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6th SESSION, 17th PARLIAMENT, 25 GEORGE V, 1935

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THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL A, AN ACT TO AMEND AND CONSOLIDATE THE ACTS RELATING TO PATENTS OF INVENTION

No. 1

The Honourable Frank B. Black, Chairman

WITNESSES:

The Honourable C. H. Cahan, P.C., M.P., Secretary of State.
Mr. C. H. Carlisle, President, Goodyear Tire and Rubber Company.
Mr. J. J. Ashworth, General Manager, Canadian General Electric Company, Limited.
Mr. Russel S. Smart, K.C., Ottawa, Ontario.
Mr. T. W. Smith, representing Canadian Industries, Limited.
Mr. G. S. Maybee, representing Toronto Section of the Canadian Institute of Patent Solicitors.

OTTAWA
J. O. PATENAUDE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Frank B. Black, Chairman

The Honourable Senators:

Aylesworth, Sir Allen.	McLennan.
Ballantyne.	McMeans.
Beaubien.	McRae.
Black.	Meighen.
Brown.	Michener.
Casgrain.	Murphy.
Côté.	Parent.
Dandurand,	Planta.
Dennis.	Raymond.
Foster.	Riley.
Gordon.	Schaffner.
Graham.	Sharpe.
Griesbach.	Sinclair.
Horsey.	Smith.
Hughes.	Tanner.
King.	Taylor.
Laird.	Webster.
Lemieux.	White (Inkerman).
L'Esperance.	White (Pembroke).
Little.	Wilson (Rockcliffe).
McGuire.	Wilson (Sorel).

MINUTES OF EVIDENCE

THE SENATE,

TUESDAY, February 26, 1935.

The Standing Committee on Banking and Commerce to whom was referred Bill A, intituled "An Act to amend and consolidate the Acts relating to Patents of Invention," met this day at 10.30 a.m.

Honourable Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, the program, as near as we can outline it now, is that first we shall hear the Secretary of State, who is the father of the Bill, and who would like to talk to the committee. After that we shall hear persons who have asked to appear before the committee, up to the time of adjournment at about one o'clock. Then if the Senate does not sit very long this afternoon—

Right Hon. Mr. MEIGHEN: I do not think it will.

The CHAIRMAN: Then we shall resume here this afternoon after the Senate adjourns, to carry on the business of the committee. Mr. Cahan is on his way here. In the meantime perhaps the leader of the Senate might like to give us some light on the matter we are concerned with here.

Right Hon. Mr. MEIGHEN: There is nothing of any value that I can say now. We have received a lot of representations, but there is a marked uniformity in them. I mean to say, the criticisms of the Bill are largely against the sections 53, 55, and 63; and there are some to section 2 (*h*). But they all converge into pretty much the same form of attack, so I do not think the number of representations will be quite as many as they otherwise would be. They are all very important, though. The criticisms that are to be made are coming from large industries, in fact the largest in our country, and too much attention cannot be given to them by the committee. I think probably it would be better to hear Mr. Cahan first, and after that we can call upon the others who wish to speak. I know I intimated to Mr. Carlisle of the Goodyear Company—and perhaps to some others—that if he were here to-day we would hear him. So with the committee's consent, we might perhaps hear Mr. Carlisle's remarks after Mr. Cahan is through.

Hon. C. H. CAHAN (Secretary of State): Mr. Chairman, this Bill was originally prepared for introduction in the House of Commons because of the rule that Bills requiring money votes should first be introduced there. We had so intended until we found some way of getting around that rule and have it introduced in the Senate, where this impartial Committee would hear all the arguments pro and con and give a fair—

Right Hon. Mr. MEIGHEN: Intelligent.

Hon. Mr. CAHAN: Yes; a fair and intelligent judgment by way of compromise between the opposing factions.

The fact is that the administration of the Patent Office of Canada has in recent years become a matter of very grave criticism not only in this country but in other countries, and some measures of reconstruction and re-organization of the office are absolutely necessary.

Various amendments have been made to the Patent Act since its enactment in 1903, and in almost every case these amendments have been found to establish more securely the monopoly which patentees have, and which they are

entitled to have, because patent rights were at first excluded by the old Monopoly Acts, and subsequently exceptions were made to these Acts in favour of the inventive genius of the prospective patentee.

We have had also several international conventions in which Canada has been represented, and as the majority voice controls these conventions, it has been quite obvious that the trend of the opinions expressed has been largely in favour of the foreign patentee who wishes to establish his monopoly in less developed industrial countries such as Canada.

Therefore when you come to deal with this Bill I trust you will consider its provisions not only from the point of view of the inventor, but also from the standpoint that Canadian inventors are very few, and that for one Canadian invention which is patented at our Patent Office there are ten or fifteen foreign inventions patented. Secondly, I trust the Committee will consider as to what is a fair compromise between just consideration for the Canadian patentee and reasonable protection for the Canadian public. At the present time I do not complain very much about Canadian patentees, but foreign patentees are taking some millions of dollars out of this country every year at the expense of Canadian industry. These foreign patentees should be compelled, wherever there is reasonable opportunity, to establish industries in this country or to make arrangements with industrial establishments already existing here, whereby the manufacture of the patented articles or commodity or the use of the patented process may give employment to Canadian labour.

Many peculiar circumstances arise in one's experience as the Minister who has nominal direction and control of the Patent Office, but what is brought to my attention from day to day and week to week is the danger arising from these monopolies, which are established here, unless there is some reasonable, equitable and impartial control.

Hon. Mr. DANDURAND: Might that be done under our international obligations?

Hon. Mr. CAHAN: Oh, yes, we have not much difficulty in conforming to our international obligations. But they are attempting to make those international obligations more onerous year by year.

Now, I understand that the objections against this draft refer first to section 2, paragraph (*h*), "work on a commercial scale" in Canada. The terms of this amendment are based on the definition in the British Patent Act. Every country by its patent law compels the working of the patent in that country, and we desire to put on a proper basis the working of the patent in Canada. For that purpose we have accepted and embodied in this definition the very terms of the British Act.

The next real objection, I think, is to section 26. For my part I do not see any reasonable objection to the section. It simply makes the provisions of the old Patent Act sufficiently clear and provides for a reasonable interpretation of that Act and its administration by the proper officers of the Department.

Right Hon. Mr. MEIGHEN: Mr. Cahan, the objection made to section 26 is this. Taken in conjunction with the subsequent section, a patent has to be applied for in Canada by a foreigner within twelve months after his application is made, say, to the United States Government, if he is a United States citizen.

Hon. Mr. CAHAN: Quite so.

Right Hon. Mr. MEIGHEN: Now then, it is said that on an average there is an interval of about two or three years between the application and the grant of the patent by the United States Government, and that if the patentee applies here within twelve months of his application over there he is in no position of knowing, first, whether he is even going to get a patent there, and, secondly, he

has not reached the stage where he knows from experience in his own country that there is going to be a demand. The request from one firm is that that be changed to " from twelve months of the grant of the patent," and from another firm, that if he must apply it would be more reasonable to do so not later than the date of the grant of the patent in the other country.

Hon. Mr. CAHAN: First, I contest the facts so far as I have been able to ascertain them. I have taken a long list of the grants of patents, in England, for instance, made to foreign patentees coming into that country. The rule of one year applies, and in a whole range, of patent applications by foreigners you find that the vast majority of the original applications were granted in foreign countries within a year; and in every case in which a foreign patentee comes into England to obtain a patent, he must come within one year from the grant of the foreign patent.

Hon. Mr. GRIESBACH: The grant or the application?

Right Hon. Mr. MEIGHEN: They are always ready to take the grant, you say, within a year of the application?

Hon. Mr. CAHAN: Will some of the gentlemen tell me if in England it is one year from the application?

Some REPRESENTATIVES: From the grant.

Hon. Mr. CAHAN: Then that is a fair compromise, if that is so.

Right Hon. Mr. MEIGHEN: One critic says that he would be ready to agree to having the application made not later than the date of the grant.

Hon. Mr. CAHAN: That depends on another thing, and I may as well mention it first as last, because I hold very strong opinions about it. It is that there must be a restricted time between the date of application in Canada and the date of the grant. As a matter of fact the old term of the patent was fourteen or fifteen years. In England it was the same, and gradually they extended the life of a patent to sixteen years. Those who were interested in obtaining patents in Canada came from time to time before Parliament and suggested that in this country, as it is not extensively industrially organized, the patent should be given a longer life in order that there might be ample time to develop the patent in this country, and they secured a life for the patent of eighteen years, a longer term than that which you do not find in the United States or in England. In England it is still sixteen years. Then the ingenious patent lawyers, to ensure that the life of the patent would extend not eighteen years from the date of the application, as it would in England, but eighteen years from the date of the grant of the patent, applied their genius and skill to prolonging the term during which the patent would be negotiated with the Patent Office after the date of application. The result was that in many cases when matters came up they would not answer letters for a year; many took six months, and in numerous cases, not by reason of any fault on the part of the Patent Office, an extension of at least two or three years was secured by their dilatory methods. As a consequence of the taking of the patent from the date of the grant, which has been postponed two or three years through their dilatory methods, the life of the patent was really extended from eighteen years to twenty or twenty-one years; and if you examine the records you will find that in some cases foreign patentees have maintained their patents in Canada under our law for three or four years after the date of the expiry of their patents in the foreign countries in which they were resident or are domiciled.

That is an abuse, and ought to be dealt with. So the compromise which the Hon. Mr. Meighen suggests must be a fair compromise. If the term of the patent is to be reckoned from the date of the grant of the patent, and if you refuse to follow the English provisions in that respect, because they pro-

vide that the term begins to count from the date of the application, then you must very severely restrict the provisions under another clause of which we complain and which allows them to employ such dilatory methods.

Hon. Mr. LYNCH-STAUNTON: Is the inventor protected in the manufacture and disclosure of his patent from the date of his application?

Hon. Mr. CAHAN: Yes.

Some REPRESENTATIVES: No, no.

Hon. Mr. CAHAN: He is protected in this respect, that no other person may obtain a prior patent, and his application at the Patent Office here or abroad is absolutely confidential. It is never revealed. Furthermore, if anybody does infringe between the time he has filed his application for a patent and the date of the grant, he has no right after the grant of the patent with regard to either the sale or the manufacture before that time, or with regard to the use before that time. I think that is a fair statement.

Some REPRESENTATIVES: No, no.

Hon. Mr. CAHAN: You don't think it is. Well, all I can say is I think that is so, and I have never in five years had a single complaint of an application to the Patent Office having been revealed so that others could make an infringement of the prospective patent between the time of the application and the date of the grant.

Hon. Mr. LYNCH-STAUNTON: Can you not protect him from the date of his application, and then if you only give him sixteen years—

Hon. Mr. CAHAN: If you will restrict the term to sixteen years I shall be very glad to protect the patentee by agreeing to modifications in that respect. We had in Canada—I don't remember when it was, but I was practising at the Bar then; it is a long time ago—a law whereby every foreign patent expired in Canada on the day that it expired in any other land. Now we have patents running on four or five years after they have expired abroad. So I would prefer to make this patent date from the time of the application in Canada, and then grant absolute protection during the time in which the patent is being considered at the patent office up to its actual grant. I can see no objection to a compromise in that way.

Then, section 53 is very radical indeed. The present law is the law of England—that the patentee must, either by himself, or his licensee, or his assignee, or personal representative, proceed with the manufacture of the patented article or the use of the patented process in Canada. So far as the three years go, there is no radical change.

But how are you going to compel the patentee to take any reasonable steps towards manufacturing a product in Canada? You will find that the French and English, particularly, who obtain patents in Canada—and more recently since the war, the Germans, who have obtained patents abroad—sell or assign their patent rights in Canada to American manufacturing concerns. I have seen the contracts. The contract is usually printed in very fine type, and it gives to the American concern the sole and exclusive right to manufacture the patented article or to use the patented process in Canada, the United States and usually Mexico. At the Economic Conference which was held in Canada in 1932 we had a large number of English engineering firms represented, and it was my duty to deal with some of those representatives. They were complaining that our purchases of engineering machinery from England were very limited. And when you inquired into it you found that the patents under which that engineering machinery was manufactured in England had been sold or assigned to American manufacturers. And we had Canadian industrialists appearing and saying that they had endeavoured to buy such and such engineering machinery in England, but the sales had been refused.

Hon. Mr. GRIESBACH: Who refused the sales?

Hon. Mr. CAHAN: The English manufacturer. Sales had been refused, and when inquiry was made it was found that the patent under which this machinery, or certain parts of it, was manufactured, had been sold to American manufacturers with exclusive rights as to Canada, and Canadians were invited to buy in Ohio, or in Pittsburg, or from some office in a high building on Broadway, because the article could only be purchased for use in Canada from the United States. So long as that condition exists, we, north of the 49th parallel, will never be able to develop our factory life to the extent that we should. I recognize here many gentlemen who appeared at a conference which we had in respect of this same Bill. They said "Why not protect yourself by the tariff? It is the tariff that is intended to protect Canadian labour." But there is no way under the Canadian tariff by which you can protect Canadian labour in respect of these patent monopolies, unless provisions are made to compel patentees, if it is reasonably possible to do so, to manufacture and supply the patented articles in this country. As I look over the situation, with my experience of the last five years, I see the industrial life of Canada held in the grip of the holders of some 100,000 to 200,000 patent monopolies, all of whom have obtained similar patents in the United States, or in Germany or England, and none of whom have any strong incentive to produce in Canada if they can make use of the manufacturing facilities of the neighbouring Republic, or of other foreign states.

Right Hon. Mr. GRAHAM: Would the market in Canada be sufficient to induce many of them to establish industries in Canada?

Hon. Mr. CAHAN: Well, Senator Graham, if the market in Canada is sufficient to induce someone to come in and infringe a patent in order to supply the demand, then it should be sufficient to induce the real owner of the patent to come in and manufacture on such a commercial scale which will reasonably supply the Canadian market.

Hon. Mr. CÔTÉ: If we pass section 53 as it is, instead of having to buy certain machinery in the United States we would buy it from England?

Hon. Mr. CAHAN: We could, yes, but I am trying as far as possible to force the Englishman to come in here.

Hon. Mr. CÔTÉ: But section 53 would not force him to come here.

Hon. Mr. CAHAN: It might. I think it would be a very strong incentive to him—I do not know of any stronger one, and personally I think it is, in its terms, too strong, if you ask my opinion. But it is made strong in order to call attention to the flagrant evil which exists.

Hon. Mr. LYNCH-STAUNTON: Would it not be sufficient if you were to put in a provision that the patent would become void unless the owner agreed to sell on reasonable terms the right to manufacture in Canada?

Hon. Mr. CAHAN: My only objection to that is, that under the convention we have made with other countries I cannot declare it void But though I cannot declare it void under the convention, I can avoid the monopoly to the extent of preventing them from using our courts.

Hon. Mr. LYNCH-STAUNTON: I see. You are taking a leaf out of the United States Supreme Court's book.

Hon. Mr. CAHAN: No, but I am taking a leaf out of the International Convention. Article 5 of that convention says, in part:—

> The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent.
>
> Nevertheless each of the contracting countries shall have the right to take the necessary legislative measures to prevent the abuses which

> might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.
>
> These measures shall not provide for the revocation of the patent unless the grant of compulsory licences is insufficient to prevent such abuses.

Under that I wish to escape complete revocation of the patent. but I wish to impose such stringent measures as will compel reasonable efforts being made to manufacture and produce the patented article, or the use of the patented process, in Canada, to the extent necessary adequately or reasonably to supply the Canadian market

Perhaps honourable members do not quite appreciate the ramifications of this patent measure. I heard of an interesting experience not long ago. An abbé of the Catholic church, resident in Quebec, had been down to Philadelphia to attend some gathering of the particular order to which he is connected. The Catholic people of Philadelphia opened their houses to the strangers who were there for the purpose of attending the gathering, and in one of the houses where the abbé was being entertained he heard a radio which, though small, was peculiarly effective in tone and other qualities—I do not know much about radios. He became quite enamoured of this machine and asked where it could be obtained. One of the young ladies told him that if he would go down with her to such and such a place in Philadelphia, he would be able to buy one. So he went. And knowing something of the Canadian custom laws, he inquired if there would be any difficulty about his taking the machine to Canada. They told him there would not be, as they would give him triplicate invoices, properly made up, and the necessary forms so that he could secure admission of the radio into Canada. He paid for it and brought it back, and when he arrived at Montreal he went to the customs, gave up his radio, produced his invoices and paid the duty. Some time after his arrival in Quebec he asked. as he had been accustomed to, some of the younger men of his association to spend the evening at his home. They were very much interested in his radio. Two or three days later it came out that so and so had used such and such a make of radio at the private entertainment he had given to some of his congregation. A day or two later a constable served him with a summons to appear before a magistrate for infringing the Canadian Patent Law, the penalty for which was a term in gaol. His lawyer investigated and found that although his client had bought a patented article, and in the price paid in the United States had paid the inventor's royalty there, had brought it into Canada and paid duty not only on the original cost but on the American royalty as well, yet the royalty rights still existed in Canada. He found that, although the article was not manufactured in Canada the American patentee had a monopoly here, but nevertheless had not made any arrangements to manufacture. So the law had to be observed. The abbé's friends put up sufficient money to pay the penalty.

That sort of thing is happening in many country districts throughout Canada, and something must be done to meet the storm of criticism that arrives at our office day by day and month by month.

If you think that that amendment is too strong, let us sit down and see what modification we can make. For instance, I have some suggestions from a number of very prominent lawyers in Canada. They say something should be done, but they think the provision that after three years the patentee shall not be able to proceed with an action for infringement unless proved to the satisfaction of the court that at the time of the infringement the patented invention was being worked on a commercial scale in Canada—

Hon. Mr. LYNCH-STAUNTON: Mr. Cahan, could you not say, "without the fiat of the Minister"?

Hon. Mr. CAHAN: That would help.

Hon. Mr. LYNCH-STAUNTON: There might be a case in which you yourself would think the relief should be granted.

Hon. Mr. CAHAN: I have to issue many fiats in connection with sequestrations and all that sort of thing, but I find such matters very difficult for a political Minister to handle.

Hon. Mr. LYNCH-STAUNTON: It seems to me the object is quite right, but the provision ought not to be inflexible.

Right Hon. Mr. GRAHAM: Would the process be slow?

Hon. Mr. LYNCH-STAUNTON: There might be a case now and then in which he would want to give relief.

Right Hon. Mr. MEIGHEN: That can be considered.

Hon. Mr. CAHAN: Yes. A prominent law firm that deals in patent rights suggests to me that section 53 should be revised by rewording lines 32 and 33 on page 19 of the Bill as follows:—

> injunction restraining the opposite party from manufacturing or producing the patented invention in Canada or vending or using the patented invention so manufactured or produced in Canada.

It is suggested that that would give adequate relief.

Right Hon. Mr. MEIGHEN: That would leave it pretty strong still.

Hon. Mr. CAHAN: Yes.

Hon. Mr. DANDURAND: How would it read?

Hon. Mr. CAHAN: If you please, Senator Dandurand, I do not wish to attempt at this stage to remodel the clauses. I thought I would give a general statement of the views that we entertain in asking that this Bill be considered. Then you gentlemen might hear the objections of the large number of legal gentlemen who have assembled from all parts of Canada. After that has been done I should be very glad to sit down with the whole Committee, or with a small subcommittee to see how nearly we can draft or redraft modified sections which will meet with the general view of the Committee.

The next section to which Senator Meighen has called my attention, and to which some protest has been received, is section 55. This is a new provision in the place of old 50. This provides that:—

> Every person who purchases of the inventor, or constructs any newly invented machine or other patented article prior to the application by the inventor for a patent, or who sells or uses one so constructed, shall have the right to use and vend to others to be used, the specific thing so made or purchased, without liability therefor.

We are getting back there, Senator Lynch-Staunton, to the suggestion you made. We have so modified that section that he cannot sell or vend or use the patented article if it is constructed after the date of the application for the patent, but if he has done so before the date of the application then, with regard to that specific article manufactured, he is free and unencumbered.

Subsection (2):—

> Notwithstanding the above preceding subsection, any person who manufactures or sells an article for which a patent shall subsequently issue under the present Act, shall be liable to an action for infringement provided such manufacture or sale occurred after the filing of the application covering the said patent.

Objection has been made to this section, but I conceive it to be in the interests of the patentee, if the patentee is compelled, as I think he should be, to date his patent from the date of the application, and reckon the term of the patent from the date of the application, and not from the date of the grant.

Right Hon. Mr. MEIGHEN: The objection, Mr. Cahan, is that a manufacturer has no means of knowledge of the application covering the patent, and

without such means of knowledge he innocently manufactures the goods and sells them. The application for the patent is kept secret. Such manufacturer then is liable to a severe penalty for something in respect of which there is really no guilt. The suggestion is that there should be an onus placed on the person who takes action against the manufacturer of showing that he so manufactured or sold with knowledge of the application.

Hon. Mr. CAHAN: Those are reasonable suggestions, Senator Meighen, and above all things we wish to be reasonable. You must not think that I am so ardent simply because I have seen only one side of it—the abuses; but when we sit down with a Senate Committee we must be very reasonable in arriving at compromises to cover the situation.

The next section is No. 63. Clause (*a*) of subsection 1 provides that:—

> Every patentee shall satisfy the reasonable requirements of the public with reference to his patent, and to that end shall work the patented invention on a commercial scale within Canada.

I do not know what objection Senator Meighen has in mind, but the objection made to me is that three years is too short a time in which to give complete immunity.

Right Hon. Mr. MEIGHEN: I will read a very brief paragraph here from representations made by General Steel Wares, Limited, through Mr. Corrigan.

> Section 63: Subsection 1, of the Bill, relating to working of patented inventions requires manufacture on a commercial scale within Canada whether the demand for the patented article warrants same or not. It requires further, that to work the patent on a commercial scale within Canada, fifty per cent of the value of the parts or materials used in the manufacture of the patented article must be made in Canada. It would be impossible for us to comply with this latter provision, as in many cases our products are made from materials which are not made in Canada and must be imported. Wherever possible we use material which is made in Canada, but in many cases it is impossible to obtain suitable raw materials in this country. This means that there are many patented articles produced by us on which practically one hundred per cent of the raw materials must be imported. It would, therefore, be impossible for us to comply with the working provisions of Section 63, subsection 1, of the suggested Bill.
>
> Section 63: Subsection 2, requires certain annual reports to be made by registered owners of patents. In the cases of patents which are owned by parties outside of Canada, it will be obvious that the people who would suffer in the event of the reports in question not being made, would be the Canadian manufacturers holding licences under these patents. This would put the onus on the Canadian manufacturer to see that the owner of the patent made these reports, and in the event of the said owner neglecting or refusing to make such reports the Canadian manufacturer would have no recourse against the patentee, and thus the patent would be liable to be invalidated under the provisions of Sections 52 and 53 of the Bill, through no fault of the Canadian licensee.

That is the reporting clause. He takes 1 and 2.

Hon. Mr. CAHAN: I have no desire, gentlemen, to enforce that reporting every twelve months. It seems to be onerous, but we must have some means of compelling disclosures of information which affects the continued validity of the patent, as in the case of the continued validity of the trade-mark or the copyright.

At the present time, having to ascertain any information, we must appoint a commission under the Inquiries Act, and take evidence. This is very cumbersome, but it is my own personal impression that if I had a Royal Commission taking evidence as to use and abuse of patents in Canada, the result would be

as startling as some of the information obtained from the Price Spreads Commission and I do not wish to do that. It is not a case of raising a scandal and an outcry which involves the honest and upright man as well as the one who is guilty of abuse.

Right Hon. Mr. MEIGHEN: What you do want is the right to demand the information?

Hon. Mr. CAHAN: Yes. I suggest that we try it out for a year or two. I probably will not be here, but some other minister will come back to this honourable body if the remedy is not effective. I think we might compel them to disclose this information on demand.

Hon. Mr. MURPHY: By the minister.

Hon. Mr. CAHAN: By the minister or the commissioner.

Hon. Mr. LYNCH-STAUNTON: Could you not, to meet that occasion—the neglect of the inventor—fine him severely for it?

Hon. Mr. CAHAN: Each of these patentees must have a registered agent in Canada, and a registered address, so that we can put it up to them. I was going to suggest that we might apply in modified and suitable terms section 49 of the Unfair Competition Act, under which notice may be given requiring information and compelling the giving of that information under a severe penalty.

Right Hon. Mr. MEIGHEN: It might be an ultimate penalty of cancellation.

Hon. Mr. LYNCH-STAUNTON: Nobody would give the information until they received notice. Nobody would give the information until you went to the trouble of giving thousands of people notice.

Hon. Mr. CAHAN: With regard to the individual patentee, I can give his representative here notice, and a reasonable time within which to furnish the information.

Right Hon. Mr. MEIGHEN: Or you could provide that he must make the returns on proclamation, so that you would not have to notify everybody. You would have a right to make proclamation in the Canada Gazette.

Hon. Mr. CAHAN: That does not get to the point I want to reach. It is general. I wish to get down to individuals and to remedy particular abuses. Possibly if notice were sent to these persons informing them that they were not complying with the Act, that might suffice. However, so far as the Department is concerned, we are quite willing to consider an amendment along that line.

Now, as to this manufacture in Canada, I have heard complaints similar to those which have been made to Mr. Meighen with regard to raw products. But with regard to the manufacture in Canada of component parts from the materials, what you find is that in order to comply with the provision as it stands—namely, that the patent must be worked in Canada—they merely import everything that enters into the product and set it up and put it together in Canada, and say that it is manufacturing in Canada. All the continental countries have the same difficulty, and if you desire to exclude such raw products as are now produced in Canada, what are you to do? I fancy that the company which has made this criticism which has been read by Mr. Meighen imports its tin.

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. CAHAN: I think that is the raw material which is not manufactured.

Right Hon. Mr. MEIGHEN: Not produced.

Hon. Mr. CAHAN: Well, fortunately we are beginning the production of it. Up to the time of the meeting of the Imperial Conference here Great Britain

controlled the tin trade, and those who controlled that trade in Great Britain sold exclusive rights to speculators in the United States, and time and time again those who wished to buy tin for the purpose of manufacture in Canada were unable to buy in England. They would go to London with ample credits but they could not buy a pound of tin, except scrap tin, because it had been placed under a cartel which had sold to the Americans the exclusive right to supply tin to Canada. These things are irritating and embarrassing that something must be done to meet them. I understand that now we are producing tin plate in Canada, but whether to an extent sufficient to supply the steelwares trade I do not know. It is a fair and reasonable suggestion, that if the raw product is not being produced so as to be available in Canada, those products should be excluded from the fifty per cent requirement. The real evil that we wish to prevent is their asserting that they are working to a reasonable extent and adequately supplying the market demand in Canada, when they are not manufacturing a single screw in this country, but are simply bringing in component parts from other countries.

Right Hon. Mr. GRAHAM: The same thing arose to some extent in connection with the manufatcure of copper wire. I forget now how we got the matter straightened out, but I know I was three or four months at it. Copper was produced in Canada, and the copper wire manufacturer said that he was unable to get it except at a price which was prohibitive.

Hon. Mr. CAHAN: I do not want to be extreme—

Hon. Mr. LYNCH-STAUNTON: We want to know all you know.

Hon. Mr. CAHAN: —but I want to find some reasonable means whereby we may conserve the rights of the patentees in a thorough manner while at the same time lessening the cinch they now have upon the Canadian people. Many patentees—I am not saying the majority—are abusing their rights and privileges. I have met the patent representatives of a large number of Canadian industrial concerns, who have come to my office to consult about certain measures, and I have found them very reasonable indeed. But there is carried on beneath the surface a great deal of what I regard as abuses of the monopoly rights which parliament has conferred upon certain patentees.

That is all I have to say, Mr. Chairman.

The CHAIRMAN: We very much appreciate your coming here and giving us this information, Mr. Cahan. I do not know whether any members of the committee wish to ask questions of you.

Hon. Mr. DANDURAND: Mr. Cahan, I have received representations from Canadian patentees, with respect to section 53. They claim that when an attempt is made to infringe their patent, they should be allowed to establish that they did not manufacture in Canada because there had not been any reasonable demand manifested by the public. They feel that section 53 should give the Canadian patentee the right to show that there was no demand in Canada, and that the absence of demand was a good reason for not having complied with the clause that obliges a patentee to satisfy the reasonable requirements of the public.

Hon. Mr. CAHAN: Work on a commercial scale, as referred to in section 2 (*h*), means the manufacture or the carrying on of the process on a scale which is adequate and reasonable under the circumstances. It is for the court to determine what is reasonable, because the decision of the Commissioner is appealable to the Exchequer Court. The court will say whether a reasonable attempt was made to supply the demand.

Hon. Mr. DANDURAND: But under section 53 a patentee would be estopped from alleging the fact that there was no demand.

Hon. Mr. CAHAN: Quite so, because the very fact that the bootlegger—

if I may call him so—finds it profitable to supply the Canadian market, is prima facie proof that there is a demand for the article. The committee will have to decide what is reasonable and fair.

Hon. Mr. Côté: Mr. Cahan, would not a compulsory licence clause in the Act provide ample security against abuses of the monopoly such as you have described? If a man is not manufacturing his invention, and if there were a clause which enabled anyone to go to the Patent Commissioner and apply in his own name for a licence to manufacture, would that not provide the public with ample protection? I know that section is in the old Act, and it is carried into this new one. Will that not provide sufficient protection?

Hon. Mr. Cahan: As a matter of fact, in practice it does not give protection, because we seldom ever have such applications. Suppose a manufacturer seeks a compulsory licence. Well, he at once is entering upon a law suit. The Commissioner may decide to grant the application, and then the matter goes to the Exchequer Court. A man does not want a compulsory licence which prevents him from exercising his rights under it while there is tested out in the courts the consideration under which the licence was granted. As a practical remedy it is ineffective, but theoretically it should afford some relief.

Mr. C. H. Carlisle (President of the Goodyear Tire and Rubber Company Limited): I suspect, gentlemen, you will consider what I may have to say as being about on the same basis as the advice of an old maid to a mother as to how she should feed and raise her children.

Right Hon. Mr. Graham: That is the practice.

Mr. Carlisle: I shall not attempt to criticize this Bill. I am not appearing here of my own choice, but I have been requested as a manufacturer dealing with production under patents, to present some views growing out of my experience which might be of some benefit to you gentlemen in enacting the law governing patents.

To the layman it seems the subject should not be complicated. There appear to be about four phases to be dealt with: one, the rights of the inventor; two, the rights of the public, three, the rights of the manufacturer; four, your relations to other countries.

I have heard considerable criticism about our Patent Department's administration of our patent laws as compared with the Patent Department in the United States. I am not fully in accord with that criticism I think both countries in their patent laws are decidedly deficient, because the patents issued by either country are not positive and conclusive, but are subject to review by the courts. That being the case, the amount of investigation made before issuing a patent is not so serious.

The man who creates an invention is entitled to fair remuneration for that invention. It seems to me that such remuneration can be made and proper treatment accorded by a board which is free to act and to judge all the phases and conditions that surround the transaction.

With respect to an eighteen year period in which a patent may be active, I fail to see wherein that or a ten year period or in fact any fixed period is equitable. If you take the invention of the incandescent light, you will find Mr. Edison was seventeen years in completing the invention. With an eighteen year limitation, he would have had one year to establish plants, to get equipment, to form a selling organization and put his product on the market. You would hardly think that condition fair. There are other patents that can be completed very readily because they may be simple in their construction, and considering all the conditions surrounding the invention eighteen years might be an exceptionally long time. It may be necessary to put into your Act a specified time; I am inclined to think that is true. But I think the board or the Minister of the Department should be given a maximum leeway within which to extend or limit the number of years that the patent is to be operative.

Hon. Mr. Griesbach: Is that done in any other country?

Mr. Carlisle: I do not know. I am talking only as a layman. I will say this, the man operating the business could not say what he would definitely do eighteen years from now. I am inclined to think he would not even venture to say what he would definitely do in two years. But in this Bill you are giving a concrete and definite ruling as to time. I think this should be reasonably left to discretionary modification by those who are administering the Patent Act.

Now, as to voiding the patent in three or six years, or any other definite period, I think it cannot be done in an equitable way. Again I think that should be left with the board. You might set up a period of three or six years, but the board should have the right to modify that period. In many cases it is impossible to operate a patent within three years or even six years. In the case of the incandescent light it took seventeen years. I think the only way in which it can be reasonably handled is to leave the matter flexible.

With regard to a patent that is granted and production held up, perhaps for some selfish reason, I think the board should be empowered to force production or to cancel the patent. It should be the judge on the facts and the conditions, having in mind the operations under the patent and the benefits accruing to the people at large.

Another item brought up was the period between the filing of the application for the patent and the granting thereof. If I understand it correctly, when the application is made it does not become public. Later, when the patent is granted, if some body or some concern has infringed on the rights of the patentee, then the infringer is liable to an assessment on the production or to a fine for the period over which he had operated, although, not knowing the application was in, he was innocent of any violation. I think that is unfair. There are two ways in which it might be handled. One is to make the application known to the public through publication; the other is to make infringement date from the issuing of the patent.

Instead of dealing with the matter generally I would prefer to call your attention to concrete cases. Patents should be filed when issued. I could give you cases of hardship resulting from that not being done, and I could occupy your time for the next two hours, but I will confine myself to a few examples for the next three or four minutes.

I will take first the Overman case in the United States. It applied to the manufacture of a certain type of motor truck tire. Those who manufactured this tire manufactured it under patents granted to them, and they thought the patents were valid. They manufactured the tire for a period of sixteen or seventeen years. Action was brought against them for infringement of another patent, and they had to pay $1,000,000 and spend about half a million dollars in fighting the case. The penalties were made retroactive for fifteen years. That hardly seems fair.

Let me cite another case in the United States, Perlman against the Standard Welding Company. The Standard Welding Company were granted a patent to make a certain rim or automobile wheel. At a later date Perlman was granted a patent along the same line. The Standard Welding Company were permitted to manufacture; they grew into a very large manufacturing concern and were serving a useful purpose. Perlman entered suit, and it was decided by the court, whether justly or unjustly, that Perlman was the originator of the idea. This was granting Perlman a patent after the other patent had been granted and after the business had been established. The damages against the Standard Welding Company were so great that they could not pay, and they turned over their plant to Perlman.

There is another case that I would call to your attention. This litigation, which was carried on in both Canada and the United States, was started in 1927. It is still in the United States court, and the matter will likely continue in

litigation for one or two years more. Now, let us see in what condition this places the manufacturer. He does not know whether he is violating that patent or whether he is not. I have noticed statements in the paper saying that if this decision goes against the manufacturer it may involve a settlement of about $30,000,000. The cost of litigation is great, the interference with business is great, and the uncertainty of the outcome is a most disturbing and even a threatening influence.

I will give a case which applies in Canada as well as in the United States. It has to do with a minor industry, but it illustrates the point. Patents issued for the manufacture of Cincrete blocks. They are somewhat like a concrete block, but are manufactured from cinders. After the patents were granted real estate was bought and factories were established in Canada and in the United States, and machinery was bought and installed and manufacturing was commenced. Only a short time afterwards it was found that these patents were not valid. The result was a great loss of money. That, I think, is unfair to the public.

