly.

Q. And that is what they wanted to do?—A. And that is what they have been keeping on doing.

By Mr. Maybank:

Q. There is one question I would like to ask. You have told Mr. McGeer that there was nothing to prevent the non-board companies from going in and making their own surveys?—A. Nothing whatever.

Q. Would it not be right to say that there was nothing to prevent them going in and making a relatively slip-shod survey and guessing that the information they had in the book already was probably correct and consequently carry out their survey very much more cheaply, relying partly on their more or less slip-shod work and the book which you people had prepared?—A. Quite.

Q. They could make that survey very much more cheaply?—A. They could make it, and it was only a question of the excellence of the services they retained in the field.

Q. Simply a guess of a surveyor, for instance, going over a line and seeing pegs that somebody else had put there and saying, "well, I guess he was right and I will accept that same spot as being correct?"—A. Certainly.

Q. They were in that position?—A. Certainly.

By Mr. Kinley:

Q. In your plans that you have now, is there anything upon them to indicate they are Goad's plans; are they not referred to Goad's plans?—A. No, sir, nowhere.

Q. In your contracts for insurance, in indicating the property insured, do you not quote Goad's plans?—A. No. We quote the Underwriters' Survey Bureau, and the plans state that they are the property of the Underwriters' Survey Bureau Limited and that for information in detail apply to certain

people in the map and plan department of the Canadian Underwriters' Association. There is no Goad address on any of them.

Q. I am under the impression that insurance contracts do refer to Goad's plans.—A. Of course, you will remember this: that might happen because if you will remember up to the time Goads went out of business, Goad's plans and Goad's maps and Goad's atlases were almost household words. For instance, their real estate plans were in various offices—in land surveyors offices—their atlases were published and sold and their fire insurance plans were published and sold. Goad was, undoubtedly, the biggest plan maker in this dominion and one of the biggest in England, because they operated in England.

Q. You have eliminated the name "Goad" from these plans altogether?—A. Entirely.

Q. I do not think the insurance contracts show it?—A. I will tell you that with a household word such as "Goad," its origin being up to 1917 Goad's plans, you can quite easily realize that the public may have got into the habit of expressing in insurance plans as Goad's plans. It is quite possible. It is not done in the east. It is not done in Ontario and Quebec as far as I know. I have never seen it, but it is quite conceivable that an agent may refer to Goad's plans, sheet No. so and so and block No. so and so. That is merely because the word "Goad" has grown up as a species of household word in the insurance art, having reference to the plan.

Q. Of course, the idea is Goad's; the plan idea is Goad's. You bought that in 1931.—A. Of course, you must realize that there are in this room to-day two gentlemen who have been engaged in the making of fire insurance plans completely independently of Goads.

Q. The fire insurance business of Canada used Goad's plans just as long as they possibly could?—A. Up to the time—

Q. 1935.—A. No, sir; up to the time they decided to go out of business. We did not use them at all after 1917, except as a bases for the revisions and the servicing of our members.

Q. This memorandum that has been submitted, I presume, by the promoters of the bill says, "It will readily be seen that while every insurance company in Canada has sets of the plans, the inability to purchase new copies and revisions only became acute between 1930 and 1935."—A. Perhaps that is correct. I think it is incorrect.

Q. I want to know about this: did the non-tariff companies buy these plans with the revisions up to 1932?—A. No; they photographed thousands and thousands of them. That is what we complained about in court, in the 1931 action.

By Hon. Mr. Cahan:

Q. Does not your claim to an exclusive right to circulate and use the plans which you prepared and have obtained a copyright for each sheet depend entirely upon judicial determination of what constitutes publication. The circulation of your plans which you have copyrighted to the thousands of agents throughout the country, probably 20,000 in Quebec and Ontario, does not constitute publication under the Act. Is not that the essential ground upon which you base your exclusive right to use and dispose of these plans?—A. Yes, practically that; but I must answer my friend Mr. Cahan this way, and it brings me back to what Mr. Cahan said. It is perhaps a mistake, or perhaps an enlargement of language to say that these plans have been circulated to 20,000 agents and so forth in Ontario and Quebec and through the Dominion of Canada. I am talking of the Canadian Underwriters' plans, which applies only to Ontario and Quebec. The western Canadian underwriters and the British Columbia board have non-intercourse to them. What the Canadian Underwriters do is this. When a member joins the association the member is entitled to as many plans as he makes application for upon an agreement to pay a proportionate cost

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of that number. Then, he has an agent, who is an agent of the board member, and the agent is entitled to the loan by the association of a copy of whatever plans he operates under in a district. He operates as that board member's agent; you will realize, Mr. Chairman, that the board member's agent may be a broker, broking loans for ten or fifteen companies, six or eight or ten of them are non-board companies. He secures insurance for all companies who will take it. Now, what is the result? He is in possession of the plan under a loan agreement. He says that he will use the plans for the purpose of the board company's business; but it is not human nature to expect that when he brokers a large risk or several risks of non-board companies that he is not going to use the plan that belongs to the association to get the information or the key and the rate from it. It is not human nature. That is why these agents of brokerage companies and non-board companies are in possession of the plans; but it is only because they are agents of one of the board companies.

Q. That is perfectly true, and I recognize that but the essential issue to my mind is the question of publication. You have a preliminary decision of a puisne judge, at least, that the circulation of your plan to all these agents and brokers is not a publication within the meaning of the section which I read.—A. Yes, that is right, sir.

Q. And it is upon that your exclusive right is sustained?—A. Yes, that is right, sir.

Q. One further question. You contend that it is not prejudicial to the public interest that you should retain a copyright which is not published in the sense I have mentioned within the meaning of the Act; that you should retain that copyright and use that copyright as a means of compelling all these outside brokers and agents to co-operate with your business exclusively and become associated with you?—A. Yes; but you see I do not know quite how to express it to the members of the committee, but I say that is not quite correct. There is nothing in the world compelling anybody to be a member of the Association.

Q. No.—A. The Royal Commission, you will remember—

Q. But you can compel them to become members of your Association in order to enjoy the privileges of using plans circulated and licensed by you as I have mentioned. To enjoy that privilege they must now, under the Copyright Act as it stands, become members of your Association, agree to the conditions of membership and to the general tariff which your Association fixes; is not that so?—A. I will answer it this way and say I want to go back to the time when the Goads went out of business. With the greatest respect, you advance the argument 21 years to 1938. They went out of business in 1917.

Q. I am not— —A. I want to say this: from the 1st January, 1918, to the 31st December, 1937, the Canadian Underwriters' Association for the servicing of their maps with their groups and their members and agents, spent $2,112,588.61.

Q. Certainly.—A. What I say to you, sir, is this: if the non-board companies had not waited for 21 years and then raised this complaint or this shibboleth before this parliament, they would have had the business acumen in 1917 to do exactly what we did; they would have gone out and they would have taken the Goads plans which they had and invited somebody to service them for them—

Q. I agree with that, but it seems to me— —A. They could do it to-day.

Q. It seems to me the essential question before the committee is as to whether, with the conditions which now prevail in Canada, a non-board company should not be entitled to the use of these plans upon paying adequate and proper compensation to be fixed by a court after hearing the evidence as to costs. That is the essential problem.—A. Then, sir, the result of that would be that as the Act exists at this minute the non-board companies would then have what has been

used against us, a monopoly, and they could go to the minister or to the minister's commissioner and get a licence, and the result of the provisions of the Act are that they would have the sole right to publish in Canada the works in respect of which they have the licence.

Q. That is not my contention. You and Mr. Scott have raised a vital issue which has been raised with regard to groups other than the fire insurance companies.—A. Yes, sir.

Q. And that to meet any public prejudice that arises out of several sections of the Act, whole paragraphs of the Act must be redrafted.—A. I do not see how there is any way out of it. I think you are perfectly correct.

Q. I cannot see it either; but still the essential thing is as to whether you are entitled to this exclusive right by reason of the past judicial determination that circulation among thousands of people in Canada is not publication. That must be determined first. If that is sustained you are within your rights, and if it is not sustained then others have the right to participate with you in the product of your labour and your technical and engineering training and experience. —A. That is quite correct.

Q. But in doing so they must pay proper compensation, and it seems to me that should be determined by a court; but certain paragraphs of the Act must be redrafted in order to carry out clearly and definitely the desire of Mr. Scott and those whom he represents.—A. Yes.

By Mr. Landeryou:

Q. You claim the Underwriters' Association claims exclusive right to these plans because they prepared them themselves. Up until a short time ago I understand the non-board companies had access to these plans. Is that correct? —A. They have access to them to-day. They had access to them and they have copied and photographed tens of thousands of them. A board agent who happens to work for a non-board company, as I said a moment ago, has access to these maps, and he has loaned these maps to a photographing concern and there have been copies made of them, and the non-board companies have the copies. To amplify that I will give the instance of the Dominion Gresham Guaranty and Casualty Company, who made an assignment in 1928. They had a set of maps practically up to date. These maps were put up for sale by the liquidator. The Trans-Canada Insurance Company bought them in for $5,000 or $6,000. I have forgotten which. The board did not buy them in. They let them go, and they were bought up by the Trans-Canada Insurance Company. They are their own property, just as much as my hat or my coat is mine. They are their property, but they have not got the right to make thousands and thousands of reproductions. By copyright the right to make reproductions remains in the owner of the copyright.

Q. The question I should like to ask is this: the non-board companies claim there has been a tightening up. Can you explain to the committee the reason for the tightening up; is it simply because— —A. Yes, I would be very glad to do so, sir. We began to discover these photographic copies in very large quantities in non-board offices around 1929, 1930 and 1931. The evidence before the Exchequer Court was to the effect that until 1929, 1930 and 1931—I just forget which, I cannot tax my memory to that extent,—the board companies did not know that the non-board companies were wholesalely photographing their plans and organizing volumes of them. The litigation was promoted against Massey and Renwick Limited, who were the agents and represented the largest of the non-board companies. The evidence showed there was an admission of 6,000 or 7,000 rates or rate-schedules and admission of several thousand reproductions of plans; and the court was given access in Toronto to books and volumes of plans that had been photographed, all our original plans, and in 1932 we pursued

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an investigation; in 1933 we continued the investigation, and in 1934 we took an action against the reproducing company, and a judgment was rendered by the Exchequer Court restraining the reproducing company from copying the plans of the Canadian Underwriters' Association. By that time the Canadian Underwriters' Association, in 1931, had acquired the copyright, even the right to produce and reproduce. We did not complain that original plans were in hands of non-board companies, that they had no right to keep them. They had a right to keep them, but we had acquired copyright, which was the right to reproduce or produce in 1931. Then, as I say, in 1934 an injunction was issued restraining the company from making any further copies and protests were lodged in all copying concerns in Canada. In an examination of the books of the commercial reproducing company we found 31 companies, not members of the Canadian Underwriters' Association, who had been getting reproductions of Canadian Underwriters' plans, and then we launched actions.

Q. I have just one more question. Did you offer to sell the information that you are preparing for practically nothing. Did you make any offers to these companies to sell them the information that had been secured?—A. If we did, I am not in possession of it.

By Mr. Kinley:

Q. You won that case in the Exchequer Court?—A. Yes; we were upheld in every single part of the claim.

Q. This legislation is to get over the judgment?—A. Which is now pending before the Supreme Court of Canada. I want to go further.

By Mr. Landeryou:

Q. You made no offer to sell this to the companies?—A. No. We maintain, as Mr. Cahan has quite fairly put it, that these are not public works; that they are issued only to the members; that they have never been exposed to the public for sale. They are issued only to our members. They are not retailed. Nobody can buy them. The members do not buy them. They contribute so much to pay the cost of reproduction.

Q. These are your exclusive maps?—A. Yes.

Q. You have no desire to make them public at all?—A. No, except to the 170 companies.

Q. The members of your Association?—A. Yes; but may I say this. Let me assume, Mr. Chairman, that the Supreme Court of Canada reverses the judgment of the Exchequer Court, and says that we have not secured copyrights, that we have no copyright interest in them, or they are public and subject to licence, what on earth is the use of this legislation? It is prejudging what the Supreme Court of Canada is going to do. It is prejudging that the Supreme Court of Canada is going to confirm the Exchequer Court. If it does not confirm the Exchequer Court, if it does the very opposite, reverses the Exchequer Court, we are wasting our time here and this legislation is useless, because they can then go to the commissioner, under section 14, and get a licence and they can ask that subsection 3 of section 14 be amended. It reads as follows:

> Every applicant for a licence under this section, shall with his application, deposit with the minister an amount of not less than ten per cent of the retail selling price. . .

I do not know where they would get the cost of these plans.

> . . .of one thousand copies.

They could make representations to the minister and say one thousand copies of the plan of Noranda would be useless. By subsection 3 they must say one thousand copies or such number of copies as the minister in the circumstances

shall deem to be just and equitable. Then the minister could say a hundred or fifty or seventy-five or two hundred.

By Mr. Vien:

Q. In the public interest, would it not be better or simpler if the owner of the copyright who claims protection on the copyright were compelled as part of his application and right to supply the public with such copies?—A. Well, that would be very simple—

The CHAIRMAN: Order, gentlemen.

By Mr. Vien:

Q. I am asking a question of Mr. Mann.—A. I will be very glad to answer. It would be very simple; if you wanted to turn upside down the Copyright Acts of the civilized world and enter into an agreement with 67 different countries, then that could be done; but you are speaking now, I think, on the question of international problems. I have before me here, and I am not going to burden you with it, a list of the members of the Berne Convention and the protocols and the Rome Convention, to which the United States adheres and all the south and central American republics.

Q. There is nothing in that Convention that provides that the owner of the copyright may refuse or refrain from selling to another applicant, and paragraphs 1 and 2 or section 14 provides for the right by licence to any complainant to publish and print and distribute if you fail to do so, provided he does it by licence or notice?—A. Yes; but Colonel Vien, I must repeat the difficulty that arises, and I am forced to repeat what I asked Mr. Stevens. The right is part of the section. Any person may apply to the minister for a licence to print and publish in Canada any book wherein copyright subsists if at any time after publication—

By Mr. Thorson:

Q. That is the question.—A. These rights arise only when there has been publication. So my friend Mr. Cahan is perfectly right when he says the question at issue is to determine what is the meaning of publication.

Q. What constitutes publication?—A. I say this committee is in a difficult position to determine the meaning of publication, because in every part of the Rome and Berne Conventions we find sanctified unpublished work as being subject matter of copyright until it is published, and giving the author or owner of copyright the sole right to decide to publish it.

By Mr. Vien:

Q. Is there anything to prevent the Canadian parliament passing legislation to define publication?—A. Yes, there is.

By Mr. Thorson:

Q. Wait a minute. Is the question of publication before the Supreme Court?

Hon. Mr. RINFRET: With regard to section 14, the section covering licences, I may say that that is a special disposition of the Canadian law. It does not exist in copyright acts in other countries. It applies only to the domestic market. I want to make that plain. At the time it was passed it was greatly objected to by these composers and copyright people in a general way. I may say that we have left it there, but I still have my doubts as to whether it should be there at all. It does not exist in legislation in other countries, and it does not apply to copyrights in other countries at all.