There is another thing which you gentlemen who follow the patent law have no doubt come in contact with. I refer to individuals who collect and purchase patents of various kinds. Such a person has a knowledge of patent law, and he sets up these various patents that he buys and finds out how they may adversely affect some industry or group of industries. Then he get out a notice of infringement. In some cases he may bring suit, but in most cases he tries to get a settlement out of the manufacturer affected. I could cite a case of that kind where it was found beneficial, perhaps, to a certain manufacturer to pay such an individual $1,000,000.

Hon. Mr. GRIESBACH: Is that a Canadian case?

Mr. CARLISLE: No, it is a foreign case.

As President and Manager for a long period of time of the Goodyear Tire and Rubber Company of Canada, I may say that nearly all our manufacturing in production is done under patents. Some of those patents we own, some we have assignments for, and in respect of others we are operating under licences from sources not directly connected with this particular branch of industry. To-day our company stands in this position: while it does its operating under patents that are legal, and while we think we are operating in accordance with the law, we have not any assurance that any of these patents would be sustained in an Upper Court or a Court of Final Jurisdiction. We do not know that we are not subject to penalties and conditions such as I have enumerated, and the only way we can be sure is to have each and every one of these patents taken to a Court of Final Jurisdiction in order to secure a decision as to whether they are legal or not. It may not be practicable to do that, but you see the position we are in.

I would suggest to you gentlemen who have the compilation of these Acts —I have cited cases, and could cite many more—that there ought to be an estoppel with respect to how far back the patentee may go, in collecting. If a concern is manufacturing innocently in violation of any law, if it has used ordinary precaution, I do not think it should be penalized as was the company I referred to in the case where they went back fifteen years. A patentee should know whether his patents are being violated. If they are, he should give notice to the person violating them, and then that person should be responsible from the date of receipt of notice from the patentee. If the patentee has not a reasonable chance to know that his patents are being violated then I think he should have some recourse.

There are two things in the Act or the amendment to the Act upon which I would like to make some comment. One is the provision with regard to content. I think it has no place in the Act. The content, whether it is foreign or domestic, is a matter, I think, of government. Perhaps it should be regulated through a protective tariff or other means, but I do not see where it fits into this Act.

As to the matter of returns, if they are called for every year, I think it is going to be cumbersome and that there is little to be gained by it; but I think the Department should be given full power to call for returns on any patent or number of patents as it sees fit, and, should anybody refuse to comply with the request for information, I think the Department should have jurisdiction to impose fines or even to cancel the patent. There is a condition under which foreign patents are used in Canada and where the owners might fail to report. Such patents might be cancelled. That would result in great hardship, and if the Canadian manufacturer were deprived of the use of that operation it would result in a great loss of money. In that case I think we should know what concerns are operating in Canada under these Acts and they should have due notice.

I think that the suggestion I am going to make should be of great benefit to the patentee, the producer and the public. My thought is that when patents are issued they ought to be final. When a government has issued a patent, I do not see why people who go into production and make large investments should be confronted by conditions such as I have enumerated. Ultimately a final decision is made in these patent cases, usually by a court. I would suggest that the Patent Department be divided into two divisions; one that might be called the operating division, which would carry on much the same as the department does to-day; and the other should be a judicial division. I see no reason why you could not get as high efficiency from a judicial division of the Patent Department as you can get in any of our courts, even the Supreme Court of Canada.

Hon. Mr. GRIESBACH: Is it part of your suggestion that there should be a Government guarantee of patents?

Right Hon. Mr. MEIGHEN: The Torrens title to patents.

Mr. CARLISLE: Senator Meighen has said in a word; it is a Torrens title to patents.

Hon. Mr. GRIESBACH: Would you favour an assurance fund for guaranteeing the Government against loss?

Mr. CARLISLE: Will you let me finish, please, and then I will answer any questions. I have only a few more words to say. Judges who were operating within the Department, handling similar cases day in and day out, should be the most efficient men for passing final judgment on the matters that come before them. If there were a Torrens title to a patent, it would make the patent worth something to the patentee and to the public. Then there would be some safeguard to production under the patent. It may be argued that it would be going too far to have a judicial division right in the department, because some of the judges might become biased, and there might be frauds that would find their way into the department. I am not fearful about those things, but I think that provision should be made for an appeal on facts, from the Patent Department to an appeal court. An appeal should be allowed only under certain conditions.

When one considers the waste of time, the disturbance to business, and the huge amount of money that is spent, all because of patent litigation, it would seem that we are not handling the matter very efficiently. Because of an attack made on a certain process that we were using, three or four years ago, we had to go to England for certain proofs, we had to go to continental Europe for certain proofs, and we had to go to the United States for certain other proofs. That disturbed us greatly, and in the end it was found that we were not violating any patent.

There is one other point. There are so many patents in existence throughout the world that it seems very difficult to get one that is wholly original. I know that in looking up the patent in the case I have referred to, we went into the leather goods business because there is a machine used in it that we thought might perhaps have some similarity to the machine we were using. Sometimes you

may have to go into the machines used by forty other businesses. When the Patent Department receives an application for a patent, and the invention is found practical and beneficial and not to violate the rights of others, especially in a monetary way, and where the invention is to be used in a specific way for the production of specific goods, it would greatly simplify matters to have the patent considered as original. Such patent should be confined to its specific purpose.

Hon. Mr. CAHAN: In relation to the production of the specific article or commodity?

Mr. CARLISLE: Yes. If at a later date it is found that this same device or invention should be extended to other fields of operation, then I think the patentee should apply for supplementary letters patent. It would then be up to the Board, which would have all the information before it, to decide whether or not supplementary letters patent should be granted.

That is all I have to say. I have given you merely a viewpoint, from one who does not know patent law and has not the presumption to tell you how to draft a law; but it is the result of experience with conditions that have to be contended with, when you are producing under patents. I think these conditions should be improved.

Hon. Mr. GRIESBACH: Mr. Carlisle, you did not discriminate between your experience with Canadian patent law and your experience with American patent law. I observed that your complaints about lengthy litigation and heavy damages, and so on, applied to your experience with American patent law. Did you intend that the same remarks should apply to Canadian Law?

Mr. CARLISLE: I think the conditions are somewhat better in Canada than in the United States.

Hon. Mr. GRIESBACH: Of course, your company is an international one.

Mr. CARLISLE: The Goodyear Tire and Rubber Company is a 100 per cent Canadian company.

Hon. Mr. GRIESBACH: I had occasion to look into your affiliations, for a certain purpose, not long ago. Your company is Canadian, but with affiliations in the United States.

Mr. CARLISLE: Yes.

Hon. Mr. GRIESBACH: Are your complaints directed against the patent law of the United States or the patent law of Canada?

Mr. CARLISLE: Against both, against the system. I am making the point that when a patent is granted, either in the United States or in Canada, it is meaningless until it is adjudicated on.

Hon. Mr. GRIESBACH: Referring to your suggestion of a Torrens title to patents, that involves a question as to the validity of patents, and the possibility of injustice being done. Under the Torrens system, in connection with land titles, a fund is created for the rectification of any injury that is done. If you are going to follow out the Torrens system, a fund must be provided out of fees paid by applicants, out of which fund anyone who was injured by the decision of the judicial division of the department would be reimbursed. And that raises the question of the struggling inventor, who wants to get a patent. It is all very well for large manufacturers who have acquired patent rights to pay heavy fees, but would not such fees have the effect of discouraging the small inventor?

Mr. CARLISLE: If there is any action brought against the government, I do not think the patentee should pay any of the costs. And I suppose it would be necessary to get a fiat to bring action against the government?

Hon. Mr. Lynch-Staunton: But the point is that it would cost the inventor a lot of money to prove to the satisfaction of the department that he has a patentable article at all.

Mr. Carlisle: I do not agree with you. He would prepare his application the same as he does now, and after the application is made, notice should be given to all countries with which we have reciprocity in patent matters, and the application should be published in Canada, and the granting of a patent should be postponed for one year. During that year any person would have ample time to make any objections, if he so desired, to the granting of a patent. I am trying to keep these cases out of long litigation. When a patent is granted it should be of some worth. I do not consider a patent has any worth until its validity is beyond question.

Hon. Mr. Lynch-Staunton: Supposing it were proved to your satisfaction that after you had issued a patent to me I had really no right to it, that I had stolen it, as people often do, from the true inventor, what would you do?

Mr. Carlisle: I mentioned that when I was saying that patents should be final, unless the Commission should find later that something had not been disclosed or that fraud had been practised. My contention is that such a Commission, especially when backed up by the Department, is more competent to deal with a matter of that kind than any other sort of jurisdiction.

Hon. Mr. Griesbach: The guaranteeing of titles is a very interesting suggestion, but it seems to me it is surrounded by terrific difficulties. Certainly the question of compensation would arise, and somebody must pay it.

Right Hon. Mr. Meighen: There is no reason why the insurance fund should be any more serious in relation to the value than it is, say, in the land system. There it is really of more value to the little fellow than to the big.

Hon. Mr. Griesbach: The question of land titles is simple compared with this.

Right Hon. Mr. Meighen: Perhaps so.

Hon. Mr. Griesbach: As a matter of fact where the Torrens system exists it has been found that the fees paid into the fund far exceed any calls made upon it, and they have really become part of the revenues of the Government. But here is a business which, as Mr. Carlisle points out, is full of difficulty and danger, and I find it impossible to figure out what the fees should be. He is speaking of millions of dollars of damages.

Right Hon. Mr. Meighen: But he would limit the right to issue to a certain time.

Hon. Mr. Griesbach: It would not be the Torrens system in any sense of the word. It would be but a pious hope.

Right Hon. Mr. Meighen: You could have a Torrens system in patents the same as in anything else.

Hon. Mr. Lynch-Staunton: Mr. Carlisle says that it is a practical matter and that a man of large experience in the Patent Office would be able to decide. It should not be left to the hair-splitting distinctions made in the courts.

Mr. Carlisle: May I say that you are likely to have a number of questions that, as I have said, may be visionary, but I have given you my suggestion in case it may be of some benefit. You may study it, and if you find it would be of any practical benefit, I shall be pleased; if not, I shall not be disappointed. As to these legal and technical questions which you may ask, may I say that I can give you no really worthwhile or intelligent answers.

The Chairman: Thank you, Mr. Carlisle.

Mr. J. J. Ashworth (General Manager Canadian General Electric Company Limited): Mr. Chairman and gentlemen, I am not going to attempt to

deal with the technicalities, some of which have been brought up during the various remarks made so far, but rather to lay before you the viewpoint of the people who are in charge of large manufacturing concerns.

I presume my company, the Canadian General Electric Company, can be taken as a fair example of large reputable manufacturing organizations, and probably also of the smaller ones, all of whom have their ideals, and all of whom no doubt desire to carry on their business in a proper way.

We think that the present Act has been fairly satisfactory. Some points have come up between our own patent departments and our legal departments, which perhaps should be composed as between the Governmental Departmnt and the manufacturers or owners of patents. That is a short general statement of our view as to the present Act.

The Hon. Mr. Cahan referred to the Bill under discussion as being in some measure a further protection of the patentee. Which perhaps it is if you do not give him something with one hand and take that something away with the other.

Reference was made to the great number of patents which are taken out by so-called foreigners. They are foreigners inasmuch as they are not citizens of Canada. But in the majority of cases the patents which are the subjects of inventions by foreigners are taken out in Canada by the concerns through whose instrumentality these inventions have been secured. Many concerns operate important research laboratories in these countries, and they protect themselves in the several countries including Canada.

Though most of these patents are assigned to some manufacturing concern or to some individual in Canada who would be prepared to operate them, if the demand arose, every owner of a patent in Canada has naturally a desire to see his patent operated in order that he may get some revenue from it. So that while the names of the inventors are in many respects foreign, the actual patents are owned and controlled by Canadian persons who would be only too willing to see them operated if it were possible to create a demand. In other words, the demand for a certain article must precede the operation of the patent. There are patents bearing on many kinds of products. Under the present Bill it is proposed to automatically consider a patent void if it be not commercially worked within a period of three years from the issuance of the patent. That may be very fine in the case of a small device which has been invented and for the manufacture of which the necessary equipment is available and for which a public demand may be created in a few days or weeks. But all cases are not of that nature. I should like to cite an example, for I think perhaps it would go home better than a less concrete argument. There is illustrated in Hydraulics, a journal which I picked up, and which may be read by some of the gentlemen here who are interested in electrical power production, a new device which overcomes one of the greatest difficulties experienced in the transmission of electrical power. Heretofore electrical power has been transmitted at high voltages of alternating current of various periodicities. In some cases it is what they call non-synchronous; in some cases it may be generated at 25 cycles and employed at 60 cycles. Over a period of something like eight years a company in the United States has developed a machine, a static device, which enables you to take one class of voltage, and raise it to the desired voltage for transmission without moving machinery, and to step it down at the other end, still without moving machinery. That concern has been working since about 1925. The first patent was issued in 1925. They have set up many experimental installations and have at last succeeded in producing something which will do the trick up to several thousand horse-power, or kilowatts, and they are on the way to something that is really important.

Now, had these provisions of the Act been in force in the United States there would have been no effort made to take out patents, because they would

have known they could not possibly use this device within three years. You get into a situation such as the one which existed when the Act which preceded the one of 1923 was in force. At that time every patent had to be used within two years or it became invalid. The result was that we made no effort to take out patents and pay the expenses of so doing, because we knew they would be automatically invalidated. When the Act of 1923 came into effect we adopted a policy of taking out patents on any device that looked as thought it might be used at some later time. Now, if you remove the incentive to the inventor you remove the possibility of creating work in this country.

Hon. Mr. CAHAN: With regard to the illustration you gave for the setting up and stepping down of power. They began in 1925, but in successive years as the improvements developed they obtained new patents on the improvements.

Mr. ASHWORTH: They couldn't. They have taken out supplementary patents.

Hon. Mr. CAHAN: Year by year, as the development went on.

Mr. ASHWORTH: But the basic patent may have been in use for twelve years

Hon. Mr. CAHAN: Quite so.

Mr. ASHWORTH: I will give you another instance. We happen to be interested in power research. My company is connected with the General Electric Company of the United States, and we have available to us all the resources of their research bureau although we are purely a Canadian company. In the process of research, looking for inventions, they fell upon a chemical compound which is largely used at the present time, and which is the only real finish for motor cars. It is used on nine-tenths of the motor cars in use to-day. It is composed of certain acids known as phthalic anhydride and glycerine. That discovery lay dormant for many years until it was used for some other purpose; then it began to be used for paints and varnishes. Under the present Bill the patent on that would have lapsed. So it takes more than the mere patent. The patent specifications and the patent drawings are merely a nucleus around which you build something tangible, and that takes years of time and hundreds of thousands of dollars of money.

I may say it has always been our desire—and when I say this I think I am speaking for all the manufacturing concerns in Canada—to manufacture under the patent and employ labour rather than to hold it and set it aside for some other purpose. There is no object in doing that. There is no money in it. I think every company is desirous of satisfying the demands of the public, and there would be no reason for either refusing to manufacture under a patent or to give a licence to someone else. For that reason the licensing provision in the present Act seems to me to meet the demand.

With regard to the annual report which is proposed, it seems to me that it would be very onerous to require such a report on a very large number of patents. We, for instance, have some 2,200 patents. At the same time we are willing, as I think every other company would be willing, to give whatever information may be desired by the governmental department. Therefore, before any such drastic change as has been written into the present Bill is made I think it should receive the most earnest consideration not only of the parliamentary bodies, but of our legal friends and our manufacturing friends, who should be called in to the discussion. Until that time I think great care should be exercised in drawing the clauses of an Act which may affect us all most seriously.

Hon. Mr. CASGRAIN: May I ask just one question? Would that wonderful new device that you spoke of transform 25-cycle power into 60-cycle power?

Mr. ASHWORTH: Yes, 25-cycle current into 60-cycle current

Hon. Mr. CASGRAIN: Would it be very expensive?

Mr. ASHWORTH: It will change the 60-cycle current into direct current.

Hon. Mr. CASGRAIN: That will save the Ontario Hydro?

Right Hon. Mr. MEIGHEN: There will be no charge to the Hydro for it, will there, Mr. Ashworth?

Mr. ASHWORTH: A small charge.

Hon. Mr. CAHAN: Mr. Chairman, I would like to make a comment. At the hearing which was held before me as a Minister, I said that I thought the Canadian General Electric patents were administered with scrupulous care, and more nearly in the interests of the Canadian consuming public than is the case with a great many other companies. That is due to the General Electric Company's constitution and its relations to the great American company of the same name. I understand that in Canada the Canadian General Electric Company has a licence to use all the patents and improvements and, what is more important, all the expert knowledge that comes from the research department of the American company, and therefore it maintains a very stable equilibrium between manufacturers in the United States and in Canada. But no such situation exists with regard to 85 or 90 per cent of the patents which are in force in Canada, issued from the Canadian Patent Office. If the existing evils are to be remedied, it will be necessary to find some compromise which will protect the companies that are manufacturing in Canada, as distinguished from those which are not manufacturing in Canada and have no intention of doing so—and they are the vast majority of the foreign patentees. They use the Canadian patent in order to establish a monopoly here, and this allows the foreign producer to manufacture and bring in an article, no matter what the tariff is.

There is another fact. A patent is not rendered void by reason of non-manufacture for three years. That is not a fair expression There is a suspension for a time until manufacture is begun and where there is a demand. That three-year provision is in the English patent law, and it has been in the English patent law for many years. And in no case in England, except one, has a patent ever been extended beyond the sixteen years, so far as I can ascertain. That was in the case of a very important patent, concerned with the production of certain machinery for shipping. It was highly important to the Naval Department and to the large shipbuilding firms of England. The patent in question had been suspended for more than three years. owing to conditions arising out of the war. And a special Act, an unprecedented Act, was passed by the parliament of Great Britain, to provide for an extension of the term beyond sixteen years. But I confess that hydro-electric machinery has not been developed in Great Britain to the extent that it has in Canada and the United States. I remember a discussion I had during a meeting at the Economic Conference. One of the heads of a great engineering firm in Great Britain came to the conference, and when asked what he required in this market he stipulated that what was practically a monopoly should be given by tariff concessions to the manufacturers of hydro-electric machinery in Great Britain. He said he understood we were going to proceed with the development of hydro-electric energy of the Saint Lawrence, and there was prospective development in northern Ontario. I am only a novice, but I have had some experience with hydro-electric affairs, and I was able to assure him that if all the hydro-electric companies in England were put under one roof, with their experts in the attic, you would not have as well-equipped an enterprise as the Canadian Westinghouse Company or the Canadian General Electric. And I saw no reason why we should transfer to Great Britain, by tariff legislation, or tariff concessions, the construction of hydro-electric machinery which they were not then equipped to manufacture; and I pointed out that they did not

have available the scientific research and the expert administration which were necessary to the efficient production of this machinery I pay tribute to the Canadian Westinghouse Company and the Canadian General Electric Company. I had dealings with them thirty years and perhaps longer ago. You must not, however, take them as being typical with respect to production in Canada under Canadian patents. While those companies must be reasonably protected, their circumstances, which the gentleman has just stated, do not apply, I think, in the case of 75 or 80 per cent of the patents which have been granted under Canadian law.

Hon. Mr. CASGRAIN: In Newfoundland all the hydro-electric machinery came from England, and it worked very well. There is some at Corner Brook and at Grand Falls.

On another point, why should there not be a clause in the law that if manufacture is not proceeded with in two or three years, the patent is void?

Right Hon. Mr. MEIGHEN: That is the law.

Hon. Mr. CASGRAIN: I approve of that.

Hon. Mr. LAIRD: I should like to ask Mr. Cahan if he has any objections to make about the suggestion of Mr. Carlisle as to dividing the Patent Department into two sections, an operating section, and a judicial section.

Hon. Mr. CAHAN: I do not want to pass any reflections, but I do not think the Canadian Patent Office has been efficiently administered. I think that in the last thirty years many patents have been granted which never should have been granted. There has grown up in Canada an idea that the patent office is a revenue producing branch of a department of government. It should not be administered solely as a revenue producing branch. It should be thoroughly equipped and reorganized, but the difficulty is to procure officials who are thoroughly competent at the salaries which the parliament of Canada is willing to pay for such services. I remember that at one time I went with Sir John Thompson to interview Sir William Van Horne, with regard to getting his advice as to procuring a manager for the Intercolonial Railway, Sir William asked him, "what do you wish? What are his qualifications?" and Sir John stated them at great length and specifically. Then Sir William replied, "well, Sir John, if I can find that man, I am willing to pay him $50,000 to $75,000 and even then I will think I am getting him cheap."

But we have to have a thoroughly efficient organization of the Patent Office; there is no doubt about that. This Bill when enacted should be brought into force by proclamation, and this step should be taken only when we have succeeded in reorganizing that office.

Patent litigation is not very extensive in Canada. Appeals from the decision of the Commissioner are taken to the Exchequer Court, and from there to the Supreme Court of Canada. Its decision is practically final in patent litigation. Only one or two cases have gone to the Privy Council. But I think you should revise this Bill on the clear understanding that the Patent Office is to be reconstructed, reorganized and reformed. Having that understanding in view, I think you should proceed to consider what should be enacted to ensure that legitimate industry in this country may be protected and that all foreign combinations which seek to control the domestic market of Canada may be duly restricted and restrained.

Right Hon. Mr. GRAHAM: What do you think, Mr. Cahan, of the advisability of Mr. Carlisle's suggestion to establish a bench of judges, another court in the Department, from which there would be no appeal except under some very exceptional circumstance, in order that the patents granted might be practically final? I am rather enamoured of the proposal.

Hon. Mr. CAHAN: I think that would be going a very long way to bring about finality. I think the suggestion made by Senator Meighen at an early

stage of the discussion might well be considered and worked out, that those having secured a patent and working under it should not be liable for damages by way of compensation for past sales unless they had clear notice and knowledge that they were infringing upon a patent outstanding. I think you may find some compromise there which would be helpful and effective.

Hon. Mr. LYNCH-STAUNTON: It has been suggested, Mr. Cahan, that your Department should pass upon the validity of a patent, and that then it should be binding. That question, I am told, has been considered in England and in France, and in both countries it has been rejected.

Hon. Mr. CAHAN: It does not prevail in those countries. As to its actual rejection, I do not know.

Right Hon. Mr. MEIGHEN: Neither does the Torrens system in regard to land titles. I never have been able to see why the principle should not apply. I know it is a tremendous innovation, and we would not have time in one session to work out a plan properly; but I do not see why it should be more complex in relation to patents than to land. The Government had nothing to do with the question of land titles, it did not issue patents, except patents originally from itself. But in relation to patents of invention, as distinguished from land titles, it does virtually give an implied title.

Hon. Mr. LYNCH-STAUNTON: I do not believe in the bureaucratic administration of justice.

Right Hon. Mr. MEIGHEN: What bureaucratic administration of titles is there in our province? It is the greatest reform ever brought about in our civil law, and we are all wondering why we were so foolish as not to avail ourselves of it long before.

The CHAIRMAN: The Committee will now adjourn. We will assemble here after the Senate rises this afternoon, probably about half-past three.

The Committee adjourned accordingly.

AFTERNOON SITTING

The hearing was resumed at 3.30 p.m.

Mr. R. S. SMART, K.C., Ottawa, appeared before the Committee.

Mr. SMART: Mr. Chairman, I have considered this Bill rather carefully, and as some of the conclusions that I am about to express differ from those that have been expressed by the Hon. the Secretary of State, perhaps I should say first upon what they are based. I have practised for the last thirty years as a patent solicitor, for the last twenty as a member of the bar and counsel in connection with litigation on patents, and during that twenty-year period I have been, I think, in the majority of those cases in which patents have been litigated in the courts. Naturally I have acted both for the plaintiff and the defendant, so that I have been concerned with attacking patents as well as supporting them; and also I have acted for manufacturers, and for inventors who are not associated with manufacturing companies. In appearing before this Committee I am not representing, nor have I a brief from, any particular client. But naturally I have a considerable interest in seeing that what may be termed the patent system of Canada continues to have a favourable development. As long as I have been concerned with it the development has been favourable, I think; the amendments have been in the direction of securing greater definiteness in the conditions under which patents should be granted, and as regards what attack may be made on their validity.

I am afraid that this Bill will give the system a considerable setback, because it strikes, I think, fairly deeply at the foundations on which the development has taken place during these last years. It does it in two respects: One with regard to conditions to be imposed both as to manufacturing or working on a commercial scale; and the other, as to the limitation of time within which an application may be made. There are also a number of matters in the draftmanship of the Bill which I think would give rise to considerable uncertainty, but I am not proposing to touch on those at this time. I can offer any suggestions with respect to them as particular clauses are to be considered.

The purpose of all patent Acts, I think, is two-fold: First to encourage the individual inventor—that is, primarily in Canada—to produce something new which will be of benefit, and second, to ensure that what has been invented will be available in some form to the public within a reasonable time.

Right Hon. Mr. MEIGHEN: Why say " in some form "?

Mr. SMART: Well, I should have said in some commercial form; that is, that it should be on the market, so that the people of the country can get it. In other words, it is so that an industry should be established. I think that in the anxiety to reach the second objective, there is a tendency to kill the goose that lays the golden egg. All patents are not alike. The variety of the subject matter is almost as infinite as any other kind of speculation that can be made by the human mind. Some inventions can be put on the market on a large scale in a very short time. For instance, this cigarette lighter that I have in my hand, was sold to the number of 800,000 in the United States, the second year after it was invented; and the third year there was a large number sold in Canada, and a factory was established.

Hon. Mr. LAIRD: Is that the kind that lights?

Mr. SMART: Yes, it is the kind that lights—almost every time. Other inventions, such as those relating to railway signalling systems, for instance, can be adopted only after many years of work in persuading some railway that they should use them, in persuading authorities that they must be used.

Hon. Mr. DANDURAND: And there are only two possible purchasers.

Mr. SMART: Yes. Another invention such as something relating to a paper mill, can only be used after the engineers and others are persuaded that it should be. Some inventions require large manufacturing equipment, and the individual inventor, who is on the outside, must wait until he has persuaded someone that it is commercially feasible, before he can sell his invention.

In Canada we originally had a very rigid law which provided that a patent became void if the article was not manufactured in two years. That was modified in 1903, by providing that certain classes of inventions should be put under what is termed a compulsory licence clause. I think the decided cases with regard to both these classes show the difficulty of courts applying the requirements to all classes of inventions. In the end the law was amended in 1923. Meanwhile there had been a series of international conventions, and Canada joined the convention of 1928. Her obligations as regards other countries, therefore, are as defined in that convention. And I may say that in the revisions of that convention there has been a progressive change from more or less restrictive conditions as regards the working of patents. The condition which is presently in force in Canada, after dealing with the right to prevent the abuse of patent monopolies, says (in article 5):—

> These measures shall not provide for the revocation of the patent unless the grant of compulsory licences is insufficient to prevent such abuses.

In the more recent convention, which was made in London last June, there was a still further amendment proposed with respect to that, which would make it easier and not harder to comply with the patent laws. So I think that in other countries, and that includes the majority of the countries of the world,

the direction of change in the law regarding working has been in favour of making the conditions easier—not out of sympathy for the patentee, but more out of self-interest of the country granting the petition. For the second objective, that is of getting something into commercial operation, is dependent upon there being a monopoly for a given period, so that capital may be risked, the necessary plant built to place the invention on the market. All this takes a number of years. If that period is too short, and if the patent became automatically invalid, as it did a few years ago, encouragement is given to pirates who cast a keen eye on inventions which they can copy and put into use. Naturally there would be many of such patents. I do not think that the industrial development which would result from that kind of piracy is as suitable and far-reaching as that which is possible under the present patent law, which I think provides adequately against abuse.

This whole subject, I may say, was investigated by a very well-selected committee under the Board of Trade in England. The present working provisions of our patent Act correspond reasonably closely to those which are in force in England, although there have been some recent amendments as to the abuse of monopoly in England, which have not been incorporated here. That committee started to work in 1929 and its report was made in 1931. Dealing with the evidence which they took and summarized, and with the compulsory licence sections, which are in their Act as in ours, they said:—

> The evidence placed before us did not show any general demand for any alteration of the principles underlying the provisions of the section. On the contrary, the view expressed in the Report of the Committee of the British Science Guild, and confirmed by several witnesses, was that the existence of the section has had a strong moral effect, and that difficulty is rarely experienced in obtaining licences on reasonable terms without resorting to proceedings under the section.

That conclusion is one which I personally would apply to the present compulsory licence provisions under our law.

Right Hon. Mr. Meighen: That is, you would leave them just as they are?

Mr. Smart: I should. I think that the present section has been working very well. Not many compulsory licences have been granted.

Right Hon. Mr. Meighen: None at all. The section has not been working at all.

Mr. Smart: I have obtained the grant of four or five compulsory licences.

Right Hon. Mr. Meighen: I understood the official to say this morning that there had not been any. I am now told that there have been two or three out of say 50,000.

Mr. Smart: In dealing with figures on patents, I think one must always take into account that about 90 per cent of the inventions are good for no purpose at all, about 9 per cent have some purpose and about 1 per cent are real inventions. Only very few inventions get to the stage where someone wants a compulsory licence, and I think there are adequate provisions for them in our present law.

Right Hon. Mr. Meighen: We probably have 100,000 patents in Canada.

Mr. Smart: Possibly that many in force, yes.

Right Hon. Mr. Meighen: One per cent would be 1,000.

Hon. Mr. Griesbach: What do you call a compulsory licence?

Right Hon. Mr. Meighen: The Minister can force the giving of a licence.

Mr. Smart: Under the present provisions of the Patent Act, if an article is not manufactured to an adequate extent in Canada, anyone after three years may apply for a compulsory licence to the commissioner of patents.

Hon. Mr. Griesbach: What is compulsory about it?

Mr. SMART: The commissioner compels a licence to be granted on terms, such as perhaps a 5 per cent royalty, or something of that kind, which are fixed after a full hearing as to what would be reasonable in the case.

Hon. Mr. PARENT: Is that in the law, or is it a departmental ruling?

Mr. SMART: It is in the law, in sections 40 and 41 of the present Act. These sections are incorporated in the present Bill, but made more drastic, and particularly in that after three years no action may be maintained on a patent unless it is shown that it has been worked on a commercial scale. Of course everyone forms his own conclusions from his own experience. Generally speaking, I think in this subject, as in law, hard cases are apt to make bad law. And I think that the cases that have been brought to the attention of the Hon. the Secretary of State, probably by reason of his office, have been exceptionally hard cases. I myself have not had experience of any similar cases. I know of no instance in Canada where an industry is deprived of any useful invention by the failure of any person to grant a licence for it in Canada, so far as the clients that I have had to deal with. And I may say that I have dealt with a great many of the foreign applicants, because my office acts as agent for foreign attorneys, and we file many hundreds of applications each year. They have been only too eager to find someone in Canada who would be willing to manufacture the invention on the basis of a licence. So from my own experience I should say that the drastic revision now proposed is quite unnecessary and would not attain the ends which are sought.

I was going to say that in the report of the Board of Trade they referred to the British Science Guild. This Guild had also investigated the matter and made a report. A good deal of evidence was taken, and the conclusions are expressed shortly in section 23 of the report:—

> More than half the patents granted by Great Britain are granted to persons residing abroad, and it is important that foreign-owned patents should be used for promoting new manufactures in this country and not for restricting home manufactures in favour of imports. In past years the chemical industry in particular has suffered from obstruction of this kind. Section 27 provides for the grant of compulsory licences, and in extreme cases for the revocation of patents which are being obstructively used, and it has been suggested that the remedies available under this section should be still further strengthened; it is a fact that in some countries patents are frequently invalidated on the ground of non-working. We are informed, however, that section 27, as amended by the Act of 1919, after careful consideration by the Parker Committee, has a strong moral effect and that difficulty is rarely experienced in obtaining licences on reasonable terms, without resorting to proceedings before the Comptroller. In the absence of strong evidence that the present section fails in its object we think that change would be undesirable.

The last sentence is an expression of my own views on the subject, and I have not had brought to my attention any conditions which would warrant the change.

Right Hon. Mr. MEIGHEN: I will read you an extract from a letter received from one of the very largest Canadian concerns, but I will not give its name at present. This is the extract:—

> It has been quite annoying to us to be so frequently overcharged by the foreign owner of a Canadian patent for his invention, and then find that we have to import it from the United States or elsewhere and pay duty upon it as well, when it was always the intention that when a country gave a person a monopoly on an invention for eighteen years he should at least manufacture it in that country at a reasonable price.

That is written by the general solicitor for the firm.

Mr. SMART: That might be an isolated instance.

Right Hon. Mr. MEIGHEN: No, he says "so very frequently."

Mr. SMART: I mean his firm might be an isolated instance. Of course, I can have no opinion in the absence of knowledge of the facts, and I suggest that facts of that kind usually can be presented in two ways. When the question has come up before the Commissioner of Patents there is a good deal to be said on both sides, and actual facts are developed in a way in which they cannot be developed in a letter written ex parte to secure some particular object. I do not think any conclusion should be drawn from it.

Right Hon. Mr. MEIGHEN: You may feel they did not have to pay too much, but you cannot possibly say there is no complaint.

Mr. SMART: The writer has a complaint, but I think on the basis of the letter it is quite impossible to determine whether his complaint is justified or not. If the writer of the letter was before a committee or a court and could tell the particular circumstances, one could reach a conclusion as to whether the complaint was justified or not.

Right Hon. Mr. MEIGHEN: It would be no use to get him before the court with the law as it is.

Mr. SMART: The remedy at the present time would be to apply for a compulsory licence to manufacture, and under our present law the applicant would almost automatically get such compulsory licence at the end of three years if the facts were as stated that he was being supplied entirely by articles manufactured in the United States. That is what I am really suggesting, that this Bill has been drafted on the basis of complaints which have been sent to the Minister by letter, and that if those complaints had been investigated by any body capable of making a thorough investigation of the facts, quite a different conclusion might have been reached as to the proper remedy to be applied.

As regards the second point in the Bill which I mentioned, the time of application, it is not as important as the first part on which I was speaking. On the whole I think there is an advantage in allowing a period for application in Canada after patents have issued abroad. That is to say, as long as our law is in its present condition as to who shall have the right to obtain a patent.

In one respect Canada has the most drastic law that I know of in the world, in this sense, that the Canadian applicant for a patent must be the first inventor the world over in order to obtain his patent. Until the amendment of 1928 a Canadian patent could be defeated by mere knowledge which had been locked in the breast of someone in the foreign country. That was amended in 1928 by providing that the knowledge must be available to the public before it can be used to defeat a patent. But at the present time any applicant for a patent in Canada must be able to show that no one in the whole world made that invention available to the public before he made his invention. That means that it must not have been patented, it must not have been published, and it must not have been in public use in any one of a great number of countries.

The facilities for searching at the Canadian Patent Office are limited, and the search which is actually made is also limited to Canadian patents. In the United States alone there are probably fifteen times as many patents actually issued as in Canada. So that the field of search respecting validity of a Canadian patent is probably fifteen times as great in the United States as in Canada. Consequently there is a very much greater chance of issuing valid patents in Canada if there is opportunity for the United States examiner to have completed his search, so that what is applied for in Canada represents the patent as issued in the United States or England or in some other country, with appro-

priate language to distinguish it from whatever prior that has been found as a result of the searches there. So I think it would be unwise to provide three years. I think one year would be probably sufficient. It was so until 1923, that is, the applicant for a patent could come for it year after year. I think one year would be sufficient as long as there is opportunity for the search to be made.