By Mr. Thorson:

Q. The question of whether your organization is publishing these plans within the meaning of the Copyright Act is before the Supreme Court, is it not? —A. No, sir. What they said was, you did not publish them, you refused to publish them, you did not publish them.

Q. Is the question as to whether your organization is the owner of unpublished plans one of the questions before the Supreme Court?—A. Yes, that is one of the questions.

Q. So that the question as to whether you have published the plans or not is before the Supreme Court in that way?—A. Undoubtedly.

Q. Then, may I also ask, in respect of each of your plans, how widely have you distributed amongst the members of your organization and amongst agents and brokers individual copies of plans?—A. How widely, sir?

Q. Yes. That would depend, I suppose, upon the community in respect of which you made a plan. Let us, for example, take a plan of a portion of the city of Toronto. How widely does that individual plan become circulated? —A. In conformity with the insurance activity in that district. If I could give you an example it may help you. Let us take Noranda. The original plan was made by ourselves and no more related to Goad than I am—

Q. How many people would get that plan?—A. Certain members of the Association decided they would contribute to the cost of printing the plan of Noranda. There were sixty copies printed and twenty-two distributed.

The CHAIRMAN: It is 1 o'clock.

The WITNESS: There were seven to agents and fifteen to companies.

By Mr. Thorson:

Q. So that the circulation of individual plans is very limited?—A. Quite limited, because you see the agent in British Columbia is not a member and it does not apply to Manitoba or Montreal or the eastern provinces.

Q. When you speak of the circulation of these plans to thousands and thousands of people you are speaking of the circulation of a large number of individual plans?—A. Altogether, undoubtedly.

Q. But each individual plan is circulated only in a very limited manner?— A. In so far as the insurance activity of that district requires, and nothing further.

The committee adjourned to meet Wednesday, June 15th, at 11 o'clock.

APPENDIX

Reasons Against the Adoption of Bill 124 An Act to Amend The Copyright Act Given Before the House of Commons Committee on Commerce and Banking by The Canadian Authors' Association

The Canadian Authors' Association feels that, not only are the provisions of Bill 124 strongly detrimental to its members, but also that a general Act such as the Copyright Act should not be used as the medium in which the private dispute of opposed commercial groups should be settled.

We understand that the sponsors of the Bill, Underwriters who are not members of the Canadian Underwriters Association have introduced it in order to gain freer access to certain plans, maps and fire risk schedules and tariffs, belonging to members of the Association.

Members of this Committee will readily understand that while the author's property rights in his works are based on similar principles to those which govern all property, his power to enjoy any profit from his " copyrightable " property depend for effect, not on general property rights, but on this very Copyright Act which it is sought to amend.

It does not take a specific Act to enable a householder to enjoy the profits from his house, but the Copyright Act had to be passed by Parliament for the specific purpose, before the Canadian author could safely make a profit from his work.

Hence our objection to this amendment which, however it may be worded, is designed to gain an end which has nothing to do with the purpose for which the Copyright Act was originally passed.

The sponsors of the Bill, we know very well, have no wish to injure us in any way, but even if the Bill is amended, it is illogical and a dangerous precedent to try and torture the English language into excluding every possible variety of copyrightable material *except* those specific maps and plans which are really in question.

We feel that a separate Bill for the one specific purpose would be the straightforward of obtaining the points desired by the sponsors, and the only way which could not *possibly*, under *any* circumstances affect authors, composers, artists and those others for whose protection the Copyright Act was primarily intended.

* * * * *

The Bill as at present printed severely prejudices Canadian authors in several ways which we here state very briefly:

Subsection (14) of the Amendment extends the scope of the Compulsory Licensing clause of the Copyright Act to include *unpublished* works as well as published—a drastic, far-reaching extension when viewed in the light of an author's manuscripts. Even if the wording of the Bill is changed to some such form as " otherwise prepared, distributed or issued for commercial purposes," instead of " unpublished," those words are still perfectly applicable to certain classes of purely creative writing,—material prepared for syndication, for example.

This subsection makes a further great extension of the Compulsory Licensing clause (14) of the Copyright Act when it uses the words". . . . allege. . . . . that there has been an abuse of the rights. . . . ."

" An abuse " can only mean " any abuse," but in the original Act the abuse which the Minister is empowered to remedy by compulsory licence is strictly

limited to cases where the owner of the copyright fails (*a*) to print the books in Canada, or (*b*) to supply the Canadian market with the books so printed in Canada.

Bill 124 therefore throws the gates wide open to compulsory licensing, the only restriction being that the owner of the copyright be a Canadian citizen. It departs entirely from the original purpose of the clause, which, as is made clear in many places, was to serve the interests of Canadian printers and publishers against their competitors outside Canada.

Subsection (15) of the Bill emphasizes the great scope of the extension and the departure from the original purpose. Like the other two subsections of this Bill it is taken—largely verbatim—from the Patent Act, which was designed to meet quite a different class of problem.

Subsection (16) deserves your very special attention. The mere number attached to it—" 16 " is significant. This amending Bill adds three subsections to Section 14 of the Copyright Act. They start with " 14 " and end with " 16." Why? Because Section 14 of the present Act already has thirteen subsections—*and each one of them is a definition or regulation or restriction of the Minister's powers under the compulsory licensing clause, all of which are removed by Bill 124.*

This fact seems clear from the wording of the Bill which starts " Notwithstanding the provisions of the preceding subsections..." and ends "...may order and grant such relief as he may deem just and fair in the circumstances."

We feel that if we must be subject to a compulsory licensing clause, its scope and working should be defined as fully as possible and the necessary protective regulations clearly stated in the Act of Parliament itself.

On an attached Appendix sheet we have listed the purport of each of the present protective regulations which this Bill would remove. They are enlightening to those with some understanding of an author's problems.

We respectfully submit that so many drastic changes in an Act on which an author's livelihood depends, should not be made in this manner—as the by-product of a dispute between two groups of Underwriters.

APPENDIX

SHOWING THE PURPORT OF THE THIRTEEN SUBSECTIONS OF SECTION 14 OF THE COPYRIGHT ACT, WHICH REGULATE THE COMPULSORY LICENSING OF AN AUTHOR'S WORK, AND WHICH WILL DISAPPEAR IF BILL 124 IS ADOPTED.

Subsection 1. Provides that the work must be unpublished, that the owner must have failed to print it in Canada and to supply reasonable Canadian demands.

Subsection 2. Applicant for licence must state proposed price.

Subsection 3. Applicant must deposit certain monies with application.

Subsection 4. Notice of application must be given to the owner of the work it is proposed to licence.

Subsection 5. Owner may then undertake Canadian publication himself and thus prevent any licence at all being granted.

Subsection 6. If more than one person applies for a licence to publish the same work, it must be granted to the one offering the most favourable terms to the owner of the copyright.

Subsection 7. The time for which the licence may be granted is limited.

Subsection 8. Licensee must pay royalties.

Subsection 9. (*a*) Licensee must print at least 1,000 copies—and within two months of granting of licence.

(*b*) Licensee may not alter in any way whatever, or condense or add to the authorized edition of the work concerned.

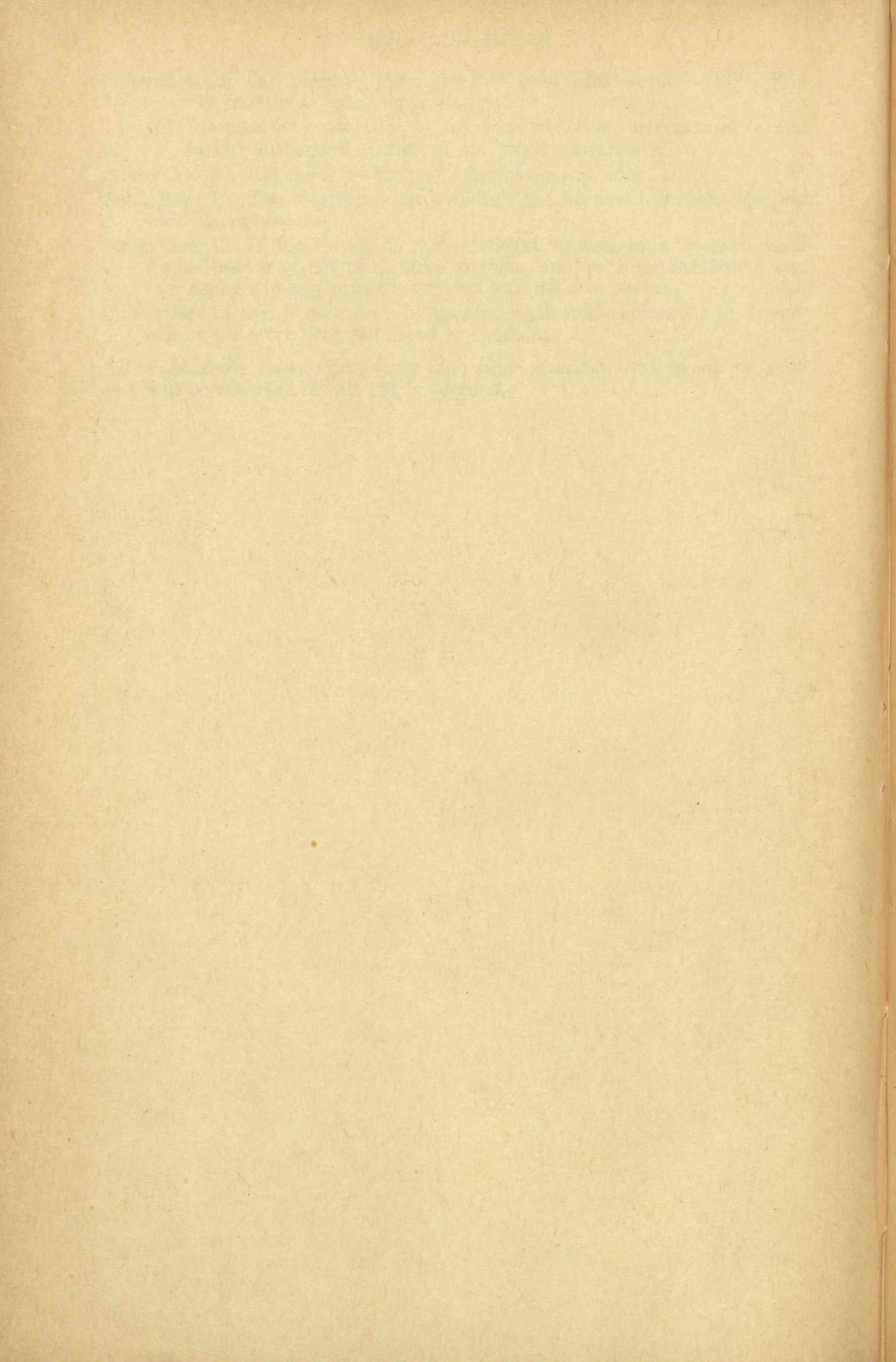
Subsection 10. Regulates method of imprinting the book.

Subsection 11. The Minister must withdraw the licence if licensee does not fulfil its provisions.

Subsection 12. If the owner of the copyright suppresses a licensed book the licensee may not print more of them, and owner is entitled to buy any copies already printed, but not sold, at cost price.

Subsection 13. No licence may be granted against the owner's will, if any edition has ever been published in Canada.

All of the above clauses protecting the author when his work is compulsorily licensed, will be removed if Bill 124 is adopted.



SESSION 1938

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 3

WEDNESDAY, JUNE 15, 1938

WITNESSES:

Mr. D. K. MacTavish, K.C., Ottawa;
Mr. W. B. Scott, K.C., Montreal;
Mr. F. P. Lloyd, Toronto;
Mr. E. R. F. Long, Toronto.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

MINUTES OF PROCEEDINGS

WEDNESDAY, June 15, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Cahan, Clark (York-Sunbury), Coldwell, Donnelly, Fontaine, Hill, Jaques, Kinley, Kirk, Landeryou, MacDonald (Brantford City), McGeer, Mallette, Martin, Maybank, Moore, Raymond, Stevens, Thorson, Ward.

In attendance: Hon. Fernand Rinfret, Secretary of State, Mr. G. D. Finlayson, Superintendent of Insurance, Mr. W. B. Scott, K.C., Montreal, Mr. Cuthbert Scott, Ottawa, Mr. D. K. MacTavish, K.C., Ottawa.

Hon. Mr. Rinfret addressed the Committee.

Mr. D. K. MacTavish, on behalf of Mr. J. A. Mann, K.C., made a brief statement after which, on motion of Mr. Stevens, it was resolved that witnesses in attendance be heard, and that following the conclusion of their evidence, the Committee proceed to the consideration of the subject-matter referred to the Committee by the House.

Mr. F. P. Lloyd was called and examined.

Witness retired.

Mr. E. R. F. Long was called and examined.

Witness retired.

Mr. W. B. Scott, K.C., was recalled and further examined.

Witness retired.

On motion of Mr. Thorson,—

Resolved—That the Committee adjourn to the call of the Chair its consideration of the subject matter of Bill No. 26, in order to give members of the Committee an opportunity to study the evidence, and that the Under Secretary of State and the Commissioner of Patents be invited to attend the next sitting.

The Committee then proceeded to the consideration of Bill No. 120, An Act to incorporate The Workers' Benevolent Society of Canada.

B. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

The Standing Committee on Banking and Commerce met at 11 o'clock, Mr. W. H. Moore, the chairman presided.

The CHAIRMAN: Order, gentlemen. I am told that Mr. Mann will not be here to-day; he has been called away. As you will recall, he was finishing his statement when the committee adjourned yesterday. Mr. MacTavish is taking his place. Have you anything further to say, Mr. MacTavish?

Mr. MACTAVISH: We have nothing further to add, Mr. Chairman, unless my friend Mr. Bolton wishes to say something. However, Mr. Chairman, with the permission of the committee we have two witnesses we would like to call, both of whom would be quite brief, on the general question of the plans.

Mr. MARTIN: Mr. Chairman, I have not any desire to be unfair to Mr. MacTavish and the group he represents, but it seems to me that we have unnecessarily gone into a great deal of detail about matters that really do not concern the principle of the bill or the principle of the subject matter referred to this committee; and while the additional information that Mr. MacTavish has in mind might be of great concern to the issue as between these two groups of companies, I do not see how that can help the issue. We have spent two meetings on this question; and I think what we should do this morning is amongst ourselves to discuss the question as to whether or not it is desirable to amend the Copyright Act so as to give to the Commissioner of Patents power to deal with abuses in respect of any copyright. I think that is the issue if we go into this matter further. This matter is a dispute between two groups. It is quite possible that others who might have a conflicting interest might want to air a grievance before this committee. In any event, I think those grievances are properly referable now to the minister and under the proposed amendment to the Act, to the Commissioner of Patents.

Hon. Mr. STEVENS: Mr. Chairman, I agree with what Mr. Martin has said. He did not agree with me when I said the same thing two meetings ago. I quite agree that this dispute between two groups never should have been brought before a committee at all, but it having been brought here and we having heard as much as we have, I think that out of courtesy we must allow them to complete their statements. I assume that Mr. Scott would like to say something further, and it seems to me that having committed ourselves to that principle—if I might say with deference to you Mr. Chairman, over my protest two meetings ago—the only thing we can do is complete the hearing. I suggest that if the committee agrees to hear these people that those who are to be heard should cut their remarks short and keep them as close as possible to the matter before us.