There are also some minor points which may be important, but I think they will be dealt with on the drafting of the Bill, such, for instance, as working requirements to be carried out by the patentee and his legal representative. The term " legal representative " is not defined in such a way as to include the licensee. Obviously if a foreign patent owner has a licensee in Canada he should be entitled to regard him as his legal representative.

Hon. Mr. CAHAN: Yes.

Mr. SMART: The others are matters of detail which will be considered in the particular sections as they come up for consideration, and no doubt I shall be allowed to mention them at the time.

Hon. Mr. CÔTÉ: What did they do in England to strengthen the compulsory licence feature as a result of the report?

Mr. SMART: The Act was amended to make quite a few detail provisions, which I have here, but they are not of the drastic character which it is proposed to incorporate in this Bill. It was left so that there would be a hearing before the Commissioner, who would say whether a compulsory licence would be a satisfactory remedy, and deal with it accordingly. I should think provisions of that kind might very well be put in here.

Hon. Mr. PARENT: What was the decision arrived at on the very question that Senator Côté has put to you?

Mr. SMART: They amended their Act a few years ago, making it somewhat different and providing specific matters as to revocation of patents. It is a very long section. It begins in this way:—

Hon. Mr. PARENT: We are asking for the conclusion, not for the whole Act. What conclusion did they arrive at in England?

Hon. Mr. CÔTÉ: He answered that.

Mr. SMART: I will read the first clause:—

> Any person interested may at any time after the expiration of three years from the date of sealing a patent apply to the Comptroller alleging in the case of that patent that there has been abuse of the monopoly rights thereunder and asking for relief under this section.

Then follow a number of subsections defining what should be considered to be an abuse of the monopoly rights, and the Commission is given certain powers to deal with those. Those sections go further than our present Act, but they are nothing like as drastic as Bill A.

Hon. Mr. LAUNCH-STAUNTON: Wherein do they differ from the proposed Bill?

Mr. SMART: They do not take away the possibility of a compulsory licence. Section 53 of the present Bill takes away the patent.

Hon. Mr. CAHAN: I do not think the section takes it away, it rather suspends it until there is manufacture.

Mr. SMART: There might be some discussion as to the language, but it seems to me that as against an infringor who has commenced infringing, the patent is taken away unless the patentee has proved that it has been worked on a commercial scale before the infringement. I suggest that would work particular hardship on the individual inventor who is seeking to interest a manufacturer in his invention. It would be much more profitable for the manufacturer, instead

of entering into an agreement with the inventor, to wait three years and commence manufacture himself, in which event the inventor, not having been able to manufacture, would have no redress against the manufacturer in view of section 53 of the Patent Act. I repeat, that section is a particular hardship on the individual inventor. In fact it is an enactment in favour of large companies which can comply with the law by manufacturing in some way in their own plants. They have already an existing commercial establishment, so they can technically comply with the terms of the Act, but the individual inventor, who is often responsible for quite as much progress in development as the large corporations, would find it a very great hardship. I know of several inventors who would have obtained no reward for their inventions if this section had been in force. I shall ask one of them to come to-morrow and tell his story.

Hon. Mr. LYNCH-STAUNTON: It might be that a manufacturer would stand off for three years, and then take it up.

Mr. SMART: Yes. That is what I am suggesting. I think it would be quite a sufficient penalty in section 53 if he were deprived of damages for infringement of the patent until such time as he manufactures. To say that he shall have no right, and to encourage someone who has better facilities to stand by and then take advantage of the patent is not fair.

Hon. Mr. DANDURAND: There is no demand during those three years.

Right Hon. Mr. MEIGHEN: If there is no demand there will be no infringement.

Hon. Mr. DANDURAND: No, but he will be estopped. If, under section 53 there is an infringement, and the inventor sues, he is estopped from asserting his rights because he has not proved to the satisfaction of the court that at the time of the infringement the patent of invention was being worked on a commercial scale.

Right Hon. Mr. MEIGHEN: There is no use doing that unless you take away his right to an injunction. If he can get an injunction there will not be any further damages, and that is all this Bill provides. Unless he can show that he has manufactured within that period of time so that the public can get his invention, he cannot get an injunction. Now, you suggest that instead of saying he cannot get an injunction it should say he cannot get damages. That would mean he could get an injunction.

Mr. SMART: Yes.

Right Hon. Mr. MEIGHEN: So there would be no damages. As soon as he starts to get out his injunction he sits pat during the life of the patent.

Mr. SMART: All I am suggesting is that the penalty does not fit the crime. The penalty for failure to meet the conditions the patentee must fulfill are set forth in section 63, working conditions; and if no compulsory licence is granted against him I think he should be allowed to enforce his patent. If anyone else wants to use it he should not be allowed to act like a pirate, but should go to the Commissioner of Patents and make out a case for a licence, otherwise I think it should be in full force against him. I can see no reason for putting in a provision of that kind in section 53.

Right Hon. Mr. MEIGHEN: What you are suggesting is a strengthening of the compulsory licensing clause.

Mr. SMART: Yes.

Right Hon. Mr. MEIGHEN: Putting it in the form of the British Act?

Mr. SMART: Yes.

Hon. Mr. LYNCH-STAUNTON: Does not the section as drawn deprive him of his patent entirely if he does not work it?

Right Hon. Mr. MEIGHEN: Yes, but Mr. Cahan's answer to that is that if there is no demand there will be no infringement. Nobody will come in unless there is a demand.

Hon. Mr. LYNCH-STAUNTON: The demand may arise three days after.

Right Hon. Mr. MEIGHEN: All he has to do is to start as soon as it pays someone else to start.

Hon. Mr. LYNCH-STAUNTON: The three years go by. During the three years there is no demand, but the next day someone springs up, and you cannot get an injunction against him because the demand arises the next day.

Right Hon. Mr. GRAHAM: That person might be a large consumer of the article himself.

Hon. Mr. LYNCH-STAUNTON: It may be an extravagant example, but a demand might only arise at the end of three years, and the man might be able to show to the minister that there had been no demand during the three years. I suggested that the minister might give him a fiat under those conditions, to restrain someone else.

Hon. Mr. COTE: Let us take an invention for railway purposes. The inventor can only sell to the two railways. Under section 53 they can sit back for three years and take it for nothing.

Hon. Mr. DANDURAND: There is something that strikes me as extraordinary under clause 63, subsection 4:—

> The Attorney General of Canada or any person interested may present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, or that the patentee has failed to work on a commercial scale the patented invention in Canada, and praying that the patentee may be ordered to manufacture or to produce within Canada and to supply the patented invention at a reasonable price or to grant licences for the manufacture or production and use within Canada of the patented invention on reasonable terms.
>
> (5) If the parties do not come to an arrangement between themselves, the Commissioner shall proceed to hear and determine the matter, and if it is proved to his satisfaction
>
> (*a*) that the reasonable requirements of the public with respect to the patented invention have not been satisfied; or
>
> (*b*) that the patentee has failed to work on a commercial scale the patented invention in Canada;
>
> the Commissioner may order the patentee
>
> (i) to manufacture—

etc. Therefore, on inquiry, he is ordered to proceed, whereas under section 53 he is estopped absolutely, and cannot set up reasons why he did not proceed within the three years. Under section 63 an inquiry takes place, and if the Commissioner finds the patentee at fault he may order him to proceed. If not, I suppose the licence may issue. I am not reading the whole article. But under section 53 he is estopped from defending himself against infringement.

Hon. Mr. CAHAN: Will you allow me, senator?

Hon. Mr. DANDURAND: Yes.

Hon. Mr. CAHAN: He is estopped from taking proceedings against an alleged infringer until he takes reasonable measures himself to comply with the conditions of the Act. The moment he begins manufacture after the three years and a day his rights with respect to infringement revive.

Right Hon. Mr. MEIGHEN: The section could be worded to give effect to what you want, but that is not the effect of it now. It says:—

> Provided, however, that after the lapse of a period of three years from the date of a patent, neither the patentee nor his legal representatives shall be entitled to obtain any interlocutory order or injunction—

and so on Then it goes on:—

> Unless such patentee or legal representatives shall have proved to the satisfaction of the court that at the time of the infringement alleged in such action the patented invention was being worked

It is not easy for him to get to work within six weeks after the infringement, and to say "Now I am manufacturing, and want an injunction."

Hon. Mr. CAHAN: He cannot proceed with regard to that past infringement when he was not fulfilling his duty under the Act, but he can proceed three days, three months or three years afterwards if he then complies with the act.

Right Hon. Mr. MEIGHEN: Do you say he could get an order or injunction preventing a man manufacturing if he was able to show infringement six weeks afterwards? I do not think that is the result.

Is there anything else, Mr. Smart?

Mr. SMART: That is all of a general nature.

Right Hon. Mr. MEIGHEN: You object chiefly to section 53, and you object also to the annual reports, do you not?

Mr. SMART: I would say that the sections to which my remarks have been particularly addressed are 26, 52, 53, 55 and 63.

Right Hon. Mr. MEIGHEN: 52?

Mr. SMART: I think 52 is unnecessary in view of the working provision, and would cast a cloud on practically every Canadian patent if it were allowed to exist in its present form, because it says:—

> A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading, or if the patentee and his legal representatives fail to perform the conditions in this Act prescribed.

It is almost impossible to determine in advance of litigation, and one could not express an opinion, as to the validity of any patent. It might be that failure to file a return would void a patent.

Hon. Mr. CAHAN: You might change that word "void" to "voidable."

Mr. SMART: It seems to me it is a terrific penalty to invoke for such things as failure to file a return.

Right Hon. Mr. GRAHAM: What do you think of the filing of the return itself?

Mr. SMART: It would probably make a lot of work for me, and make a lot of expenses for manufacturers, and a great deal of useless information would be gathered together in the Patent Office. I suggest that the information should be subject to being furnished on demand on the payment of a small fee. Then the Commissioner would be able to demand it. But to require an annual return to be made with respect to say 50,000 or 60,000 patents, to be classified so that they would be available for anybody's use, I doubt—

Hon. Mr. LYNCH-STAUNTON: Does it not shut out everybody who doesn't start to manufacture for three years?

Mr. SMART: I am afraid of it. I do not know which way I would have to argue it.

Hon. Mr. PARENT: Suppose I, representing the ordinary, common people, file an application for a patent. Under section 52 of the present Bill it is provided:—

> A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made.

How can they contain more or less?

Mr. SMART: It might contain more or it might contain less; it cannot contain both. I have known of instances where patents contained more or less.

Hon. Mr. PARENT: If it contains less it is just the same as if it contains more.

Mr. SMART: In the same patent?

Right Hon. Mr. GRAHAM: It might contain more in one part and less in another.

Mr. SMART: That section of the Bill is directed towards preventing an inventor suppressing some knowledge that it is necessary for the public to have. He leaves that out of his specification, hoping to get the patent without telling the full story. He might also put in something with a view to misleading.

Hon. Mr. COTE: That is old law, Mr. Smart.

Mr. SMART: Oh, yes, that is old law.

Hon. Mr. PARENT: If so, it can be made younger.

Hon. Mr. COTE: With care.

Hon. Mr. LAIRD: I should like to ask Mr. Smart to explain, please, what a compulsory licence is. The members of this Committee are not inventors—except the legal members.

Mr. SMART: A compulsory licence is one granted under compulsion by the Department, represented by the Commissioner of Patents. The Commissioner of Patents hears both sides, and if he thinks a case has been made out, he orders a patentee to licence someone else to use his patent on the payment of a certain royalty.

Hon. Mr. DANDURAND: It is imposed upon him?

Mr. SMART: Yes. And that follows the English law. In the United States there are no requirements of any kind, either as to manufacturing or compulsory licences, notwithstanding that a committee of the Senate there took evidence for weeks and weeks. They took big volumes of evidence, and in the end concluded that their present law, which had no restrictions as to working or compulsory licences, had contributed to industrial development in such a way that they did not feel like tampering with it.

Hon. Mr. LYNCH-STAUNTON: They have no power to give a compulsory licence?

Mr. SMART: No, none whatever.

The CHAIRMAN: The next name on our list is Mr. T. W. Smith, of The Canadian Industries Limited.

Mr. T. W. SMITH: Mr. Chairman and gentlemen, I represent Canadian Industries Limited, a company engaged essentially in the chemical industry, and one which has important affiliations both in Great Britain and in the United States. We are, therefore, vitally interested in the developments which come from either or both of those countries, and I think I may say that our fundamental object is to exploit as soon as it is economically practicable the developments which originate with our affiliated companies.

The Bill contains a number of quite laudable and necessary improvements to the Act. It is divided essentially into two sections: what one might call the administrative section, and the technical. I suggest at once that the laudable objects which the Minister has in connection with the administrative part of the Bill will largely remove any of the imaginary objections which exist in the latter part of the present Act.

Right Hon. Mr. MEIGHEN: What about the real ones?

Mr. SMITH: I am sorry, sir, that I am not familiar with many real objections.

My object is to give you, if I may, a few specific illustrations of the manner in which we operate under the present Act, and indicate the disadvantages

under which we probably would find ourselves if we were called upon to work under the Bill. During the years 1932 and 1933, which are those for which the records are complete, because of the fact that one has twelve months under the international convention within which to file, 54 per cent of our filings were made in one year from the date of the original filing in the country of origin, 83 per cent in two years and 94 per cent in three years, leaving 6 per cent which were filed after a greater lapse of time than six years from the original filing.

Hon. Mr. GRIESBACH: When you say filing, do you mean the application or the grant of the patent?

Mr. SMITH: The filing of the application, sir. This has relation particularly to section 26 of the Bill. It should be borne in mind that in addition to the requirements for filing and the privileges of filing, there is quite an important provision as to working of a patent in Canada, and consequently if one takes the full limit of the filing allowances of the present Act, so far as publication is concerned, one may run foul of the public use requirements, because if the invention has been in public use in Canada for more than two years prior to the filing, it is impossible to obtain a valid patent. For that reason we do not postpone to the limits otherwise allowable the filing of our cases, because of the risks involved there. However, in the chemical industry, and particularly in Canada, where the industrial development of a relatively sparsely populated country must necessarily be behind that of the larger industrialized countries, such as Great Britain and the United States, it would be disadvantageous, both to ourselves and to the country, if we should file always within the international convention year. We therefore in cases postpone this filing. We do that for these reasons: it permits us to benefit by examination of applications, which is given in the country of origin and which is admittedly more thorough than it is possible to give in Canada; and it also permits us to consider, at least in a preliminary manner, the possible value of that invention or development to this country.

Right Hon. Mr. MEIGHEN: Excuse me, Mr. Smith, but do I understand that under the international convention you have only twelve months within which to file, after the filing in the original country?

Mr. SMITH: Yes sir.

Right Hon. Mr. MEIGHEN: Have we adopted that convention?

Hon. Mr. CAHAN: Yes.

Right Hon. Mr. MEIGHEN: Is not that just as rigid as the Bill?

Hon. Mr. COTE: Is that not merely for the conservation of your priority? You do not lose your rights if you file later than that; you can still get a patent.

Hon. Mr. CAHAN: Mr. Smith is stating very accurately that the international convention, to which we are a party, makes one year imperative with respect to foreign patents. Under our Act as drawn the intention was said to be to carry that into effect, but the interpretation given to it by one of the judges of the Exchequer Court was to allow for an extra year, was it not?

Mr. SMITH: No sir, I am sorry I do not quite agree with that.

Hon. Mr. PARENT: Who are the parties to the international convention?

Hon. Mr. CAHAN: Great Britain, the United States, France, Germany—

Mr. SMITH: There are thirty or forty nations.

Hon. Mr. PARENT: It has nothing to do with the Geneva treaty at all?

Mr. SMITH: No sir. Under the international convention, if one files in Canada within a year of the original filing in the country of origin, the patent has the same effect as if it was filed in Canada on the same date that it was filed in its country of origin. That therefore gives you that priority of invention.

Hon. Mr. LYNCH-STAUNTON: What did you say about three years?

Mr. SMITH: The time within which we file. We at times waive that priority right because of the development nature of the invention.

Right Hon. Mr. MEIGHEN: That is to say, you file in the second or third year, and you can get your patent, but your rights do not date back to the date of the original application?

Mr. SMITH: No.

Right Hon. Mr. MEIGHEN: That is all you lose?

Mr. SMITH: Yes.

Hon. Mr. DANDURAND: You take that risk?

Mr. SMITH: Yes.

Hon. Mr. LYNCH-STAUNTON: You sometimes file in the third year?

Mr. SMITH: Yes.

Hon. Mr. LYNCH-STAUNTON: Suppose I invented something—and I believe it has occurred that two men have invented the same thing—if I invent something in the interim and apply here, may I cut you out?

Mr. SMITH: Well, one would have to discover which was the first invention.

Hon. Mr. LYNCH-STAUNTON: No, not if I understand your answer to Senator Meighen. You have lost the two years. If I apply in the second year and I satisfy the department that I have an original invention, notwithstanding that you also have an original invention, do I get ahead of you?

Mr. SMITH: Not necessarily, sir.

Hon. Mr. LYNCH-STAUNTON: But do I not, possibly?

Mr. SMITH: No sir.

Hon. Mr. LYNCH-STAUNTON: Alright, do not bother any more with it.

Mr. SMITH: The point I was trying to make was that in spite of that, not more than one per cent of our cases mature into patents more than two years after the issue of the patent in the country of origin. In other words, the benefits derived, in my opinion, are not such as to be of material handicap to the life of the patent to which reference is made, the extended life of the patent.

Reference is made in the notes to this section of the Bill that it has been adopted from the United States practice. I think, however, it is important that it should be understood that while one must file in the United States within twelve months of the original filing—there are certain provisos of exceptions—there are no working conditions at all in the United States. The life of the patent is 17 years, and when the patent is issued the owner of it can do as he likes with it. He may, if he likes, not work it at all, in any way. The result is that the foreign applicant, filing in the United States, is faced with one consideration only, namely, would it be advisable to endeavour to obtain a United States patent? Having decided that it is, he is faced simply with the necessity of spending the amount of money involved in endeavouring to get a patent, and when he has got it he can do what he likes with it. The inevitable result, it seems to me, of the provisions of this section of the Bill must be the making of one of two devisions: one, not to file, not to make application with respect to any invention, the use of which in Canada cannot be immediately foreseen; and the other would be to file at once every application that was received in connection with any development and to issue that in due course, if proved to be patentable. And both of those alternatives, it seems to me, are open to serious objection. In the first case, undoubtedly there would be situations arising, possibly within a comparatively few years, in which had patent protection existed in Canada it would have been possible to exploit that development to the benefit not only of the company but of the country. Since there was no patent protection, there would be nothing to prevent the continued importation of the results of the invention and the exploitation of that particular develop-

ment would very likely be almost indefinitely postponed. The other alternative would result in a flood of patents issuing in Canada, which could never be exploited upon a commercial scale, and which, I believe, is one of the things this Bill is designed to prevent.

Under section 47 it is proposed to calculate the life of a patent from the date of filing.

Right Hon. Mr. GRAHAM: Is that the date of application?

Mr. SMITH: Yes, the filing of the application. The reasons for this are undoubtedly the expediting the issue of the Canadian patent. I think it can be safely said that in the vast majority of cases where an application is held in the Patent Office for a considerable length of time it is almost without exception with the object of securing as far as it is practicable a valid patent, and not with the object of ultimately extending the life of the patent, which under our present practice dates from the date of issue.

I submit further that even where the Canadian patent may have a life of two or three years longer than the corresponding British or United States patent, it may not be and rarely would be unjust because of the slower development of industry in Canada. It is a recognized fact that in early life of a patent it is usually of not very great value, and the development of industries in this country in comparison with similar development in the United States or Great Britain can, I think, be safely said to be two or three years behind, while in a good many instances it is very much more.

Therefore that does not seem to me such an injustice as it might at first sight appear. And in any case the importance to the patentee is not the extension of the life of the patent, but his attempts to secure as valid a patent as possible.

Hon. Mr. CAHAN: That is the reason, Mr. Smith, that we extended the term to eighteen years in Canada, two years beyond the British term. Your present argument was the argument presented at that time, that owing to the slower development in this country a longer term should be granted.

Hon. Mr. DANDURAND: Because we were lagging behind.

Hon. Mr. CAHAN: Yes. My contention is that by dilatory methods they secured not only eighteen, but twenty-one years.

Hon. Mr. LYNCH-STAUNTON: Make it sixteen years.

Hon. Mr. CAHAN: Any fair compromise.

Mr. SMITH: Section 39 is a rather radical change for the chemical industry. It seems to me it will place the industry at a disadvantage compared with some of the others. Subsection 5 is particularly objectionable. Most of the chemical patents issued since 1923 will be automatically rendered invalid.

The chief features of the Bill, however, from the point of manufacture and exploitation in Canada are those to which reference has already been made, sections 53 and 63.

Hon. Mr. CAHAN: Supposing that the time mentioned in subsection 5 of section 39, namely, "This section shall apply only to patents granted after the thirteenth day of June, one thousand nine hundred and twenty-three," were extended to the present year, would you still regard section 39 as objectionable owing to the substitution of the word "or" for the word "and"?

Mr. SMITH: I would, sir.

Hon. Mr. CAHAN: I dislike to interrupt, but may I put this question to you. In the case of a chemical or similar process—I am not dealing now with mechanical engineering at all—which has for its object the production of an article or commodity with certain qualities, if you obtain a patent for a certain scientific process, that patent would be valid as a patent for the article invented. But should you by obtaining a patent for a particular process obtain a monopoly in the production of that commodity, if other distinct and different processes are

invented whereby the same useful end could be attained? The object of changing " and " for " or ", as I understand is this. If you obtain a patent for a process for the production of an article, say, salverine, which has certain qualities and effects, you virtually secure a monopoly. Now, if I can by a different process manufacture a commodity which answers the same end because it has the same qualities and effects, should you have a monopoly of the production and be able to preclude the use of that other process?

Mr. SMITH: That is a question, sir, which has been answered to the extent that if the product of that process is new and is the original result of that process, there seems to be a right to the original inventor to have a monopoly of it for the period of his patent.

Hon. Mr. CAHAN: Supposing, for instance, that a certain process is patented to produce a substance such as aspirin, and aspirin has certain qualities and effects. Now, if another inventor, with perhaps a more astute mind, can by a process different and distinct from yours produce a similar substance, should you have a monopoly of the substance so as to preclude any other firm manufacturing that substance? Your process may have originated at a time when there was less scientific knowledge available to attain the end in view. I am putting the question not by way of quizzing you, but to satisfy my own mind.

Mr. SMITH: The Act as it stands does not relate to food stuffs and medicinal products; but it is now enlarged to include all types of chemical compounds.

Hon. Mr. CAHAN: Excluding those intended for food and medicine.

Mr. SMITH: The changing of the wording is the point in issue, sir.

Hon. Mr. CAHAN: Quite so.

Mr. SMITH: The process may be the result of very considerable research on the part of some individual. Now, it is particularly onerous, it seems to me, to the individual inventor, because the moment he has obtained an invention other larger organizations will simply put twenty or thirty research men on to produce that same material by all sorts and varieties of different processes, which under the Bill would not constitute infringement.

Right Hon. Mr. MEIGHEN: You say that hitherto if a man invents a process by which he gets a certain result in the form of a chemical compound or a food, he not only has a patent on the process, but also a patent on the result?

Mr. SMITH: Not on food products or medicinal products.

Right Hon. Mr. MEIGHEN: Just chemical products?

Mr. SMITH: Yes.

Right Hon. Mr. MEIGHEN: Leave out food and medicinal products for the moment. He has a patent on the process and also on the result, provided the product is a chemical compound, for the purpose of further manufacture?

Mr. SMITH: Yes, sir.

Right Hon. Mr. MEIGHEN: And he can prevent anybody else from producing that compound or a compound that will do the same thing by another process?

Mr. SMITH: Not a compound that will do the same thing, sir; the identical compound.

Right Hon. Mr. MEIGHEN: Nobody else can produce that identical compound by any other process at all?

Mr. SMITH: Right.

Right Hon. Mr. MEIGHEN: That is the present law?

Mr. SMITH: Yes.

Right Hon. Mr. MEIGHEN: And it will not be if this Bill passes?

Mr. SMITH: Quite so.

Right Hon. Mr. MEIGHEN: The same rule will apply whether it is a food product or a medicinal product?

Mr. SMITH: It will still apply. It does apply now to food and medicinal products.

Right Hon. Mr. MEIGHEN: Let me put it again. You said if it was a patent for manufacturing a chemical compound nobody else could get that identical product by a different process; the original patentee has a patent on the product too. Is it a fact if that product is in another category, a food product or a medicinal product, such as aspirin, the original patentee has a patent on the product as well as on the process?

Mr. SMITH: No, sir.

Right Hon. Mr. MEIGHEN: But if this amendment goes through he will have?

Mr. SMITH: No, sir.

Right Hon. Mr. MEIGHEN: But he will have if it is a chemical product?

Mr. SMITH: He will have no protection on any chemical product.

Right Hon. Mr. MEIGHEN: But hitherto he has had in respect of a chemical product?

Mr. SMITH: Yes, sir.

Hon. Mr. CAHAN: I do not want to bother you, but I should like to get my own mind clear on this point. Supposing that by certain chemical reactions you have a process which produces a certain chemical product, and supposing that I discover or invent a new process under which by electrical reactions I can produce the same thing cheaper and in larger quantities, so that it is really of great benefit to the public as a whole that it should be so produced, under your contention, you having a process by purely chemical reactions, you hold a monopoply of the product, and I cannot produce the same product by entirely different processes; is that so?

Mr. SMITH: Yes, sir.

Hon. Mr. CAHAN: The question is whether that should continue.

Right Hon. Mr. MEIGHEN: A chemical product, not a medicinal or a food product?

Mr. SMITH: Yes, sir.

Right Hon. Mr. MEIGHEN: You admit, though, that that would prevent the development by a cheaper process of an equally good compound.

Mr. SMITH: Well, sir—

Hon. Mr. PARENT: Take stainless steel, of which possibly you know something, if through a new process somebody else can make stainless steel cheaper than it is made to-day, would he be prevented from so doing under the present law?

Mr. SMITH: I suppose so, if it comes under the category of a chemical compound. It might.

Hon. Mr. PARENT: I am asking you the question. Give me a fair answer.

Mr. SMITH: I am afraid I could not definitely answer that question.

Right Hon. Mr. MEIGHEN: I suppose that in paper manufacture, and so on, certain chemicals are essential.

Mr. SMITH: Yes, sir.

Right Hon. Mr. MEIGHEN: We will say your company has the process for making them, then you not only enjoy that process, but you enjoy also the manufacture of the product, so that others cannot produce it by another process?

Mr. SMITH: Of course, the vast majority, sir, of chemical products are old.

Right Hon. Mr. MEIGHEN: Yes, I know.

Mr. SMITH: In respect of the patented article it is essentially a new development.

Right Hon. Mr. MEIGHEN: But they have always enjoyed a monopoly of the product as long as that product was not a medicine or a food?

Mr. SMITH: Yes.

I have a few remarks which may impinge upon that, in connection with the working conditions of the Bill.

Right Hon. Mr. GRAHAM: Before you go on with that, may I ask a question? You say there are no working conditions under the United States law.

Mr. SMITH: Yes.

Right Hon. Mr. GRAHAM: What calamity would occur in Canada if we adopted that law?

Mr. SMITH: I cannot say, sir. I can only say that it is universally recognized that the development of industry in the United States, under the liberal patent laws they have, has been many times greater, probably, than that of any other country in the world.

Hon. Mr. GRIESBACH: The laws are liberal, but you cannot say that the industrial development is due to those laws.

Mr. SMITH: Many authorities claim that.

Hon. Mr. GRIESBACH: It is due to their population, their natural resources, their tariff—a lot of things.

Right Hon. Mr. MEIGHEN: The patent laws have been a very great factor.

Hon. Mr. GRIESBACH: They may have been, but to say that the progress of the country has been due to them is a rather broad statement.

Mr. SMITH: I think it should be borne in mind that the object of the patentee is to recover some monetary consideration from it.

Hon. Mr. GRIESBRACH: In the United States he has a community that does not exist to the same extent anywhere else in the world.

Hon. Mr. DANDURAND: I suppose the argument is that the less the restraint the greater the activity or action.

Mr. SMITH: I think it can be truly said in that connection that the fact that in the United States there are no working conditions has not handicapped the exploitation of patents. It is generally considered to have had the reverse effect.

The main considerations from our point of view are, I think, that there is perhaps some little misconception with regard to this section of the Bill. The argument is that this section of the Bill is designed to force the manufacturer in Canada, but in my opinion the Bill is drafted to enable importation into the country, which is a rather different thing.

Right Hon. Mr. MEIGHEN: Quite.

Mr. SMITH: Therefore, if there is to be a discussion as to the ability of one person or another to import goods into Canada under certain conditions, personally I do not think that it is a matter which rightfully falls under the basic consideration of the Patent Act. The conditions are supposed to aid manufacturing in Canada. In this connection I should very much like to say that our company, during the last five years, which embraced the period of depression, has spent something over $2,500,000 on establishing in Canada industries supported by patent protection. The result has been to give employment to somewhere in the neighbourhood of 250 persons who were not otherwise employed by Canadian industry, and that does not take into account at all anyone engaged on construction.

There is another feature, as I interpret the Bill. The inventor or the owner of the patent will be forced to operate every alternative process and produce every alternative product on which he has patent protection. Naturally that is very serious in any chemical industry, because in every chemical development there are alternatives.

Right Hon. Mr. MEIGHEN: And he has to patent for the alternative as well.

Mr. SMITH: His object is to protect his position in regard to the product he is exploiting. In fact, a patent does not grow over night; it is not something that is discovered in a completely finished condition. And here I might say that patents can be roughly classified into two groups: those that are immediately available for exploitation, and those which relate to developments which may be of value only in the somewhat distant future. The Bill, it seems to me, is not applicable in any way to patents of the second class, and those are the patents which are of prime importance to the industry of the country. If one has a process operating and producing certain lines of material, it is very easy to develop. In fact, it is the general set-up of any large organization to have two groups of men employed, one on the improvement of the present product and operation, and the other on the development of new products or processes. Those in the first class are immediately available to the industry.

If you read the Bill carefully I think you will conclude that that is the only class of invention to which it is in the whole applicable. Therefore, if one is to be forced to work on a commercial scale every alternative product and process, in the first place it would frequently be impossible; and in the second place, if it is possible, the patentee can do only two things—he can either work them, which, of course, will enormously increase his cost of production and raise his selling price, or take his preferred product and sell it at a price which he considers sufficient to give him some return on his investment before his competitor can get into the field with one of his own alternative products.

Hon. Mr. CAHAN: Mr. Smith, would you allow me? You have a patent on a certain chemical process that produces a certain result which we will call a product. Naturally, you would make extensive investments in everything necessary to carry that process into full and complete effect. But if you preclude the inventor of another process from producing the same product by that other distinct process, do you not compel him to sell his invention to you, because in the circumstances you are the only person who can produce it and utilize it? Therefore complaint is made by those who invent new processes that under prevailing conditions there is only one market for their processes, namely the manufacturers or producers who have a patent on an entirely different process for producing a product of the same utility. They say you get control of one process and then secure a complete monopoly of all processes that produce the same result.

Mr. SMITH: That, sir, is not the point to which I was referring. It was this: that in the building up and development of this preferred product, which represents perhaps years of chemical research, numerous matters of a patentable nature have been discovered.

Hon. Mr. CAHAN: Quite so.

Mr. SMITH: And they have been patented and the patents are held by the patentee. He finally arrives at a position where he believes he has a product suitable to the market, and one which he can exploit. He has a preferred product, something which he considers will do what he wants it to do, so he naturally concentrates on the exploitation of that product; but he may have quite a number of other patents on either side of that product. Now, under the Bill

if he does not make or operate or work all of those patents his competitor can assume any one of them, and while he may not have a 100 per cent perfect product he has a product which he can market.

Hon. Mr. DANDURAND: After the three years.

Mr. SMITH: Yes, sir, after the three years.

Hon. Mr. CAHAN: I thought you were discussing 39. You are dealing with working conditions?

Mr. SMITH: Yes, sir. Therefore those conditions as outlined in the Bill, had they prevailed during that period, would certainly have very seriously militated against the decision which the company took in connection with particular products.

Probably, in view of what has already been said, I need not go at great length into the other features of section 63, I think it is, but I should like to point out that its provisions would be particularly onerous as one of the branches of our industry is the paint and varnish industry, and from the investigation that I have been able to make in the time at my disposal, I estimate that 60 per cent in value of the products are not obtainable in Canada.

A number of those, such as gums and resins, oils such as chinawood oil, which are not produced and never can be produced in Canada, must always be imported. And the inventor, therefore, through no fault of his own, will very frequently find himself with his patent invalidated because of the fact that he is unable to obtain Canadian material.

Hon. Mr. DANDURAND: To 50 per cent?

Mr. SMITH: Yes.

Hon. Mr. CAHAN: I think that clause certainly should be modified in respect of products of that kind. It is a fair provision with regard to importation of component parts of machinery and that kind of thing, but I think your argument is one that should be carefully considered by the committee.

Mr. SMITH: I would like to say that Canadian Industries are in perfect agreement with the generally expressed statement that patents should be rendered available to the public, and to that end should be manufactured or exploited in Canada as soon as it is practically and economically possible. They do not, however, agree that any arbitrary period can be set after which the rights of an inventor or a patentee should be taken away from him. It has been quite sufficiently emphasized, I think, how impossible it is to generalize, and Canadian Industries feel that if the provisions of section 40 in the present Act are not considered adequate, that section 27 of the British Act should be adopted.

Hon. Mr. GRIESBACH: What is section 27 of the British Act about?

Mr. SMITH: Compulsory licences.

Right Hon. Mr. MEIGHEN: I suppose, Mr. Smith, that it might be said of your company, as of the Canadian General Electric and the Canadian Westinghouse, that the Patent Act will not be directed towards you, to a very great extent, for the reason that you are affiliated with companies in England and the United States, and by your very organiaztion you are keenly interested in Canadian manufacturing. The Patent Act and its amendments are directed not to take care of situations like that, but of situations where there is no Canadian manufacturing at all, where there is no one here affiliated with the people who own the patent, and where the article is imported, or the parts are imported and assembled in this country.

Mr. SMITH: But unfortunately, sir, the Bill which is directed against the bootlegger is hitting the legitimate companies.

Right Hon. Mr. MEIGHEN: We do not want that to happen, Mr. Smith. We know what your company has done.

Mr. SMITH: The remarks I have made are in line with those expressed in the pamphlet issued by the Canadian Institute of Patent Solicitors, copies of which pamphlet I believe have been distributed among the members of the committee. I have here a memorandum, which I would like to file, with your permission.

Hon. Mr. COTE: If we pass section 39 as it is, and you discover a new chemical process and manufacture a new product, you would not be protected on the product itself, but you would be protected upon the process?

Mr. SMITH: Yes.

Hon. Mr. CÔTÉ: Not being protected on the product, what is there to prevent anybody from importing that product from other lands, where it may be made by the same process?

Mr. SMITH: There is nothing, as far as I know.

Hon. Mr. CÔTÉ: So since there is no protection of the product, your protection on the process is not worth much?

Mr. SMITH: No, sir.

Right Hon. Mr. MEIGHEN: That encourages importation.

Hon. Mr. CAHAN: Mr. Chairman, in view of Mr. Smith's statement I would like to put on the record section 38-A of the Patents and Designs Act, 1907, of Great Britain. In that section the word "or" is used in exactly the same connection as it is used in section 39, subsection 1, of the Bill.

Mr. SMITH: Yes.

Hon. Mr. CAHAN: In our present Act the section was copied from the British Act, but apparently by inadvertence, or careful, tactful foresight the word "and" was substituted for " or." Section 38-A of the British Act reads:—

> In the case of inventions relating to substances prepared or produced by chemical processes or intended for food or medicine," etc.

I wish to emphasize that the word " or," which we are now introducing into section 39, is the word used in exactly the same connection in the British Act.

Mr. SMITH: I am not sufficiently familiar with the history of the Canadian Act to know why the word "and" was used there. I do know, however, that by amendments made in 1932 to the British Act, while they have not gone as far as we go in our present Act, there is some provision by which the product can be claimed, as distinct from the process, when it has been made by the process. That was done, I understand, because of abuses which occurred under the Act as it stood prior to 1932.

Hon. Mr. CAHAN: There has been no amendment to the British Act since the 12th of July, 1932. This copy which I have is the consolidated British Act up to the 12th of July, 1932, and includes all the amendments that have been made to the present date. And the word "or" still appears in that section.

Mr. SMITH: I am sorry that I have not the reference here. But is there not something in that Act which states that the product can be claimed, as disinct from the process, when the product has been made by the process?

Hon. Mr. CAHAN: I will be very glad to look into that. It would be very helpful if you would let us have the reference later when you find it.

Hon. Mr. GRIESBACH: Senator Meighen said there would be no infringement of the patent unless there was a demand for the product. Would that always be a true statement? Can you conceive of an infringement of a patent when there was no demand?

Mr. SMITH: I am afraid I do not understand your statement, sir.

Hon. Mr. GRIESBACH: We were discussing an action for infringement of a patent, and I understood Senator Meighen to say that there could be no infringement of a patent unless there was a demand for the product.

Mr. SMITH: If there was no demand for the product, it would not be imported, and therefore there would be no infringement.

Hon. Mr. GRIESBACH: You are sure of that? There are no circumstances under which there would be any infringement if there was no demand?

Mr. SMITH: If the patent referred to a product which was not being supplied, or to a process which was not being worked, there would be no infringement.

Hon. Mr. DANDURAND: Section 53 apparently is an estoppel to the obtaining of redress against one who infringes after three years, if it cannot be established that the patented invention was being worked on a commercial scale within Canada.

Mr. SMITH: I am unable to interpret section 53 in any other light than that it is to enable the public to purchase the invention in the cheapest market.

Right Hon. Mr. MEIGHEN: I think the objection raised by Senator Côté is very formidable. With respect to a patented article that could be sold only to the two railways, the railways could sit by and wait until the three years had gone by.

Right Hon. Mr. GRAHAM: Any railway would take five years before testing any invention to begin with.

Mr. SMITH: A private inventor would be at a decided disadvantage.

Hon. Mr. DANDURAND: He could not manufacture if he had no clients.

Hon. Mr. CAHAN: I think, Mr. Smith, that the provision in the British Act to which you referred is to be found in subsection 2 of section 38-A, which reads:—

> In an action for infringgment of a patent where the invention relates to the production of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

Mr. SMITH: Yes.

Hon. Mr. CAHAN: There is prima facie evidence that the product was produced by the patented process, unless direct evidence is given to the contrary.

Right Hon. Mr. MEIGHEN: If such direct evidence is given in England, the company would not have a patent on the product?

Mr. SMITH: No.

Right Hon. Mr. MEIGHEN: And you think they should have?

Mr. SMITH: Yes.

Right Hon. Mr. MEIGHEN: And you think it would be injurious to national interests, by restricting manufacturing in Canada, if we do not provide that the company should have?

Mr. SMITH: Yes.

The CHAIRMAN: I understand that Mr. G. E. Maybee desires to be heard now, because he would like to leave Ottawa this evening. He is counsel for the Canadian Institute of Patent Solcitors and for General Steel Wares.

Mr. G. E. MAYBEE: Mr. Chairman and gentlemen, in the first place I would like to point out that I have no brief from the company referred by the Chairman, although they have been in communication with me and have expressed themselves as being in sympathy with certain representations which have already been made to Mr. Cahan and to this committee. I propose to speak rather as the representative of the Toronto group of the Canadian Institute of Patent Solicitors, and as a patent solicitor myself. In the first place I would like to express the appreciation of the Institute of Patent Solicitors, and I think of everyone concerned, with respect to the interest which Mr. Cahan has shown in the patent Act. Unfortunately we are not able to agree with a number of the proposals he has made in this Bill. Most of the important objections have already been covered, and I intend to speak only briefly.

Mr. Cahan has pointed that there are certain abuses which he proposes to overcome by the Bill. But it seems to me that however laudable the intention may be, these abuses will not be cured in the manner proposed. I desire to take the case mentioned by Mr. Cahan of the English inventor who sells his American rights to a United States concern, lumping the Canadian patent rights with them.

This is possibly what would happen if this Bill becomes law. The British inventor would still sell the entire rights to the United States manufacturer, and he would manufacture in the United States and ship into Canada. We are assuming that there is a Canadian patent. Under the provisions of section 53 a Canadian manufacturer would be able to start manufacture in Canada without being sued for infringement. However, if the article was one capable of being made in this country, the United States manufacturer would immediately arrange for manufacture in this country, possibly only long enough to stop the other man from infringing. That is one possibility. The other possibility is that the British inventor would think that the Canadian working provisions were too stringent and he would not take out a patent in Canada. However, he would grant the United States rights to the United States manufacturer and agree that he would have the Canadian market, that is to say, the British inventor would not come into the Canadian market. Those are just two possibilities of what might happen in such a case.

Hon. Mr. CAHAN: Is there not a third? Is it not shown in the case of Canadian Westinghouse, Canadian General Electric, Canadian Industries, and other cases, the United States manufacturer makes arrangements with its affiliated companies to manufacture in Canada?

Mr. MAYBEE: Yes. Of course, sir, that is what we get under our present Act, and what we might get to a greater extent if, as suggested, the working provisions in the Canadian Act be amended along the lines of the British Act, which are more equitable and a great deal more easily understood.

Hon. Mr. CAHAN: That is a matter of opinion, of course.

Mr. MAYBEE: Yes. I am just taking the possibility which, I think, shows Mr. Cahan's objective would not necessarily be reached by the provisions he proposed to insert in our Act.

Right Hon. Mr. MEIGHEN: But supposing that second alternative were adopted, which would be a very disastrous one for us. The British patentee sells his patent rights in America to a United States company, and his rights to obtain a patent in Canada to the same company. That company, not wishing to manufacture in Canada, takes from the British patentee the Canadian market, he agreeing not to supply that market from England. So the American company has that market and can ship in here and not take out any patent here at all. Could not someone else then take out a patent in Canada?

Mr. MAYBEE: No.

Right Hon. Mr. MEIGHEN: Under no circumstances at all?

Mr. MAYBEE: No.

Right Hon. Mr. MEIGHEN: He could manufacture without taking out a patent?

Mr. MAYBEE: There would be that possibility, but the difficulty there is that he would have to start a new industry in Canada in face of the opposition of the imported goods; that is to say, he would have no way of building up his industry under protection.

Right Hon. Mr. MEIGHEN: He would have the protection of the tariff if he had his patent.

Mr. MAYBEE: You are suggesting he would have no patent.

Right Hon. Mr. MEIGHEN: That is so.

Mr. MAYBEE: He might have a tariff which might or might not be sufficient. But tariff provisions, as suggested before, could cover a good many of those cases, and they should not be brought into the Patent Act.

Right Hon. Mr. GRAHAM: That might necessitate raising the tariff for a number of industries that do not need it.

Mr. MAYBEE: That is possible. But perhaps we could assume that all Canadian industries need a tariff.

Right Hon. Mr. GRAHAM: The manufacturers do believe that. But when you start to raise the tariff every person wants to raise it sufficiently to keep out the other man's goods. There would be an epidemic of tariff raising which might not be required.

Mr. MAYBEE: I do not know that the tariff would cover every case. That is why it has been suggested by a number of speakers to-day that perhaps mere tightening up in the compulsory licensing provisions is advisable; but I do not think that this provision under section 53 whereby the right of action is taken away will achieve that object.

Hon. Mr. LYNCH-STAUNTON: How would you attain the object if this were not done?

Mr. MAYBEE: Merely by compulsory licensing provisions.

Hon. Mr. DANDURAND: Under section 63?

Mr. MAYBEE: Similar to 63, but section 63 with present section 40, which corresponds in a general way to section 63—these sections are open to serious objections, and in a minute or so I intend to refer to them.

Sections 53 and 63 as we have been discussing them are, I think, definitely objectionable and should be removed or something radically different substituted therefor. However, I should like to make it plain—which perhaps has not been done so far—that there are other provisions of this Bill which I think will be an improvement and should be given favourable consideration. So far as the form of these other provisions is concerned, I think they require considerable amendment. The Institute has spent a great deal of time on this matter and is prepared, if we get to the stage of considering this Bill section by section, to suggest specific amendments which we think will improve the sections, making them clearer and putting them in such form that they will carry out the object intended.

One of the specific provisions is that for shortening the time for filing applications in Canada—section 26. That has been considerably discussed, but there is one point which I do not think has been brought out very fully. Under the present provisions whereby an application in Canada can be filed within two years of the date of the first foreign patent, there is during that period not only a further period while the patent is pending but considerable uncertainty as to whether the particular invention is going to be patented in Canada. That provision has caused a good deal of difficulty to a number of my clients, and I should imagine that most manufacturers in Canada have run into that trouble. They do not know, things are in a state of uncertainty for a period of possibly five years from the date that the United States patent issued. For that reason I agree with the provisions of this Act in a general way so far as they reduce the time for filing in Canada.

It has already been pointed out in some of the briefs submitted that the provisions of the Bill are rather too drastic. That is to say, according to the Bill, in effect we have to file in Canada within one year of the date of filing the first foreign application. I do not know that it is necessary to go into this very fully, but, as has already been pointed out, the examination of the Canadian office is not very extensive and it is advisable to have the applications in other countries acted upon first, so the inventor may know just what he is entitled to in Canada. For that purpose he should be allowed some time to work. It has been suggested, and I think the Institute of Patent Solicitors is unanimously of the opinion, that the applications in Canada should be filed prior to the

issue of the first foreign patent, stating it in general terms. In most foreign countries you will receive notice of allowance, as it is called, stating your application is allowed and that the claim is in proper form. When you get that you have a period of time, in the case of the United States six months, in which to put your Canadian application into the same form as the foreign application, thus assuring you are not claiming too much or, possibly, not claiming too little. That has been of the greatest value to the Canadian Patent Office, and it is of great value to Canadian inventors and manufacturers, in fact to anyone interested in patents. I think that Canadian patentees should be able to take advantage of action on their foreign applications before putting their application on file in Canada. That object would be achieved in the way suggested by providing that application in Canada must be filed prior to the issue of the first foreign patent.

Right Hon. Mr. MEIGHEN: That is to say, Mr. Maybee, it must be so filed in order that the patent when issued will date as to all its rights from the date of the application in the foreign country?

Mr. MAYBEE: No, that would not necessarily follow. If you want that you would have to file within the convention year. That is to say, in order to get priority rights you have to file within one year of the—

Right Hon. Mr. MEIGHEN: Date of application in the foreign country?

Mr. MAYBEE: Yes.

Right Hon. Mr. MEIGHEN: I see.

Mr. MAYBEE: As a matter of fact, convention priority is not of great importance in Canada the way our law stands at the present time. As a rule convention priority is not important. So that if we have the extra time so we can file in Canada before issue of the first foreign patent—

Right Hon. Mr. MEIGHEN: Let me get the object of all that. If you file within the convention time, a year after the application in the original country, then your application will have the prior rights which the application has in the foreign country?

Mr. MAYBEE: Yes.

Right Hon. Mr. MEIGHEN: Do you mean to say you should be absolutely prevented from applying for a patent after you have a patent in the foreign country?

Mr. MAYBEE: Yes.

Right Hon. Mr. MEIGHEN: Then no one can ever get a patent in Canada for that article?

Mr. MAYBEE: That is the suggestion.

Right Hon. Mr. MEIGHEN: And under this Bill, if you had not applied within the time specified, then your right to apply for a patent is gone?

Mr. MAYBEE: Yes.

Right Hon. Mr. MEIGHEN: Your idea is it should be filed before you apply for a patent in the originating country?

Mr. MAYBEE: If your patent in the originating country issued before the year, you still have your year before the date of filing.

Right Hon. Mr. MEIGHEN: I understand that. But the penalty—

Hon. Mr. LYNCH-STAUNTON: What is the point?

Mr. MAYBEE: To limit the time for the application in Canada so there should be a certainty as to whether there is going to be a Canadian patent or not. That is what is upsetting, particularly to Canadian manufacturers.

Hon. Mr. DANDURAND: But the argument so far has been in favour of extending the period.

Mr. MAYBEE: We agree in principle with reducing the length of time for filing, but we think the Bill has gone a little bit too far. I may say that the Institute has spent a good deal of time in redrafting section 26, and we shall be glad to suggest specific amendments.

Right Hon. Mr. MEIGHEN: That is right, you will get a chance to do so.

Mr. MAYBEE: Some discussion has taken place as to the present compulsory licence provisions. I feel rather strongly in regard to them. They have never been satisfactory. It has been said there are very few applications under these present provisions of the Act, that is section 40. Section 63 of the Bill corresponds to section 40 of the Act. One reason may be that suggested by Mr. Smart, the moral effect of these sections. That is to say, it may be that in a good many cases when a Canadian wants to manufacture he has been able to reach a satisfactory agreement with the patentee, because the patentee knows that if he is not reasonable the Canadian manufacturer can go to the Commissioner of Patents and make the patentee be reasonable. That may account for the fact that there have not been very many applications under section 40.

But there is another reason, I think probably the chief reason, that the provisions have never been clear, and very few cases have arisen where counsel could advise their clients that they had a clear right to obtain a licence. The result of the application being so much in doubt, the provisions are not taken advantage of.

I think it is most desirable that these provisions should be made workable. The provisions of the Bill do not improve the provisions of the present section of the Act so far as that is concerned. The provisions of the Bill are merely modifications of the present Act without removing the objectionable features and the adding of some more objectionable features, as has been pointed out.

Hon. Mr. CAHAN: Would you explain what are the objectionable features of the present Act, so that we will have them definitely before us?

Mr. MAYBEE: There is the general objection, of course, that it is very difficult to understand just what your rights and remedies are. There are two specific objections. One is that in order to get a licence under the present provisions of the Act—I am talking in general terms now—

Hon. Mr. CAHAN: Would it not be well to deal with it in specific terms?

Mr. MAYBEE: What I mean is that I am not referring to specific cases. In order to get a licence under the present provisions you have to prove not that your own business has been harmed by the monopoly rights of the patentee, but that trade or industry in general has been damaged. That is to say, if you and two or three other manufacturers have been damaged because you cannot get the patented article at a reasonable price, or a licence at a reasonable royalty, that is not enough; you have to show that everybody in your class has been damaged. There was a decision, I believe, in Great Britain when their working provisions were the same as ours; subsequently the British Act was amended to say that you could get your order if any individual had been damaged. That amendment was never made to the Canadian Act.

Then there is no provision for an exclusive compulsory licence. You might apply for your licence in Canada and get it, and then find that the patentee would continue to import and prevent you from carrying on your operations in Canada on a profitable basis.

Hon. Mr. LYNCH-STAUNTON: What is that again?

Mr. MAYBEE: There is no provision in the present working provisions enabling the Commissioner of Patents to grant an exclusive licence to an applicant.

Right Hon. Mr. MEIGHEN: And no other is any good.

Mr. MAYBEE: In a great many cases that is so. So the present provisions are far from satisfactory, and that, in my opinion, is the chief reason why there have been so few applications.

Further, I am of the opinion, and I may say that my manufacturing clients also are of opinion, that the working provisions should be put into a more satisfactory state. You understand that whereas that might result in applications being made for licence under the patent of General Steel Wares, for instance, on the other hand they might have cases where they are being damaged.

Hon. Mr. LYNCH-STAUNTON: There is no provision for the granting of an exclusive compulsory licence. Is that the point?

Mr. MAYBEE: That is the point.

Hon. Mr. DANDURAND: Transferring the rights of the patentee in toto.

Mr. MAYBEE: Granting to the manufacturer the right to manufacture under an exclusive licence, on the payment of a royalty, of course.

There are two main objections to section 53 which prevent the inventor from taking action unless he is commercially working his invention in Canada. One has already been mentioned—the case of the inventor who invents something for which there are only one or two prospective customers. They can merely sit back and say " We won't take a licence, because after three years we will be able to manufacture without paying a royalty." Then there is still another case which, possibly, can be best explained by a specific example. It is the case of large machinery which has a small market in Canada.

Hon. Mr. CAHAN: Just before you go into that. The compulsory licence as authorized by the present statute is not a compulsory licence to manufacture but a compulsory licence to use, is it not?

Mr. MAYBEE: It is both. It is rather difficult to understand just what is meant.

Hon. Mr. CAHAN: I agree with you, but the statute says that a licence may be granted for the use of the patented invention in Canada.

Mr. MAYBEE: That would mean, of course, the exploitation of it. You have to make it and sell it.

Hon. Mr. CAHAN: That is so. It has been deemed inadequate in its terms.

Mr. MAYBEE: The other case I am just citing is the instance of a patent covering large machinery. Take, for instance, printing presses, for which there is a very limited demand in Canada. It is not practical, nor possible, nor advisable to require that this machinery should be made in Canada. The effect of section 53 on that type of article would be to invalidate the patent, because it cannot be worked on any large scale. The result would be that importation into Canada would be free. In that case, unless we had adequate tariff provisions, the importation would take place from the country where the cost of production was least—it might not be from the United States; it might be from Germany or Czechoslovakia.

Hon. Mr. LYNCH-STAUNTON: Or Japan.

Mr. MAYBEE: Or Japan. I have a case now in which there are patents on large machinery in Great Britain, Canada and the United States. At the present time practically all of this machinery is made in Great Britain, and it is imported into Canada by my clients. If this section went into effect the probable result would be that the Germans would export it from Germany, because they can produce it more cheaply than it can be produced in Great Britain. So, instead of fostering industry in Canada the section merely deprives Canadian patentees of the advantages of their patents without conferring any benefit on Canada or the British Empire.

Right Hon. Mr. MEIGHEN: What good does Canada get out of a patent if it is on something which cannot be made here? Why give a patent at all?

Mr. MAYBEE: It is the general principle, I think, of encouraging the inventor that we have to consider. We cannot say that some inventors can get a patent and that others can not. We have to encourage invention.

Right Hon. Mr. MEIGHEN: It is a matter of international comity.

Mr. MAYBEE: Yes. If we stop giving patents the United States will stop, and we will be back where we were before we had any laws.

Hon. Mr. CAHAN: That is an extreme argument.

Mr. MAYBEE: We have an obligation, I think to maintain our end of this. I know of a number of cases in which Canadians have reaped large benefits from patents in the United States and Great Britain. Any royalties accruing from Canadian inventions which are exploited in other countries come back to Canada. You have to consider that situation. We are just one country, and we have to hold up our end.

Hon. Mr. LYNCH-STAUNTON: Would you explain again about that big machine?

Mr. MAYBEE: The machine is patented in Great Britain, the United States and Canada. It is not possible to manufacture it in Canada. It is a large machine, made in a number of different sizes, and in some sizes possibly only two or three would be sold in five years.

Hon. Mr. LYNCH-STAUNTON: What do you want done?

Mr. MAYBEE: Well, I don't want it done.

Hon. Mr. LYNCH-STAUNTON: What do you suggest should be done?

Mr. MAYBEE: I suggest that we should have some strict compulsory licencing provisions. The British provisions would not affect a case of that kind, because there would be no compulsory licence granted by reason of the fact that it would be easy to show that the machine cannot be made in Canada, and therefore nobody would apply for a compulsory licence. However, under the proviso of section 53 that patent is in effect invalidated, and I say that if you can show one case where a patent has been invalidated by a section that section should go out.

The CHAIRMAN: Are there any questions the members of the Committee desire to ask Mr. Maybee?

Mr. MAYBEE: The Secretary of the Institute has just requested me to state that the opinion expressed by me as to section 40 of the Patent Act is my own and that of my clients, not that of the Institute as a whole.

Right Hon. Mr. MEIGHEN: With respect to taking out the patent before the application in the other country?

Mr. MAYBEE: No, as to the unworkability of the present working provisions. I think the present working conditions are unsatisfactory. I think that Mr. MacRae desires to point out that that aspect has not been discussed by the Canadian Institute as a whole, and that there has been no general expression of opinion.

Right Hon. Mr. MEIGHEN: You did not say it was.

Mr. MAYBEE: I said I was speaking in the interests of the Toronto group.

Hon. Mr. CAHAN: The present compulsory licence is simply a licence to use, and I find that out of the 45,000 patents issued in four of the years during which I have been minister, only five compulsory licences have been granted. I think that the real reason why the number is so small is that the compulsory licence as at present issued is simply a licence to use an invention, and I am advised by those who are more expert in such matters than I am that the present section, subsection 5, paragraph (*b*) goes a very long way towards satisfying the public need. I am informed that that makes such a radical change in the terms of the licence that it satisfies to a very considerable extent the requirements.

Right Hon. Mr. MEIGHEN: It should go further and give such exclusiveness as to the Department may seem fitting.

Hon. Mr. CAHAN: Yes that is a suggestion.

The Committee adjourned until to-morrow at 10.45 a.m.

6th SESSION, 17th PARLIAMENT, 25 GEORGE V, 1935

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL A, AN ACT TO AMEND AND CONSOLIDATE THE ACTS RELATING TO PATENTS OF INVENTION

No. 2

The Honourable Frank B. Black, Chairman

WITNESSES:

Mr. A. J. R. Lanoue, Northern Electric Company, Ltd.

Mr. H. Gerin-Lajoie, K.C., President, Canadian Institute of Patent Solicitors.

FILED:

List of Members of the Canadian Institute of Patent Solicitors

OTTAWA
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MINUTES OF EVIDENCE

THE SENATE,

WEDNESDAY, February 27, 1935.

The Standing Committee on Banking and Commerce to whom was referred Bill A, intituled: "An Act to amend and consolidate the Acts relating to Patents of Invention," resumed this day at 10.45 a.m.

Hon. Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, we will proceed to hear those who desire to make some comments on this Bill A. We shall have to adjourn a few minutes before 12 o'clock. The first name on the list before me is Mr. A. J. R. Lanoue, of the Northern Electric.

Mr. A. J. R. LANOUE (Northern Electric Co. Ltd.): Mr. Chairman and gentlemen, I represent the Northern Electric Company. I wish to say that I am in accord with the general statements that have been brought before you by others on the sctions of the Bill that are in controversy. However, I have two provisos to make which I will deal with later.

You have heard the previous speaker address you in a general way. I am going to give actual facts as we find them in our industry to support the general comments that have gone before.

In connection with sections 26, 30 and 34 with relation to the filing of applications, we receive on an average 750 patent applications a year from our associates, and after these are considered by our engineers we file on an average 133 cases per year; that is, one case out of every five and a half is taken out of Canada.

It is our policy to file all applications within the convention year, that is, within one year from the first foreign filing. However, in some instances this is impossible due to the delay in receiving the cases and preparing papers for the inventors' signatures, some having to go as far as Japan for execution.

Copies of all actions and amendments on the foreign cases are sent to us, and as soon as we find out exactly what we are entitled to in each case we amend our Canadian case accordingly.

An article—a copy of which I am going to give the Committee—in the magazine Electronics, dated January, 1935, contains the statement that "to put through patents at present takes an average of thirty-four months." This is with reference to United States applications.

Hon. Mr. GRIESBACH: What has that to do with Canadian applications?

Mr. LANOUE: It is to show that in a country like the United States, which has a much more efficient searching corps than we have in Canada, and which has available material and data that, as I understand it, is not available in our Canadian office, it takes over thirty-four months to decide whether you have an invention or not.

Hon. Mr. GRIESBACH: How long does it take the Canadian office to decide?

Mr. LANOUE: On an average I find it takes about three years. Therefore if the time for putting Canadian applications through the Canadian Patent Office is materially curtailed, as proposed in Bill A, we shall be unable to fully amend our cases in accordance with information we receive from abroad. This will result in the issue of patents with many invalid claims, and thus seriously handicap the applicant.

Our Canadian applications as a rule issue as patents in about three years' time from the date of filing. We had only one case in ten years that took seven years to get through the Canadian Patent Office, and I estimate that not more than 1 per cent of our cases take longer than three years. There was good reason for the delay in that case. We were in controversy with the examiners in Canada. Th United States application was an interference and it took them seven years to decide who was the real inventor. It took me seven years to get the same scope in my Canadian application through the Canadian Patent Office.

Hon. Mr. DANDURAND: It took you seven years due to Washington?

Mr. LANOUE: Not necessarily, not in this case anyway. I had to get it through the Canadian Patent Office.

Hon. Mr. DANDURAND: How long did it take on the American side?

Mr. LANOUE: It took seven years, sir.

Hon. Mr. TANNER: What was the subject matter?

Mr. LANOUE: Radio receiving sets, superheterodyne. As I say, I estimate that not more than 1 per cent of our cases take longer than three years years.

Am I allowed, Mr. Chairman, to comment on the money sections? It is not a question of costs or anything else, it is just to point out a little idea of mine to show that perhaps it would be better to follow one angle than another.

The CHAIRMAN: That is all right.

Mr. LANOUE: The provision for charging a fee for claims above twenty-five seems to us to be unnecessary, because if it is the intention that by imposing this charge fewer claims will be incorporated in the Canadian applications, I am quite sure that the extra fee will not prevent large numbers of claims being filed. I am one of the guilty parties whose applications are long, and I admit it. Over the last seventeen years out of 2,300 of our patents 309 had more than 25 claims, and under this new section 34 these 309 patents would have cost us $3,850 in additional fees.

The point is this, the Bill as drawn says that if you go above 25 claims you have to pay $10 up to 50, and for every 10 claims above 50 there is an extra charge of $5. It seems to me that if I go to 26 claims and have to pay $10 I am not going to feel very nice about it. I submit that a more equitable way of charging for claims above 50 would be to make a flat charge of 50 cents per claim. I figured it out at this rate and find that on that number of patents, 309, the additional cost would be $3,450—a difference of only $400. It seems to me that a flat charge for extra claims would be much more appropriate.

Hon. Mr. McMEANS: You forget the Government needs the money.

Mr. LANOUE: In this Department for the last ten years they have had approximately $306,000 surplus. That is the average over ten years.

Hon. Mr. McMEANS: They can use it all right.

Mr. LANOUE: In connection with section 47, the life of patents, we believe that the life of Canadian patents should remain as at present, namely, eighteen years from the issue of the patent. We had one patent relating to push-pull amplifier, namely Colpitts No. 160003, which issued January 12, 1915; this patent was used in a very small way up to the time that the superheterodyne radio receiving sets were placed on the market, which was about 1924. Therefore it took practically nine years of the life of the patent before it became of general use in Canada. The same situation applies to our Kendall Canadian Patent No. 198591, issued March 23, 1920. This patent also relates to superheterodyne radio receiving sets, and came into commercial use in 1924, four years after the issue of the patent. Another instance is our Nicholson patent on vacuum tubes, No. 170971, issued July 25, 1916, which did not become incorporated in vacuum tubes until the beginning of 1925, nine years after the Canadian patent issued.

The fundamental patent on what is known as the " panel type" automatic telephone system, developed by the Lorimer Brothers of Brantford, Ontario, issued as Canadian Patent No. 89786, on October 25, 1904, with 290 claims; the corresponding United States Patent No. 1187634, issued on June 20, 1916, with 425 claims. In other words, in that case the United States patent was issued twelve years after the Canadian.

We investigated the possibilities of manufacturing this type of system in 1918 and 1919, fourteen years after the issue of the Canadian patent.

From our experience in the telephone field, we find that it takes anywhere from four to seven years at least after a patent issues in Canada before it can be manufactured on a commercial scale by us. It must be borne in mind that a patent is filed on the invention in the embryo stage, or after tests have been made in a laboratory to see if the invention will work. After this, if it is decided to proceed with the manufacture of the invention, some considerable time is taken by the factory in developing tools and methods for its manufacture, which involves in a good many instances changes in the first conception of the invention to meet manufacturing requirements on a commercial scale. Therefore we believe that eighteen years from the issue of the patent is not too long for the life of the patent.

I come now to sections 52, 53 and 63 dealing with infringement and working provisions. In our opinion these provisions are, to say the least, too drastic. As pointed out above, it is practically impossible in most instances to "work on a commercial scale" as defined in Bill A in the time limit allowed in these sections, namely, the first three years of the life of the patent. This period of time, as I have stated, may vary anywhere from four to fourteen years before the article is put on the market in sufficient volume to warrant its manufacture on a commercial scale as defined in Bill A. In November, 1933 I had to make a study of our patents on the automatic telephone systems as put on the market now, and my survey showed that we were operating under 846 patents which relate to Step by Step automatic telephone systems as now used in Canada. This showed:—

(*a*) 203 patents—24·0 per cent —represented in equipments in use in Canada.

(*b*) 14 patents—1·7 per cent—covering features now abandoned.

(*c*) 154 patents—18·2 per cent—covering features of probable future interest, and might be used during the remaining life of those patents.

(*d*) 475 patents—56·1 per cent—covering features whose future use is not now considered as probable.

Referring to the statement that we investigated the manufacture of the " panel type " automatic telephone system in 1918 and 1919, after very careful study and some preparation to start manufactuirng, we discovered that it would be necessary for us to sell telephone equipment for 186,000 telephone lines per year to justify the expenditure. This needless to say was beyond the requirements of the Canadian public. We would like to sell it, but we can't.

We then had to take up another type of system, namely the step-by-step, or Strowger system, which is now in operation in Canada.

This shows that it would be practically impossible for us to comply with the working provisions as incorporated in Bill A.

We are exclusive sales agents for Teletypewriters, which are covered by 116 Canadian patents owned by the Teletype Corporation. Experience in the United States has proven that it is uneconomical for more than one company to manufacture this type of equipment. There is only one company in England, to my knowledge, manufacturing this type of equipment and, I think, one in Germany. It certainly is not practicable for us to even consider the manufacture of this type of equipment. Therefore, if the present Bill A had been in force, we

doubt if these patents would have been taken out at all. I might state that the tabulating machines used in industry to-day in Canada are covered by, roughly, 298 patents, and I think that this is a parallel case to the one that confronts the Teletype Corporation.

Another field, namely television, in which we own and are licenced under 195 patents, is one which after many years of research and development is still not ready for commercial manufacture. Attached hereto is a copy of an article taken from the Electrician, published in Great Britain, dated February 1, 1935, entitled Television Fantasies, in which this statement is made:—

> When the transmission and reception of television, now being investigated in the manufacturers' laboratories, were brought to a satisfactory stage the public would be offered the apparatus—and not before. The Radio Manufacturers' Association believed that the time was not yet ripe for television to take the place of radio broadcasting, but that, as the years went by, it would become a supplementary adjunct to the reception of broadcast entertainment.

That is by one of the prominent men in England.

The above shows that there are many patents taken out in Canada under which the patentees will not be able to manufacture in Canada in all probability during the life of the patents, and under the proposed Bill such patentees would have no recourse for the infringement of their patents after the first three years of the life thereof. We are always prepared and willing to manufacture patented articles or systems as soon as commercial conditions warrant it. We may be asked, "Why do you take out so many patents?" The reason for doing this is one of protection and not of exploitation; in other words, as the business in which we are interested develops, we take out all the patents that it seems to us will probably be of value in our field, the idea being that we do not want some other supposed inventor taking out patents on developments in which we are interested and then, when we desire to proceed and manufacture, to be confronted with patents held by adverse parties to whom we would have to pay toll. Incidentally, even with this precaution, we have had to purchase, from outside inventors, rights under their patents in certain fields, in order to proceed and manufacture a commercially acceptable article.

I have heard everything about monopolies and about hitting the little fellow, and I wish to say this. When the little fellow has an invention and comes to sell it to the monopoly he is not backward in asking for his pound of flesh. I have had some inventors come in to me and say, "I have an invention." I say, " That is very nice;" and the conversation is something like this; " Will you show it to me?" " Oh, no." " Why not ?" " Well, you might swipe it from me,"—you will excuse the expression—" you might steal it from me." " Well, if you cannot trust us, have you got an application?" " No." " Then, what do you want?" " Well, if you will give me $100,000 I will disclose my invention and show you how it works." After a little talking he will disclose his invention. It may be in my line or it may not. If it is not, I am not interested, and I have found that even if it is in my line very few of these inventions are of interest. That is my experience during the period of twenty-four years next April that I have been with the company—not always in the patent line, but most of the time.

With particular reference to section 63 and the requirement for patentee to submit to the Patent Office a report on whether or not manufacture is being carried on in Canada under all patents owned by him; we operate under 2,500 patents of our own and have licences under 5,200 other patents, making a total of 7,700 patents on which we would have to submit a report to the Patent Office within thirty days after the end of each calendar year. This would involve so much work and difficulty, both for the patentee and for the Canadian Patent Office, that it seems to us unworkable.

The conditions outlined above give an idea of the difficulties which a manufacturing concern would encounter in operating under the proposed Bill, and it is my opinion that the individual inventor, who is trying to cover his invention by a patent and have it marketed, will be affected to a very much greater extent.

Those are the conditions that are to be found in our own industry, gentlemen.

Now, if you will allow me to revert to some of the amendments proposed yesterday, one of which suggests that this provision with respect to the report be taken out of the Bill and another substituted similar to the one now in the Trade-Mark Act—that is that on demand you can go to the owner of a patent and ask him if he is working it. That was done, I think, on the assumption that it worked very well in the Trade-Mark Act. It does. It is very easy for me to say whether we are selling any article under a trade-mark, but it is quite another matter for me to say whether I am working under a patent. You are practically putting before the Patent Office an infringement suit. The Commissioner comes to me and asks, "Do you work under this patent?" The patent is one of a line. I am not sure. I ask the engineers what they think about it, and they go to work on it and they say, "Well, we are not sure, but we think we are." Then I have to say that I am working under it. The man who has asked for that has probably canvassed the situation, and he says, "Oh, no." I lay my data down, and he says, "He is not doing that; he is doing this." Therefore you have a condition similar to that in an infringement suit.

The CHAIRMAN: That would arise in very few cases, would it not?

Mr. LANOUE: I would not guarantee that I could answer, and be sure my answer was correct, in more than fifty per cent of the cases we are asked about, and I am willing to go even so far as to say that I would consult patent counsel.

Hon. Mr. DANDURAND: You feel sometimes that you are on the border.

Mr. LANOUE: Yes, sir, I am not sure, and sometimes it takes a judge, after having had expert witnesses before him and legal counsel—

Hon. Mr. DANDURAND: And he may err.

Mr. LANOUE: And even then he has trouble in deciding whether there is an infringement of the patent or not. That is one condition that I am trying to bring before the Committee.

Then there is the exclusive licence feature that has been talked about under the present section 40, referring to compulsory licences.

Hon. Mr. DANDURAND: Section 40 of the Bill?