The CHAIRMAN: Do I understand, Mr. Martin, that you want to have no more evidence, and it is your desire not to hear witnesses suggested by Mr. MacTavish or to allow Mr. Scott to speak in rebuttal to what Mr. Mann may have said?

Mr. MARTIN: What I am saying may not please Mr. Scott who, I believe, did want to make replies, but my view is that if we brought this matter to a close and forgot this particular issue more would be gained—if we were not hearing any more witnesses.

Mr. THORSON: Mr. Chairman, there is something in what Mr. Martin says, in that we should be careful to deal with this matter in a general way from

the viewpoint of the principles involved. On the other hand, we can get, through hearing both sides of this dispute, a very clear idea of the principles that are involved and an exposition of those principles from both sides. I would, therefore, think that Mr. Stevens has expressed the proper view, that since we have embarked upon the enquiry into this particular controversy we should conclude it as fully as possible and give both sides every possible opportunity of placing before this committee their respective sides of this controversy; because if we have both sides fully before us then we can clearly see the principles that are involved. I would be of the view that we should not in this committee attempt to settle the controversy between these parties one way or the other, but that we should refer the whole subject matter back to the Department of the Secretary of State for the purpose of considering the principles that are involved and drawing the proper amendments, if any are required, to the Coyright Act. Those amendments are of such a nature and the subject is of such intricacy that we in this committee, with deference to all of our members, could not, I think, do the job that should be done. We might indicate our views in a general way as to the principles that should be followed, and then submit our views in a general way back to the Department of the Secretary of State so that the necessary amendments, if any are to be made, may be made carefully, judicially, and submitted to various law officers in various departments who are familiar with the subject so that all angles of the question may be dealt with. Mr. Cahan made it perfectly clear, I think, to all of us that we must be very careful to see all the implications that are involved in an amendment to an Act which, after all, is a public Act; and there is great danger in drafting upon a public Act an amendment which is designed to settle an individual and particular controversy. I would think we ought to hear all the witnesses on both sides of this controversy so we may have every aspect of the question.

Mr. MARTIN: Mr. Chairman, I want to make one observation in reply to Mr. Thorson. I quite agree with the course he has suggested, that the matter, so far as drafting a bill is concerned, should be left to the Department of the Secretary of State. I do think, however, that this committee should not conclude its sittings in respect to this matter without declaring itself on the principle involved. The details, having in mind all the difficulties which Mr. Thorson and Mr. Cahan pointed out yesterday, can be borne in mind by the department.

Now, with regard to further evidence, I suggest this, that if we are going to have evidence then we have got to go to the bottom of this whole problem as between these two groups. To hear further evidence is not going to help us in respect to this general principle. This whole matter I suggest now is one for the minister at the moment, and under the proposed amendment, the commissioner of patents. We cannot really benefit greatly from further evidence. Mr. Mann has stated his point of view, Mr. Scott has stated the other opposite point of view, and I think it is a matter of detail.

Mr. KINLEY: And the matter is before the courts.

Mr. MARTIN: Yes. The important point is the one Mr. Thorson has made: A reference to the department for drafting a bill embodying what I think this committee should declare to be its opinion on the general principle; and after you have disposed of the matter of further witnesses, Mr. Chairman, perhaps there will be an opportunity for saying something.

Mr. KINLEY: What is the general principle you want?

Mr. MARTIN: The principle is this: there should be provided machinery by an amendment to the Copyright Act giving to the commissioner of patents power to determine whether or not in his judgment in respect of any copyright there exists an abuse prejudicial to the general interest and that from such decision there shall lie an appeal to the exchequer court. That is the principle involved.

Mr. KINLEY: What about the publications?

Mr. MARTIN: That is a matter for draughtsmanship which, as Mr. Cahan pointed out, is very important—the improper definition or interpretation by the courts of the word "publication." You have asked me for a general statement of the principle.

Mr. KINLEY: There is the matter of publication.

Mr. MARTIN: I am referring to the principle of the bill. I am frank enough to state that before this bill was introduced I had not thought of any particular abuse other than this particular one, but Mr. Cahan clearly indicated yesterday that there may be all sorts of abuses apart from this particular difference between these two influences—the non-tariff and the tariff groups. There is a principle involved, and I think this committee should declare itself on that principle. Are we of opinion that where, in respect of any copyright, there is an abuse that abuse shall be corrected? And if we are of that opinion shall we empower the commissioner of patents to deal with or determine there is an abuse and by that decision to stop the abuse? And having done that, shall we allow an appeal from his decision? That is the general principle. Mr. Stevens stated it at our first meeting and I subscribed to it then and I do now.

Mr. MAYBANK: Mr. Chairman, as well as I could follow Mr. Thorson I feel that my views very well coincide with his own. I am asked as one member of a committee at this moment to take some action, but what have I before me? I have a statement of desires of two interested witnesses, I have a statement of fact made by two witnesses. Each of those witnesses was doing his job in a perfectly honest and straightforward way, and nevertheless, even within the complete bounds of veracity, emphasis may be placed by a witness here, there or elsewhere because of the reactions, shall we say, that come from his heart. My friend suggests his pocket. I fancy the heart may be influenced by the pocket first. I am not casting any aspersions on anybody; I am only pointing out that what we have before us is evidence from two interested parties.

We are not likely to get the broadest possible survey by that type of evidence, and I would hesitate a great deal to pass upon any subject with such information available, especially if it were possible to obtain more information.

Mr. MARTIN: I have no objection to that.

Mr. MAYBANK: I am not asking for more evidence exactly, but I am thinking out loud about this sort of thing.

Now, then, I fancy it is inconceivable that we would pass a law which would say specifically, "These books which one crowd have must be available at a certain price for the other crowd." It is not likely—

Mr. MARTIN: Nobody is asking that.

Mr. THORSON: It is not possible.

Mr. MAYBANK: My friends on my right, I fancy, are misconstruing my remarks; I am not suggesting that any person has asked that.

Mr. MARTIN: Oh, I see.

Mr. MAYBANK: My observation was a rhetorical one by way of illustration to another point. Perhaps I speak too slowly and thereby almost invite interruption. I am not taking umbrage at the interruption. I say it is inconceivable that a law of that sort drafted specifically, be recommended by this committee and passed by parliament; however, the very moment you get away from that degree of specificality you apparently touch on some other section of the public.

Mr. Cahan pointed out with very great clearness—I wish we had his words before us this morning, but they have not come up yet, and I do not remember his case well enough to quote it—but we did all get the general impression that the moment you touch this Act in any respect you affect all manner of other interests. He suggested there were men in the department—

and he spoke as one having knowledge from experience—he suggested there were men in the department who were particularly well experienced in ability to discuss this matter—men who had a great deal of knowledge—who had a great deal of experience with some of these points. I do not know, but I think he was suggesting that what we ought to get first would be rather a comprehensive survey from them as to all of the possible issues involved. At any rate, if he did not suggest that, I would say this, that realizing that anything that I do with reference to this Act may result in all that general type of disturbance that is indicated, then before I do anything at all I want to bring these men here, and so far as my poor intelligence would lead me I would ask them all manner of questions on this matter. I would think we ought to have every person in the government service and every other person who can be found who can deal with these particular possible disturbances.

It does not seem to me that we will go forward as well as we should by at this time going in for such a large enquiry—bringing in all of the witnesses that it would seem to be necessary—but rather we should delegate to the department and to those experts I have spoken of for the time being, at any rate, an examination into this matter, and a very complete report back. With all deference to Mr. Martin, I think we cannot pass upon the principle involved. I do not think we can pass upon a question of principle without seeing the implications of the application of the principle, and that is the very thing with which I am dealing. We must be clear on all the implications before we can pass on the principle.

It is not quite like they sometimes say about lawyers. I could not help but think of this when Mr. Mann was giving evidence and Mr. Cahan asked him a question. I think one other member and I were agreed that he was hedging. They say that sometimes lawyers will not agree that two and two make four unless they find out what use is going to be made of the admission. The position is not quite like that because here we know that there are many implications, or we have good reasons to fear many implications. Therefore, I do not think we ought to be asked to pass upon any principle until we can see all the implications of the application of that principle.

There is a further point. In spite of the fact that the subject matter of this bill has been referred to this committee, it does seem to me that it would be in the best interests of all if the enquiry did not proceed until we found out what the Supreme Court decides. Here we are mixing ourselves up into a war between these two litigants—

Mr. Martin: No.

Mr. Maybank: Just a moment. After all, this is only an expression of opinion on my part, and gentlemen have a perfect right to disagree with me; but we are mixing up in a war between two litigants at the moment. I am justified, I think, in drawing that inference, owing to the fact that the only people we have had before us are two litigants who are presenting their case to us. It seems to me that is the position in which we are placed, and the man on this side of the fence at this moment, about the time we make our report or shortly after, may be over on the other side of the fence. The supreme court may give a complete reversal of the judgment so far rendered.

Let us suppose, for instance, the non-board companies won their case before the appeal court, and they apparently are not withdrawing their case; let us suppose that they won their case, obviously they would not desire this bill any longer and all our labour would go for nought. I think, therefore, it would be better if the departmental experts were to deal with this matter rather than that we should deal with it, because they would probably make a report after the time the supreme court had dealt with it.

In addition to all of the other items to which I have referred in the nature of additional evidence, and so forth, we have this: Mr. Martin a few moments ago said that the principle is whether or not under certain circumstances an

abuse should be corrected. But, sir, we have got to get down to the proposition of deciding whether, granted everything that Mr. Scott says is correct, that does constitute an abuse.

Mr. MARTIN: I am not asking that the committee should determine whether or not this claim of Mr. Scott's is to be substantiated; I am simply saying let us provide the machinery whereby there will be an opportunity of determining that.

Mr. MAYBANK: Yes, I appreciated that. But I do think that we are in the position of creating machinery for the correction of an abuse, and, at the same time, deciding that we shall confer upon some officer the right to determine whether there is an abuse.

Mr. MARTIN: That is right, with an appeal.

Mr. MAYBANK: All right, then there is another principle involved, whether we shall give this judicial function to some bureaucrat who may be in the employ of the government to-day. There is an additional principle involved; and I would like to know a great deal about the abuse, if there is one, before I would decide that it is desirable to give any such power to a man in the employ of the government of the Dominion of Canada.

Mr. MARTIN: May I say that this provision already exists in the Patent Act.

Mr. MAYBANK: Yes, I know it does, and there appeared in the past to have been good reasons why it did not appear in the Copyright Act. It appears in the Patent Act, and I presume that point has been considered in the past, and I suppose we would have to consider it all over again.

That is my general position with relation to this. I understood Mr. Thorson was making a motion that it be referred to the department.

Mr. THORSON: No, no.

Mr. MAYBANK: I would like to make that suggestion, at any rate, and if it finds any favour at all I would either make it as a motion or—

Mr. THORSON: Mr. Chairman, the question before us is whether we should hear any witnesses.

Mr. MAYBANK: I think we ought to decide that before deciding on the question of the witnesses. I think it would be better to have an enquiry of that sort made rather than to bring in more witnesses now and then pass it over.

The CHAIRMAN: Mr. Maybank and gentlemen, I suggest that at this stage we have a statement from the minister.

Hon. Mr. RINFRET: In the first place, Mr. Chairman, I point out that the minister is the one who referred this matter to the committee. If I had felt at that time that the government should take a definite stand in the matter naturally I would have said so when the bill was up for second reading. I thought it might be better to do that in view of the fact that there was little time left twice a week to deal with this matter as a public bill, but from a private member, and that there would be ample opportunity here to discuss the matter, hear evidence or expressions of opinion on the subject.

I was made aware that a motion would be put this morning to the effect that it should be referred back to the Secretary of State. I did not greatly object to that at first, but having heard what I have just heard now—I have an open mind on the matter—I would think it might be better if the committee would give a little more consideration to it before referring it back to me, because that is where it came from, and unless the committee were convinced as to the principle of the bill, which would represent some progress. If the committee merely reports the whole matter to me without an expression of opinion, we will not have made any headway.

I may say, though, that there is much in what Mr. Martin said, that this committee should not consider itself as being a judicial body to pass upon the case of the two insurance groups.

Mr. THORSON: Certainly not.

Hon. Mr. RINFRET: I think it is quite plain, as Mr. Cahan said yesterday, that if we put through the bill it will do nothing in the way of settling that case. You might adopt the bill as it has been presented, but the Commissioner of Patents might decide that it should not be used in the case of the insurance people. Therefore, I believe the evidence given by the lawyers interested in that case can only serve as an example to point out what kind of an abuse might exist. But it is not material for any of you gentlemen to be fully aware as to whether Mr. Mann or Mr. Scott is right. That can only serve as an illustration of what might take place, and as Mr. Cahan has pointed out in his very valuable evidence, there might be other cases arise where the department would want to act.

I think we are agreed one point, namely, that there is no machinery at the present time in the Copyright Act to permit an action in the case of an alleged abuse. There might be, for instance, some medical books, or books of science, which were the property of one group, and we may think that they should be made available to the public generally; but there is nothing at present in the Copyright Act to force that.

I do not want to be driven away from my main argument, namely, that I would ask this committee not to dismiss the subject matter of the bill before giving us some indication at least of what they think of it. It has been referred to the committee for that purpose. As to evidence on the insurance case, perhaps we might reach a compromise and say that we might as well reach some conclusion in regard to it because it has been started, and to have a full statement printed in the committee's report. At the same time, it might not be improper to point out to these gentlemen that the committee is not to pass on that case.

Mr. MARTIN: Hear, hear.

Hon. Mr. RINFRET: Therefore, that their statements should be made briefer because they will only serve as an illustration to guide us in adopting a general principle.

I may point out that although there is a coincidence in the fact that the bill has been presented at the moment this case is being argued, at least one phase of the case before the supreme court, it is true that the case submitted to the exchequer court dealt with the infringement of copyright and is not altogether similar, or is not the one that we are now considering. But in the course of the suit and, in the judgment of Mr. Justice McLean, I could point to many declarations which certainly could help us in our present work, and I expect that when the supreme court finally passes on the bill which it cannot do before this fall, we may there also find material that would help the department in reaching a decision.

I may say that even though the bill were passed now, the department would very much hesitate to take any action in the insurance case until the supreme court had rendered judgment.

Mr. MARTIN: Quite.

Hon. Mr. RINFRET: I do not want to argue that point, that the point submitted to the court is not the one that is before us; but in the course of the arguments many things happened that bring them together. I may point out, for instance, that in the matter of publication Mr. Justice McLean in his judgment indicated that in his own opinion the alterations to the original Goad plans had not been published in the terms of the Act.

I do not think it is necessary to read that judgment, I just give that as an example.