Mr. LANOUE: No, section 63 of the Bill, sir. There you have a condition which, it seems to me, should be considered. In some cases I think the man who is asking for that compulsory licence should be protected from an outside manufacturer, especially one who is importing and undercutting his market; but there are other conditions where a man has built up his situation, probably not only on one patent, but on four or five, and he has decided that the best one or the best two or three out of the five are the ones he is going to operate under. The other two are probably alternatives, and the man who is asking for a compulsory licence says, "I want a licence under those patents."

Right Hon. Mr. MEIGHEN: Under No. 1?

Mr. LANOUE: No, under one of the alternatives. And he wants an exclusive licence. In other words, he is asking for something that the man who owns the patent is developing, and he wants to undercut him by getting a right under that man's patent.

I wish to thank you, gentlemen, for your consideration in listening to me.

The CHAIRMAN: Are there any questions, gentlemen?

Hon. Mr. GRIESBACH: You heard the proposal of the gentleman who spoke yesterday on the establishment of a court of some sort in connection with the Patent Office that would give a patent that would be practically unassailable, or a guaranteed title?

Mr. LANOUE: I was hoping you would not ask that question. We have thought many times ourselves that we would like to have an unsinkable patent, but the whole trouble is this. If you have a piece of property you can sit down and say that from this point 160 feet in this direction and 150 feet in that direction, and back around again to the starting point you have got something. But in a patent you are never sure of what you have got. I might illustrate in this way. De Forest took out United States patents on his talking motion picture machine. He went through the patent offices in the United States and Canada, and got his patents. I do not know whether he went to England or not. He sued us for infringing his patents. We defended ourselves. The result was that his patents were found not to cover the apparatus he had or the systems we used. Now, after going through all that he had to go to the courts and get all the information, and we had to collect not only in Canada and the United States, but in England, all that information, put it together and lay it before the courts. In other words, to go before a Patent Office and say, "Now, give me a definite right," is, I think, impossible. I cannot see how the Patent Office, no matter how good it may be, can do that.

I will illustrate further by another case in the United States which came up before Mr. Justice Taft for decision. To my mind it was pretty hard. In the United States there was an inventor who had obtained his patents on a machine. A competitor of his had a machine stored away in his attic, which, if it became public, would invalidate that patent.

Hon. Mr. GRIESBACH: How?

Mr. LANOUE: By becoming public, in public use, because it had been invented before the other machine was invented—a secret invention.

Hon. Mr. GRIESBACH: But not patented?

Mr. LANOUE: Not patented and not published. The owner of the patent says, "All right. You keep that secret and I will give you a licence for nothing," and he went around and collected royalties from industries just because the other people did not have the data in their hands to outlaw that patent. Those are actual conditions that we find under the patent law, and we have to meet them.

Hon. Mr. GRIESBACH: You spoke of the extensive facilities which the American Patent Office has for the investigation of claims. A court which purported to give an unassailable title, and the title given, would be dependent on those facilities.

Mr. LANOUE: Yes, sir.

Hon. Mr. GRIESBACH: And the cost would of course be in proportion?

Mr. LANOUE: Absolutely.

Hon. Mr. GRIESBACH: That is the answer to the question I asked you, that if we tried to be a court, the value of the title as given would be dependent upon the amount of money we are prepared to spend upon a research bureau that would ensure that the title would be worth what we said it was?

Mr. LANOUE: Right.

Hon. Mr. GRIESBACH: And if we failed to give a good title and injured anybody, we would be liable to very substantial damages?

Mr. LANOUE: That is for you gentlemen to say, as I see it.

Right Hon. Mr. GRAHAM: With all the changes that are being made, could anybody give an unassailable title to a patent?

Mr. LANOUE: You could give a title, but whether it is good or not I do not know.

The CHAIRMAN: The next gentleman to speak to us is Mr. H. Gerin-Lajoie, K.C., president of the Canadian Institute of Patent Solicitors.

Hon. Mr. GRIESBACH: We had a representative of that organization yesterday.

Mr. GERIN-LAJOIE: Mr. Maybee was the representative of the Toronto group of the Institute.

Hon. Mr. McMEANS: Is there anything you want to say that he did not say?

Mr. GERIN-LAJOIE: I shall try not to repeat anything that he said.

Mr. Chairman and gentlemen, the Canadian Institute of Patent Solicitors is a Dominion-wide organization, formed of patent solicitors and of barristers who have specialized in patent matters.

Hon. Mr. PARENT: How many are there?

Mr. GERIN-LAJOIE: The approximate number of fellow-members is some thirty-five. There are associate members also.

Hon. Mr. PARENT: Where do they come from?

Mr. GERIN-LAJOIE: From all over Canada, sir.

Hon. Mr. PARENT: Have you the list with you?

Mr. GERIN-LAJOIE: We have the list with us here.

Hon. Mr. PARENT: Will you file a copy of it?

Mr. GERIN-LAJOIE: Certainly, we will do so. I will ask the secretary to have a list prepared, which we will file.

Personally I have had the benefit of some experience in patent matters, having been engaged as counsel in patent litigation for a number of years, sometimes attacking and sometimes defending patents. I also wish to say that I represent before this committee the Canadian Celanese Limited, on whose behalf also I am making my remarks. I wish at the outset to clear up the position of the Institute with regard to the Bill as a whole. We are not opposed to the Bill as a whole. I think there are very valuable suggestions in it, and I wish at this stage to express our profound gratitude to the Hon. the Secretary of State for the very great interest he has shown in matters pertaining to the Patent Act. We look forward with great interest to the improvements and changes which he has promised in the administration of the Patent Office. Many of the provisions of the Bill are desirable, in particular those relating to the administration of the Patent Office contained in the earlier sections. Other sections also are desirable, in particular section 43, which deals with conflicting applications, which section I think constitutes a real improvement on the existing law. Therefore I hope that the criticisms we may have to make as to some provisions will be taken as constructive criticisms, with a view to giving whatever help the Institute may be able to furnish in the best interests not only of inventors but of the industrial life of the country as a whole. I do not want to take up the several sections separately, although the Institute has gone into them very deeply. I understand that at this stage I should content myself with making general statements on some of the main features of the Bill.

The Institute's position has already been expressed with regard to the question of delay in filing applications in Canada, when the inventions in question have already been applied for in foreign countries. This is referred to in section 26, subsection 2, of the Bill. I think everyone is pretty well in agreement on the point that this subsection might be modified with advantage by allowing applications in Canada to be filed at least up to the time of issue of the patent in the foreign country. Reasons already have been given in support of that view, and I do not want to take the time of the committee over it.

The first major change in this Bill with regard to our patent system is that the term of the patent would run from the date of application. That, honourable senators, is a major modification, which I regret to state I think would be unwise. That matter is dealt with under section 47, and also section 55, which deals with infringement suits for the period between the date of application and the date of issue. I think honourable senators are already conversant with the fact that under the American system the term of the patent runs from the

date of issue, the term being seventeen years. And under the English system the term does not start from the date of application, as has been suggested, but from the date of acceptance of the complete specification by the controller. And that is quite a different thing, for that is after an examination. In England they have a provisional specification which we have not got. The acceptance by the controller follows an examination, and the acceptance of the specification is published. That acceptance must occur within eighteen months from the date of application.

Hon. Mr. GRIESBACH: How close is the date of acceptance to the date of issue of the patent?

Mr. GERIN-LAJOIE: It must be within eighteen months.

Hon. Mr. GRIESBACH: No. First of all there is the receipt of the claim, and then eighteen months later something preliminary is issued.

Mr. GERIN-LAJOIE: The controller accepts.

Hon. Mr. GRIESBACH: From the time of the acceptance to the date of the patent, what is the period?

Mr. GERIN-LAJOIE: I do not believe there is any statutory limit, and I could not say for sure what is the practice.

Hon. Mr. GRIESBACH: When does it run, from the date of acceptance?

Mr. GERIN-LAJOIE: Yes, the date of acceptance. It becomes public from that date.

Hon. Mr. GRIESBACH: The issue of the patent has nothing to do with it, then?

Mr. GERIN-LAJOIE: The date of sealing has nothing to do with it. The term of the patent runs from the date of acceptance.

Right Hon. Mr. MEIGHEN: That is in England?

Mr. GERIN-LAJOIE: Yes. The system as proposed in this Bill would be sui generis. The date of application would be secret. Section 11 expressly states that applications will be kept secret. Even if the innocent third party had notice of the application, I do not think he would thereby secure proper protection, as I wish to explain briefly in a moment.

As to the proposed changes, I think we should first consider whether there is any good reason for a change from the present system. The explanatory notes to section 47 give the reason for the change as being the desire to hasten the prosecution of applications through the Patent Office. Well, there may be several answers to that. In the first place the delay very often occurs through no fault of the applicant, but possibly through inefficiency of the Patent Office. But the main point at issue, I think, is this. Is it desirable in the interests of inventors, and of Canadian industries, that these prosecutions should be hastened? The feeling of the Institute is very definitely that it is neither in the interests of the one nor of the other. For the chief concern of all Canadians is that patents should be valid. And in order to secure valid claims and valid patents, full time and full opportunity should be given both to the applicants and to the Patent Office to assure themselves of the scope of the claims that should be granted to the applicant.

Hon. Mr. PARENT: How do you expect an ordinary lawyer, who files an application with the drawings and anything necessary, so far as the present law is concerned, to have any success with an application when he has to fight against such an institute as you represent, which is trying to tell the department various reasons why a patent should not be given? It is very difficult to get a patent, due to the interference of such a strong body as you represent.

Mr. GERIN-LAJOIE: I do not quite understand the objection, sir. The Institute has nothing whatever to do with the administration of the Patent Office, and still less to do with the applications of private individuals or private companies for patents. I do not quite catch the point which you may have in mind, sir. The Institute is merely for the defence of the common interests of the profession.

Hon. Mr. DANDURAND: Like the Bar Association?

Mr. GERIN-LAJOIE: Somewhat like the Bar Association. And the Bar Association would not think of intruding into private cases of its own members.

Hon. Mr. CASGRAIN: Would the Patent Office consider an application presented by one who does not belong to your Institute?

Mr. GERIN-LAJOIE: Oh, absolutely. It is not a closed corporation, sir.

Hon. Mr. DANDURAND: Like the surveyors.

Hon. Mr. CÔTÉ: Mr. Gérin-Lajoie, may I suggest another reply to my colleague, namely that an inventor should get an expert to look after his patent application, and not an ordinary lawyer who is not skilled in that work.

Mr. GERIN-LAJOIE: That is absolutely right, sir. And I think it would be most unwise for an inventor, as many of them know by this time, to attempt to secure a patent otherwise than through a patent solicitor, that is one who has specialized in the securing of such patents. The patent solicitor's practice is an extremely delicate one, by reason of the very nature of the inventions. A patent is a comparatively easy thing to obtain. The search made at the Patent Office will rest only on the material available there, and that consists in the prior Canadian patents. That is a very restricted field. Now the task of the patent solicitor will be to obtain such information on the priority, which he has not got in his office, so as to draft claims which will just cover and cover properly that of which his client is the inventor. If he fails in the discharge of that duty the result will be claims that are too broad, with the result that that patent when sued upon may be declared invalid by the court, or the claims in question at least would be declared invalid as being too broad, which is a case of invalidity. You can readily see that handicap and embarrassment it would be for the industrial life of the country to have issued by the Patent Office patents having claims that are too broad and which possibly will prevent industrial development throughout the country.

This priority which it is the patent solicitor's task to appreciate can only be obtained usually by reference to some patent office having greater facilities than our own Canadian Patent Office. I think you honourable gentlemen are already aware that the usual practice followed by patent solicitors in Canada is to apply in the United States first, where they will have a much more thorough search made than they would have in Canada. Thus they can to some extent know what the priority is and what scope should be given and how broad the claim should be with respect to their clients' applications. But, as already has been stated, even with all these precautions it is impossible to give a patent which one can guarantee as being beyond attack by the very nature of the patent, which required for its validity that the inventor should be the real inventor the world over. Even the most thorough bureau of information or patent office cannot possibly have all of the information that might be secured by one interested in getting up information at great expense, perhaps by going over to France and other European countries just to find out instances of priority which might have some bearing on the patent application in question.

So the point that I intended to make was that it is in the interest not only of the inventor—the Institute does not claim to defend before this Committee the interests merely of the inventor—but it is in the interest of industry gener-

ally, because invalid claims and claims that are too broad certainly constitute a real impediment to the industrial life of the country by preventing further developments and discouraging the establishment of industries.

Hon. Mr. Côté: May I interrupt you here to ask: Under the law as it is what time have you to file an application in Canada after you file in the United States, for instance?

Mr. Gerin-Lajoie: Two years after the issue of the United States patent. The general rule is two years from publication in any country of the world, and that would include the issue of a patent, or two years from public use in Canada.

Hon. Mr. Côte: Is not that an unreasonably long time after you have tested your patent and your claim in a foreign office?

Mr. Gerin-Lajoie: That is just the reason for the stand taken by the Institute in suggesting that the delay might be limited to one year from date of application or any time prior to the issue of the corresponding foreign patent. This is just in accordance with my opening remark under 26 (2).

Hon. Mr. McMeans: He can apply at any time after?

Mr. Gerin-Lajoie: He cannot, sir.

Hon. Mr. McMeans: He would lose his priority?

Mr. Gerin-Lajoie: No, after two years he loses. We will suppose A is the inventor of a very valuable invention and is the only one using it in Canada, if he waits for two and a half years before applying for a patent he cannot get it. The patent has become public property. The two-year limit is absolute, even although the public use might be by the inventor himself.

Hon. Mr. McMeans: He loses his right?

Mr. Gerin-Lajoie: He loses his right after the expiry of two years.

Right Hon. Mr. Graham: Could anybody else get a patent on the invention?

Mr. Gerin-Lajoie: That is the essence of the patent, it must be an invention the world over, which of course is quite different from a trade-mark. A trade-mark does not require the exercise of inventive genius, it is not something as personal as an invention. An invention is the product of one's own brain, something essentially personal; whereas a trade-mark is on a different footing entirely.

Hon. Mr. Parent: Would it not be a primary duty of such an inventor to first file a caveat to protect his rights until his mind is made up?

Mr. Gerin-Lajoie: If he wants to protect his patent he may file a caveat, although that is very seldom resorted to to-day. The filing of the application is what is constantly done in preference to the filing of a caveat.

Hon. Mr. Parent: A caveat would give him one year to think over it and proceed with his invention.

Mr. Gerin-Lajoie: Yes, but the caveat is practically forgotten to-day.

Hon. Mr. Parent: By the Institute?

Mr. Gerin-Lajoie: Yes, it is almost forgotten. At the Patent Office it is very seldom used.

So it seems to me, gentlemen, that the main reason given in support of the change of the term of the patent to have it run from the date of application in order to hasten development has no foundation. I think it would tend to work the other way. Some reasonable time must be provided for which the other sections do provide for the application.

Hon. Mr. Cahan: Don't you think that some provision should be made to prevent a patent lawyer withholding and protracting the correspondence? Some of you lawyers will refuse to answer a letter from the Patent Office within less

than eleven months and twenty days. Then when the letter is answered and you have another from the Patent Office dealing with the same subject, you allow another year to elapse before you answer it. All this tends to protract the negotiations.

Right Hon. Mr. MEIGHEN: And the life of the patent.

Hon. Mr. CAHAN: Not only does it protract the life of the patent; sometimes there is a delay of about three and a half years, for which apparently on the surface there can be no justification whatever. Lawyers can be dilatory, and thereby instead of the patent giving you eighteen years from the date of the application, you have the patent outstanding in this country two, three and four years after the original patent has ceased to have any effect in the foreign country in which it was first issued.

Mr. GERIN-LAJOIE: May I remind you, sir, first of all that the protection itself under the patent is not prolonged, it remains at eighteen years all through. The protection starts only from the date of issue of the patent. The only result of protracting the correspondence, as has been suggested, would be to vary the term of the patent by having it start at a later date. That would be the only practical result. But, sir, it is very difficult to lay down a hard and fast rule and to answer an objection of that kind in a general way. I think it has been shown already that in some instances several years may be really necessary if a valid patent is to be obtained, so if in some cases these supposedly dilatory methods have been used, they may have been used quite properly in the interest not only of the inventor but of the industrial life of the country. Otherwise the Patent Office in Canada would gladly have allowed the application with its broad claims giving apparently very wide powers to the applicant, which would be a real embarrassment to the industry without conferring any substantial benefit on the applicant. On the contrary I would say it would be to his great detriment, for it would most likely involve him in expensive litigation, only to find out that his patent was only a piece of paper.

Perhaps I should state in this connection that I am speaking from an independent standpoint, as I am not a patent solicitor myself. The Hon. Mr. Cahan is evidently referring to patent solicitors when he speaks of lawyers. Lawyers do not file patent applications.

Hon. Mr. CAHAN: Some lawyers are registered as patent solicitors.

Mr. GÉRIN-LAJOIE: They might be unwise enough to run the risk of doing so. I am informed that in several instances applications, the prosecution of which has been delayed in this way, are withdrawn following the objections and difficulties met before the United States Patent Office. Is it not proper that under those conditions the application should be withdrawn in the interests both of the inventor and of the industrial life of the country?

In summing up, I might state that the proposed change would have the effect of penalizing applicants who exercise a greater care in making sure that they only ask for and secure those limited claims to which they are really entitled.

This question ties up also with that of relief against infringement during the period between the application date and the date of issue. If the system is to be logical at all, if we are to have the term of the patent run from the date of application, assuredly protection must run also from that date. Section 55, subsection 2 of the Bill provides for it. What is the result?

Right Hon. Mr. MEIGHEN: Protection does not now run from the date of application?

Mr. GÉRIN-LAJOIE: No. At present the protection runs from the date of issue, and there is no protection of any kind during the pendency of the application before the Patent Office.

Hon. Mr. CAHAN: You have priority by reason of your application.

Mr. GÉRIN-LAJOIE: There is no protection with regard to infringement.

Hon. Mr. CAHAN: But you have nothing to infringe, no one else can come in ahead of you after you file your application and secure the patent. The mere filing of your application gives you priority over others for a distinct and different invention.

Mr. GÉRIN-LAJOIE: It merely establishes the date at which that application is deemed to have been filed, sir. But any application is invalid unless the applicant is the first inventor, and that is the fundamental idea which must be borne in mind in dealing with patent matters. It is not a question of who runs first to the Patent Office. Only one man in the world can be entitled to a patent on a given invention and that is the real inventor, not only in Canada but the world over. I submit that the question of being the first one to apply for the patent has no bearing whatever.

Hon. Mr. CAHAN: If you read the proceedings of the international conventions you will find that all the patent lawyers representing particular interests insist upon the priority which is granted by reason of the prior filing of the application. We have continuously before us the question of French and German patentees and the priority given both under the international convention, with respect to which they set great store indeed if one is to judge by the volume of correspondence about it.

Mr. GÉRIN-LAJOIE: May I be allowed to point out that this question of priority has very little effect in Canada on account of the principle, which is clearly recognized by the courts, that the first inventor alone is entitled to the invention. The only advantage, possibly, of this priority claim is that it establishes definitely that on a certain date Mr. So-and-so, the applicant, had made application in the Canadian Patent Office and that therefore anyone coming subsequent to that date to apply for a patent, or establishing that his date is subsequent to that priority date, is not the inventor.

Hon. Mr. CAHAN: I entirely disagree, Mr. Lajoie. Under the International Convention if he comes in within a year from the date of the grant of the foreign patent he then obtains priority in this country.

Right Hon. Mr. MEIGHEN: Suppose someone comes forward in Canada and shows that he invented that before the man had it in the other country, would that shut him out?

Hon. Mr. CAHAN: No. So far as the foreign patentee is concerned, if he lacks priority of invention then it falls into the public domain.

Right Hon. Mr. MEIGHEN: A makes his application here; subsequently B comes along and shows that he is a prior inventor the world over, then the priority is destroyed and B could get that invention.

Hon. Mr. CAHAN: There is that probability that the priority of A will be destroyed, but there are few cases of the kind in which B could obtain a patent here, if the invention had been published.

Mr. GÉRIN-LAJOIE: Perhaps the contradiction is merely apparent. You may have in view the administration of the Patent Office. I am dealing with the validity of the patent. With regard to the administration of the Patent Office it may be that it would have its importance, because they would determine by the date of application who was the first applicant, but that only comes down to the point of the first applicant, which is wholly irrelevant with regard to the question of validity, which is the vital issue, and that question rests solely on the question of first inventor.

Now, section 65, subsection 2, which is linked up with that question of the date of application, states that one, after the issue of his patent, may sue for an infringement which may have occurred previously during the intermediate period

between the date of his application and the date of the grant of his patent. Obviously, in the absence of any provisions whereby these applications would be rendered public, this would cause very serious injury to innocent outsiders infringing without the knowledge that they were doing so. If the system of having the term of the patent run from the date of application is to be adopted, then machinery will have to be provided for somewhat along the lines of the English system, which I have referred to. I merely wish to point out here that sections 7, 8, 9, 10 and 11, particularly, of the British Act, state what this special machinery is whereby third parties may be protected. I have already referred to the preliminary search that is carried on and the subsequent acceptance of the complete specification, as distinguished from the provisional specification, by the Comptroller, and have pointed out the requirement under section 9 of the British Act, whereby:—

> On the acceptance of the complete specification the Comptroller shall advertise the acceptance; and the application and specifications, with the drawings, samples and specimens shall be open to public inspection.

Then persons may come up and oppose the grant of the patent following this publication. They may file a notice of opposition. All this is a special procedure which is a necessary incident to the working out of the system, and, of course, is entirely ignored in the present Bill.

Right Hon. Mr. MEIGHEN: The point is that if you have a life of the patent from the date of the application you need several supplementary provisions such as appear in the British Act?

Mr. GÉRIN-LAJOIE: The system itself would have to be changed. No doubt the British system is a logical system. It would be a different system from our own, because under our system the mere publication of the application would not be sufficient. The proposed change is much more drastic, as I have pointed out, than the English system, and I think would be—

Right Hon. Mr. MEIGHEN: Under the English law it runs from the date of acceptance.

Mr. GÉRIN-LAJOIE: Acceptance.

Right Hon. Mr. MEIGHEN: And even if we changed to that we would then require such provisions as you have cited, for advertising and hearing opposition.

Mr. GÉRIN-LAJOIE: Yes, sir, and we would have to establish just what the acceptance is. The acceptance referred to is not the final acceptance. Under the British Act the procedure is very different. If the mere filing of an application were sufficient under our system, third parties would not be protected, because obviously it would be sufficient for someone to apply for and obtain a patent to which he is not entitled; and just by rendering this application public he could use it as a means of intimidation, to prevent others coming into the field, which I think would be very prejudicial to industry.

So, the feeling of the Institute, gentlemen, is that on this question of term of patent, and the date from which it should run, we should let well enough alone. We are really not able to see what change should be recommended, and the Institute does not feel that there is any reason for a change merely on the basis of the assumption that there is a real necessity of hastening prosecution before the Patent Office.

Right Hon. Mr. MEIGHEN: Have you stated the British Act quite correctly? Section 13 reads as follows:—

> Except as otherwise expressly provided by this Act a patent shall be dated and sealed as of the date of the application:

and then there is the proviso:—

> Provided that no proceedings shall be taken in respect of an infringement committed before the acceptance of the complete specification.

The patent is dated as of the date of the application. I do not know that it is very important.

Mr. Gérin-Lajoie: Section 10, sir, if I may be allowed to refer to it, states that:—

> After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: provided that an applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

As a matter of fact, for a complete statement of the system we would have to explain fully sections 7 to 12, and 13 and 14, possibly, which have intricate provisions and cover a somewhat involved system quite different from our own. Section 7, for instance, sub-paragraph 3, states that:—

> If the Comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.

And the acceptance itself follows an examination, as covered by sections 8 and 8a.

The Chairman: Mr. Lajoie, the leader of the Senate has an engagement at 12 o'clock; he has promised to address the Study Club.

Is it the pleasure of the Committee that we adjourn now and meet again this afternoon when Mr. Lajoie can continue?

Some Hon. Senators: Carried.

The Chairman: Then we will adjourn to meet when the House rises this afternoon, and after the present witness has been heard we will hear Dr. Tory, is he is present.

The Committee adjourned until this afternoon.

AFTERNOON SITTING

The Committee resumed at 5.30 p.m.

The Chairman: We will continue where we left off at 12 o'clock to-day. Will you proceed, Mr. Gérin-Lajoie?

Mr. Gérin-Lajoie: Mr. Chairman, may I be allowed to file the membership roll of the Institute? I was requested to put it in this morning.

Membership Roll of the Canadian Institute of Patent Solicitors

Fellows

Mr. Charles W. Taylor
Mr. H. J. S. Dennison
Mr. Alex. E. MacRae
Mr. A. J. R. Lanoue
Mr. Lloyd C. Prittie
Mr. S. W. R. Allen
Mr. Harold G. Fox
Mr. H. Gérin-Lajoie, K.C.
Mr. George E. Leetham
Mr. Hanbury A. Budden
Mr. E. G. Gowling
Mr. O. M. Biggar, K.C.

Mr. Raymond A. Robic
Mr. J. Edward Maybee
Mr. H. G. Hendry
Mr. Gordon G. Cooke
Mr. F. B. Fetherstonhaugh, K.C.
Mr. Eric L. Harvie
Mr. Russel S. Smart, K.C.
Mr. Ernest E. Carver
Mr. R. R. Jarvis
Mr. J. D. O'Connell
Mr. Gareth E. Maybee
Mr. J. A. Bastien
Mr. T. S. Cole
Mr. Egerton R. Case
Mr. Warwick F. Chipman, K.C.

Associate Members

Mr. Norman T. Tyndall
Mr. Harold A. Weir
Mr. Thos. E. Sherman
Mr. Thos. W. Smith
Mr. W. Donald Scholfield
Mr. Harold E. Dunn

In addition there are ten British and eighteen foreign associates.

It is not my intention, Mr. Chairman and honourable members, to dwell longer on the British Patent Act which I touched upon this morning, but for clarity's sake I believe I should point out in connection with the provisions of the British Act that although the protection under it runs from the date of acceptance of the complete specification, as I have mentioned, the term of the patent itself runs from the date of application. Perhaps that point has not been properly brought out.

In a general way I wish to add that the British system is different from our Canadian Patent Act. There the patent is not granted to the first inventor the world over as we have it here in Canada. The date of application has a great deal to do with it, and the patent is granted to the one who first introduces the invention in the United Kingdom. That is an entirely different principle from the one embodied in our Patent Act.

Right Hon. Mr. MEIGHEN: Are we free to adopt that principle here?

Mr. GÉRIN-LAJOIE: I suppose we are free to accept any other principle.

Right Hon. Mr. MEIGHEN: I mean under the convention?

Mr. GÉRIN-LAJOIE: Great Britain is a party to the international convention.

Right Hon. Mr. MEIGHEN: Would you recommend that principle?

Mr. GÉRIN-LAJOIE: I would not, Senator Meighen, for the reason that we have already a set of judicial precedents built around our present system, which on the whole I think has worked satisfactorily, and it would appear to be a pity to merely strike out with one stroke of the pen all our jurisprudence built upon our present system.

Now, the other main feature of the Bill which I intend to take up was that of the conditions attaching to patents as covered by section 63, revocation of the patent covered by section 64, voidance of patents for failure to perform the conditions prescribed by the Act, section 52, and the provision whereby the patentee is prevented to sue for an infringement after three years unless the invention is worked on a commercial scale as covered by section 53. All of these sections are linked and must be, I believe, considered together.

The essential requirement as the basis of all these sections is that of manufacturing on a commercial scale within Canada as defined by section 2 (*h*). Section 63 expressly states that the patents will be issued subject to the following conditions, and the very first condition mentioned is that relating to the working of the patented invention on a commercial scale. Together with this requirement or condition must be considered section 52, which states that the

patent will automatically become void if the patentee and his legal representative fail to perform the conditions in this Act prescribed, one of the essential conditions under 63 being that requirement of working on a commercial scale. Section 64 deals with the revocation of the patents after three years if the requirements have not been met, and in particular if the patent has not been worked on a commercial scale after a licence has been granted. Section 53 renders the patent ineffective for all practical purposes in preventing the patentee from suing unless the requirement as to working has been fulfilled.

These are very drastic provisions, and they are very different from those which obtain under our present law and which have obtained under our previous Patent Acts. The question which arises is whether there is any good reason for this stringent requirement as to working on a commercial scale, which exists neither in England nor in the United States. I think this question should be considered from a two-fold angle. First, is the provision fair to the inventor; second, is it in the interest of Canadian industry.

Now, the problem must be faced with respect to the inventor. He is the one furnishing the invention, and his position, I think, must be considered. What position does he occupy in Canada, and what consideration does the inventor deserve, if any? That brings us down to the very fundamentals of patent law: What are the respective positions of the public towards the inventor, and vice versa?

Everyone will agree, I believe, that the position is that of contracting parties. The inventor agrees to give to the public irrevocably by full disclosure something which is useful, and has to be useful, otherwise it would not be patentable, but intangible—he gives an idea resulting from the exercise, not of his skill but of his inventive genius, otherwise there would not be a proper subject matter for a patent of invention.

Now, the inventor if not offered proper inducement might not invent.

Right Hon. Mr. MEIGHEN: What clause are you speaking to, Mr. Gérin-Lajoie?

Mr. GÉRIN-LAJOIE: I am dealing with the requirement as to working on a commercial scale.

Right Hon. Mr. MEIGHEN: In three years?

Mr. GÉRIN-LAJOIE: Not only in three years. Section 53 states that the three years must be considered in connection with that section, although I do not believe the three year limit applies to the voidance of the patent under section 52 taken in combination with section 63, section 63 declaring that the patent is issued subject to that requirement of working on a commercial scale, and 52 stating that the patent becomes automatically void for failure to meet any of the conditions in the Act prescribed. But as we are considering whether there is any good reason to provide for this requirement which considerably curtails—

Hon. Mr. GRIESBACH: Mr. Chairman, your quorum is going out the door.

The CHAIRMAN: Can you stay, Mr. Senator?

Right Hon. Mr. MEIGHEN: We do not want any three-hour day in the Senate.

The CHAIRMAN: I suppose you are nearing the end of your remarks, Mr. Lajoie?

Mr. GERIN-LAJOIE: I do not intend to speak very long, but if the members of the Committee prefer to adjourn until to-morrow morning, I can postpone what I have to say.

The CHAIRMAN: I think we had better finish up in the next fifteen minutes, then we will adjourn.

Hon. Mr. COTE: He does not need to conclude his remarks to-night. He is speaking on some very important sections.

Right Hon. Mr. MEIGHEN: So long as it is important to the Bill, I do not care if you take fifteen hours.

Mr. GERIN-LAJOIE: Thank you, Mr. Meighen. If I have been dealing, perhaps a little tediously, with the fundamentals, it is just to arrive at a solution of the problem of whether this stringent and extreme requirement is justified or not. It depends on your interpretation of the respective positions of the inventor and the public, because that is the postion that must be considered. By this requirement the rights of the inventor are considerably curtailed, since the Bill proposes a condition which will expose him either to having his patent voided at once, if the sections are to be interpreted that way, or at least after a three-year period. I have just mentioned what the inventor or patentee gives to the public in consideration of the monopoly which he, in turn, expects to receive from the public authorities.

The requirements imposed on the patentee in order to secure the benefit of this monopoly called a patent are very stringent. Such a patent is not easily obtained, or, at least, is not given unless very strict conditions, part of which I have already mentioned, are met. First, there must be the exercise of the inventive faculty, and therefore the subject-matter of a patent must be new. It must not be a mere improvement in some art or science, but an invention, and that is a creation. Sometimes the courts have to decide whether there is subject-matter of invention, and whether the improvement is merely an improvement of mechanical skill or an invention in the exercise of inventive genius. Apart from that, under our Canadian law, it must be new the world over. Therefore the patentee furnishes something which would not have been disclosed, or available to the public, had it not been for this invention.

Then it must be useful, and, finally, the disclosure must be full. That is, it must be such that the invention will be available to the public at the expiry of its term.

Now, in consideration of that gift which the patentee makes to the public, what can he reasonably expect to receive in return? Well, under all patent laws he may expect to receive a monopoly for a certain number of years—and I am not now discussing the exact number of years—during which he is allowed to operate or use this invention or patent either by himself or through licences, thereby deriving a profit from it, or getting returns in the form of royalties. That is the whole contract, and the whole of the inventor's obligation has been fulfilled from the moment he has made full disclosure.

Now, does that mean that under no circumstances those rights can be taken away or affected? Well, they can be or may be affected only in the case of abuse, and it is the question of instances of abuse that I think legislators have to consider in deciding what methods are to be adopted to deal with the rights of the patentees. The abuse arises where the patentee who gets this monopoly does not operate under it either by himself or through licensees, and refuses to let others operate under it, even on the payment of royalties. That is abuse, and that is the abuse which has to be taken care of especially under most patent systems.

Hon. Mr. GRIESBACH: That is by the compulsory feature.

Mr. GÉRIN-LAJOIE: By the compulsory licensing. I am just arriving at that very delicate point, which is a vital issue in the question. That situation of abuse is and can be fairly met only by a compulsory licensing clause. Now, what is the practical effect of this compulsory licensing clause? It is a clause whereby, if the public is prejudiced by the fact that the reasonable requirements of the public are not met, some interested party may lay down that situation before some authority, say the Patent Commissioner.

Hon. Mr. GRIESBACH: What it really comes to is this: that some other concern feels the need of the use of that patent in their business. You are using

high-falutin language. You are talking about what the public want, but as a matter of fact it is expressed in the need of some other outfit.

Mr. GÉRIN-LAJOIE: It would arise in that way, where some other firm needs to get that invention which the patentee has disclosed to the public and which this competing firm would never have known of but for the disclosure by this inventor. This competing firm wants to get the benefit of this inventive work, which may represent the work of years, and, in the case of a corporation, a very considerable expense on a research department.

So, in the case of such abuse, where the invention is not operated either by the inventor or by licensees, this other firm may apply to the Commissioner and compel the patentee to operate under the patent so as to produce the product, whatever it may be; and if the patentee refuses, to compel that patentee to grant licences. And one may even go further: if licences are not granted, that the patent will be entirely voided.

That is really the extent and scope of what may be referred to as a compulsory licensing provision. That is quite different from the automatic voidance that I have just referred to, but which would result from the provisions of the present Bill. The feeling of the Institute is, gentlemen, that the compulsory licensing—and I am not dealing with the express wording and details of this compulsory licensing clause—that some compulsory licensing is the only fair and effective remedy, and that to go beyond that is, perhaps, to treat the patentee unfairly.

Hon. Mr. GRIESBACH: In what respect is the Bill going beyond that?

Right Hon. Mr. MEIGHEN: In the three-year clause?

Mr. GÉRIN-LAJOIE: First, by the automatic voidance of the patent on account of the provisions of sections 52 and 63. But if these were modified and it was intended only to have it operative at the end of three years, it would be operative then, which I think would be excessive, and would be interfering unduly with the rights to which I think the patentee is entitled under his contract with the public. In other words, I do not think the patentee should be punished for not manufacturing—it may be by reason of conditions beyond his control—but effective means should be taken to enable a competing firm to get the benefit of that patent, as it could get it if the patentee were reasonable and were willing to grant licenses.