Therefore, Mr. Chairman, I would suggest two things. I have been very remiss in offering opinions, because I referred the bill to the committee in order to become enlightened on it. I think that inasmuch as you have entered into evidence about the insurance matter, it should be concluded; but I would suggest

to the interested parties that they could make their statements shorter inasmuch as this is not the point on which we are going to pronounce ourselves, and, in the second place, I would ask you, Mr. Chairman, to see that this bill is not sent back to me unless it is accompanied by a certain amount of instructions or expressions of opinion from the committee. If after looking into it further the committee does not wish to pronounce itself, it may say so. I am not in favour of the immediate reference of the matter to the Secretary of State's department before further work has been put on it by the committee, which may be helpful to us when we have to consider the matter fully.

Hon. Mr. STEVENS: Mr. Chairman, I would like to move that we hear the witnesses suggested, with the understanding that they should be as brief as possible and to the point; and that following the conclusions of the evidence the committee proceed to consider the order of reference and to study the subject before the committee.

Mr. THORSON: Hear, hear.

The CHAIRMAN: Carried.

Mr. MAYBANK: If I was reported as making a motion, I am agreeable to withdrawing it.

The CHAIRMAN: What witness do you wish to call, Mr. McTavish.

Mr. McTAVISH: Mr. Lloyd.

F. P. LLOYD, called.

By the Chairman:

Q. Mr. Lloyd, will you state your position?—A. I have been engaged in the map business since 1901. From 1901 to 1905 I was with the Charles E. Goad company.

Q. As a publisher of maps?—A. No, I was doing both the outside work on insurance plans, and the inside work. I am thoroughly conversant with every part of the business as far as fire insurance plans are concerned.

I left them in 1905 and in 1908 I commenced doing business in an organized way. I was thoroughly conversant with every end of the insurance plan business.

In 1915 my father and brother, who were with the Goad company, came in with me; they left the Goad company and came in with me, and in 1915 we did quite a bit of work for the Western Canada Fire Underwriters' Association.

In 1916 we made a couple of insurance plans which I have here, for Milton, Ontario, and also a series of maps of mining camps in northern Ontario, which I also have here.

The CHAIRMAN: Mr. McTavish, just what do you desire to prove?

Mr. McTAVISH: The point is, Mr. Chairman, that we are showing that maps were available during this period about which there was some discussion.

Mr. THORSON: Can we not accept that, that they were available?

Mr. McTAVISH: If that is acceptable, all right.

The CHAIRMAN: The committee accepts that as a fact? Is that correct?

Mr. MARTIN: No. The committee, surely, does not express an opinion. I think the furthest we can go is that that has already been stated pretty clearly to the committee.

Mr. SCOTT: Mr. Chairman, I want to say that that is distinctly not admitted by us.

Mr. THORSON: Mr. Scott, we are not concerned with any question of facts in this case at all.

Mr. MARTIN: That is right.

Mr. THORSON: We simply want to get an illustration of the different sides of the controversy, and we do not care a button whether the facts are

one way or the other. It is an illustration of the two sides of this controversy that we would like to get so that we will be in a position to make a general statement of the principle that might be carried into effect by proper draftsmanship in making amendments to the Act.

The CHAIRMAN: We have just decided that we want to have some brief evidence, and it seems to me that we ought to know from Mr. McTavish just what he proposes to prove to the committee by the witnesses.

Mr. THORSON: Yes.

The CHAIRMAN: It may be unnecessary to repeat what has already been said. My suggestion is simply to shorten the evidence as much as possible.

Mr. THORSON: Mr. McTavish might tell us what he proposes to prove.

Mr. McTAVISH: Mr. Chairman, this witness will prove that at the times he mentions, map makers were available to do the work that we did and were available to the clients of my friend, Mr. Scott.

Mr. MARTIN: That is not necessary.

The CHAIRMAN: That is not necessary. Next witness.

Mr. McTAVISH: The next witness, who can be equally short, will prove that there are plan makers to-day in the business who will be or could be put out of business by virtue of the passage of legislation that is before this committee at the present time.

Mr. MARTIN: That has already been alleged.

Hon. Mr. STEVENS: Who is he? Let us hear him.

Mr. McTAVISH: Mr. Long.

E. R. F. LONG, called.

Q. Mr. Long, will you state your position?—A. I am an independent fire insurance surveyor.

Q. An independent fire insurance surveyor?—A. For the last two years I have been making fire insurance surveys for fire insurance companies in Ontario.

Q. Board companies or non-board companies?—A. For both. I have been making plans for both, both for the non-board and board companies. I have here surveys made by myself and also by the Provincial Insurance Surveys; and at the present time I am actively engaged in the making of fire insurance plans.

Mr. MAYBANK: Mr. Chairman, I should think that evidence of this type would probably be more appropriate if and when there were an actual bill being considered.

Mr. MARTIN: Do you not think, Mr. Chairman,—I say this with great respect to Mr. Maybank—that this evidence may be very important for the Commissioner of Patents in determining whether or not there is an abuse?

The CHAIRMAN: Quite right.

Mr. MARTIN: Not before this committee.

The WITNESS: I think the mere fact that I came here this morning—

By Hon. Mr. Rinfret:

Q. Do you consider these maps are as good as the Goad maps?—A. I will not only say so, but the companies have expressed their opinions that way, and they have bought them.

Q. They do not insist on getting Goad maps?—A. The Goad maps today, a certain amount of them, are very much out of date, and they buy our maps because our maps are right up to date.

Q. That is the point. Your maps being better than Goad's, why should any insurance company want to amend the Act to be put in a position to buy Goad maps? Perhaps my question is in the form of an argument and I should not press it.

The WITNESS: There is one thing, too, that could have been done in the past; the companies that are now holding Goad's plans or maps could have revised them themselves. In fact, some of them have revised Goad's maps, that is, those who are in possession of Goad's maps of 1915 and 1916. I have seen revisions put in by hand.

Q. But your maps are available to the whole public?—A. Absolutely.

By the Chairman:

Q. The minister used the words "Goad maps"; are your maps as up to date and as good as the Underwriters' maps for the same towns?—A. Yes, sir.

By Mr. Martin:

Q. You have maps for every town in Canada?—A. No, not at the present time. We have only been making maps in the province of Ontario.

By the Chairman:

Q. Are you prepared to make surveys of towns on request?—A. Oh, yes; only too glad to do so.

Q. That is your business?—A. That is our business.

Q. Tell us something about your charges. What are your charges?—A. For a village map, running, we will say, 4 sheets, our charges range from $8 to $10 a sheet. I have here a list of charges by the Provincial Insurance Surveys, and for my own maps. They run approximately $8 to $10 a sheet.

Q. Give us an illustration of a town, some town. Do you know the celebrated town of Whitby?

Hon. Mr. STEVENS: Say Oshawa.

Mr. MARTIN: Where is Whitby, Mr. Chairman?

The CHAIRMAN: I thought everybody knew it.

Mr. THORSON: A suburb of Oshawa.

The WITNESS: The plan of Belleville, consisting of twenty-three sheets—that is, including the key of 500 feet, sold for $252; the approximate cost per sheet was $10.90. Of course, you have got into the city category where the sheets are heavy. But getting into the villages—take the village, we will say, of Uxbridge; there are three sheets—$30. Of course, that is the $10 a sheet plan. There are some of the smaller places where they are not very well built up, and they do not cost so much.

By the Chairman:

Q. That is per purchaser, or is that outside? Is that the purchaser who wants a map of Uxbridge?—A. Our prices are the same to the public.

Q. He has to pay—what was it—$10?—A. About $10.

Q. And Uxbridge has about 1,400 inhabitants?

By Hon. Mr. Stevens:

Q. Mr. Long, would you undertake, for instance, a survey of a city like Hamilton or Winnipeg or Vancouver without having some guarantee of cost from some group?—A. No. In cases like that I would have to go to the insurance companies and get them to agree that they would take the plans, so many subscriptions, before anything was done.

Q. You would have a contract?—A. A contract.

Q. For a certain limited number; and then afterwards it would be open to the public to purchase?—A. I am working at the present time on a contract I

have with the Canadian Underwriters Association on unprotected areas. I am making a survey at the present time on a contract basis. I first go to the village or town and find out how many sheets are to be done, how much area is to be covered. I figure out the cost and go to the companies and get their sanction, their orders or subscriptions.

By Mr. Maybank:

Q. A sort of advance sale proposition?—A. That is it.

The CHAIRMAN: Mr. Scott, how many non-board companies are there?

Mr. SCOTT: 71.

By the Chairman:

Q. Would an order from 71 companies satisfy your requirements for a special survey?—A. I would say yes, sir, if you can get it. But there are a lot of non-board companies that are not buying plans from individuals such as myself, because they are making their own. The Federal Hardware and Implement Underwriters have their own staff of surveyors. They have to revise their plans. They claim their engineers make their own surveys, just as they have in manufacturing risks—sprinklers and so on; they have their own survey in framing the rates as well.

By Hon. Mr. Stevens:

Q. Their requirements are a limited survey?—A. A limited survey.

Q. Limited to the industry?—A. To the particular risk.

By Hon. Mr. Rinfret:

Q. May I ask you a question—have you ever used original Goad's plans in your work?—A. No. Our work is original.

Q. They are available. There is nothing that could prevent you from taking the original Goad's plans and making alterations to make them up-to-date.—A. Well, I do not know about that, because I have never done that.

Q. But you can do it in another way; you could produce, for instance, for a group of insurance companies, if they were numerous enough, at a reasonable price, insurance maps that would be perfect for their requirements for their work?—A. Yes. Take for instance the case of the Goad's maps—I could use the skeleton of the Goad's maps and block in the areas.

Q. That is what I had in mind.—A. Yes. I could fill in the necessary details. I could still use their skeleton. The surveys can be made fairly reasonably if you can make use of a basis map. The way I do, I apply to the town engineer of these municipalities for a skeleton map, and we build up our information on that, after securing the skeleton map of the general frontages of the mercantile buildings. After that, it is filled in; that is all original work.

Q. This is very interesting evidence. I just want to put one further question. I am not sure whether you can reply yourself. If you are in a position to produce insurance maps just as well as the Underwriters, why should the non-board companies insist on buying Underwriters maps?—A. It is a rather difficult question to answer.

Q. Perhaps some other witness can answer it.—A. May I make one statement, and I am not overstepping the mark. It is very difficult for any surveyor or any organization in the map business to get a definite program from the non-board companies. We have tried to have meetings whereby we could have all sat in together and discussed the advisability of forming a stock company for the purpose of making these plans. I am going back to two years ago when Mr. Allgate, my associate, went to Kitchener. I believe the meeting at that time was at Stratford of five companies known as the Waterloo and Kitchener group. He sat in there and he tried to sell them the idea of supporting this organization

[Mr. E. R. F. Long.]

for the making of insurance plans, and the result was that they could not agree. At the present time they said, No, there was to be no money to be put up, there was to be no advance made for the manufacture of these plans. I, personally, called on at least twenty companies and only found two who were willing to go in on the idea as a stock proposition whereby they would advance a certain amount of this money; because it must be understood that in making a survey of towns like Hamilton, Montreal or Toronto, it would take an awful lot of capital to do a thing like that, and at the present time the largest towns that have been surveyed by independent people like ourselves are Belleville or Oshawa.

Q. But if the non-board companies would get together, they could have plans prepared at reasonable cost that would be just as good as the Underwriter?—A. Absolutely; and I will admit that they could be produced a lot cheaper than we are producing them now, because it would be their own organization. They have gone out and made maps for themselves. I have seen maps made by the non-board people themselves. They are not big maps such as cities, but small towns. I will give you an instance—Williamsburg, for instance. That consisted of two 50-sheet plans. They made their own survey. At the time it was rough in its design, was sketchy, but it answered their purposes completely.

By Mr. Ward:

Q. Did you tell the committee that you were under contract to the Life Underwriters Association?—A. No, fire.

The CHAIRMAN: Fire Association.

The WITNESS: Fire Underwriters Association.

By Mr. Ward:

Q. If this is not a fair question, do not answer it. Why did the Fire Underwriters Bureau or Association employ you and at the same time have their own organization, as we were told they had, to prepare maps and plans?—A. Well, I can answer that, I think, in all fairness to the Underwriters Association; I can make a map of an unprotected area, of a village or town, cheaper than they can themselves. My overhead is much less than theirs. I am doing it on a contract basis. We will say a plan costs $350 to make. That is split pro rata amongst these companies.

By Mr. Thorson:

Q. That is in unprotected areas?—A. That is in unprotected areas. I am not making any plans of an unprotected nature for any Underwriters Association.

By Mr. Maybank:

Q. In general they do it themselves. But some amount of this overflow comes to you—that overflow of the type you have mentioned?—A. Yes, in these unprotected areas. There are not very many companies interested—probably fifteen or twenty out of a total of one hundred and sixty; and these surveys are now available to them upon a contract basis.

Mr. THORSON: How many board companies are there?

Mr. MCTAVISH: About 165.

Mr. THORSON: 165 board companies and 71 non-board companies.

Mr. SCOTT: 71.

The WITNESS: I have known cases in northern Ontario towns, where an insurance company—they have located a plan; they have written to the town engineer and he has sent them down a blueprint, a field blueprint, showing them the lot number; and that is all that is necessary in these unprotected areas. There are no official street numbers. These lot numbers are there, and you can find the property.

By Mr. Donnelly:

Q. What do you mean by unprotected area?—A. An area where there is no fire protection, no water main or hydrant, no fire department to take care of fire hazards.

The CHAIRMAN: Are there any other questions, gentlemen?

Mr. SCOTT: Mr. Chairman, may I ask this witness a question or two. I did not know, of course, that any lay witnesses were going to be heard, and I have none.

Mr. Long, have you made any estimate of cost and of the time that it would take to make a survey for a fire insurance map of the city of Montreal?

The WITNESS: No.

Mr. SCOTT: Have you made any estimate of a survey, or how long it would take your organization to make fire insurance maps for the province of Quebec? You have not?

The WITNESS: No. People did suggest when I was down in Montreal some months ago—they asked me if we were going to come down to Quebec—and I said probably at a later date, but not at the present time.

Mr. SCOTT: You have made no estimate as to the time or cost of surveying every city, town and village in the province of Quebec?

The WITNESS: No.

Mr. SCOTT: With reference to making fire insurance plans?

The WITNESS: No.

Mr. SCOTT: And I take it your answer would be the same with respect to the maritime provinces?

The WITNESS: Exactly.

Mr. SCOTT: And your answer would be the same with respect to the western provinces?

The WITNESS: Absolutely.

Mr. SCOTT: And am I right in regard to the province of Ontario, which is the only province in which you have done any business, that you have not attempted to touch their cities and towns?

The WITNESS: No.

Mr. SCOTT: Is it not a fact that you were recently asked to prepare plans for the city of London and you said you were unable to do so?

The WITNESS: Yes, that is true.

Mr. SCOTT: Thank you.

The WITNESS: For this reason: I did not have the necessary finances to make a survey of the city of London, until I got the support of the companies. But there has been the feeling lately that, due to this suit that is now going on at the present time, they are buying cautiously; they do not know how this thing is going to turn out, and they are not going to invest too much money. One company came out flat-footed and wrote in connection with a certain plan, "We are not buying any more plans from any one until the Supreme Court or the courts decide on this issue."

By the Chairman:

Q. Mr. Long, will you tell us who asked you or suggested to you that you should make plans of the city of London?—A. Well—

Q. Was it a company or a non-board company?—A. The non-board companies. You see, the question of the city of London—

Q. Just a minute; the non-board companies, you say; was it an association or just a number of them or what?—A. No; individuals, sir.

[Mr. E. R. F. Long.]

Q. Certain individuals?—A. Certain individuals.

Q. How many?—A. I would imagine approximately fifteen; and how that came about—I was talking to them about other surveys, trying to get out from them their requirements, and London and Brantford were mentioned, that they would be particularly interested in the larger centres.

By Mr. Rinfret:

Q. I understood you to say that the companies had told you that they did not want any plans until the Supreme Court had passed judgment on the appeal; did you say that?—A. There is one company that has made that statement to me, within the last two weeks.

Q. Which means that if the decision of the Supreme Court was favourable to the Underwriters, then it is likely that the companies would place contracts for plans with you?—A. The probabilities are, in my own personal opinion—I am not voicing it for my associates—but I really do believe if it was made possible for them to buy freely from the Canadian Fire Underwriters' Association, we would get practically no support at all except in special cases where the Underwriters did not have a plan.

Mr. MARTIN: I suggest, Mr. Chairman, that evidence will be properly before the minister or before the commissioner of patents.

By Mr. Donnelly:

Q. Mr. Long, are you suggesting that this committee make it possible or make it necessary to make two or three surveys of each of these cities, like London? You have a survey already. You want another survey?—A. No. The only thing I am trying to point out is that it is possible for non-board companies to make their own plans. For instance, the large majority of non-board companies still retain or still have the Goad's plan of 1915 of the city of London, and they themselves could see that that plan was revised and brought up to date.

Q. Very well.

The CHAIRMAN: Thank you, Mr. Long. Is that everything, Mr. McTavish?

Mr. MCTAVISH: That is all, thank you, Mr. Chairman.

The CHAIRMAN: Now, will someone move that Mr. Scott be heard?

Mr. THORSON: I move that Mr. Scott be heard.

Mr. SCOTT: If I might take a moment or two, I should like to reply briefly.

The CHAIRMAN: Would you come up here to the front, please?

Mr. SCOTT: I might say, Mr. Chairman and gentlemen, that we never contemplated that this was going to develop into any fact-finding committee with lay witnesses. I thought Mr. Mann and ourselves would outline the respective positions in the matter. We have no lay witnesses here.

Mr. THORSON: It is not going to be fact-finding at all, either for lay or professional witnesses.

Mr. SCOTT: Quite so. I understand. As the first point, I simply want to say that according to my instructions there is not in existence in Canada at the present time any map-making company that is able to furnish fire insurance maps for the Dominion of Canada, or particularly the province of Ontario and Quebec, within any reasonable or practical length of time or for a practical cost that is within the bounds of commercial possibility. I will say that is our case, and I will leave that point at that. I mention it because there is an indication in the statement made by Mr. Mann, page 17 and pages 26-27, that there are several map-making companies able to supply similar service to the non-board companies in Canada. We do not admit that for one single minute, and at the proper time and place we are willing to bring forward evidence to that effect.

Mr. MAYBANK: Whatever there are in that way, they are much too small.

Mr. SCOTT: Yes. It is perfectly obvious that we would not be going to all this trouble if we could purchase these from anybody else.

The CHAIRMAN: Mr. Scott, may I ask you a question. Whom are you acting for—the non-board companies—71 non-board companies?

Mr. SCOTT: I am acting for a group.

The CHAIRMAN: Which is the group; how many?

Mr. SCOTT: I gave the names the other day.

The CHAIRMAN: How many, approximately?

Mr. MARTIN: About how many?

Mr. SCOTT: Fifteen—twenty—or thirty-three.

Mr. MCTAVISH: Thirty-three.

Mr. SCOTT: Thirty-three sent petitions to the Secretary of State—thirty-four, as a matter of fact.

The CHAIRMAN: I understood the last witness to intimate that if he had purchasers or sanctions of purchasers or requests for services from 71 non-board companies, he could do about anything that they wanted him to do.

Mr. MAYBANK: He said 71; I think he said about fifteen came to him.

The CHAIRMAN: Yes.

Mr. MAYBANK: Mr. Scott stated there were 71 non-board companies.

Mr. SCOTT: Of course, Mr. Chairman, every one of those 71 would not necessarily be interested, for instance, in London, Ontario.

Mr. MAYBANK: No.

Mr. SCOTT: Or Winnipeg, Manitoba. That same rule applies as regards the board companies. Every board company of Canada does not cover every single town. In answer to another question that was asked yesterday by Mr. Maybank—he wanted to know from Mr. Mann and I would like to give Mr. Maybank an answer now—how many of the surveys are original by the Underwriters Survey Bureau, Limited, and how many are based on Goad's surveys? Was that your question?

Mr. MAYBANK: I do not think I asked that.

Mr. WARD: I asked that question.

Mr. MAYBANK: But it is all right. I am interested in the answer just the same.

Mr. SCOTT: I am dealing now with the provinces of Ontario and Quebec, with which I am familiar, and this is taken from the memorandum prepared by the underwriters in 1935. Out of 28,761 sheets which are Goad's, new surveys made by the bureau are only 661; 661 out of 28,761.

Mr. THORSON: When you give the figures with regard to Goads, do you mean Goad's maps unrevised?

Mr. SCOTT: I beg your pardon?

Mr. THORSON: You mean Goad's maps unrevised?

Mr. MAYBANK: Unrevised.

Mr. SCOTT: And revised. This is all Goads. This is all the original survey made by Goads.

Mr. THORSON: It is all original survey made by Goads. But to what extent is there new material in it?

Mr. SCOTT: That varies with the different plans, according to the amount of building.

Mr. THORSON: And with many of them you would not recognize them as the original Goads maps.

[Mr. W. B. Scott, K.C.]

Mr. SCOTT: Possibly that is correct in many cases.

Mr. MAYBANK: What were those figures again—28 hundred and something.

Mr. WARD: 28,000.

Mr. MAYBANK: You gave two figures, what were they?

Mr. SCOTT: Of the plans presently in existence in the province of Quebec and Ontario alone, 28,761 sheets go back to their source to Goads surveys, original Goads surveys.

Mr. MAYBANK: Yes.

Mr. SCOTT: And as Mr. Thorson has said, they were superimposed upon and added to and so on and so forth; and 661—

Mr. MAYBANK: —are original?

Mr. SCOTT: —are original with Underwriters Survey Bureau, Limited.

Mr. MAYBANK: I suppose, in estimating this matter, that we may say that —in that 28 thousand odd maps, if you were estimating their importance, you would give to some a different weight than you would to many others?

Mr. SCOTT: Yes.

Mr. MAYBANK: And likewise, as you pointed out to Mr. Thorson, some are more revised or superimposed upon than the others?

Mr. SCOTT: Yes.

Mr. MAYBANK: So that all told, we are not getting much in the way of comparison.

Mr. THORSON: No.

The WITNESS: Not by itself.

Mr. MAYBANK: Or as a basis of comparison.

Mr. SCOTT: It is just to answer the question we were asked to answer.

Mr. MAYBANK: I am not criticizing you.

Mr. THORSON: They really could not.

Mr. MAYBANK: I am not criticizing; but the question was asked.

Mr. SCOTT: In conclusion, Hon. Mr. Cahan has given such a careful, precise and accurate statement of the law of copyright with respect to publication and published works that I do not wish to add anything to it except to say that we entirely agree with it. The whole difficulty here arises not only for fire insurance plans, but for every scientific work such as he mentioned through this fact, that somebody—and this is very interesting, Mr. Chairman,—that somebody has conceived the idea that in between published works in their popular sense—and, mind you, the Copyright Act was drawn up, and the Berne convention, primarily with reference to books; the idea of map and scientific compilations, if you look through everything, was only a secondary consideration. I have read through hansard when that section 14 was put in in 1921. There was a very long and careful debate over the whole thing, and the whole idea uppermost throughout was that of books; maps and scientific compilations was only a secondary consideration. The whole difficulty here is this—and I would like to forget all about fire insurance maps and plans—in between publication in its popular ordinary sense, as the man in the street understands it or as 99 people out of 100, including lawyers, understand it—in between publication and in between the word "unpublished" or unpublished works apparently lies a no man's land which believe that by not issuing to the whole public, they can issue in hundreds and in thousands and still, under the judicial interpretation of the courts, claim that they are unpublished. This definition of unpublished and publication is not something new that arises from the Massie and Renwick case at all. We have only got to refer to the last edition of Coppinger, the seventh edition, page 27; the whole thing is set out there. As life goes on, as

trade and commerce develop, as scientific work and medical knowledge progresses, different problems come up. We submit, sir, that there is confronting this committee, or confronting the public of Canada, a situation where, with great respect, we suggest that an abuse can be committed by reason of people being able to say that we are not publishing within the sense given in the English decisions—Coppinger and so on—and therefore, we are entitled to issue scientific works and compilations of that character to a certain limited class, but on condition that they resell their services for certain prices and charges.

Mr. THORSON: You would not go so far as to say that there should be no such area? You called it a "no man's land." You would not go so far as to say that there should be no such area; that is, that there should be no possibility of a limited circulation amongst a group of persons who form a society, and still have that regarded as not published within the meaning of being published to the public?

Mr. SCOTT: Oh, no.

Mr. THORSON: It is desirable to have that limited field?

Mr. SCOTT: Absolutely, absolutely.

Mr. THORSON: And the whole question is what use should be made of that limitation or right?

Mr. SCOTT: Absolutely. You might have a bar society or you might have any other kind of association you wanted, that circulated a pamphlet around amongst its members for consideration and study.

Mr. THORSON: And yet be an unpublished work?

Mr. SCOTT: And yet be an unpublished work; absolutely.

Mr. THORSON: Quite so.

Mr. SCOTT: I only suggest to you that getting into the commercial field is something different.

Mr. MAYBANK: The point of difference then, or the point of departure would be that when a thing is put to some commercial use, it should be lifted out of that; there should be the possibility of lifting it out of that so-called "no man's land."

Mr. SCOTT: When it has gone into general circulation.

Mr. MARTIN: That is all.

Mr. SCOTT: May I make a correction? I have tried to be as accurate as I could.

Mr. THORSON: I think you have been.

Mr. SCOTT: There is a stenographic error here in the first day's proceedings. It says, "71 out of 73 of these non-tariff companies." The correct figure appears later on; it is 33 out of 71.

Mr. MARTIN: That has been corrected.

The CHAIRMAN: Now, what shall our procedure be? We have heard all the evidence, have we?

Mr. MARTIN: Yes.

Mr. THORSON: Mr. Chairman, I would suggest that we should have an opportunity of having the evidence before us, and of then discussing the matter from the point of view of the principle involved at a subsequent session. I do not think we will be able at the present time to take part in a discussion that would be of real value.

Mr. MAYBANK: I think we might as well adjourn.

The CHAIRMAN: The minister has just suggested that it is quite possible if we want him to have the commissioner of patents here or any officials of the departments, for him to arrange it.

Mr. THORSON: When we are considering what report we should make?

Hon. Mr. RINFRET: Or the under-secretary of state, either.

Mr. MARTIN: I think it would be very helpful if we could have the commissioner of patents here.

The CHAIRMAN: Shall we adjourn until the printed evidence is before us? Is that your suggestion?

Mr. THORSON: Yes. I think it would be of great help if both the commissioner of patents and the under-secretary of state were here.

The CHAIRMAN: At our next meeting?

Mr. THORSON: At our next meeting, at which we can consider the question.

Mr. MARTIN: To-morrow morning, Mr. Chairman.

The CHAIRMAN: No. We will not have the printed evidence before to-morrow. Next week.

Mr. MARTIN: The only difficulty, Mr. Chairman, is this: the printed evidence, all except this morning's, will be available to-morrow; and, in any event, what has taken place here is not really going to decide whether or not we favour this principle or not. We should get the commissioner of patents here to get his point of view on the mater, and then we will be in a position to discuss and determine the principle involved.

The CHAIRMAN: Gentlemen, the clerk of the committee informs me that yesterday's evidence may not have come from the printer and may not be in the hands of the members for study by to-morrow. So we will adjourn to the call of the chair.

The committee adjourned at 12.35 p.m., to meet again at the call of the chair.

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BANKING AND COMMERCE

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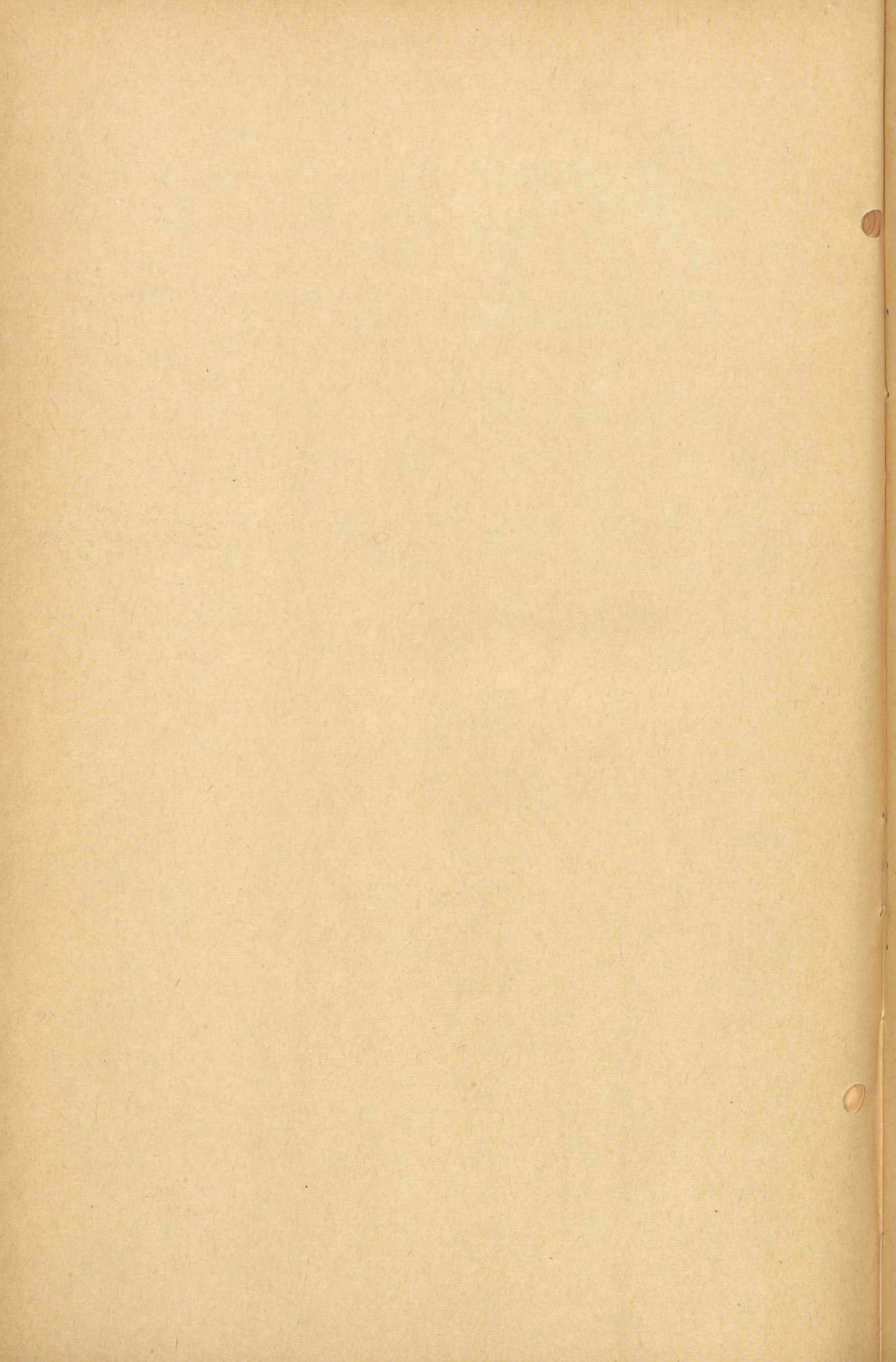


SESSION 1938
HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 4

FRIDAY, JUNE 17, 1938

WITNESS:

Dr. E. H. Coleman, K.C., Under-Secretary of State.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

MINUTES OF PROCEEDINGS

FRIDAY, June 17, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Cahan, Clark (*York-Sunbury*), Coldwell, Donnelly, Dubuc, Fontaine, Howard, Kinley, Kirk, Leduc, MacDonald (*Brantford City*), McGeer, Mallette, Martin, Maybank, Moore, Stevens, Thorson, Ward.