Now, that is exactly the situation that was met by section 40, as completed by section 41, of the present Act; and the feeling of the Institute is that that clause is sufficient.

I do not want to take any more time, Mr. Chairman, if there is a feeling that I should not proceed.

The CHAIRMAN: Is there any further argument?

Right Hon. Mr. MEIGHEN: Is there any other feature of the Bill?

Mr. GÉRIN-LAJOIE: In order to hasten this matter, I shall not deal with sections 40 and 41, which I think are pretty clear, and which provide the means of forcing the granting of licenses where the reasonable requirements of the public are not met.

The CHAIRMAN: What I would suggest, if you are about through with your main argument, is this: It is now 6 o'clock. We will adjourn until to-morrow morning at 10.30. We will then hear what other witnesses have to say, and if later on you want to amplify it, you will have an opportunity of doing so.

Right Hon. Mr. MEIGHEN: I would like three or four representative men, mainly of the business community, who are heavily interested in patents, to get together, assisted by the representatives of your Institute and one or two patent counsel, to draft amendments that they think are essential, keeping in mind the fact that we are determined to secure as much public protection as we can and prevent abuses as far as we can.

Mr. GÉRIN-LAJOIE: Would this Committee be appointed by someone?

Right Hon. Mr. MEIGHEN: Appoint yourselves. Have men like Mr. Lanoue, say, whose company has enormous patent responsibilities, and two or three others like that. You could not have that ready for to-morrow, but you could for next week.

Mr. GÉRIN-LAJOIE: If I may be allowed to suggest, Senator Meighen, the difficulty is that we do not as yet know what the decision of the committee will be about the provision for working on a commercial scale, and as to dating of patents from the date of application.

Right Hon. Mr. MEIGHEN: I would like you to have your amendments go as far as we can safely go in the way of compelling the use of patents. If you think that one means is in the compulsory licence provisions, frame your amendments along that line.

The CHAIRMAN: Your amendments will be considered by the committee.

Mr. GÉRIN-LAJOIE: I might say that the question has been very carefully considered by the Institute. The conclusion arrived at was that it was impossible at the present time, unless we copy the British system entirely, to do otherwise than content ourselves with the present sections, which very fully provide for contingencies.

Right Hon. Mr. MEIGHEN: Oh, no, they do not. It is admitted by many people that there could be far better provisions with respect to compulsory licencing. Also while we can have a limit within which the patented article must be used, we can provide that though suits or infringement may be brought after that perhaps they should be allowed only on the fiat of the Minister. Do not think that we are going to have things done entirely in your own way. We have to be sure that the amendments you propose are going to protect the public against the very abuses Mr. Cahan has outlined. Surely you can get together and agree on amendments that you think would strengthen the Act.

Mr. GÉRIN-LAJOIE: We shall be very glad to give it our consideration.

Right Hon. Mr. MEIGHEN: Let us know to-morrow whether you think this suggestion is worthwhile, and whether you are ready to work on it. If you are not, we may have to appoint a sub-committee and draft amendments ourselves.

Mr. GÉRIN-LAJOIE: Would the sub-committee require the assistance of the Institute?

Right Hon. Mr. MEIGHEN: I would rather not have a sub-committee. The Bill is not long, and I would prefer to have it considered by all the members of the committee. If you get your proposed amendments together, they could be considered by the whole committee, and that would be more satisfactory to us.

Mr. GÉRIN-LAJOIE: Your suggestion will be considered, sir.

The hearing was adjourned until to-morrow, Thursday, February 28, at 10.30 a.m.

6th SESSION, 17th PARLIAMENT, 25 GEORGE V, 1935

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL A, AN ACT TO AMEND AND CONSOLIDATE THE ACTS RELATING TO PATENTS OF INVENTION

No. 3

The Honourable Frank B. Black, Chairman

WITNESSES:

Mr. H. Gérin-Lajoie, K.C., President of Canadian Institute of Patent Solicitors.

Mr. Russel S. Smart, K.C., Ottawa, Ontario.

Dr. G. S. Whitby, Director, Division of Chemistry, National Research Council, Ottawa, Ontario.

Mr. George J. Manson, Hawkesbury, Ontario.

Mr. A. E. McRae, Secretary, Canadian Institute of Patent Solicitors.

Mr. J. H. VanKoolbergen, President, International Bureau of Inventors, Incorporated, Montreal, P.Q.

Mr. G. S. Maybee, representing Toronto Section of the Canadian Institute of Patent Solicitors.

Mr. S. R. W. Allen, Montreal, P.Q., representing the Montreal Board of Trade.

Mr. E. Blake Robertson, Canadian Manufacturers Association, Ottawa, Ont.

Mr. J. H. Thompson, Canadian Marconi Company, Ltd., Montreal, P.Q.

FILED:

Memorandum by the Canadian Institute of Patent Solicitors.

OTTAWA
J. O. PATENAUDE
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1935

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable FRANK B. BLACK, Chairman

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Meighen
Michener
Murphy
Parent
Planta
Raymond
Riley
Schaffner
Sharpe
Sinclair
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Tanner
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Webster
White (Inkerman)
White (Pembroke)
Wilson (Rockcliffe)
Wilson (Sorel)

MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, February 28, 1935.

The Standing Committee on Banking and Commerce, to whom was referred Bill A, intituled: "An Act to amend and consolidate the Acts relating to Patents of Invention," resumed this day at 10.30 a.m.

Hon. Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, we will proceed to deal with our work. I am not sure whether Mr. Gérin-Lajoie concluded his statement yesterday.

Mr. GÉRIN-LAJOIE: I did not quite finish, sir. I am at the disposal of the committee.

The CHAIRMAN: We shall be glad to hear you now if you wish to continue. I did not know whether you wished to say anything further, except with reference to the suggestions that Senator Meighen made to you.

Mr. GÉRIN-LAJOIE: The only other point that I thought it might be proper to touch upon, which affects those working provisions in the Bill, in connection with the sections that we were dealing with yesterday afternoon, is the question of the international convention. I do not think the point has been discussed very fully as to whether the present provisions of the Bill would be in contravention of the provisions of the international convention. I regret to state that I think they are in contravention of the international convention.

Right Hon. Mr. GRAHAM: The provisions of this new Bill?

Mr. GÉRIN-LAJOIE: Yes sir.

Right Hon. Mr. GRAHAM: That would be serious.

Mr. GÉRIN-LAJOIE: The matter has been given a great deal of thought by members of the Institute, counsel and patent attorneys. Article 5 of the international convention is the provision which we all have in mind. The provision to which we have subscribed, and which I think affects the question, is subsection 3 of article 5 which says:—

> These measures—that is legislated measures to prevent abuses—shall not provide for the revocation of the patent unless the grant of compulsory licences is insufficient to prevent such abuses.

I think this provision must be interpreted to mean that the compulsory licensing clause in a patent Act must not go beyond stating that the patentee is given an opportunity either to operate under the patent himself or to grant licences. If he fails to comply with the order that may be given him, then the patent may possibly be voided. The abuses referred to in that part of article 5 of the international convention, which I read, are abuses which might result in the exercise of exclusive rights conferred by the patent, for example, failure to use. We have already subscribed to the text which I read, but there is another clause, decided upon at London on June 2nd, 1934, to which we have not as yet acquiesced, though I presume it is the intention of this country to agree to it as well. It is clause 4 of article 5, and I think it is perhaps still more imperative. It provides that:—

> In any case the issuance of a compulsory licence cannot be demanded before the expiration of three years beginning with the date of the grant-

ing of the patent, and this licence can be issued only if the patentee does not produce acceptable excuses. No action for the cancellation or revocation of a patent can be introduced before the expiration of two years beginning with the issuance of the first compulsory licence.

This I think bears out my previous statement that the procedure in the Act must be such that an opportunity is afforded to the patentee either to manufacture himself or grant a compulsory licence. Now, sections 52 and 63 I believe really go against this principle, inasmuch as section 63 states:—

Every patent, except those governed by the provisions of this Act relating to the granting of patents in the public service, shall be subject to the following conditions:—

(*a*) Every patentee shall satisfy the reasonable requirements of the public with reference to his patent, and to that end shall work the patented invention on a commercial scale within Canada.

And section 52, subsection 1, states:—

A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading, or if the patentee and his legal representatives fail to perform the conditions in this Act prescribed.

Now, taking these two provisions together, and as there is no delay with respect to the working conditions, I believe the effect would be an automatic voidance of the patent, which would be in contravention of the international convention, article 5, to which I have referred.

Hon. Mr. DANDURAND: And section 53 goes further.

Mr. GÉRIN-LAJOIE: Yes, section 53 goes further in a way. It is in a different position, perhaps, but nevertheless it is in contravention of the international convention, inasmuch as it states that no recourse can be exercised by the patentee after three years, unless he has worked his invention on a commercial scale within Canada.

Hon. Mr. DANDURAND: Giving him no chance for an explanation or an excuse?

Mr. GÉRIN-LAJOIE: None whatever.

Hon. Mr. GRIESBACH: Is the expression "commercial scale" defined anywhere?

Mr. GÉRIN-LAJOIE: Section 2 (*h*), sir. It is a very drastic and stringent definition, which is copied from the British Act, but with this difference, that the British Act contains no corresponding provision whereby the patent might be automatically voided, as is provided by sections 52, 53 and 63 of the present Bill, but merely contains a compulsory licencing provision. Under section 53, as Senator Dandurand was pointing out, the patentee has no opportunity whatever to give any reason or explanation of his position. If the patent has not been operated on a commercial scale, no relief whatever will be granted to the patentee, and the patent is rendered ineffective by the mere lapse of time.

Hon. Mr. GRIESBACH: Who decides that?

Mr. GÉRIN-LAJOIE: Nobody decides it, sir, because it operates ipso facto, under section 53.

Hon. Mr. GRIESBACH: But somebody, the Commissioner, or someone, must do something?

Mr. GÉRIN-LAJOIE: No, sir. That is the severity of this section, that it operates automatically without any judgment or order being rendered by anyone.

Hon. Mr. DANDURAND: It is an absolute estoppel?

Mr. GÉRIN-LAJOIE: The patentee is absolutely estopped. The general rule under our patent law, I think, is that a patent is always presumed by the courts to be valid and effective, and on ex parte suits the only proof which the plaintiff has to make is that of infringement, apart from filing his petition, but under this provision he will have the onus of proving that his patent is effective because he has worked it and is working it on a commercial scale. Otherwise the presumption is that his patent is ineffective, on account of the mere lapse of time. In other words, as soon as a patent is three years old, and according to the provisions of the Bill that might be from the date of application, the patent is presumed to be ineffective. It will be for the plaintiff on an infringement suit to prove that this prima facie presumption is rebutted because he has worked on a commercial scale as provided for under 53.

Hon. Mr. GRIESBACH: Your contention, anyhow, is that that is in contravention of the international agreement.

Mr. GÉRIN-LAJOIE: Yes; which in effect, I think, states that no such voidance must result unless the patentee is accorded some opportunity of explaining his position.

Hon. Mr. CAHAN: What section of the international convention are you referring to?

Mr. GÉRIN-LAJOIE: That is Article 5, section 3, sir, that I have read. I have also referred to paragraph 4, to which Canada has not yet subscribed, but we assume she will do so. That was adopted at the last conference in London in June.

Hon. Mr. CAHAN: I think that is a very wide presumption. We will deal with the convention as it is.

Mr. GÉRIN-LAJOIE: Dealing with the convention as it is, as suggested by the honourable Minister, the wording is that these measures dealing with abuses will only provide for the revocation of the patent if the granting of a compulsory licence shall not suffice to prevent these abuses. I think that goes a long way against any provision for automatic voidance of the patent as covered by sections 52 and 63, taken in combination, and I think—this may be a matter of opinion—even against the provisions of section 53 of the Bill.

I am not quite sure, Mr. Chairman, whether it would be in order for me at this stage to state that the private committee of members of the Institute met yesterday members of various manufacturing concerns to consider the question that had been put to me yesterday afternoon by the Right Hon. Senator Meighen as to whether we could not suggest some measure whereby the requirements of the public might be met more closely than under present sctions 40 and 41 of the Act, which it was suggested to me were not satisfactory. The conclusion arrived at was that a fair compromise might be reached, and perhaps we might go a long way towards meeting the wishes of the honourable Minister, by suggesting to replace sections 40 and 41 by section 27 of the British Act, which deals with working on a commercial scale. It uses those expressions, and in fact uses them in the sense within the meaning of 2 (*h*) as our definition is taken from the British Act itself.

Right Hon. Mr. GRAHAM: Are the British and the Canadian Acts so nearly alike that you can transfer holus bolus a section from one to the other and make it workable? In other words, are conditions in Great Britain pretty much like ours, or are they altogether different? Section 27, you see, might not be applicable here at all. We want to be clear about that.

Mr. GÉRIN-LAJOIE: There are many important principles involved under the British Act that are not to be found under our Canadian Act. I think a fair answer is that the two systems are quite different. There is no doubt about that. The object of our study yesterday evening was precisely to find out whether section 27 of the British Act could be transferred into our Act without causing too much disturbance. So we went very fully into that long section just to see to what extent it could be made to apply to our system.

Right Hon. Mr. GRAHAM: Who are "we"?

Mr. GÉRIN-LAJOIE: Our committee jointly with representatives of the manufacturing concerns, which met yesterday evening at the request of the Right Hon. Senator Meighen. We came to the conclusion that it could be transferred, with the exception of one paragraph which I think would not serve the purpose. I refer to paragraph 3, subsection (*a*), which deals with licences of right which has nothing corresponding under our Act. But the other provisions, which are much more specific than our present sections 40 and 41 could be made to apply and would go a long way, I think, towards meeting the wishes of the honourable Minister in connection with the requirement of working on a commercial scale.

Right Hon. Mr. GRAHAM: What would become of 63 of this Bill?

Mr. GÉRIN-LAJOIE: It would replace 63 and 54 of the Bill. Sections 52 and 53 would require to be amended by striking therefrom the new provisions.

Right Hon. Mr. MEIGHEN: What you suggest is that those sections 40 and 41 are to be covered, if this Bill passes, by section 63?

Mr. GÉRIN-LAJOIE: Replaced by section 27.

Right Hon. Mr. MEIGHEN: No. Section 63 of this Bill corresponds to sections 40 and 41 of the old law.

Mr. GÉRIN-LAJOIE: More exactly, 63 and 64 correspond to 40 and 41 respectively.

Right Hon. Mr. MEIGHEN: You say 63 and 64, for the reasons you have given, are not acceptable and you would replace those sections by section 27 of the British Act?

Mr. GÉRIN-LAJOIE: Exactly, sir.

Right Hon. Mr. MEIGHEN: Then that will require the elimination of the new features of section 53.

Mr. GÉRIN-LAJOIE: Of 52 and 53; and, futhermore, 55 would have to be replaced by section 50 of our present Act.

Right Hon. Mr. MEIGHEN: I have your suggestion. I shall require some time to study it.

Mr. GÉRIN-LAJOIE: I might point out that section 27 of the Act provides for those cases of abuses where the patented invention is not worked on a commercial scale, which I think meets the wishes of the honourable Minister as to that feature. It deals very fully with that requirement. Section 2 (*a*), for example, gives it as an instance of abuse where the patented invention is not being worked in the United Kingdom on a commercial scale and no satisfactory reason can be given and so forth. 2 (*b*) also states that if the working of the invention in the United Kingdom on a commercial scale is being prevented or hindered by the importation, and so on. Those references to working on a commercial scale deal, I assume, with the point which the honourable Minister raised.

Hon. Mr. CAHAN: Only to a certain extent.

Right Hon. Mr. MEIGHEN: Mr. Lajoie, will you get typewritten and have ready for us this afternoon the exact changes you say will be necessary in those other sections?

Mr. GÉRIN-LAJOIE: You mean by striking out 63 and 64 altogether, quite so.

Right Hon. Mr. MEIGHEN: And substitute 27. You say you have to make certain changes in 52, 53 and 55.

Mr. GÉRIN-LAJOIE: And replace 55.

Right Hon. Mr. MEIGHEN: Just put in typewritten form what changes you say are to be made in those sections.

Mr. GÉRIN-LAJOIE: Yes.

Hon. Mr. GRIESBACH: And copies for distribution.

Mr. GÉRIN-LAJOIE: I thank this Committee very much for the attention I have been given. May I be allowed to deposit the memorandum prepared by the Canadian Institute of Patent Solicitors? I think it has already been distributed among the members of the Committee.

Hon. Mr. DANDURAND: It does not cover the remarks you have made as to the new amendments?

Mr. GÉRIN-LAJOIE: No, the suggestions last made.

Hon. Mr. PARENT: You desire this document to be part of the evidence?

Mr. GÉRIN-LAJOIE: Yes.

Hon. Mr. CAHAN: Mr. Lajoie, do you suggest that adoption of the English provisions with regard to manufacture would cover the case in Canada that is provided for in one of the proposed sections, namely, as to 50 per cent of component parts being manufactured or produced in this country? Do you think that would exclude the almost complete manufacture of the invention across the border? You must remember the patents which are in force in this country are largely of American origin, nearly nine-tenths of them. Now, do you think it reasonable and just that the holder of the patent in Canada should be able to go across the border and buy the component parts and bring them in here, simply employing sufficient labour to put them together, and thus comply with the clauses with respect to manufacture?

Right Hon. Mr. GRAHAM: Would that collide in any way with the Customs Act?

Hon. Mr. CAHAN: The Customs Act has nothing to do with it.

Right Hon. Mr. GRAHAM: It provides for a 50 per cent content.

Hon. Mr. CAHAN: That is on the preparation and treatment of products under the British agreement.

Right Hon. Mr. GRAHAM: We do not want to have two Acts to provide the same thing.

Hon. Mr. DANDURAND: The two or three large concerns that have appeared before us could perhaps better answer the effect this proposed legislation will have upon the working of their own patents.

Hon. Mr. CAHAN: Large concerns, senator, work on a fair basis. Canadian General Electric, Canadian Westinghouse and Canadian Industries manufacture in this country.

Hon. Mr. DANDURAND: Are they not importing parts?

Hon. Mr. CAHAN: No. This is with regard to importation of parts by other companies than those. They manufacture in this country as far as they can.

Hon. Mr. DANDURAND: To what extent, would you say 50 per cent?

Hon. Mr. CAHAN: So far as my information goes the Canadian Westinghouse, Canadian General Electric, Canadian Industries, and the National Electric Company are manufacturing in this country to the fullest extent possible. They have in some cases to import raw material, but they are manufacturing.

The complaints are not with regard to the three or four companies that are honestly and efficiently working under the Patent Act. It is the others that I am anxious to cover.

Hon. Mr. DANDURAND: Are there many of those concerns importing 50 per cent?

Hon. Mr. CAHAN: I am informed there are large concerns that import practically everything. My information is that an American concern will obtain a patent in Canada of a particular invention, and then assume to comply with the present law by sending the parts across the border and assembling them in some factory in Canada. I do not think that is fair compliance with the working provisions.

Mr. GÉRIN-LAJOIE: I believe, sir, that that situation would be fairly met by a reasonable interpretation of the provisions of section 27 of the British Act, which you have referred to. I think the answer would rest on the interpretation to be given of the words "manufacturing or working on a commercial scale in Canada."

Right Hon. Mr. MEIGHEN: We could make that pretty certain.

Mr. GÉRIN-LAJOIE: The first case of abuse dealt with under the provisions of the British Act, section 27 (*a*), deals also with importation in sub-paragraph (*b*) of 2. If it amounts to an importation, it would be prohibited by this paragraph of the British Act.

Hon. Mr. CAHAN: Which paragraph is that?

Mr. GÉRIN-LAJOIE: Section 27, subsection 2 (*b*), which deals with importation. And the previous one deals with non-working on a commercial scale in the United Kingdom.

Right Hon. Mr. GRAHAM: If that did not meet the case in the eyes of the committee, there would be no objection to our changing it?

Right Hon. Mr. MEIGHEN: Or fixing it up by definition.

Mr. GÉRIN-LAJOIE: Exactly. And if those conditions were not met by the patentee, then any outsider could apply for the relief provided for under this section.

Hon. Mr. CAHAN: I would like to call attention to another matter. I understood you yesterday to make a statement, Mr. Gérin-Lajoie, which to my mind was confusing as to the meaning of priority in one case, when you were dealing with the prior state of the art, and priority in a different case in connection with the international convention, which gives a certain priority. We all admit that under our Act, if there is a prior invention you should not be able to obtain a patent. After all, it is not an invention or discovery unless it is something new with respect to which publicity is being given for the first time. I understand that an invention or discovery may be kept secret, but that is another phase of the question. Now the priority which the foreign patentee obtains in this country is dealt with by article 4 of the international convention. Leaving out the words which do not refer to patents, it runs as follows:—

> (*a*) Any person who has duly deposited an application for a patent shall enjoy for the purposes of deposit in the other countries, and reserving the rights of third parties, a right of priority, during the periods hereinafter stated.
>
> (*b*) Consequently, a subsequent deposit in any of the other countries of the Union before the expiration of those periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another deposit, by publication or exploitation of the invention, by the putting on sale of copies of the design or model.

(*c*) The above mentioned periods of priority shall be twelve months for patents.

These periods start from the date of deposit of the first application in a country of the Union.

Now, if an application is made in Germany and a patent granted in that country, in order to obtain a patent in Canada under that convention you must deposit your application in this country within the twelve-months period. The same thing is necessary in Great Britain.

Mr. GÉRIN-LAJOIE: In order to obtain the convention date, sir, but not merely to obtain a patent in Canada.

Hon. Mr. CAHAN: Let us be clear about that. I understand that as well as you do, and I want this committee to understand it. Do you think there is any sound reason why in Canada we should extend the right which the foreign patentee has under the international convention? It is not extended in England, nor in the United States. But in order that the committee may understand it, I will say that by a decision, whether bad or indifferent, given by the junior judge of the Exchequer Court, the foreign patentee is not confined to one year. Under the international convention the foreign patentee must apply within a year, but if he does not apply within a year he comes in under another interpretation to our act given by the court, which interpretation in my opinion ought to be wiped out, and which this Bill is intended to wipe out. Is there any just reason why the foreign patentee should have larger and more extensive rights in Canada than are granted to him under this international convention? He has no larger and more extensive rights in the United States or England. I have traced back a whole series of applications in England, for patents granted in Germany and France, and in every case where the patent has been granted in England it has been applied for within the year, under the terms of the international convention. Now, should we go beyond that?

Mr. GÉRIN-LAJOIE: In reply, sir, may I be allowed to point out that our system, which only permits of the granting of a patent to a person who is the first inventor the world over, is different from the system in England and in some European countries, where the patent is granted to the first applicant, or to the first person who introduces the particular invention into the country. The principle on which our patent Act rests is entirely different.

Right Hon. Mr. MEIGHEN: We know that.

Mr. GÉRIN-LAJOIE: As I have previously stated, the convention date has practically no utility with us, because it is not the question of the first applicant that counts but the question of the first invention.

Hon. Mr. CAHAN: I am asking you whether we should not exclude all foreign applications that are not made within the year, as prescribed by the international convention. There are now in existence in Canada about 118,000 patents from across the border. Why should Americans be allowed to apply for and secure patents here, after the lapse of time which is prescribed as their right by the international convention? And why should not the Germans and the French be treated accordingly? They give no such additional rights to us.

Mr. GÉRIN-LAJOIE: The rule would of course be uniform and would apply not only to foreign applicants but to Canadians.

Hon. Mr. CAHAN: I beg your pardon. The restriction upon our rights as an administrative department of government in connection with patents, as made by the international convention, is with regard to foreign patents. There is no restriction by the international convention excepting article 2, with regard to our dealing with our own domestic patents. The international convention prescribes international rights, and I differ from the interpretation that you made a short time ago, that we are bound when dealing with the applications of our own patentees to treat them in the same way in respect of the time of filing.

Mr. GÉRIN-LAJOIE: I assumed that you were asking me whether I thought that the one-year period under the convention would not be a sufficient lapse of time to allow for applications in Canada.

Hon. Mr. CAHAN: Is it not right and just that we should limit the rights of a foreigner to his international rights?

Mr. GÉRIN-LAJOIE: If the suggestion would apply only to foreign applicants we might have to deal with it differently, but when considering the limit of time within which an application must be filed I also had in mind the position of Canadian manufacturers and applicants.

Right Hon. Mr. MEIGHEN: That is Canadians who go to the United States first to get their patents?

Mr. GÉRIN-LAJOIE: Quite so.

Right Hon. Mr. MEIGHEN: Would the international convention apply to those Canadians?

Hon. Mr. CAHAN: I should think that if a Canadian gets a foreign patent first, he comes in as a foreign patentee.

Right Hon. Mr. MEIGHEN: If he does, why should he get more than a year? Still I cannot see how an international convention can restrict us in dealing with the rights of our own citizens.

Hon. Mr. CAHAN: I am merely saying that. A Canadian who goes to the United States and obtains a patent there usually does not come back here and apply as a foreign patentee, though in many cases he does. But if he applies here by registering his foreign patent and asserting in our patent office the right which accrued to him as the owner of a foreign patent, then I suggest that right should be limited and restricted to what he is entitled under the international convention. We have constantly been hearing throughout this discussion the suggestion that the Canadian Patent Office is inefficient, that it cannot perform its duties, and that the burden of investigating patents is beyond its capacity. I think there will be some reforms in that respect. You say that people of other countries go to Great Britain, or to the United States, or to Germany, or to France, where the facilities of research are greater, and apply for their patents there, because they believe that if they pass the test of one of those foreign patent offices they will be more secure in their rights. But having done that, when they come to Canada why should they not be restricted to the one year?

Mr. GÉRIN-LAJOIE: But may I suggest, sir, that we must also consider the question of the Canadian.

Hon. Mr. CAHAN: We will think of him.

Mr. GÉRIN-LAJOIE: Canadians would be affected by that rule. Most Canadians, practically all of them, will apply in the United States before applying in Canada, for the reasons that have been stated. The suggestion has been made that it should be sufficient for those Canadians to apply for their patent in Canada before the issue of their foreign patent. Up to now the delay was perhaps excessive and may have given rise to some abuse, as the applicants were allowed to file their applications in Canada until two years from the granting of their foreign patents. That would appear excessive and I suppose should be changed. But if the limit of one year from the date of filing in the foreign country applied to all Canadian manufacturers who saw fit, for the reasons already stated, to apply first in the United States, it would I think be very harmful to Canadian industry. For after all it is only by means of this procedure of applying for their patent in the United States first that they can know what scope they should give to their patent. Otherwise they would be forced to apply much sooner in Canada, say just before the expiry of one year from the date of application in the United States, at a time when they are not yet sufficiently informed as to the prior state of the art and of the scope that should be given to their claims.

Right Hon. Mr. MEIGHEN: Suppose you are right there, the very same disability attaches to an American who is applying in the United States for a patent and desires to apply here, he wlil be in the same state of incomplete information at the end of the year that the Canadian would be. At least you can say you are not putting anything on the Canadian that is not on everybody else.

Mr. GÉRIN-LAJOIE: I was arguing from the standpoint of the Canadian manufacturer. If it is the position of the foreigner that we have in mind, then of course we may have been at cross purposes. My only position before this Committee is in the interests of Canadian industry, and nothing more. I am giving you the benefit of any knowledge I may have for that purpose. I am not a patent solicitor, I merely act as patent counsel.

Right Hon. Mr. MEIGHEN: You think the Canadian would have an advantage if he could delay longer, an advantage that we would be justified in giving him?

Mr. GÉRIN-LAJOIE: I think so. I think it would be in the interests of Canadian industry.

Hon. Mr. GRIESBACH: You are separating there the nationality of the applicant from the patent that he has. I understood the Secretary of State to make it clear that it is the nationality of the patent, so to speak; that is to say, if the Canadian goes to Germany and patents an article there, so far as our law is concerned that is a German or foreign patent. The nationality of the man who patents his invention has nothing to do with it. He comes back here as a foreigner with a foreign patent.

Mr. GÉRIN-LAJOIE: Our law as it stands at present does not distinguish between the foreigner who applies—

Hon. Mr. CAHAN: You know the law was never intended to convey the meaning given to it by decisions of the court.

Mr. GÉRIN-LAJOIE: As to the application of Article 7, the rule is generally wherever an inventor sees fit to apply for his patent in a foreign country, he must, if he wants to—

Right Hon. Mr. MEIGHEN: Will you answer this. Suppose we restrict the foreigner who applies for a patent in another country to twelve months after his application there within which he must make his application here; but as to the Canadian who goes to a foreign country and makes his application for a patent we allow him, say, two years. If we do that are you sure we are in compliance with that convention I should think that was something that would likely be covered by a convention. We could not give that advantage to our own people.

Hon. Mr. GRIESBACH: Take the converse of that, the foreigner who would come here and get a Canadian patent.

Right Hon. Mr. MEIGHEN: He would not likely do that.

Hon. Mr. GRIESBACH: We cannot draft the law on probabilities.

Mr. GÉRIN-LAJOIE: It is very hard, sir, to know what the reaction would be.

Right Hon. Mr. MEIGHEN: I do not care about the reaction, I want to know what the convention is.

Mr. GÉRIN-LAJOIE: I do not think that point is covered of having a country distinguish between applicants of its own nationality—Canadian subjects in this case, and non-Canadian subjects. I do not know of any law in any country which distinguishes between the two.

Right Hon. Mr. GRAHAM: Would the convention be likely to anticipate any such condition?

Mr. GÉRIN-LAJOIE: So far as I know the convention would not provide for the case either way. The priority date which is dealt with under section 4,

read by the honourable Minister, provides for one year from date of filing. That would be quite right. It seems to me the objection that honourable members would have to face would be, should we make a distinction between applicants who are Canadian subjects and those who are not.

Hon. Mr. CAHAN: The international convention is in favour of the nationals of each country of the Union.

Mr. GÉRIN-LAJOIE: I might point out that in practically all foreign countries except the United States one can apply for a patent before the issue of the first foreign patent. It cannot be done in the United States.

Hon. Mr. CÔTÉ: Are the United States subscribers to the international convention

Mr. GÉRIN-LAJOIE: Yes. About forty countries, including England, France, United States, Germany, are all members of the convention.

Hon. Mr. CAHAN: Under subsection 1 of section 8 of our present act you find a reasonably fair provision for carrying out the international convention. It reads:—

> An application for patent for an invention filed in Canada by any person who has previously regularly filed an application for a patent for the same invention in a foreign country which by treaty, convention or law affords similar privilege to citizens of Canada, shall have the same force and effect as the same application would have if filed in Canada on the date on which the application for patent for the same invention was first filed in such foreign country, provided the application in this country—

That is, Canada.

> —is filed within twelve months from the earliest date on which any such foreign application was filed.

That does make a distinction between citizens of Canada, or Canadian nationals, and citizens or nationals of other countries, and it provides for carrying into effect the international convention. When I came into office I found between 2,500 and 3,000 American patent lawyers practising before the Patent Office in Ottawa. The business was very large and very lucrative because American patents formed the vast majority of the patents issued in this country. But as the right was given to the Governor in Council to restrict those who should practice before the Patent Office, I at once applied for an order which wiped out 2,500 of the American registrations.

Right Hon. Mr. GRAHAM: That was an international rap.

Hon. Mr. CAHAN: Yes, but it was well deserved, if you knew how the practice was carried on here. I am not going into that matter before this Committee.

I suppose there are throughout Canada about 250 gentlemen qualified to practise at the Patent Office, and naturally my action brought them the business hitherto done under the American registrations. I find now that these lawyers having the sole and exclustive right to do the business for the foreign applicant are looking very carefully after American interests, more carefully, indeed, than they are after the interests of the public of Canada as a whole. Therefore when they make suggestions to me in the administration of that office, I always scan them pretty carefully.

Another subsection, number 3, was added to section 8 to which I have referred. It says:—

> No patent shall be granted on an application for patent for an invention which had been patented or described in a patent or printed publication in this or any foreign country more than two years before

the date of the actual filing of the application in Canada, or which had been in public use or on sale in Canada, for more than two years prior to such filing.

The prevailing practice is for the American to secure his American patent, the German his German patent, the Frenchman his French patent, the Englishman his English patent, and then instead of coming within one year and registering that patent at the Canadian office and making application thereon under the provisions of the international convention, which are provided for in section 8, subsection 1, they presume to come in under the two year period which the court has said is established by subsection 2. That is, within two years after the patent has been described and printed in the publications of the foreign country they can come and make application in Canada outside altogether of the restrictions prescribed by the international convention in favour of the foreign country, of which they as foreign nationals should have to avail themselves. How you are to take care of that condition I am not saying at the moment, but something must be decided. I thought there was confusion of statement yesterday with regard to that.

Hon. Mr. CÔTÉ: Mr. Lajoie, a moment ago I asked you if the United States were members of the convention, and you answered yes.

Mr. GÉRIN-LAJOIE: They are, sir.

Hon. Mr. CÔTÉ: In the United States, if an applicant has made his application in Canada first, is he limited to a year from the date of his Canadian application to apply to the United States office?

Mr. GÉRIN-LAJOIE: I am informed he is limited. I may have made a misstatement a moment ago in stating the United States are the only exception. I am informed they are not an exception. I am informed that no other countries have a restriction such as that suggested.

Hon. Mr. CAHAN: In England I am informed definitely and officially that the foreign patentee who applies under his foreign patent must do so within a year.

Mr. GÉRIN-LAJOIE: That is a question which I think it is quite easy to reply to, sir, because all these gentlemen here do make applications every day in England, and they inform me that there is no such restriction there. The only reason for that convention provision is to give the priority date so as to enable the applicant, if he files within that year, to say "my application is of such a date." But he is not precluded from filing his application after the one year period under the convention.

Hon. Mr. CAHAN: He may apply on other grounds, but not on his foreign patent. I have looked at such papers by the score. The date of the application for the foreign patent and the date of the application in England have to be included in the English and French records, for instance, and in no case, going back for a term of years, could I find more than twelve months had elapsed.

Mr. GÉRIN-LAJOIE: In order to have the benefit of the priority date. But I am informed that in no country are they precluded from applying and obtaining a patent notwithstanding the lapse of more than a year from the date of their first application in the foreign country.

Right Hon. Mr. MEIGHEN: Who is the man most conversant with the actual practice that you quote as your authority?

Mr. GÉRIN-LAJOIE: Patent solicitors. Mr. Smart, no doubt, is quite familiar with the procedure of various countries as to the filings of applications. I think most of the gentlemen—Mr. MacRae, Mr. Maybee, in fact almost all our patent solicitors.

Right Hon. Mr. MEIGHEN: Remember what Mr. Cahan said that the applicant cannot apply on the basis of his foreign patent in England after a year has elapsed from the date of this application in that foreign country.

Hon. Mr. CAHAN: He may apply for a patent.

Right Hon. Mr. MEIGHEN: But not file his foreign patent as a basis of the application.

Mr. GÉRIN-LAJOIE: All applications have to be distinct applications and have to be examined from the standpoint of Canadian Law.

Hon. Mr. CAHAN: But he files a facsimile and certified copy of his foreign patent when he applies under the international convention.

Mr. GÉRIN-LAJOIE: Yes, so as to show the priority date that he is entitled to. But that is only for the purpose of getting advantage of that priority date.

Right Hon. Mr. MEIGHEN: He cannot file his foreign patent if he has not got it. Suppose he has only applied in a foreign country, and he is compelled by our law to apply here and in England. When he applies on the basis of his foreign application, does he file a copy of his foreign application and specifications?