In attendance: Hon. Fernand Rinfret, Secretary of State; Dr. E. H. Coleman, Under-Secretary of State, and Mr. J. T. Mitchell, Commissioner of Patents.

The Committee resumed consideration of the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

Following a statement by the Secretary of State, Dr. Coleman was briefly examined.

On motion of Mr. Stevens,—

Resolved,—That the question under consideration be referred for study and report to a subcommittee to be selected by the Chairman.

The Committee adjourned to the call of the Chair its consideration of the subject-matter of Bill No. 124.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons, Room 277,

June 17, 1938.

The Standing Committee on Banking and Commerce met at 11 o'clock. Mr. W. H. Moore, the chairman, presided.

The Chairman: Order, gentlemen. The minister has a statement to make.

Hon. Mr. Rinfret: Mr. Chairman, I desire to say a few words now, because I will not be able to stay with you this morning. This committee meeting has been called somewhat unexpectedly for me, and I have a very important council meeting that I must attend. I understand that the parties interested are anxious that some decision be arrived at, and I make no objection to the fact that the committee is meeting.

I want to remind you again that the committee is not a tribunal to decide finally which group of insurance men is right or wrong; but it is dealing with a very important amendment proposed to the Copyright Act. At the same time it has been considered useful, both as an illustration and to complete the record of information, to hear evidence on the insurance case, but this is only given as an illustration of what might happen. You are not to decide whether one group is right or whether another group is right, but you are to consider whether it is advisable to have as an amendment to the Copyright Act sections dealing with a possible monopoly.

I will be very frank and say that this is a very, very important matter indeed. I have not yet been able to find any country in the world where the Copyright Act contains such a provision. The reason for that is that a copyright is a much different thing from a patent. A patent deals with an object, and when the patent has been granted, nobody can make use of the object or sell it except the patentee; and if it is kept out of the market, it may be to the detriment of the public. Copyright covers a work which is the exclusive property of whoever holds the copyright; but it does not prevent anybody from writing about the same matter or from producing a work covering the same subject—whether it is a painting or whether it is music—in the same mode. In other words, the copyright does not cover a definite object, but it merely covers the production of either a writer or a composer; and there is nothing to prevent another writer from writing a book on the same subject. But it has been considered that the ownership of the original work remains either with the writer or whoever has bought the interest, the copyright, in it. I may add, though, that copyright, being a privilege granted by the state, or a right acknowledged by the state, has been surrounded with certain conditions; and in this country, at least, when a work has been published, the public market must be supplied with it. In this peculiar case, the old contention is as to whether the maps altered and completed by the underwriters are considered as published documents. I would say that if that were clear, and the documents were considered as published ones, there would probably not be needed any amendment at all.

Mr. Martin: In this particular case.

Hon. Mr. Rinfret: Anyway, what I want to bring out in this initial statement is that what you are to consider, gentlemen, is as to whether, after a few days of study of the matter, you are ready to recommend that we introduce in the Copyright Act an amendment which has no similar counterpart —which does not exist in any Copyright Act in the world. As a matter of fact,

those who have asked for the amendment have been very careful to see that it would only apply to domestic works. As the minister in charge of copyright, I may warn you on this point, that every time we have wanted to amend the Copyright Act against owners of the copyright, and it has been found out that this was not international practice, it has always been suggested that we do that in this country anyway. I do not consider that it is fair to our own authors and composers, the copyright owners, to say that a disposition which is not wanted in any other country and which we cannot impose in this country on foreign works, should nevertheless apply here, no matter whether or not it hurts local production. It is true that the last draft has been made in such a way as to exclude literary or artistic work, but I will say this: You have heard the authors, several of them professors of the university. If you bring in a group of men interested in copyright, they would all pronounce against this amendment. There is no doubt about that.

What I want the committee to realize is that they are not to adopt or recommend legislation merely to meet the special insurance case, but that they should deal with the matter at large, and it is a very involved question. As I know, there has been pressure on the present committee and on the minister to hurry this matter through. My first point would be that, on the contrary, it should be very carefully considered. The second point is this: It just happens that the insurance case, which would have been the pivot of all this work, is now sub judice before the Supreme Court. I might as well be very fair. I have been considering this matter right along, and I have come to the conclusion that no matter whether there is or is not an amendment, whether the bill is put through or not, the department would not feel itself at liberty to pronounce upon this case until the case has been disposed of by the Supreme Court. I will not go into the details as to distinguishing between what has been submitted to the court and what is intended to be dealt with here. But I consider there is a close enough connection between the two aspects of the cases to justify the department in refraining from taking any action or rendering any further decision in the insurance case until the judgment of the Supreme Court has been rendered. So, for both these reasons,—on account of the fact that the amendment in a general way is a very involved matter, and on account of the fact that whether it is or is not put through, it could not be of immediate application,—I was going to ask the committee not to hurry its decision, but to consider the matter very fully. I would further ask, if there is a report made to the Secretary of State, that it should not be made in the spirit of putting through anything at all that might just adjust itself to this case, but that it should be made with a view to recommending an action that would be real improvement to the Copyright Act. Of course, if there is a claim of monopoly, there is always recourse to the Combines Act, which applies not only to copyrights or patents but to trade generally.

I have been asked—not in an official way, but in a tentative way, if I might say so—whether the department would prepare a draft bill or not. I do not think the committee should recommend that to the Department of State. I think the committee should, in the first place, consider whether it is desirable to recommend an amendment to the Copyright Act in principle. When once that has been decided, then the question of drafting a bill might come in. But I have my doubts, gentlemen, as to whether, whatever work is done in this matter, we might reach any immediate action for the reason that I have just indicated. Now, my purpose in coming here is that my officers are here, both the under-secretary of state and the commissioner of patents; they will naturally supply you with any information which you may desire. But I do not think they should be asked as to matters of policy. That is the reason I made my pronouncement at the beginning of this meeting. I indicated that I had to be

elsewhere, but at the same time if some members of the committee feel that they might like to put a question before I leave, I will be quite willing to attend the first part of the meeting.

Mr. MAYBANK: There is just this question, Mr. Rinfret. Am I right that you were expressing the view,—in fact, I think you indicated it certainly to be the case—that if any change were to be made, as I might put it, penalizing or restricting any copyright owner, it could only be, in your view, as respects a copyright owner who is a Canadian himself; that is, it could only touch the domestically owned ones, and only in respect to Canada, and that it is useless to think about any kind of amendment which might extend to some persons outside the boundary lines of Canada? Am I right?

Hon. Mr. RINFRET: That is what has been proposed. Of course, nothing has been accomplished yet. But you are right in stating that according to the international convention we could not make a disposition such as the one that has been proposed, except against domestic owners. Perhaps I should not say "against", but at least concerning domestic owners.

Mr. MAYBANK: Let us put it this way. Suppose we were considering an amendment, and its effect upon some scientific work circulating in the way this is circulating—in the way these maps have been circulating, and apparently a monopoly had been created, and this scientific work was owned by some person in New York. You feel that we might just as well stop considering that because we run into the Berne convention right away.

Hon. Mr. RINFRET: Well, that is my view. Of course, the way the act prensently stands, there is no disposition either in Canada or any other country. But if this is made, it could not apply to this maps case without touching Canadian property; but if some kind of scientific work was the property of someone in England or in France, and for some reason the owner of the copyright chose to sell that work only to certain institutions and not to others, my claim is that we could not amend the act in such a way as to force that copyright owner to put the work at the disposal of the public. That was made very plain when the license clauses were adopted allowing the printing of books in Canada, on licence. It had to be made to apply only to Canadian copyright owners. That is one of my objections. Where we are prevented by international agreement from doing certain things, I object to saying that we should impose them on our own people.

Mr. MAYBANK: May I follow that point up? For example, in this particular matter, if these maps were owned by the XYZ company in New York, we would be up against the difficulty you have mentioned.

Hon. Mr. RINFRET: Well, just to show how complicated the matter is—in United States we have a different situation, because you are not subject—United States is not a member of the international convention. They have their own special agreement with us. But that just shows you how involved this question is. What I wanted to impress upon the committee were two main things—in the first place that this amendment was quite a departure and should not be recommended in a hasty way; and in the second place, that inasmuch as the whole procedure issues from that insurance case, I thought I would have the frankness to inform the committee that the department would not feel at liberty to deal with that case, even with an amendment to the act, until the supreme court had pronounced on it—which means many months, if not a year.

Mr. MARTIN: Mr. Chairman, before the minister leaves the committee, I should like to make one or two observations in connection with what he has just said. I say with the greatest respect that the position he takes this morning is substantially different from the position taken at the last meeting of the committee when he pointed out that he was essentially responsible for referring

the subject matter to this committee, and that he would not want the committee to dissolve without, first of all, having given the matter consideration and made some sort of recommendation with respect to the principle involved. I agreed with his stand then, and I think it is the one we should pursue now. The merits of this particular dispute between these two companies, I agree—

Mr. MAYBANK: There has been a change in that?

Mr. MARTIN: No, I do not think so. As to the dispute between these two companies, I agree we have gone perhaps further than we should have gone into it; and I quite agree that when the matter comes to the minister for consideration, he might be perfectly justified—while there is not any great connection between the dispute and the matter that is before the court, but because there is some relation he might well suspend judgment. But this is not the issue. The issue here is a simple one, as I see it; and I do not profess to pit my knowledge against the minister's, because he certainly knows much more about these things than I can pretend to. But the issue is a simple one, namely, that we are merely considering whether or not there should be in the Copyright Act a provision for dealing with abuses of copyright. That is the only issue. While he says—and it is no argument to say so—that while other countries have not got such a provision, that in itself is an argument why we should not incorporate the adoption of this principle in the Act, I suggest that it is not a sound argument. We have got to make up our own minds whether or not in this country we are going to allow any copyright to create an abuse.

Hon. Mr. RINFRET: Will you allow me to interrupt?

Mr. MARTIN: Certainly.

Hon. Mr. RINFRET: I agree with that. My point is that we should not be hasty in our decision to meet a special case, because it would meet it anyway; but I agree with my hon. friend that we might consider the amendment.

Mr. MARTIN: Yes. I am glad to hear that. I misunderstood the minister on that point. Now, Mr. Chairman, my final observation is this: The Canadian Authors Association were here the other day. I happen to be their chief honorary counsel; they still indicated confidence in me, by re-electing me the day before yesterday, in spite of my stand. What I want to say is this: There is not any desire on my part or on the part of those who were made responsible for this bill, to interfere with their interests. We have had conferences with them, and I must say—having in mind my prior responsibility—the attitude they have taken is this: We recognize that you do not want to interfere with our rights as authors in respect to literary and artistic works. We recognize that. But this section 14 is our Magna Charta and any interference, whether it directly affects us or not, is calculated to have the effect of a precedent, inviting future amendments. Well, that is certainly no argument. The minister has not said—but he being of a literary turn of mind himself, I hope he has not been too greatly persuaded by their presence in the city this week; I know that they almost influenced me. But, assuming that the principle is worth adopting, surely we can provide in the act by a special clause a clear exemption in so far as this measure is concerned, in respect of literary and artistic works.

Mr. KINLEY: Why should we? If it is a good law, it is good for them the same as for everybody else.

Mr. MARTIN: I should think that that point required no explanation; but if the hon. member is serious in that objection, I do not mind explaining it.

Mr. KINLEY: It is obvious.

Mr. MARTIN: You cannot obviously put a premium on. The chairman has written books, and they are good books. If you were to compel the publication of those books when he did not want it—and it is not likely, because the royalties would cease if that was the case—

Hon. Mr. Rinfret: I suppose my hon. friend realizes that in a great number of cases we have very great difficulty in deciding whether a thing is literary or otherwise.

Mr. Martin: I do not deny that. But surely when he was speaking the other day, Mr. Cahan gave us the true picture. I mean, it happens. I am frank enough to say that I never thought of this until this particular problem came to hand. This dispute between these two corporations is the provocation for this bill. But once the bill was introduced, a little bit of study revealed that there might be very many other abuses; and these were very admirably stated by Mr. Cahan at the meeting before last. I think the principle is a very important one. Are we going to allow a monopoly in respect of a copyright to go on creating abuse after abuse, when the general interest demands a change? Finally, I quite agree with the minister that we should not be hasty about the matter. But the principle is one that is pretty clear; I do not think it requires much thinking. We have called his officers here for the purpose of assisting us; and I do suggest, Mr. Minister, that the matter is one which, if it is at all possible, should be given attention this year.

Hon. Mr. Rinfret: There is another point that has been raised by Mr. Martin about abuses of that kind in other fields. I may say that no man — and I say that with much sincerity — has more esteem and admiration for the former Secretary of State than I have. For five years he did work in that department, and it has been definitely improved in every branch. I may say that I do not think Canada has ever been graced with a better Secretary of State than the Hon. Mr. Cahan. But I must say that within the five years I was in the department before him, and in the three years since we have been back in power, I do not remember of one case that has been brought to my attention, except the insurance case. I always come back to the point that I would not want any act to be amended to meet any special case. That is my main point. It would be quite easy to have a definition distinguishing between maps and a literary work. We all agreed on that. But when you want to draw a line between a certain kind of works that would come under the amendment as proposed and another kind, it would be a very hard thing to do indeed. That is why I say that if this bill is merely one to settle an insurance dispute, then we are wasting our time, because it cannot do it now. That is what I want to make clear to the committee. But if the committee is really interested in amending the Copyright Act at large, then this work may be very valuable indeed. But the matter should be approached with much care. I will leave you with my officers, and they will supply any information that is required; but naturally they are not expected to pronounce upon any matter of policy. I am very sorry I have to retire.

Mr. Thorson: Mr. Chairman, it would seem that there are three principles, perhaps, involved in the reference before us, and I think they were all enunciated by Mr. Cahan when he made his statement. The first one, I think, is this: The Copyright Act is a public act, and we should be very careful, indeed, that we should not make amendments to the Copyright Act, which is a public act, for the purpose of resolving in any way a private dispute or a private controversy. I would think, therefore, that while this controversy between the tariff and the non-tariff companies is before the court no amendment to the Copyright Act relating to the controversy in any way, shape or form should be made. That, perhaps, is the first principle that we should follow. The other two principles were also enunciated by Mr. Cahan, as I recall them. The contention is made by the underwriters association that they have a copyright in an unpublished work. Now, the question we have to consider in regard to that is this: How far shall a work be deemed to be an unpublished work, although it is circulated fairly widely? If an association owns a copyright in a work and circulates that work

amongst the members of the association, or agents of the members, exclusively for its own purposes, then it would appear that that is an unpublished work, because publication has not been made of it to the public.

That principle, I believe, should be safeguarded because if an individual owns copyrighted work and does not publish it, quite obviously he should not in any way be forced to sell that work to the public if he does not wish to do so. The same principle applies to an association that uses the work solely and exclusively for its own purposes.

We come now to a broader line of controversy. If an association uses a work of that sort not exclusively for its own purposes, but in such a manner as to compel other persons to come into this association for the purpose, let us say, of maintaining rates at a certain level, that, I would say, might well be considered as an abuse of the copyright that it has in the work by reason of its being an unpublished work.

We should certainly take steps in some form or another to correct that kind of abuse and set up some machinery for dealing with that kind of abuse. There might be some merit in some of the suggestions contained in the bill that came before the House that brought to this committee the reference of the subject matter of the bill. There might be some merit in some of the proposals; for that purpose that kind of an amendment should be drafted in a general way and would have to be drafted with extreme care. I do not believe that we can sit down and draft the necessary amendment. I believe that should be done by the officers of the Department of the Secretary of State and the officers of the Department of Justice, in consultation with the Commissioner of Patents and Copyrights, so that all the implications of the whole controversy may be kept in mind.

Then, a third question arises. Suppose it is found by the tribunal that is set up to consider whether there has been or has not been an abuse of copyright, that there has been an abuse and persons wish to buy copies of the work in which copyright is said to exist? The question of compensation then arises. That is the third question which I believe we ought to consider. The persons who have this copyrighted work unpublished are entitled to receive fair compensation if they are forced to sell or if it is held that in the public interest they should sell. That compensation should be paid. Upon what principle, on the other hand, that compensation should be based is a very difficult question. Let us take by way of illustration what I have in mind, the controversy that has been aired before this committee. The Underwriters' Association have the Goad plans. They have the Goad plans on which they have superimposed their own work, and they have their own exclusive plans which they have created entirely themselves. They have spent, as I understand it, about $2,000,000 on this work. They sell their plans to their own members and to brokers who are associated with them.

Suppose the Commissioner of Patents forces them to sell the plans to non-tariff companies. At what price shall these plans be sold? I do not attempt now to enunciate the principle. It has been suggested that the non-board companies should have the right to buy these plans at the same rate as the members of the Underwriters' Association now buy them. Would that be fair after the Underwriters' Association have built up all this machinery, put all this money into the investment to create this very valuable asset? It might be necessary to go further than that and require purchasers of these plans to pay a pro rata percentage of the capital that has gone into the whole venture in addition to the actual price that is required. Now, that requires a statement of the principle that should be applied in fixing compensation. It would seem to me that that question is beyond us. I mean, there are so many implications involved in that that a statement of these principles will require extreme care on the part of draftsmen, and that statement, I submit, should also be left to the officers of

the Department of the Secretary of State, the officers of the Department of Justice and the Commissioner of Patents and Copyright.

These, Mr. Chairman, are the three principles which I see involved in this controversy before us.

Mr. MARTIN: I think we ought to hear Mr. Coleman.

Dr. E. H. COLEMAN called.

The WITNESS: I hardly know upon what particular point I can enlighten the committee, Mr. Chairman. In the first place, however, you will note that the proposed bill is an amendment to section 14, and it occurred to the Commissioner of Patents and to me that it might be of some interest to the committee to know how many applications have been made under section 14 of the Copyright Act. If it is agreeable to you I shall read the record. The first one was made on the 5th April, 1924, in respect to the "Boston Cooking Book" by Fanny M. Farmer. The second was on the 24th April, 1924, "'Hardware and Metal,' Waste and Distribution," by publisher of *Hardware and Metal*, July 24, 1924. The third was an application in respect to the book called "Jalna," by Mazo de la Roche, October 12, 1927. The owners of the copyright complied with the requirements of the Copyright Act and it was not found necessary to grant a licence. The fourth was with regard to the song, "Will You Remember," from "Maytime," by Sigmund Romberg, in April, 1937. In that case also the owners of the copyright complied with the requirements of the Copyright Act and it was not necessary to grant a licence. The application was withdrawn.

These are the four cases where applications have been made under section 14. In respect of a further one by a non-tariff insurance company, it was dealt with by the minister in April of this year.

By Mr. Maybank:

Q. That would also include any record of any other case where an unpublished work similar to this——A. Yes, that is the complete record from the files of the Commissioner of Patents.

Q. What was that first date?—A. April 5, 1924.

Q. So your record was from 1924 to 1938?—A. Yes.

By Mr. Martin:

Q. I presume you have had the opportunity of reading some of the evidence?—A. I have read the evidence which was given on the 9th June, and this morning at 10 o'clock I received No. 2, which was Tuesday, June 14.

Q. I should have prefaced my question. Have you had an opportunity of reading Mr. Cahan's statement?—A. I read it in a very hasty fashion. I received it at 10 o'clock this morning, and I was here at 11.

Q. It was said in that statement that there were a numebr of instances where there was at least a possible potential abuse in respect to other matters than the one in particular dispute, to which, unfortunately, we have confined so much attention. Now, having in mind these possible abuses, do you think the Patent and Copyright Act—I am not asking about policy now—could be amended satisfactorily so as to take care of these abuses by the adoption of the bill proposed which is in draft form and before the committee?—A. I would hesitate to express a definite opinion upon the terms of the Act and the proposed amendments, Mr. Martin.

Q. I think we might ignore the proposed amendment. You can regard that as being wholly inadequate.—A. I would think if the committee desired such an amendment that any proposed legislation would require very, very careful study.

Q. Quite.—A. Because I believe the Act would throw a very heavy burden upon the Commissioner of Patents in the absence of any elucidation of what might be meant by "abuse." If you will look at section 65 of the Patents Act you will find that exclusive rights in a patent may be deemed to have been abused in any of the following circumstances, and then they enumerate in subsections (*a*) to (*f*) what the abuses are. Obviously that is a great aid to the commissioner in dealing with any applications under the Patent Act.

Q. Let me put a specific case to you. There was, you will remember, a dispute which arose out of an alleged formula which a certain doctor in a certain Ontario town said he had as a guaranteed cure for cancer. Assume that formula were in the form of a published work, and assume the doctor did not wish to give it to the public when it might be of very great interest to the public, could we not provide for such a contingency?—A. If you decide—

Mr. KINLEY: So unnatural.

Mr. HOWARD: No, it is not.

Mr. MARTIN: That actually did arise.

Mr. MAYBANK: Mr. Chairman, let us get the answer to that question.

The WITNESS: I should think in a case like that you would first have to decide whether public policy required such a formula should be divulged. There might be quite a difference of opinion in that respect, Mr. Martin.

By Mr. Martin:

Q. I quite agree, but my question was more to the mechanism of bringing that about, assuming the policy were declared.

By Mr. Maybank:

Q. To add to the other assumption that you have introduced, you would put this one, and also let us assume it is desirable the public should have it. So that it is really a question based on not quite half a dozen assumptions, but several.

By Mr. Thorson:

Q. What are the difficulties?

Mr. HOWARD: Let us have the answer.

Mr. MARTIN: I do not think Mr. Coleman has finished.

The WITNESS: I have said all I can on that.

By Mr. Thorson:

Q. What are the difficulties that you see in framing a definition of abuse in connection with the Copyright Act?—A. Well, I believe we would have to look at all the other sections of the Act firstly. We would then have to look at the international conventions, study any implications which may follow from our legislation.

Q. That was going to be my second question. Assume that it would be possible to frame a definition of what would constitute an abuse—that admittedly is difficult, because then you have to go into particularization— —A. Yes.

Q. Assume it were possible to frame the definition of abuse, to what extent would we fall foul of international conventions in view of the fact that no other Copyright Act contains provisions of the kind that we are contemplating?—A. I am sure, Mr. Thorson, that is a question we would have to study for a considerable length of time.

Q. That also is a very difficult question?—A. That also is a very difficult question, I believe.

[Dr. E. H. Coleman, K.C.]

Mr. MARTIN: It is admitted that these things are very difficult.

By Mr. Donnelly:

Q. If you have provisions dealing with abuses of the Patent Act, why is it not possible to have provisions dealing with abuse of the Copyright Act?—A. I have not said it is not possible.

Q. I understand that, but that looks to me like the crux of the whole question.—A. I said any proposed legislation, in my opinion, would have to be carefully studied in the light of international conventions and in the light of the other provisions of the Act, and it would be very desirable that the word "abuse" should be defined.

By Mr. Maybank:

Q. I was thinking this: it seems clear that if we were agreed that such a condition did exist, and we undertook to legislate to prevent that abuse, a transfer of the rights of the Canadian to some foreigner would immediately render any steps that we might take completely inoperative.—A. I would not be prepared to say that without very careful study. That is why I said you would have to study this in the light of our international arrangements.

Q. Again putting the question on certain assumptions, the first assumption is that any legislation that we decide to draft would not touch the foreigner. We are clear on that, we shall assume—

The CHAIRMAN: You mean the foreigner operating in Canada?

Mr. MAYBANK: Yes. I am saying the assumption is that any legislation drafted shall not touch the foreigner operating in Canada. Now, agreeing with that, it could result and would almost necessarily result, would it not, that as soon as the rights of the Canadian which we were attacking went into the hands of a foreigner the attack would be immediately nugatory, unimportant; that is, we are balked at once the moment the foreigner gets himself into the position in which the Canadian at this moment is. Is not that right?

The WITNESS: Right.

By Mr. Maybank:

Q. Based on the assumption, of course.

By Mr. Martin:

Q. Dr. Coleman, you mentioned possibility of a conflict between the proposed Act and the Berne convention. Are you making that as a serious objection?—A. I would say it would require very careful study.

Q. It is intended merely to apply to domestic works, and would not section 17 of the Copyright Act take care of that?—A. 16 (*h*)?

Q. No, article 17 of the Rome Copyright Convention, page 13.—A. Yes, I have that.

Q. Then, subsection (8) of section 17 would preclude an assignment?—A. I think your reference indicated the necessity of very careful study. That was the point I was trying to make.

Mr. MAYBANK: I want to clear up—

Mr. MARTIN: I have not finished one point.

The CHAIRMAN: The reporter is having very great difficulty in following your questions. If you will stand and speak a little louder I think it might be a convenience to everybody. Now, order, please.

By Mr. Martin:

Q. Now, Dr. Coleman.—A. If you look at article 17 of the convention—I would hesitate to interpret it—I think you will find it relates to matters of

domestic policy, and you will notice it refers to the word "police." I think it might be something which the government of the state might regard as undesirable for circulation by reason of—

By Hon. Mr. Stevens:

Q. You refer to article 17?—A. Article 17 of the convention.

By Mr. Maybank:

Q. I wanted to clear up a misconception that I myself may have created in the question I asked Dr. Coleman a little while ago. I believe I spoke as though in the event of legislation of the type being considered being passed, that the owner of a copyright in Canada might transfer it to a foreigner and thus render nugatory our legislation. I believe I was in error in any such suggestion because I think it only applies to Canadian authors, not to the owner of the copyright. I want to clear that up because I believe I was wrong in that.

By Hon. Mr. Stevens:

Q. The first reference to article 17 which has been mentioned in my opinion is not broad enough to serve the purpose, because obviously the suggestion here is what one finds in other treaties dealing with entirely different subjects, namely, that each country may control or prohibit by measures of domestic legislation or police, the circulation of representations, etc. The point there is to prevent this convention or the joining of this convention from interfering with the Criminal Code or other statutory laws of the country. I believe that is the object of that section; but what I was going to ask Mr. Coleman was this, and then I have a suggestion to make to the committee before I sit down. I notice, Mr. Coleman, that — again referring to this matter before us — one of the difficulties in connection with it is the question of the issue of new plans, maps and schedules of one kind and another incident to the business. That sort of thing is defined, as far as I can see, in only two sections in the interpretation clause. For instance, books shall include " every volume, part or division of volume, pamphlet, sheet or letter-press, sheet of music, map, chart or plans separately produced ", and I notice in the evidence which was presented to us that it was argued that these highly technical and scientific works, these plans, came under that definition. The point I would like to suggest to you is this: Does it not appear that in the original drafting of this act, such plans, charts and so on as are mentioned here, were intended to apply to maps, plans or such things as would be inserted in a book and form part of the book? I know that it is interpreted in another way, but I say it seems to me that that is indicated. Therefore would you consider that it might be advisable to amend the definition so as to clearly define commercial plans and charts and so forth? That is one point. Then if you will turn over to " n " in the same section, you will find " literary work " includes maps, charts, plans, tables and compilations; so that while these two definitions define maps and so forth, yet there is no definition clearly applicable to purely commercial or scientific plans or maps used for commercial purposes. That is one point, and I think that is important for this reason; the abuse that the committee has had in mind is the possibility of creating a sort of combine or exclusive power that would effectively be a combine.

Mr. MAYBANK: Mr. Coleman, would you say whether in the notes you have in front of you, there is some amendment to " n " which Mr. Stevens has referred to? I have some words scribbled in here, and I thought your book would be complete.

Hon. Mr. STEVENS: It might have been amended with the subsequent Act.

Mr. MAYBANK: Is there any amendment to "n "?

Hon. Mr. STEVENS: I do not see any.

Mr. MAYBANK: I do not say definitely there is, but I have some notes scribbled in here.

Mr. COLEMAN: In the act of 1931?

Mr. MAYBANK: No, "n", literary work.

Hon. Mr. STEVENS: No, I do not see any amendment in 1931 dealing with that. It may be there.

Mr. MAYBANK: I do not say there is. There is a note I had that suggests it. I just wanted to clear it up.

Mr. COLEMAN: There is a definition in the 1931 amending Act:

> " 'Every original literary, dramatic, musical and artistic work' shall include every original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets, and other writings, lectures, dramatic or dramatico-musical works, musical works or compositions with or without words, illustrations, sketches, and plastic words relative to geography, topography, architecture or science."

Mr. MAYBANK: That does not touch this subsection "n".

The CHAIRMAN: Mr. Stevens has the floor.

Mr. MAYBANK: I am sorry.

Hon. Mr. STEVENS: Do you not think that only multiplies the confusion, Mr. Coleman?