Hon. Mr. CAHAN: Yes.

Right Hon. Mr. MEIGHEN: Can he do that in England after a year?

Mr. GÉRIN-LAJOIE: I am informed he can if he drops his priority. The only reason for filing the foreign application is to inform the department that he is entitled to the priority date.

Right Hon. Mr. MEIGHEN: The only object in filing within the year is to get the benefit of the priority date, of the filing date in another country?

Mr. GÉRIN-LAJOIE: Yes sir.

Right Hon. Mr. MEIGHEN: Do you declare that that is the only purpose he can serve by it?

Mr. GÉRIN-LAJOIE: Yes sir.

Right Hon. Mr. MEIGHEN: In England or in United States or anywhere?

Mr. GÉRIN-LAJOIE: Yes sir.

Hon. Mr. DANDURAND: I asked Mr. Smart if that was his view, that if the applicant drops his priority he can apply in England after the year.

Mr. R. S. SMART, K.C.: Possibly we are at cross purposes. I think the Minister stated it correctly in one way, and that Mr. Lajoie stated it correctly in another way. An applicant who applies in Canada must apply within the year, if he wishes to get the benefit of the filing date in a foreign country. But let us assume that his Canadian application date is on file three years before his patent is issued. He cannot obtain his priority, but assuming the invention has not been published, and that no other statutory bar has been created in any foreign country, at the end of three years he might still apply in England for a patent on the same invention, following the same specifications that he had had filed in Canada for three years. So in that sense there are conditions where after the year has expired a patentee in one country may still, if he can comply with the laws of another country in other respects, obtain a patent.

Hon. Mr. CAHAN: There is no doubt about that. But we have been referring to the rights of the foreign national under the international convention by which his rights are restricted. The procedure that is there laid down must be followed.

Mr. SMART: Yes, sir.

Hon. Mr. CAHAN: Ouside of that he has no rights in this country, except such rights as our laws provide for him.

Mr. SMART: That is quite so. And that statement which you made with respect to Canada applies equally to other countries.

Hon. Mr. CAHAN: To some others.

Mr. SMART: To most of them.

Hon. Mr. CAHAN: I do not want it said that in section 27 of this Bill I am attempting the violation of an international convention.

The CHAIRMAN: The next witness named on our list is Dr. G. S. Whitby, Director of The Division of Chemistry, National Research Laboratories.

Dr. G. S. WHITBY: Mr. Chairman and gentlemen, in speaking on this Bill I am not speaking as one who has an expert knowledge of patent law or procedure, although in the course of my career I have been mixed up a good deal in patent applications and infringement actions. I am speaking rather as one who has devoted a good many years to scientific research and its application to industry; and I am particularly concerned with considering how far and in what way this Bill may have an influence on the scientific research movement in Canada, in what way it may or may not encourage or discourage that movement. Certainly I agree that a patent system is essential for the effective application of scientific research to industrial advancement, and in its turn research is the basis, in our modern world of such advancement. The situation in Canada to-day is that undoubtedly the volume of research work that is going on is not commensurate to the magnitude of our industries and our natural resources. That statement, I think, is unchallengeable. It was stated before the committee that technical developments must inevitably lag in Canada behind those in other countries. In many fields that is undoubtedly true, although in some of them it is true only because there has not been any, or at least any appreciable, scientific work carried on at all. There is no fundamental reason why many lines of industry in Canada should lag behind, and there have been striking cases of Canadian companies which maintain adequate research departments and have been very much in the van by pioneering in inventions. Therefore my particular interest in this Bill is as to whether it will tend to the extension and intensification of scientific research work in Canada. If it will, it will have a beneficial effect upon our industry in general and will afford greater opportunities for the employment of many competent and even brilliant investigators which our universities are capable of turning out.

I would draw the attention of the committee to this fact, that all the representatives of industry who have appeared to give evidence so far have without exception been representatives of firms with foreign affiliations. Not only that, but those firms rely exclusively or very largely for their research work upon research laboratories in foreign countries, the results of which work may make the subjects of Canadian patents.

Hon. Mr. CASGRAIN: There is no harm in that.

Right Hon. Mr. MEIGHEN: It is very beneficial, is it not?

Dr. WHITBY: Yes, sir, in general; but I am wondering whether something could not be done through the agency of the Patent Act to encourage such firms to establish research laboratories in Canada. The General Electric Company, for instance, has no research laboratory in Canada, though it does maintain one in England.

Hon. Mr. PARENT: The Shawinigan Company has one in Canada.

Right Hon. Mr. MEIGHEN: You could hardly expect a company to maintain two or three laboratories doing the very same thing.

Dr. WHITBY: Not the same thing, I suppose.

Right Hon. Mr. MEIGHEN: They would have to duplicate their equipment in every laboratory they established.

Dr. WHITBY: They need not have as large laboratories here as in the United States or England, perhaps, but they should have laboratories on a scale commensurate with the volume of their work in Canada.

Right Hon. Mr. MEIGHEN: I am not sure about that. Your object is to make more work here, but I do not think we want to develop research laboratories merely for the purpose of employing people, if we can get without cost the benefit of what is being done in laboratories in other countries.

The CHAIRMAN: Do you not think that there is something in what Dr. Whitby says? He contendes that the establishment of research laboratories in Canada would tend to the devolpment of inventions in this country and would give more work to Canadians.

Right Hon. Mr. MEIGHEN: But the extra work would be so trifling in comparison to the cost entailed, that it would be a pretty expensive way of giving employment.

The CHAIRMAN: The paper industry has been very largely developed by research carried on in Canadian laboratories.

Hon. Mr. CASGRAIN: I was just going to mention the same point, and ask whether in the making of paper we are not as advanced as any country in the world. Ten years ago, when I went to McGill for another chemical course, they had a laboratory there, but they have not done anything at all.

The CHAIRMAN: I think there is a great deal in what Dr. Whitby is saying.

Hon. Mr. CAHAN: The National Research Laboratories are open to assist Canadian firms at a very small cost, are they not?

Dr. WHITBY: Yes, sir. It is not merely a question of whether it is more efficient to depend upon one central laboratory. I believe it is advantageous to those firms that I have indicated to mainain at least a reasonable research establishment in this country, for several reasons. In the first place, the data which they get from their central laboratory cannot in general be applied most effectively to Canadian conditions, and its value can be assessed only if it passes through the hands of research men. By that I mean men who are not only trained in research but men who are engaged in it from day to day. In the second place, there are many problems presented by our resources and conditions which are peculiar to those resources and conditions. The development of our natural resources, and the development and adaptation of processes suited to our resources, can be most effectively done if it is made the object of independent research.

These general remarks lead me to offer a suggestion with regard to section 53 of the Bill, which provides that after a lapse of three years a patent may not be made the subject of an order against infringement. I agree entirely with witnesses who have appeared before this committee and urged that three years is an altogether inadequate period. In the overwhelming majority of cases the time necessary to bring an invention to the state of practical application, even where due diligence is employed, is more than three years. To make that section more in accord with the necessities of the situation, the period should be extended, I think, to five or probably seven years. Furthermore I think it would be only reasonable to provide that even after the lapse of seven years this clause should not have effect if the patentee is able to convince the Patent Commissioner, or a Board of Commissioners, that it is not feasible, technically or economically, to operate the process in Canada. I understand that in Denmark it is possible to secure relief from the working condition if the circumstances are such that it is not reasonable to expect that the patent should be operated. But the mere existence of that seven year limit would, I think, have the effect in some cases of encouraging companies who hold foreign patents to exert their very best efforts to see whether it is not possible to operate their processes in Canada. I think it cannot be denied that in some cases at least the holder of the foreign patent whose parent company is abroad has not the same incentive to bring that patent into operation in Canada as a purely Canadian company would be. He may find it more convenient or a little cheaper to import the material from his main factory.

I entirely agree with the honourable Minister as to the general attitude of high-class companies such as those which have been represented before the Committee. I suppose by and large they do endeavour to manufacture as many lines as possible in Canada. But it must be recognized, I think, that there is not quite the same inducement to a company with its main factory abroad, and operating under patents developed abroad, to bring some lines of manufacture into operation in this country.

Might I suggest further with regard to this section that if it is possible under the international convention to make it not applicable to Canadian nationals, but allow compulsory licence provisions of section 63 to take care of their case, it would perhaps favour somewhat the research movement in this country if a patent that was developed in Canada had that degree of advantage over one which came from abroad.

Right Hon. Mr. MEIGHEN: I do not see what degree you mean.

Dr. WHITBY: That this seven year limit should not be applicable to it.

Right Hon. Mr. MEIGHEN: To one developed in Canada?

Dr. WHITBY: To a patent applied for by a Canadian national.

Hon. Mr. GRIESBACH: What seven year limit?

Dr. WHITBY: The three year limit in the present Bill. May I refer for a moment to section 63, and particularly to subsection 1, paragraph (c), which provides that not more than 50 per cent of the material or parts involved in the manufacture of a patent article shall be imported. I agree with the contentions that have been made by several previous witnesses that in some cases it would be impracticable to insist on 50 per cent Canadian content of raw material. There are some articles the raw material for which must be imported because it is not available in Canada, and the raw material cost is more than 50 per cent of the final value of the product. One might instance mercury as an outstanding example. Any compound of mercury almost certainly will contain 50 per cent content of mercury itself, which has to be imported. There are many other products too that we have not in this country that are important raw materials for industry, such as potash salt, bauxite, iodine, helium, manganese, resin, pine oil, and so on.

Hon. Mr. CASGRAIN: They have helium near Calgary.

Dr. WHITBY: Not in amount sufficient to make it feasible to extract it, senator. There is only about ·2 per cent of helium in some of the gases there.

Therefore while I sympathize with this clause I would suggest that it should be modified to the extent of providing that in special cases of representation to the Commissioner that provision could be waived. There are not an inconsiderable number of cases where raw materials are available in Canada which, if the necessary research were done on their development and the proper method of utilizing them, on improving their quality, and so forth, could be used to-day in place of materials that are now imported more readily and more conveniently available. We have had a number of examples of that in our own work. I might quote perhaps one example, the magnesian rock of Quebec is now used in manufacturing a series of refractories. Formerly they were made from imported magnesite, and it could readily have been claimed by a patentee who was turning out a product in which magnesite was a major raw material that it was not possible to secure a Canadian source of the raw material.

Hon. Mr. PARENT: Do they make white lead with it?

Dr. WHITBY: No.

Hon. Mr. PARENT: Titanium?

Dr. WHITBY: There is a small production of titanium white in Canada now and a considerable amount of the raw material. It could have been claimed,

I say, that the material was not suitable because as it stood it was not suitable, and by known processes at that time it could not be used satisfactorily, the imported magnesite was so much purer, but by directing research to the problem as to whether it was not possible to develop processes which would render that material usable, it has been demonstrated that it can be used with complete success.

Hon. Mr. GRIESBACH: There is some such situation as that in the case of the treatment of radium, is there not?

Dr. WHITBY: Yes, the extraction of radium from a type of ore that occurred in the Great Bear Lake district did present a problem.

Hon. Mr. GRIESBACH: That problem has been solved now?

Dr. WHITBY: Yes, a satisfactory method has been worked out. That situation arises frequently. Therefore it seems to me in operating a clause such as this the Patent Office would have to have regard to the question in some cases, especially when a large company is concerned with adequate resources behind it, as to whether due diligence was being exercised in endeavouring to make usable Canadian resources.

There are one or two other points I might mention. Referring to section 39, this provides that substances prepared or produced by chemical processes cannot be claimed as such, all that can be claimed is a particular process of manufacture of the product. I think it is necessary to distinguish two kinds of substances here. One is the simple chemical compounds in the chemist's sense of the terms, that is to say, homogeneous materials, such as common salt or water or caustic soda. Although there are arguments which can be advanced to support the view that at least in some cases it would be legitimate and reasonable to grant blanket patents for the material as such, I think that on the whole the balance of arguments favours the opposite practice.

Right Hon. Mr. MEIGHEN: Just a patent on the process?

Dr. WHITBY: Yes.

Right Hon. Mr. MEIGHEN: That is the way the Act would be.

Dr. WHITBY: But there are a large number of other substances produced by chemical processes in regard to which I think it would be only reasonable to allow patents for the product itself. Take the case mentioned by Mr. Ashworth of the Canadian General Electric yesterday. He referred to the resin developed by the laboratory at Schenectady eleven years ago, and it is only in the last two or three years that it has found a very important use in finishing automobile bodies. That resin was originally developed as an insulating resin for motor armatures. I feel that in a case of that kind, something definitely novel and new, possessing such inherent properties as to mark it out as a definitely novel material, the man who discovered it should be able to claim the material himself.

Right Hon. Mr. MEIGHEN: Could you frame a definition for such a class?

Dr. WHITBY: Well, I would simply change this word "Substances" to "homogeneous chemical compound or individual chemical compound."

Right Hon. Mr. MEIGHEN: I do not know what is meant by a homogeneous chemical compound.

Right Hon. Mr. GRAHAM: Change it to individual.

Right Hon. Mr. MEIGHEN: Homogeneous means what?

Dr. WHITBY: All the same throughout, nothing in the sense of a mixture.

Right Hon. Mr. MEIGHEN: A chemical compound is a compound, it cannot be homogeneous.

Dr. WHITBY: That term occurred to me because this very resin, for instance, that I was using as an example probably consists of a series of compounds which are essentially similar. It is all the same material in a sense, and yet it consists of molecules of different size, although all of the same kind.

Hon. Mr. COTE: Are you making a distinction between physical and chemical compounds?

Dr. WHITBY: No, sir. I think a resin such as that would have to be described as a mixture of chemical compounds.

The CHAIRMAN: After all would not a distinction as delicate as you propose have to be left to some person in the department of a scientific mind?

Right Hon. Mr. MEIGHEN: You would have to define it in the act, Mr. Chairman.

Dr. WHITBY: I think "simple chemical compound" is adequate.

Hon. Mr. CAHAN: Doctor, this has been the subject of profound study in England and much expert evidence has been given. In England it is the process which is patented, but it is admitted in a number of cases that the same substance may be produced by other processes. If the case comes into the courts, and the substance has the same qualities and reaction and effects, it is assumed that it is produced by the same process until the contrary is proven. But if the alleged inventor goes into the courts and proves that he has invented an entirely new scientific process for producing the same shellac or varnish from the same substance, then it is that process which he is authorized by his patent to use, and the prior inventor, who ten or twenty years ago produced that substance by an entirely different process, can no longer hold a monopoly with respect to that substance. Now, is not that fair?

Dr. WHITBY: Yes, sir, there is a good deal in what you say, but I would point out that I believe that in practice the British Patent Office has had to interpret the corresponding clause to the one in this Bill in such a way as to allow process claims to be made so broad that they are in effect claims to the product. Take, for instance, the case of the resin of which Mr. Ashworth spoke. That is made by causing a reaction of glycerine and a chemical known as phthalic anhydride. If you allow a man to make a process claim—and I understand this is what the British Office would allow—claiming a process for the production of a synthetic resin caused by a reaction between glycerine and phthalic anhydride, in effect that forms a compound, but you are claiming the material.

Right Hon. Mr. MEIGHEN: We will say a man gets a patent for a process, but it does not cover the product. Then another man may get a patent for a process that is not as good but is cheaper. If the first man has not a patent on the product, although he has the better method, he loses all the benefit because the second man can make the product more cheaply.

Dr. WHITBY: You invite people to make a short-cut. I admit, sir, that it is a matter of degree. It is difficult enough to get product claims at present. I think all Patent Offices are pretty strict on this point already.

Hon. Mr. CAHAN: As this section of the bill stands now, it is exactly word for word with the English section.

Dr. WHITBY: While in practice I believe they have weakened the effect of that by allowing broad process claims. Where there is a master patent and somebody else develops another method of arriving at the same result, of producing the same product, if a second patent is granted it is subject to the master patent. Very often a difficult case develops in such circumstances. If some provision could be made by which the holder of a subsidiary or auxiliary

patent could petition the Commissioner of Patents to cause the holder of the master patent to licence him under reasonable terms, it might be a definite advance.

Hon. Mr. GRIESBACH: Is there any definition of a master patent in this Bill?

Dr. WHITBY: No, sir. The matters involved are so technical that I think the question would have to be left to the discretion of a board in the Patent Office.

Hon. Mr. DANDURAND: But there should be some text that would give that discretion.

Dr. WHITBY: Yes, undoubtedly. In the administration of these matters, involving technical and business considerations, a great deal of discretion has to be left to a board in the Patent Office.

Right Hon. Mr. GRAHAM: What would you think about a suggestion to have a judicial board in the Patent Office, with a view to making patents final at some stage, so that they could be guaranteed?

Dr. WHITBY: Well, sir, I do not think patents can be rendered final in any absolute sense, so that there never could be any question or recourse to law about it. But undoubtedly it would be possible to organize the Patent Office on a sufficiently large scale to give a greater degree of assurance of validity of Canadian patents than they now possess. That I think would necessitate the establishment of a system somewhat similar to that in effect in England, under which patent applications become open to inspection after a certain period from the date of filing.

Right Hon. Mr. GRAHAM: One gentleman who spoke before us suggested a judicial division in the Patent Office.

Dr. WHITBY: It would be a forward step if applications were made open to inspection. Then any person who had objections to raise against any application would be able to do so, and after all the statutory declarations were in the board of review in the Patent Office could decide whether the patent should be granted or not. That undoubtedly would give a greater degree of assurance as to the validity of Canadian patents. It has been said that to-day a patent is little more than a licence to go to law. But these things would necessitate a considerable extension of the staff of the Patent Office. Perhaps I might mention here that the positions of the Patent Examiners in the British Patent Office are quite highly prized among the scientific men there. When I was at university in London thirty years ago, quite a number of my contemporaries took the examinations for Patent Examiner. The examinations were extremely stiff, far more so than the ordinary college degree examinations, and there was keen competition in regard to them, because the remuneration associated with the positions was attractive as compared with that offered in other lines. Undoubtedly a very high class of men was secured for the positions of Patent Examiners, as a result of those very strict competitive examinations in Great Britain.

Hon. Mr. CÔTÉ: Dr. Whitby, before you leave the subject of section 39, may I ask you whether you know of any practical reason why the inventor of a new substance should be deprived of protection with respect to that new substance which he has introduced into the economic field?

Dr. WHITBY: Well, Senator, in general I would agree that he should receive protection. It is a matter of degree.

Right Hon. Mr. MEIGHEN: If you give a man a patent not only to his process but to his product you shut the door finally upon any better process ever being developed.

Dr. WHITBY: No, sir. You simply give him a master patent.

Right Hon. Mr. MEIGHEN: What would be the good of another man making a better process if he could not make the product?

Dr. WHITBY: That is why I suggested some method for making it compulsory for the owner of a master patent to licence owners of auxiliary patents, if they apply for such a licence.

The CHAIRMAN: It seems to me that if a man is given a patent on the product it might be a hindrance rather than a help to industry. For instance, take that homogeneous compound, automobile lacquer, which is quite generally used throughout the world. Some other man may come along with a much cheaper compound, and a much better one, but he would be estopped from putting it into use and the consumers of the country would be estopped from using it. It seems to me that if the process is patented, primary protection is given there.

Dr. WHITBY: But if you give him a primary claim so broad, you are really giving him a patent to the product. And the invention may be so novel that that would be the only just thing to do.

Hon. Mr. CAHAN: But, Dr. Whitby, a patent is not given for the materials employed but simply for the process, and in order that a new process may be patented it must be distinctly different. Senator Côté has spoken of an inventor being deprived of his rights to the product. But there can be no such rights to a product. The inventor may register a name and trademark for a product, but the essential product is obtained by a process. Therefore the patentee has control not only of the process but of the product, until some other inventor discovers an entirely new, distinct and different process for producing the same product.

Dr. WHITBY: But his product is the new discovery. Let us refer again to the man who mixed glycerin and phthalic anhydride and found that they produced a valuable resin—

The CHAIRMAN: But supposing some other man came along and was able to produce the same thing by a slightly different compound. He should have the right to make that compound and sell it to users. Otherwise, people would be deprived of benefits to which they are entitled.

Dr. WHITBY: He could only make the same product with those materials.

Hon. Mr. CAHAN: Is that so? Has research advanced to the extent that you can say to-day that ten or fifty years hence a man may not find an entirely different process which would produce the same or practically the same substance? And may not that different process involve the use of different materials from those used in the present process?

Dr. WHITBY: Then the patentee would no longer have protection, because he would have defined his starting-out materials.

Hon. Mr. CAHAN: His materials do not count. It is his process in relation to certain raw materials that produces a certain result.

Dr. WHITBY: I think it is largely a quantitative matter that produces the result.

The CHAIRMAN: I am afraid, Dr. Whitby, that if we followed your argument we would interfere with what you most want, the development of research. We must be careful not to do that.

Dr. WHITBY: Referring again to this same example, merely obvious variation of the process claimed would not be patentable. There is always a very nice question in a case of that kind as to what is a merely obvious claim.

Hon. Mr. CAHAN: Yes. But if the Commissioner holds that there is a distinctly different process, and the court agrees, then you have a final decision in the matter. It is very difficult.

Dr. WHITBY: It is, sir. On the other hand I feel there are cases where a claim to a product is justifiable.

Hon. Mr. CAHAN: Well, that has never been so far recognized in English law, has it?

Dr. WHITBY: Not in English law, but I have suggested that in practice I believe that they have recognized it in the form of process claims.

Hon. Mr. CAHAN: At the Research Laboratories you do supply facilities and assistance in research to firms or persons who wish to develop inventions for the purpose of patenting them, do you not? If I remember rightly, the Act under which the Research Bureau was constituted provides that assistance shall be given under certain conditions for research in connection with patent applications.

Dr. WHITBY: Yes, sir, I think that is a fair statement. Under certain conditions we do that, sir. We usually look for some financial support.

Hon. Mr. CAHAN: That may be so, but you can make your scientific facilities available?

Dr. WHITBY: Yes sir, we are prepared to direct ourselves to matters of that kind, and we have done so in certain cases.

There is one more relatively minor point that perhaps I might draw to the attention of the committee. I notice that section 66 provides a fee of $4 for a copy of a Canadian patent with its specifications, exclusive of drawings. I would sincerely suggest that if it is possible to supply copies of Canadian patents at a more reasonable rate than that, it would be to the general advantage of industry to do so. Probably it would assist in the fuller utilization, in a minor way, of Canadian patents. As you know, copies of United States patents are procurable in printed form at ten cents each, and British patents at one shilling. If Canadian patents were made available at say 50 cents a copy —I do not mean for back issues, but for patents issued from now on, I wonder if there would not be sufficient income to cover the cost of printing. If that were not feasible, perhaps photostatic copies could be made at, say, 15 or 20 cents a page.

Hon. Mr. GRIESBACH: The Research Laboratories are backed by the resources of the Government. In the course of your work do you ever discover new and original processes? Do you yourselves invent things for which you take out patents?

Dr. WHITBY: Yes, we do.

Hon. Mr. GRIESBACH: Who has the property in the patents?

Dr. WHITBY: Those are the property of the Research Council, to be made available to the public under such terms as the council think best.

Hon. Mr. GRIESBACH: Have you a revenue from that source?

Dr. WHITBY: We have built up very little revenue yet. We have not been operating long enough to do so, but we hope ultimately to do that.

Hon. Mr. GRIESBACH: You have been operating ten years?

Dr. WHITBY: No, we have been in those laboratories on Sussex street for three years now.

Hon. Mr. GRIESBACH: Do you anticipate a substantial revenue from that source?

Dr. WHITBY: We do anticipate some revenue, just how substantial it would be I do not know.

The CHAIRMAN: You have hopes of it.

Dr. WHITBY: Yes, sir.

Hon. Mr. GRIESBACH: And the property in those inventions or processes is the property of the Research Council?

Dr. WHITBY: Yes, sir.

Hon. Mr. GRIESBACH: It will ultimately appear as revenue in reduction of cost?

Dr. WHITBY: Yes, sir.

Hon. Mr. GRIESBACH: But at the moment you say it is negligible?

Dr. WHITBY: Yes. That is the invariable experience with patents and research work, that it takes a considerable number of years before your research comes to fruition in definite results, before those definite results can be translated into industrial practice.

Hon. Mr. GRIESBACH: Is there provision in your Research Council Act for the property to remain in a patent, and so forth, with the Council?

Dr. WHITBY: Yes, sir.

Hon. Mr. CAHAN: If they assist a prospective patentee to secure a patent, there is provision in the law for reservation of a certain interest in the Research Bureau. That is my recollection.

Dr. WHITBY: The patents are all vested in the Research Council, and the Council is to make those available to the industry on such terms and under such conditions as it sees fit.

Hon. Mr. CAHAN: That is, your own inventions?

Dr. WHITBY: No, all inventions made under the organization. Those made for individual firms could be disposed of entirely in a reasonable way under that clause.

The CHAIRMAN: Any further questions, gentlemen?

You are first on our list, Mr. MacRae. Have you any objection to Mr. Manson proceeding? He wants to go away this afternoon.

Mr. MACRAE: None at all.

The CHAIRMAN: Very well, we will hear you, Mr. Manson.

Mr. GEORGE J. MANSON (*Hawkesbury, Ontario*): Mr. Chairman, I graduated from the Ontario School of Practical Science, Toronto University, in 1904 and took my degree of M. E. in 1912. Since 1908 or 1909 I have been connected with development work practically entirely.

The point that I am trying to make in connection with my work is largely in connection with section 53 and the other sections covering the three year manufacturing from the date of application. I wish to show from my experience that that date is exceedingly short.

The first work I was connected with was a rotary engine. When I came with that machine there had been at least eight years' work done previously. I was with it for five years, which would make a period of thirteen years. All that time there had probably been two or three hundred thousand dollars spent and the machine was then in a semi-commercial form. The work had been, I think, quite intelligently handled and carried along.

From that I went to work in connection with moulded pulp, and in 1908 I developed the process for making the present board, now made by the International Paper Company at Gatineau.

Right Hon. Mr. MEIGHEN: What do you mean by "board"?

Mr. MANSON: Compressed pulp wallboard from refuse or second quality pulp.

Mr. PARENT: That is made also by the Donnacona Paper Company?

Mr. MANSON: Correct.

The CHAIRMAN: There are a number of companies making the board under different trade-marks.

Mr. MANSON: Yes, but we were the original developers of the pulp compressed board. The boards before had been made on cylinder machines. That work was started in 1907 and was carried forward with the best of our energy, we had ample funds practically all the time, and it was 1914 before we had a product that was commercially ready to go on the market.

Hon. Mr. CÔTÉ: When did you get your patent?

Mr. MANSON: I cannot say as to that, sir. The Canadian patent was probably filed about 1908 or 1910.

The CHAIRMAN: If you had been limited to three years, what would have happened?

Mr. MANSON: We just could not have been there. Then the next development that I was directly connected with was a wax size. Paper has been from time immemorial sized with rosin.

Right Hon. Mr. MEIGHEN: Sized?

Mr. MANSON: Made resistent to water, ink, grease. If this sheet of paper, Senator, was not sized, and you wrote on it with ink, the ink would go into it like blotting paper.

Hon. Mr. GRIESBACH: What do you call that process?

Mr. MANSON: Sizing. We were operating a mill at Hawkesbury, using as raw material the screenings, the waste from the I. P. mill, for which there had not been a market. We were making a high-grade board in which the rosin size did not give us sufficient resistance. The idea of using wax for sizing is quite old, but it had never been used commercially. In any methods that had been described in the trade or patent literature, if you followed their method, you got trouble with your cloth, that is, the wax came out on the wires and the felts of your machine, coated them so they were a total loss. We started in 1922. We had a lead which looked interesting to develop a particular form of wax size, but it was 1930 before we had a size that we could take to a mill and say, "If you use this size you will have no trouble with your clothing." Our original applications were filed in 1924, and we filed in the United States—my custom is to file in the United States invariably before filing in Canada. We had at that time an indication that along this particular line we would get results. We did not know definitely why we were getting those results, that is, what the reason was for this combination getting these results. We had to have protection. If we filed in Canada—understand, please, I am not criticizing our Canadian Patent Office or the practice—if we filed in Canada, because of their method of searching we would very likely have a patent issued in the course of a year. That patent would then be cited against us in our foreign applications. The United States make a much more thorough search, and it has been my practice to file an application in which the specification broadly covered what we were doing. We were not particular with regard to the claims we had in the original application. I do not know whether you are conversant with a patent application or not. In a patent application you state in the first part your specification, that is, you outline what you have discovered and how you apply it. That specification as you file it cannot be changed, you cannot make additions to it or subtractions from it. Your claims are based on your specification. You cannot claim anything that is not disclosed in your specification. But your Patent Office investigates your patent, cites against your claims—

Hon. Mr. GRIESBACH: Do you mean altered and amended

Mr. MANSON: I should say altered and amended as the Patent Office cites various patents which have anticipated your patent.

While this work is going through the Patent Office I am carrying on the investigations in the laboratory, so that I am able to draw claims which will not only coincide with the specification, but will closely fit into what we have

actually discovered and what we are actually doing. In some lines of patent work where it is comparatively a simple development it is quite possible, I think, to get a patent through in the course of a year or two years' time, but in a patent involving any considerable effort or development, from my experience it would be almost fatal to attempt to get that through in twelve months' time. That is, to protect yourself you have to file your application as soon as possible, you have not the complete information available to write your claims. Your specification is broadly drawn.

Hon. Mr. GRIESBACH: Like a political promise in a way.

Mr. MANSON: No, it is not a political promise.

Right Hon. Mr. GRAHAM: There are not so many of them.

Mr. MANSON: I might say, Senator Graham, I think that some of my patent efforts are probably not worth as much as some political promises.

Right Hon. Mr. GRAHAM: You should not have got a patent, then.

Mr. MANSON: No patent is perfectly good. Your biggest chore after getting your patent is converting the thing to commercial operation. In the development work there are two groups, such as our friends the Canadian General Electric, Northern Electric, Canadian Westinghouse and Canadian industries. Then you have in the other group, which is a much smaller group numerically and infinitely small as results go, individual effort such as I am carrying on. That work is particularly expensive, and the great chore after you have your development made is to get someone commercially to apply it. It is not a question of the value of the thing. In our work with paper and pulp we have been looking for an ideal size which would render a paper absolutely grease-proof, that is, against mineral grease, animal grease or vegetable grease. Back in 1929 we were using a product made by the Shawinigan Company, a chemical called gelvo, to grease-proof paper. The cost of that was a little more than the article would stand. We decided to see if we could not blend gelvo with something that would extend it. We tried various materials and we made a blend of gelvo and sulphur. That blend worked excellently for the purpose we were after. We discovered that that blend also was an excellent base for a chewing gum.

Some Hon. MEMBER: Oh, oh.

Mr. MANSON: That is all right, it is a joke too. The base of chewing gum is from chicle, a tree in the rubber family growing in British Honduras. This base after we had gone to all the grief of perfecting the blending, getting rid of the sulphur taste, represented a cost of about 17 cents a pound. My laboratory had not produced any revenue for quite some years, and I thought I had something really worth while. The normal selling price of chicle is 50 cents a pound. I am going into this to illustrate the difficulty of getting your development to the commercial stage. I spoke to the Wrigley Company, the American Chicle Company, the Canadian Chewing Gum Company and the Life Savers Company, and they all admit that the product is excellent, that it is cheaper than chicle. But we are going to let the other fellow take the chance.

I quite appreciate what the Minister is driving at in this connection, and I think it is perfectly sound, but it seems to me it is almost impossble to lay down a set of conditions to-day and expect them to fit in with every case that will turn up. For that reason it seems to me that the fairest thing, not only to the chap who is doing the development work, but to the manufacturer who wants to use the invention, as well as the general public, would be to have a section—probably like our old section 40, or like a section in the British Act—which provides that some individual or some judge or some group of men shall have the power to say finally that the applicant shall have a licence, or that he shall manufacture, or that the conditions are such as to entitle him to a stand-by.

I was very much interested in Dr. Whitby's discussion in connection with section 39. From my experience and knowledge, I think it would be exceedingly difficult to-day to say whether or not you should have protection on a product. And, sir, I cannot see a great deal of difference between the protection on a machine which is doing a certain work, and protection on a product, such as the resin which is filling a particular need. I know nothing about drafting a Bill, about the legal end of the business, but from a technical point of view it seems to me it is going to be very difficult to lay down a definite line in the law and not allow for a discussion of individual patents as they will come up.

Going back to the wax size, that thing is still not on the market. At the time we developed it, the comparative prices of resin and wax were such that our wax size was competitive with resin commercially. However, resin has fallen in price in the last six years, so that wax is no longer competitive with it. Now the question comes up, if we are under the three-year clause, do we lose all our protection simply because of market conditions?

Right Hon. Mr. GRAHAM: Would it be possible to have the law provide distinctions between different classes of patents, so that a comparatively short term might apply to a certain class and a longer term to another class? I do not know whether there is anything of that kind in the Act at the present time, but if there is not, would it be advisable?

Mr. MANSON: I would think so, sir. There are at least two very broad classes. For instance, there is a class of patent that covers the product mentioned by Dr. Whitby. And the work that the Shawinigan Company does, and also some of the work that I do, is not in the same class as the work of a man who invents a clip for a fountain pen.

Right Hon. Mr. GRAHAM: Do you think my suggestion would be practicable?

Mr. MANSON: I do not know whether it could be done. I think the only way would be to empower the Patent Commissioner, or a group of men, to say whether or not a thing is to be manufactured.

The CHAIRMAN: Within a certain time?

Mr. MANSON: Yes.

Some years ago I was very desirous of manufacturing a certain thing and we applied for a licence, but the holder wanted a ridiculous sum for it. We said, "All right, we are going to haul you before the Commissioner of Patents and have him decide what royalty we will pay." To my amazement we were very shortly told by them that they would be glad to give us a non-exclusive licence. I think that section 40 has not been very much used, but because it is there the Act has teeth in it. What is the use of arguing about a matter when you can go before the Commissioner and that is all there is to it? I have never heard of any case in Canada of a patentee holding up a firm and refusing to give a licence. And there are plenty of times when a licence should not be given. The General Electric, or one of those other concerns, have certain patents in connection with radio tubes. For some reason or other I have an idea that I want to operate under their patent. It is not economically sound for me to make those tubes. They are perfectly justified, from their point of view and from the country's point of view, not to give me a licence. So it is necessary to have some body to whom you can apply for adjudication of these things.

Dr. Whitby spoke about American firms not operating research laboratories over here. I can only speak about my own experience. My work and income for the past nine years have been, to the extent of I suppose 90 per cent, from the United States. That is, my developments in Hawkesbury I have sold to American manufacturers. It can be asked why these things have not been put on the market in Canada. I have tried to do that, but there is not enough

market in Canada to warrant the investment in equipment that is necessary to produce. It is cheaper to pay duty and the freight and to bring the stuff in. When you boil the thing down, it is a matter of two and two making four. Is it cheaper to make it over here? If so, it will be made here. If it is not, you just cannot do anything about it.

The CHAIRMAN: Our next witness is Mr. A. E. MacRae, Secretary of the Canadian Institute of Patent Solicitors.

Mr. A. E. MACRAE: Mr. Chairman and honourable senators, it seems to me that the question before you is such a critical one that it is difficult adequately to appreciate particular phases of it without having an accurate picture of the real purpose and position of the patent system. I would just like to offer a few comments on that phase of the situation, which has been touched on in a general way. I do not intend to speak long. The specific remarks that I have to make in other connections will be very brief, because they have been covered.