Mr. COLEMAN: No. It is simply an amendment to show that that does include musical productions.

Mr. MAYBANK: Mr. Cahan would not agree with that statement, Mr. Stevens.

Hon. Mr. STEVENS: What I meant was this: here we have two definitions in the original Act, and those who have a complaint regarding some commercial plan might bring it under either one of these definitions and make an application accordingly. Therefore, it seems to me, Mr. Coleman, it would be desirable to clarify that definition. There is a second question I would like to submit to you and secure your opinion on, it was raised and most ably treated by Mr. Cahan the other day and it is the question of publication. I notice that in subsection 2 of section 3 of the Act of 1921 as Mr. Cahan very well pointed out the other day for the purpose of this Act, publication in relation to any work means the issue of copies of the work to the public. Well, that is simply putting it in another way. It is not really a sufficiently explicit definition. So it strikes me that there is another point that might be clarified.

What I was going to suggest, Mr. Chairman—I used this merely as an illustration of what the task or part of the task at least before the committee is—is that I believe this job could be done infinitely better if we had a sub-committee of this committee, of about four or five members sitting with yourself. Then they could clarify the situation from their standpoint, with the advice and consultation of the officers. They could clarify the situation, bring it back here; and then we would have before us something definite for the committee to consider. I make this suggestion, but I certainly would not wish to be or ask to be or suggest that I should be on the committee myself. I do not make the suggestion with that idea in mind. But I think that the committee should be composed of the chairman, Mr. Cahan, Mr. Thorson, Mr. Martin, and one or two others at the outside, who could give this matter the intensive study, for a short time, that I think it merits; because as I said at the first meeting of the committee, anything touching the Copyright Act is of very great importance and should not be attempted except after most complete consideration. Might I

move, Mr. Chairman, that a sub-committee be appointed for the purpose of studying this matter and reporting back to the committee at some subsequent date?

The CHAIRMAN: You have heard the motion. By the way, Mr. Stevens—

Hon. Mr. CAHAN: I would like to have something noted upon the record.

The CHAIRMAN: Just a minute, Mr. Cahan. I understood you to ask Dr. Coleman a certain question, Mr. Stevens?

Hon. Mr. STEVENS: Dr. Coleman nodded his head, so I took it as acquiescence. I was really illustrating what I thought or leading up to why I thought a sub-committee should be appointed.

The CHAIRMAN: All right. Now, Mr. Cahan.

Hon. Mr. CAHAN: Well, the subsequent definition in 1931 of "literary work" was inserted at the request of the Copyright Board at Berne, which has supervision of international copyright, in order that the Canadian Act might correspond more or less completely to article 2 of schedule A of the Rome Copyright Convention of 1928; and the committee which sat for weeks considering copyright, and finally proposed the 1931 Bill, thought that the words used in the 1931 Act by way of definition would meet the demands of—what do they call it?

Mr. COLEMAN: The international convention.

Hon. Mr. CAHAN: Yes; it is a board is it not? Anyway, they thought it would meet the demands of the central office, the copyright office at Berne.

Mr. HOWARD: Mr. Chairman, I am prepared to second Mr. Stevens' motion, providing it is agreed that the committee are agreed on the principles that we are trying to get at. I do not want any mistake about that.

Hon. Mr. STEVENS: We are assuming that.

The CHAIRMAN: Will you state the principles?

Mr. HOWARD: The principles are these, as stated by Mr. Thorson in one of his remarks: The Copyright Act and the Patent Act are public acts. They are to protect the interests of private individuals and, as soon as they have done that, to protect the interests of private individuals or private companies; but the general action of the act or the effect of the act must be considered to benefit the public generally in Canada. If we take that as a principle, it means a lot. From the working of both the Patent Act and the Copyright Act, as far as I am concerned, I have not any intention whatsoever of taking away from the person who gets out a copyright or writes a sheet of music or has a patent, from protecting his right of protection against infringement, providing he gives the benefit of the work to the public at a price. I do not think there is any question about that. There have been many abuses—

Mr. MAYBANK: There is no question about that.

Mr. HOWARD: No. That is the fundamental principle. Now, there have been abuses, and I could cite you many of them, but I will cite you just one case. An invention that would have saved the people of Canada a great deal of money was purchased by a company and taken off the market. That has been done; and as long as it is not attacked it goes on. But in this case every single property owner in Canada is vitally interested in the amendment to this act to provide to the companies—to reduce the cost of insurance in this specific case to every property owner in Canada; and secondly, to protect the people who own the plans, from a revenue standpoint—so as to create a revenue compensating or commensurate with what they have accomplished in the purchase and in the preparation of these plans. If those general principles are agreed on, I am prepared to second Mr. Stevens' motion; and I would suggest as one member of the committee that Mr. Stevens be on it.

The CHAIRMAN: Mr. Stevens, you heard the minister's statement this morning?

Hon. Mr. STEVENS: Yes.

The CHAIRMAN: I understood from the minister that it was not the disposition of the government to deal with the matter this year.

Mr. MARTIN: He did not say that.

Mr. MAYBANK: He said not to hurry; and we have not much time left.

Hon. Mr. STEVENS: You will recall that he confirmed his statement of two or three days ago, that he invited the committee to study it.

The CHAIRMAN: Yes, to make a suggestion; but it was not the disposition of the government to deal with this matter until after the court had made a decision.

Hon. Mr. STEVENS: That is up to them.

Mr. MARTIN: In this particular matter, yes.

Mr. KINLEY: Mr. Chairman, this bill is a bill presented by a private member; and I assume that the department saw no glaring iniquities in the act or they themselves would have been presenting legislation. Have they presented legislation of this kind at any time for this amendment?

Mr. MAYBANK: No.

Mr. KINLEY: No. Well, the point is this: we might talk about principles all we like, but it is clear that this bill was conceived and had its birth in the difficulties of two insurance companies. It was introduced by a private member, and immediately the bill comes before the committee, the two insurance companies have their solicitors here to argue the case. Now, the authors were here also. They say, "This does not suit us. It is an invasion of our Magna Charta." The man who introduced the bill, of course, in order to make it run smoothly, said, "We will exempt you. We will exempt the authors from this bill, and you will not be affected." I say that it is an unnatural thing for anybody who has a work not to want it to be published, because the publication of the work is the part of it that he needs for his revenue; and therefore except in special cases, it is an unnatural thing.

Now, in the minds of this committee, and in the minds of the business men, sometimes we get the impression that in this insurance business—and I am not in the insurance business; I have been dealing with insurance companies all my life, and I have been dealing with tariff companies and with non-tariff companies—that the saviour of the situation is the non-tariff company, that it is a kind of philanthropic organization which goes around, has kept down the rates and is saving the insurance situation in Canada. Well, now the man in that business is a business man. He is just like the other fellow, he is taking advantage of his opportunities; and as long as he does business and takes advantage of his opportunities, all right. But if he wants to do business and invade the situation that has been created by somebody else, invade an organization that, I think, may also be said to be in the public interest—while, as a business man, I like to flirt with him when he comes in and deal with him, and divide my insurance—as a public legislator I want to deal with it on the merits of the case. Now, the tariff man comes in, and his rates are published, and the non-tariff man knows what the tariff rates are. He will come to you. You have $100,000 or $200,000 or half a million dollars of insurance to place. He will say, "We would like to have some of that insurance." You say, "Yes? Well, what is your rate?" He gets the tariff rate and finds out all about it and he says, "I will give you just a little under it," and he does give you just a little under it, and you perhaps give him the insurance; or you may write the tariff man and say, "The non-tariff man was here and he wants to do so-and-so; you fellows had better take this into consideration." And sometimes they do.

Mr. HOWARD: Not very often.

Mr. KINLEY: But these plans, these Goad's plans that we are speaking about, are something that these people have developed. It is part of their organization, their machinery of doing business. Now, it is quite conceivable that they do not want to give them to their competitors, and that they say, "If you want to do business, do it on your own feet." And being here, judging between the two, I am inclined to agree that this is a place where they do invade the situation. Then again, you will have a loss, and you will say, or they will say, "We will send an adjustor." The tariff company will send an adjustor and the other man immediately says, "I will not send any adjustor. I will accept the tariff company's adjustment of the case." You see there where he gets clear of considerable expense of doing business. Then in every town around will come men—inspectors, fire marshals—and these men who come around endeavour to keep up the degree of safety, to make the risks safer; they will inspect your property.

Mr. HOWARD: Why?

Mr. KINLEY: For the purpose of seeing to it that the hazard is less—which is a very legitimate and proper thing to do. The man goes around and does that, and he will divide the town into certain hazards. The non-tariff company accepts all these provisions and they are so vulnerable—that is, they are in a position that they can accept them without cost to themselves; because the average man who does insurance business will do business respecting some part of his insurance with the tariff company and some part of it with the non-tariff company. Now, the tariff structure is made up by a conference of these companies who get together for that purpose. It is not necessary that it will be higher. It may be for the very purpose of having uniformity in getting the rates as low as possible. But you can see the minute that is done somebody will try to invade the situation. We have no objection to invading it, but they should invade it on proper grounds. It is the same thing as with the railroads. The railroads must publish rates. A fellow comes along with a truck, and the country builds the roads for him, and he has certain privileges that the other man has not got; he begins to carry business on a non-economic cost, and he gets business away from the railroad and he gets it unfairly. The same racket is carried on in practically every field of business in this country. Where you have the person who is established and who has an overhead and who performs certain services for the country and certain services for the business, the other man will come along and try to get the advantage of the services; and whether he should get them or not is a matter of public policy, purely. I am not interested in any insurance company. I did have a share in some of the non-tariff companies, but I sold out a long time ago. I am interested in some of the mutual insurance companies in this country. But I believe they perform a service; but they perform that service in the interest of the man who insures and in their own interest also. But in dealing with legislation here we should deal with it on its merits, and we should see to it that one man does not high-jack the property of another man. For that reason it seems to me that there is no public need for this legislation at all. The department of state is not asking for it. They take a very non-committal attitude. It is obvious that this is for one purpose and that one purpose is in the interest of the non-tariff companies; that they may get hold of these Goad's plans. It seems to me that when general legislation must be made to exclude others, the people who are really the big part of the whole picture, we should go carefully; and in these dying hours of the session I think we might as well forget all about this legislation.

The CHAIRMAN: You heard Mr. Stevens' motion, gentlemen, seconded by Mr. Howard? What is the disposition of the committee?

(Carried.)

[Dr. E. H. Coleman, K.C.]

The CHAIRMAN: What about the names of the members of the committee —the personnel of the committee? Have you named them, Mr. Stevens?

Hon. Mr. STEVENS: I would suggest, Mr. Chairman, that you name them. I made one or two suggestions merely for the purpose of indication.

The CHAIRMAN: The committee to be named by the chairman?

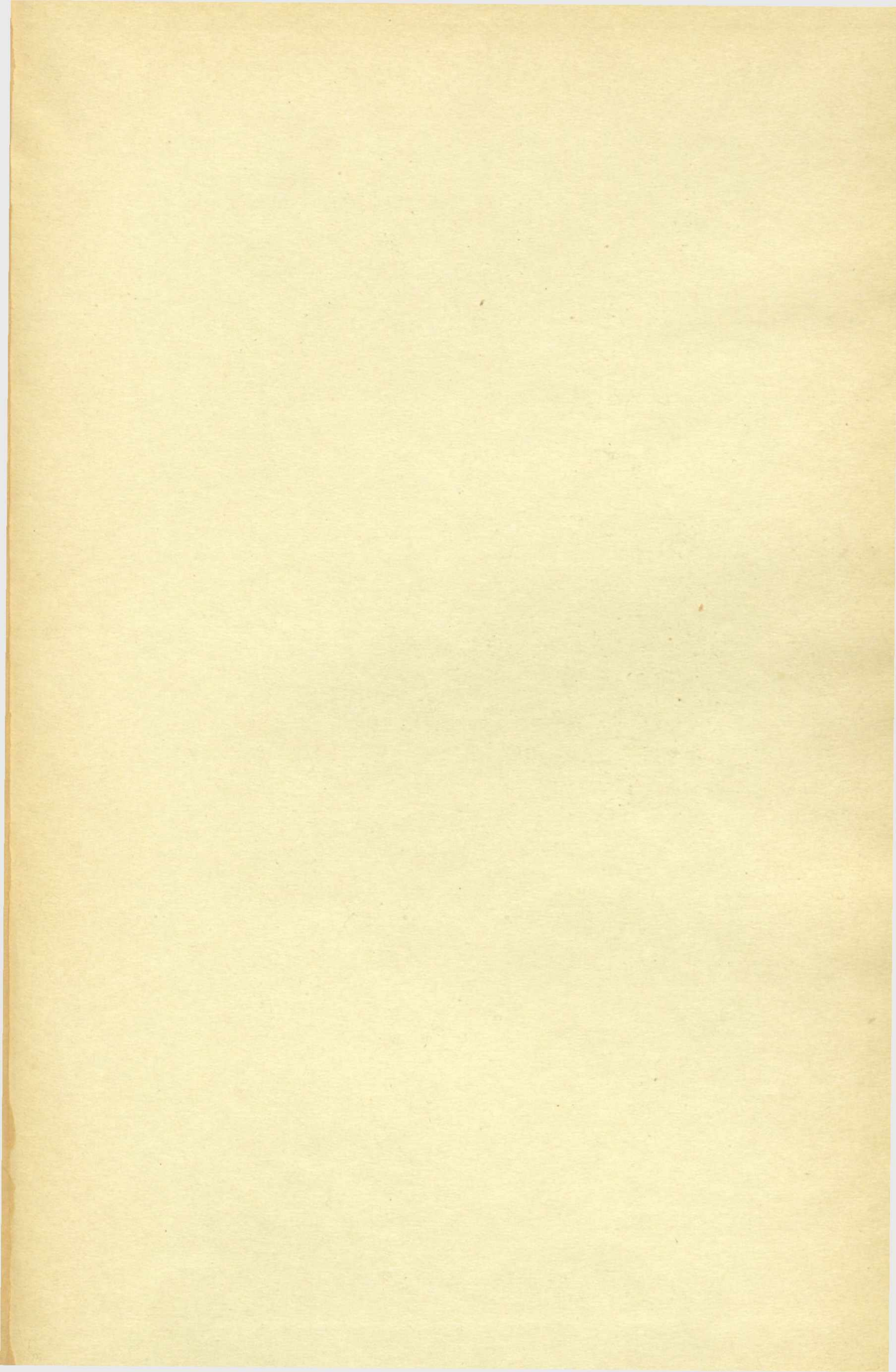
Some Hon. MEMBERS: Yes.

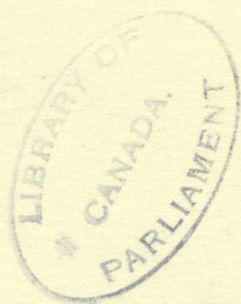
(Carried.)

The CHAIRMAN: Then shall we adjourn consideration of this matter?

Some Hon. MEMBERS: Yes.

The committee proceeded to consideration of Bill B-2 of the Senate, after which the committee adjourned to the call of the chair.

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