The sole purpose of the patent system, from the national point of view, is to encourage research and invention, and to stimulate the growth and development of industry, with all the benefits which flow therefrom in almost every realm of activity.

A patent does not grant a true monopoly because it has to do only with something which did not previously exist. It covers that which can be produced only by an inventor, by the exercise of inventive skill or ingenuity. It takes nothing away from the public. It discloses to the public a new idea, the mere disclosure of which stimulates further research and development. As consideration for that disclosure the inventor is given an exclusive right for a limited period.

History shows conclusively that the patent system which is most generous, that is most free from hampering restrictions, is the one which has best served its purpose. My own experience, which extends over a period of twenty years, shows that since the removal of the onerous manufacturing requirements from our statute in 1923, our patent system has contributed much more than previously to the advancement of the arts and sciences and the development of industry. That I think could be clearly proven from general experience.

The general tendency in all progressive countries is toward liberalizing rather than restricting patent laws. Canada with her far reaching natural resources as yet undeveloped can ill afford to travel in the other direction.

Much is made of the fact that the great majority of Canadian patents are issued on inventions made outside our borders. I suggest that is to our advantage. We have not had to bear the cost of the far-reaching research and development which produced these inventions. When the inventions are worked here under licence there follows with the patents the great mass of technical and engineering data worked out in making and developing the inventions in the larger markets of United States, Great Britain and Germany mainly. Without a reasonably generous patent system this asset would not be so available. This country could not possibly bear the cost of that development. In the gross what we pay in royalties would be a very small fraction of that cost. As a result of its increased interest in research and technical development this country is receiving in royalties an increasing amount from foreign countries. This I think is a very important consideration.

The very large number of assignments and licences recorded at the Patent Office annually transfers most of these patents from the inventors to operating companies. As an illustration, I represent a United States company which takes out annually many Canadian patents all of which on the records stand in its own name.

Right Hon. Mr. MEIGHEN: The patents stand in the name of the American company?

Mr. MacRae: Yes, on the records they stand in the name of the American company, but the Canadian company has full advantage of them. Thus an examination of the records and the Patent Office gives an entirely wrong impression of the actual situation. The Canadian company is eager to, and always does, manufacture every one of those inventions in Canada just as soon as it is commercially or practically possible to do so. It is true that in some cases the inventions are imported into this country, perhaps for considerably longer than three years after the patent is issued. But as Mr. Manson has so well put it, it would be quite impossible economically, or impracticable, to manufacture here for our small market, within that short period. If, as is proposed in the Bill, a patent becomes ineffective at the end of three years, someone operating in a large way in Germany could export inventions into this country and our Canadian company would have no recourse. That, it seems to me, would be entirely unfair to the person who carried on the development, and in my view it would defeat the intention of the Minister, in that it would tend to restrict rather than to promote manufacture in this country. Without effective patents the Canadian company about which I am speaking would have to leave its plant idle a substantial part of the year, just for the reason which I have mentioned.

Now, consider the case of a Canadian company without a foreign affiliation of the type to which I have referred. I am particularly instructed, Mr. Chairman, to make representations to you on behalf of this company, the Gypsum, Lime and Alabastine, Canada, Limited, of Paris, Ontario. To illustrate the point I want to make let me mention a particular case. After much effort and the expenditure of a great deal of money this company developed a new and valuable product for use in the building industry. Patents were applied for more than four years ago in Canada, if my memory is correct, in 1932. Nevertheless the company has not yet been able to develop a machine satisfactorily to manufacture the product on a commercial scale. It just has not been able to manufacture a machine which would make this product in a commercial way. If its patents are to be rendered ineffective as by section 53 of the Bill, there is nothing to prevent a foreigner exporting the material to Canada without regard to the company which spends so much in the development. This would certainly discourage research and any attempt to develop industry in Canada.

Right Hon. Mr. Meighen: But the foreigner would have to find a machine to do the work.

Mr. MacRae: Yes, Senator. The point there is that the foreigner who as a result of having seen this company's Canadian patent and having studied the specifications, perhaps through their larger resources—and there are much larger resources in the United States for developing and commercializing invention than there are here—a company in the United States with the knowledge disclosed in the patent of this company gets busy and develops the machine as soon as possible much before the Canadian company.

Right Hon. Mr. Meighen: This company would have patents in the United States.

Mr. MacRae: It may or may not. In this case it has. In a country where the company does not patent its invention, say Germany, the Germans who are very ingenious at developing technical machines, might do so and ship that product into Canada, and this company would have no recourse. In any event you see what might happen. The person who develops that machine outside Canada files application for a patent on it. That is secret for three or four years, and this company would have no access to that, could not get a licence even to operate in Canada, because the patent would not have issued in Canada. If the patent issued in Canda, then this company could go to the

Commissioner of Patents under section 40 as to-day and demand and get a licence. There is nothing to prevent my getting a licence under section 40 to-day if conditions are such as I have indicated would be the case in that particular instance.

On the other hand this company has taken a number of licences from foreign inventors under Canadian patents held by these foreign inventors. These, with the other patents in its possession have made it possible for this company to satisfy the Canadian market in its own field with materials made in Canada rather than imported. It had no difficulty in securing these licences. It did not have to go to the Commissioner for a compulsory licence under section 40 of the statute. The patentees were anxious and very desirous of granting the licences. Obviously why would a foreigner desire not to give someone a licence to operate under his patent if he is not doing anything with it in this country? It would be suicidal to his interest to refuse. He obviously wants some return and is glad to get it.

Right Hon. Mr. MEIGHEN: Suppose he has control of the market?

Mr. MACRAE: By importation?

Right Hon. Mr. MEIGHEN: Yes. Supposing he has an agreement with another company?

Mr. MACRAE: That is quite true, but in that case anybody who wants to manufacture goes to the Commissioner under section 40 and gets a licence.

Right Hon. Mr. MEIGHEN: Yes. Without that section he would be helpless.

Mr. MACRAE: Yes. It has served, as I have indicated, a very useful purpose since 1923. I suggest that our system since 1923 has contributed much more to the development of industry in this country than prior to that time, just because our manufacturing requirements before then were so onerous that people were not interested. They were not worth much to them because they became void. Then the Bill proposed to make them ineffective at the end of three years under special conditions. So the Bill as it stands is getting back to a condition which is almost as bad as that which we had prior to 1923. As a matter of fact in my opinion I know of no case where a voluntary licence has been refused where on mature consideration it has been found desirable.

Right Hon. Mr. MEIGHEN: That would be obvious, would it not ?

Mr. MACRAE: A voluntary licence, if it were found desirable after mature consideration by both parties.

Right Hon. Mr. MEIGHEN: I know. How could a voluntary licence be refused?

Hon. Mr. GRIESBACH: There would be no disagreement if they are agreed.

Right Hon. Mr. MEIGHEN: No.

Mr. MACRAE: Take a case in point. An action for infringement was brought by a foreigner who held a patent in Canada. He came to me in connection with it. The action had been started. It would be rather expensive to go to court with it. At my suggestion we got together with the infringer and offered him a licence, which he would not take before for some reason or other, but just went ahead and infringed. The patentee offered him a licence, and he took it. He wanted it.

Right Hon. Mr. MEIGHEN: You had your statement so qualified that it was pretty much a truism.

Mr. MACRAE: I agree with you, Senator. The point is that there are imaginary cases where people have complaints that they cannot do thus and so because of our patent system, but when they sit down and look at the situation, as Mr. Manson has indicated, they will get a licence if it seems to

the two parties after mature consideration that it is commercially possible for the applicant for the licence to go ahead and manufacture. Very often the fellow who thinks he should have a licence has not given it mature consideration, he just does not know all the facts. As a rule he is the sort of fellow who makes most noise and complains to the Commissioner or the Minister of the alleged iniquities of our system. As somebody said before, they are largely imaginary.

Another suggestion, One needs but to read the press to see the many atempts of foreign holders of Canadian patents to secure licencees. The fact that since 1923 there have been few applications for compulsory licence under section 40 is, it seems to me, proof that compulsory licences are available in every case. Mr. Manson indicated that very clearly.

I want to make another point, Mr. Chairman, which I do with some hesitancy, but much has been said on the point, and I should like to say what I am about to say in a spirit of all fairness. It may be interpreted as being rather bold on my part, but yet I want to suggest it.

It is my considered opinion that practically if not all the complaints and criticisms which have been levied at our patent system are attributable directly or indirectly to the inadequacy of its administration and not to the statute under which it operates. Because of lack of interest of successive governments for at least the last twenty years, the Patent Office has been starved. It has been surrounded by an atmosphere in which no thriving organization could exist. In fairness to the personnel in the office one may express wonder that they do as well as they do. It is regrettable that some able civil servants have had to bear the brunt of criticism for conditions over which they had no control.

As an example of such criticisms as I know have been made, and I am sure they have reached the ears of the honourable Minister, who has evidenced such a great desire to improve conditions, and everybody commends that desire most heartily, I may state that until about two or three years ago it was the regular practice at the Patent Office to give a person information as to whether Bill Jones had filed application with respect to the manufacture, we will say, of acetic acid. The Commissioner would say, "There is an application filed by Bill Jones, and it does relate to that." Obviously he would give no further information because the contents of the application were secret under the Act. For some reason or other a short two years ago that practice changed and when some Canadian manufacturers wanted to know if, for example, a Canadian application had been filed corresponding to a United States patent which had issued just about two years ago, the Commissioner said, "We cannot give you that information." That set up a howl, and I think rightly so, because this Canadian manufacturer was prepared to go ahead, perhaps, and manufacture this article in Canada if he knew that the United States inventor had not make application for a patent here. He was not able to get that information. As a result of that particular instance I know of quite a number of complaints that have been made. That was due merely to a circumstance surrounding administration of the statute.

Now another case which will illustrate the point. For nearly ten years I was an examiner in the Patent Office myself. I thank Heaven that I left the office when I did. One of the rules then in existence—I do not know if it is now current or not—was that each examiner had to pass to allowance fifteen applications—

Right Hon. Mr. MEIGHEN: Pass to allowance?

Mr. MACRAE: He had to sign his name to fifteen applications for patents. That is, they are allowed and ready for issue as soon as the final fee is paid.

Hon. Mr. CÔTÉ: Fifteen per day or per month.

Mr. MacRae: Per week—fifteen applications per week. I am not criticizing the office for that rule. With the facilities and the staff provided the Commissioner it was necessary for them to do that, otherwise applications would accumulate to such an extent that they would be buried with them. It was necessary to do that, but I ask you how can any individual examine fifteen applications for a patent to the extent that he can allow them all in one week, bearing in mind that on the average an examiner must write at least two or three reports on an application before it is ready for allowance. That means that the examiner in one week would have to give consideration to the fifteen cases which he is signing as allowed and from twenty to thirty other applications on which he has had to issue a report. It is a physical impossibility to do the job with any degree of efficiency. Nobody knows better than the examiners in the Patent Office as to that difficulty.

The Chairman: We will continue after the Senate rises this afternoon.

The Committee adjourned accordingly.

AFTERNOON SITTING

The Committee resumed at 3.40 p.m.

The Chairman: Gentlemen, we will now resume our business. Mr. MacRae has some further facts that he desires to state to the Committee.

Mr. MacRae: Mr. Chairman and gentlemen, just before the adjournment I made some reference to what had been and probably still is the rule of the Patent Office, that an examiner must finally deal with fifteen applications per week. When you realize that with some at least of those applications the attorney and the applicant probably have to spend a week or two, and sometimes more, on their preparation—that, of course, does not apply to all applications, but in many cases days and days are spent in the preparation in order that the invention may be clearly understood—you will realize the difficulty. It is a very difficult technical matter to always properly understand what the invention is, and when that has been done one must define it in such a way that the public, when it looks at the patent, will know what the invention is, and how it can be made and used. Then, how can an examiner pass finally on fifteen applications of that character per week, when, as I said before, in the meantime he also has to consider and issue reports on so many other applications? Two or three reports may be required on the average on each case. I suggested that it was a physical impossibility as well as an intellectual one.

Now, the result of that practice is—and I find no fault whatever with the officials in the Patent Office for it; it is quite beyond their control—that when the examiner comes to the end of the week, when he has to sign his cases, he finds but half a dozen cases read. What must he do? In the face of that rule he must pick out cases that look to be in reasonably good condition, and sign them. That is what he does. I did so myself. There is nothing else open to him.

Before saying that I should have said that after the examiner understands the invention as defined in the specification, he must undertake the arduous task of examining all the priorities. Section 7 of the Act requires that the invention be new over everything that is known in the world, and under the Act the examiner is supposed to deal with that.

Right Hon. Mr. Meighen: You have a sort of conveyer system to keep them working.

Mr. MacRae: It is not difficult to keep them working. They have so much to do that that is the trouble; the result is that a lot must be done in a somewhat slip-shod manner.

Hon. Mr. Dandurand: How are they informed as to what has taken place in the various patent offices of the world, since they must make sure it is a new invention?

Mr. MacRae: While there is a great deal of information as to the patents issued in other countries, unfortunately it is not now made available for the examiners' use. The Patent Office has not either the staff or the facilities to make it available for use. If I went, for example, to look at a copy of the specification of a United States patent issued last year, I could not go to the Patent Office and find it; I would have to ask an official there if he would be good enough to send down to Queen street and have it sent up by messenger, and I would have to come back in a day or two to find it. Why is that so? It is because the Patent Office has not the facilities. In the first place, they have not the staff to classify them, even if they had the room.

Hon. Mr. Parent: With all due respect to you and to the department in which you have been employed, certain people, rightly or wrongly, think that sometimes the employees would put all the information aside for a while until the man applying for a patent would become discouraged, and that later on the employees of the department would secure for themselves, through other parties, the patent rights that that man had been applying for.

Mr. MacRae: Well, I have never heard even a suggestion of that character made before, Mr. Parent.

Hon. Mr. Parent: I am not making the suggestion; I am simply stating what I am told.

Mr. MacRae: I have never heard of it, and from my knowledge I think it would be quite impossible. If it were possible, clearly it would be in contravention of the Act.

Hon. Mr. Parent: And for your own satisfaction I may say that the same remarks are being made to-day with reference to the National Research Council.

Mr. MacRae: I have no knowledge whatever of anything of that sort being done, and would be very much surprised if that were so.

Hon. Mr. Parent: I am glad to hear you make that statement.

Mr. MacRae: Obviously many of the applications which are thus allowed by the examiners are not in the form in which they should be. The claims are not properly presented in view of the information of art, prior art, anticipating art, which has come to the applicant's attention since he filed his application. With that information before him he naturally wants to use it with a view to putting his patent application in the best form, so that he will not have invalid patent claims. But it is in the interest of the Canadian public that he be not allowed claims too broad, because a manufacturer coming to the office says, "Why, I cannot manufacture that article. I would infringe that broad claim," whereas, as a matter of fact, if the claim were properly restricted the manufacturer would probably find that he could do what he wants to do without infringing the patent. So you will see that it is in the public interest that the applicant restrict his claims. The system as it now works does not well permit the applicant to do that, because these applications are allowed prematurely.

Now, what happens? What do I do? I do as every solicitor does who tries to protect the interests of his client. He goes to the Patent Office with an amendment after allowance. That is imposing additional work on the examiners, when they are already so busy, and they do not want to be bothered with it, and I do not blame them.

Since 1932, with a view to curbing that practice, the department has applied a $5 fee for each amendment after allowance. That is all right to reduce the

number, probably, but not many people would refuse to pay $5 with a view of improving the character of their patents. But the whole effect of having to file these amendments after allowance has been to create a source of annoyance to the Patent Office, and a much greater source of annoyance to the applicant, because he says, "Why am I forced to take out my application? Why don't they cite the Canadian patents against it?" The examiner didn't do that because he hadn't the time. That is the source of much complaint about our patent system.

I have every sympathy with the minister who has been burdened with complaints. No doubt he has had many of them. As Secretary of the Institute I am constantly getting complaints about our system. There are suggestions that it is a disgrace to Canada. These are exaggerated statements, but I can fully appreciate why the minister feels so keenly about that matter, and it is very gratifying to know that he and his government have taken the interest in the Patent Office which they now show. This condition is due to the fact that there has never been any organized public support given to this arm of the service. The chief interest of successive governments, naturally, has, been to keep the appropriation of the Patent Office as low as possible. As the Minister has so well said, it was never intended that the Patent Office should be a revenue-producing body; but the fact is that for a number of years, on the average, for every $2 spent in carrying out the provisions of the Patent Act the Patent Office has turned into the consolidated revenue of this country $3. In other words, out of an annual revenue of $500,000, largely derived from foreign sources, the Patent Office spends $200,000, and these criticisms which are before you to-day, and which have burdened the minister are the result of an inadequate appropriation.

The present minister is the first in a period of twenty years to exhibit a real active interest in the affairs of the Patent Office. Those concerned are most gratified.

Hon. Mr. PARENT: Are you paying a compliment to his predecessors?

Mr. MACRAE: I am merely making that statement. Those concerned are much gratified at his interest. I am casting no reflections on the minister's predecessors. Nobody has directed any attention to this. I am not criticizing governments or members of Parliament or Senators. Nobody has directed attention to it, and how can any arm of government fully realize the importance and position of such a service as this, particularly one that is so technical, unless someone or some large body exerts itself to direct attention to it?

Right Hon. Mr. MEIGHEN: I was Secretary of State once myself.

Right Hon. Mr. GRAHAM: Don't go any further.

Hon. Mr. DANDURAND: The Patent Office was not always under the Secretary of State.

Mr. MACRAE: You will remember, gentlemen, that twenty years ago when I entered the Patent Office the Minister of Agriculture administered that department. Could anyone cast any reflections on that minister? Then the office was transferred from the Department of Agriculture to the Department of Trade and Commerce, and then to the Department of the Secretary of State, where it now is.

Right Hon. Mr. MEIGHEN: When was it transferred to the Secretary of State?

Mr. MACRAE: About five or six years ago, I would say,

Right Hon. Mr. MEIGHEN: Oh, that is since my time.

Mr. MACRAE: I think, Mr. Chairman, that probably it would be fair to say that I and the organization I represent—it is only a new one—are perhaps more to be criticized than any particular government for this situation, because

we have not directed public attention to it. The fact is that we have had no real opportunity to do so, and the opportunity now afforded gives us a great deal of pleasure because it is the first time we have been in a position to express what we believe to be the views of everyone who knows and who is actively concerned with this valuable service and the splendid Act which is doing so much good. Those concerned are much gratified by the interest that is being shown, and it is hoped that through it and the influence of this Committee the Patent Office and the patent system as a whole will receive the attention which they deserve and which they so badly need. The improvements in administration which the minister evidently has in mind will, if carried out efficiently, remove the cause of practically all the complaints that are now heard. Minor amendments to a very few sections of the present Act would remove every source of criticism.

The onerous provisions of the major sections of the Bill, which have been criticized by others, will greatly hamper the system. Foreigners will not in such large numbers patent their inventions in Canada. The Patent Office revenue will be greatly reduced. Inventions will not be so largely manufactured in Canada. The Canadian market will be supplied by importation, unless excessive tariffs are maintained to prevent that. Canadian employees will suffer. More of our technically trained men will go elsewhere to find work. It is a notable fact that industry in Canada is recognizing the value of technical control and research to a much greater extent in recent years. We cannot well afford to discourage that very desirable trend.

There are one or two sections, which have not been particularly dealt with, to which I should like to refer. Section 34 of the Bill has not been mentioned, I think. It will be observed that it has to do particularly with administration. It changes in some detail section 14 of the present Act. In my view, and in the view of other members of our Institute, these amendments will make the section almost inoperative. Not only will the work of the Patent Office be hampered and the duties of the examiners greatly increased, but it will be very much more difficult for those who desire to obtain good patents to do so. One part of it, for example, will mean that in order adequately to protect a process one will have to file 25 claims instead of 10; indeed, as many as 40 may be needed. Another section of the Bill would make them pay an additional fee for claims in excess of 25. So, I think this section 34 is quite unfair, and I do not think it was really intended that it should have the result that I have mentioned. The provisions of section 14 of the present Act fully cover the requirements, and I see no reason why it should be changed.

The suggestion has been made that patent solicitors, particularly those who represent foreign interests, exert an influence in the Patent Office to delay foreign applications. I really do not like to refer to this, but I think I should. I can assure you, honourable senators, that those who are seriously representing interests of that character are very desirous of getting their cases out in the best form possible and in the shortest possible time. Obviously there may be some cases where the reason given for requesting a delay is not very strong; it may be that the Commissioner thinks it is not sufficient. But there is a provision in the Act which authorizes the Commissioner to tell anyone that he must comply with the requirements within any time that the Commissioner specifies. Surely that is sufficient authority to put in his hands. If there is abuse, he has all the machinery to take care of it. There is no need to put other onerous provisions in the Act, with a view to accomplishing that end. That is our major criticism of the radical provisions that are in the Bill.

Right Hon. Mr. MEIGHEN: What can the Commissioner do now if a man does not reply?

Mr. MACRAE: Ordinarily when a report is made, an official letter is written on the case, and the rule allows you one year.

Right Hon. Mr. MEIGHEN: That ought to be enough.

Mr. MACRAE: It is, sir. For years that has been the practice. But if the Commissioner thinks that somebody's interest is suffering by virtue of the reply being delayed a full year, he can require a reply in thirty days, or in any other time that he desires.

Right Hon. Mr. MEIGHEN: And suppose you do not reply within that time, what then?

Mr. MACRAE: Then the application is abandoned. The applicant suffers for it.

Right Hon. Mr. MEIGHEN: He can put in another one.

Mr. MACRAE: Yes, but that would be risky, because in the meantime somebody else might put in an application which would be a bar to him.

Hon. Mr. DANDURAND: You stated that section 34 of the Bill is somewhat unnecessary, but you have not told us how you think it should be modified. Will you leave us a memorandum explaining why you think this section should not be passed as it is?

Mr. MACRAE: I shall be very glad to do that, sir. My suggestion was that section 14 of the present Act adequately meets the need. But I shall be glad to follow your suggestion.

The other section to which I should like to refer particularly is section 39, which relates to chemical products and substances. From a fundamental point of view, this is a very important section, and for this reason: It discriminates between chemists and all other individuals. I know of no reason why in this day, when chemistry is exerting a major influence on our industrial activity, the chemist should be prejudiced, why you should impose upon him some restriction which is not imposed upon anyone else. Let me illustrate. The druggist who by a mere physical process, as distinct from a chemical process, produces a new product, which is patentable, may get a patent for it. But the chemist cannot get a patent for his new chemical product, because it is produced by a chemical process. Why the distinction? A veterinary surgeon who produces a new remedy which is useful for treating cattle, can get a patent for it, if it is patentable, because it is made up by a physical process as distinct from a chemical process. Why discriminate against the chemist?

Right Hon. Mr. GRAHAM: Is there an answer to your question that you know of?

Mr. MACRAE: The explanatory note with respect to this section is not strictly accurate. When this section was introduced in 1923 it was in the identical form in which it now is in the Bill. That is, the word "or" was used, and not the word "and." The change was made because of representations to the then Government, and a compromise was reached and section 17 of the Act was passed. Now it is suggested that the word "or" is substituted for "and" to correct an unintentional error. But it was not an error; the word "and" was purposely used, owing to representations that were made. It is quite true that section 39 of the Bill follows the wording of the English Act and in the Acts of many European countries. The explanation that has always been given to me for the inclusion of that section in the British and other Acts is this. Prior to the war, Germany in particular had so developed the chemical industry as to outdistance most other countries, and it is alleged that Germany adopted the practice of filing applications for chemical products without giving full details of the process of manufacture. The result was that when the war came on and the British people and others, including the Americans, went to operate under the patents, they were unable to find in the specifications sufficiently detailed information as to how the processes should be operated. So they said, "Let us not give protection on products as distinct from the processes. Let us give pro-

tection on the products only when produced by the processes disclosed." Obviously, if the process disclosed will not produce the product defined, the patent is dead, because there is no product covered by it. That is the reason, as I understand it, why this provision was introduced in the British Act. There is no similar provision in the United States Act.

Right Hon. Mr. MEIGHEN: Is it not likely that the reason is this. In a mechanical mixture there is no process to patent, for anybody can mix, if he knows what to mix, but in a chemical compound it is difficult, for there the process is a work of art.

Mr. MACRAE: There are comparatively few simple chemical compounds, that is entities in themselves, which are not more in the nature of a mixture. But there is this distinction, that when a chemical process is involved, the elements which would otherwise form a mixture are so used as to form a complex condition.

Right Hon. Mr. MEIGHEN: There is some special method which brings about the compounding. For instance, it might be temperature which has a certain effect.

Mr. MACRAE: The same principle applies all along the line. One who gets a patent on a mechanical invention which incorporates a new principle has a basic patent, and he can stop anybody who has not his licence from making something which embodies that principle. Now, why should there be discrimination against a chemist who invents an entirely new product? I am not thinking of something like helium, something that has always existed, for instance. Many honourable senators will remember that some years ago Mr. T. L. Wilson was credited with being the inventor of carbide. He invented it here in Ottawa and manufactured it to some extent. I do not know whether he got a patent on it at that time or not, but assuming that carbide had never been made prior to that time, that it was entirely new product, if Mr. Wilson was not afforded any protection on this calcium carbide as such, as distinct from the process which he used for making it, what protection would he have? We all know how useful the product was. I suppose the first process he used was very ineffective, but it produced the product which was quite as efficient as that which is now being made at Shawinigan Falls in thousands of tons. It served the same purposes and produced acetyline gas and the other products But it being new, why should he be deprived from that protection when every other body, the chemical engineer, the druggist, everybody else, would be entitled to protection on it if the invention does not require the operation of a chemical process. I cannot see the reason for the distinction. Mind you, I do not know the chemical people are the ones to attack for this discrimination, but I cannot see why at this stage when chemistry is doing so much for life in every realm you should so discourage the chemist.

It did seem to me, Mr. Chairman, that there was a little confusion this morning with respect to the convention. As far as foreign inventors are concerned, we might just as well not belong to the convention at all. The convention gives them no material right which they cannot get otherwise. The convention from our point of view is of value inasmuch as it helps our nationals when they go to other countries to get protection. That is a statement of fact. There can be no dispute about that, I think. Whether we belong to the convention or not, the foreigner can come into this country and file his applications in accordance with the other provisions which we make for him. The same applies to every other country in the world. As a matter of fact in Britain, Germany and France I rarely file applications which I file for Canadian inventors within the convention year. You do not have to. Why should you spend the additional fee which they charge over there? Why should I make my client pay an additional Pound, for example, in England just to claim the convention year if there is no need to do so? We file under the convention

in England and other countries within the convention year only when necessary to do so, when we have allowed some other publication of our invention to get into England, for example. Then if the convention permits us we file under it.

Right Hon. Mr. MEIGHEN: That means protection right back to the date of the application in the first country?

Mr. MACRAE: It means this, Senator, that in so far as the proving the first date of invention in the foreign country is concerned, he is in the same position as if his application in that foreign country were filed on the day it was filed in Canada. It goes no further than that.

Right Hon. Mr. MEIGHEN: In so far as what, proving the date of his invention?

Mr. MACRAE: In so far as his position in the United States is concerned, with reference to his date of invention, it just goes so far as stating, as under our Act, that the application in the foreign country has the same force and effect as if it were filed in that country on the day it was filed in Canada.

Right Hon. Mr. MEIGHEN: Whatever force that has it dates from that time?

Mr. MACRAE: Yes. It means nothing else.

That is not so important from the point of view of filing here. In fact it is not important at all. It has been magnified in my view out of all proportion to its significance. It is important to us to belong to the convention for the rights our nationals get in foreign countries. Each country has its own peculiar requirements with respect to filing. The convention requirement is a very secondary one.

The suggestion has been left with you, unless I misinterpret it, that one comes in here and files on the basis of his foreign application. That is not so. It is true they very often file abroad and their application here is a copy of the other in the United States, for example. But they do not come here and file on the basis of their foreign application; they file just the same as if they did not have their foreign application. That is not the significant thing. The implication is that under our system foreigners abuse their rights, come in here and do something they could not do otherwise. The fact is that an inventor who has made an invention and wants to file an application for a patent comes in here and files it in accordance with section 26 of the Bill, if it is adopted, and he gets his patent, depending on whether the examiner finds it is patentable. There is one other point I should like to mention. I do not know whether you gentlemen have been besieged—I hope you have—with the many requests and the efforts that have been made over a great many years to have something done whereby copies of Canadian patents would be made more available. There has been much effort put forth to have the patents branch in this country take that step. When you consider that you have to pay $4 to $4.50 for a copy of a patent, which in the United States you can get for 10 cents or in England for twenty-five cents, and that very often the Patent Office is so loaded with work that you cannot get your copy promptly, you will realize the position. Just now they are well up to date and do not keep you very long, but there were times when one would have to wait sometimes two or three weeks or more. The office just could not provide copies. Surely something can be done to cure that situation. With a revenue of $3,000,000 a year, surely we could do something. I know it costs money. Perhaps we cannot do it now, but will Governments not give some consideration to that question and, when possible, enable the Patent Office to do that thing which is so necessary? It will be a great help to the industry.

The CHAIRMAN: Is it your complaint that the price is too high or that there is too much delay?

Mr. MacRae: Both.

The Chairman: You suggest they should have printed copies kept on hand?

Mr. MacRae: Yes, or reproduced in some other way. I think the Commissioner has always looked at this very zealously and energetically with a view to finding something, but there is always something in the way. They have not the necessary appropriation. It is all a question of appropriation, what can we provide in that direction. That is the question. We think that we should be able to have something done in that direction.

Right Hon. Mr. Meighen: What would be a reasonable fee instead of $4.

Mr. MacRae: It is 10 cents in the United States, 25 cents in England. If you charged 50 cents here I am sure everybody would be delighted to pay.

Right Hon. Mr. Meighen: Would the department lose money at that rate on that part of the work?

Mr. MacRae: I really do not know, Senator, just what the exact figures are. I think the department have looked into it rather carefully and have figures of the probable cost and of the revenue to offset it.

Right Hon. Mr. Graham: It would depend on the number of copies sold.

Mr. MacRae: Yes, sir.

The Chairman: Any further questions of the witness?

Mr. MacRae: I thank you very much, gentlemen, for your courteous hearing.

The Chairman: Thank you.

Our next witness is Mr. J. H. Van Koolbergen.

Mr. J. H. Van Koolbergen (President of the International Bureau of Inventors, Inc., Montreal): Mr. Chairman, it was my pleasure to-day to listen to the legal aspect of the patent situation and also to the more or less technical aspect. I should like to show you another aspect which I might call the emotional.

Right Hon. Mr. Meighen: You are too old for that.

Mr. Van Koolbergen: I was rather afraid to use the word, but when I saw one of your members belonged to the opposite sex I got courage.

Right Hon. Mr. Graham: Undue influence.

Mr. Van Koolbergen: I intended to come here only as an officer of the company I represent.

Right Hon. Mr. Meighen: What company is that?

Mr. Van Koolbergen: The International Bureau of Inventors, Inc., in Montreal, which was established nine months ago. It works in co-operation with the union of officers of a similar nature in Europe.

Hon. Mr. Dandurand: You gather the inventors in your organization?

Mr. Van Koolbergen: No, sir, we just help in matters to put their inventions in the hands of those who will use them and promote them.

I saw there was rather an interest in the extension of the obligation of time of the patent. Apart from being an officer in that company, eleven years ago I had an idea that I could invent or use a certain law in electricity that would allow radio receivers to tune in from the shortest wave length to the longest without the use of the conventional condensers and coils. It took me eight years before I came to such a position that I could feel was in the right direction. It took me three years more to build a receiver that would actually do that. This receiver will only have a potential commercial value as and

when television becomes more perfected. Suppose I as an inventor to-day was applying for a patent, and that I misjudged the time that I chose to make it to the public, three years from to-day my eleven years of patience, experiment, anxiety and expense would be all null. Now, would that be fair? I might expect some protection.

You will pardon me if I read a few notes. English is not my native tongue, although I try to do the best I can.

The CHAIRMAN: You are doing very well, sir.

Mr. VAN KOOLBERGEN: From my experience I have come to the conclusion that inventing is one of the greatest gambles, with the inventor and his backer in most cases the loser, and the Government and the patent attorneys the winners. I do not believe I am very far off the mark when I say that less than two per cent of those who invent something reap any benefit from their labours and financial outlay. I ask, why curtail their chances of eventual success still further.

Speaking as an officer of the International Patent Brokers' Organization, it is my opinion that rather than create a desire to develop certain foreign inventions, such a curtailment would stifle it. It would take away the incentive to make a little money, which after all is an incentive worth while.

Then there is another danger that I, as a Canadian, must not overlook. We have in Canada inventive geniuses, men and women, who as pioneers have had to cope with almost insurmountable conditions, and they have had to be inventive-minded. I do believe that the records of the Patent Office would bear me out when I say that in proportion to the population our French-speaking citizens have a preponderant majority in the invention of articles of a domestic and commodity nature, for instance, cooking utensils or anything of that nature. We have found the French habitant and also the French mechanic always trying to invent something.

Now, before reading to you the real purposes and objects of my coming here, I should like to read to you what I find in a pamphlet issued by the Patent Office in London, entitled "Instructions to Applicants for Patents." It says:—

> What may be patented.—Patents are only granted for inventions the subject-matter of which is "a manner of new manufacture" within the meaning of Section 93 of the Acts.
>
> Applications for patents would not be accepted in the following cases:—
>
> (*a*) Where no material product of a substantial character is realized or effected by the alleged invention, or where the only material product is a printed sheet, ticket, coupon, or its equivalent, for use in carrying out some scheme of business or the like.

Gentlemen, amongst the patents issued by the Patent Office in Canada that have been submitted to us for consideration have been patents of this nature.

> (*b*) Where it is proposed to use, modify, or imitate natural conditions existing on the earth's surface, there being no invention as to the means or apparatus applied to these purposes.

Again I must say that inventions of this nature have been submitted to us.

> (*c*) Where the alleged invention is so obviously contrary to well-established natural laws that the application is frivolous.

I have such a patent application with me. The inventor of that instrument claims that by the recoil of some springs he can get 85 horse-power and have a helicopter or aeroplane which will travel all over the world.

> (*d*) Where the invention is of such a character that its use would be contrary to law or morality.

I must say that such patents have not been submitted to me.

Now, gentlemen, I do believe that the deplorable conditions and the sordid story that I have to tell are caused by the lack of provisions like these in our present laws. I wish to state emphatically that I have not come here to insult or insinuate, and I believe that those who have the public interest at heart will take my word that I desire to help to improve the conditions under which we labour to-day. I have addressed to different members of Parliament, and to the Chairman here, a letter which, if you will allow me, I will read. I may say that I have had answers which encouraged me to come and appear before you.

> In June last this corporation was granted Letters Patent for the purpose of dealing in inventions, following the manner and practices of, and in co-operation with, European concerns of long standing and unimpeachable standards Since then, the executives of this company have become cognizant of the deplorable manner in which most inventors are treated by those in whom they had to place their confidence, and from whom they might reasonably expect proper advice, guidance, and even protection. The following study will outline to you the grounds upon which we make this statement
>
> There have been submitted to us a large number of patents, granted for inventions, the total expenditures of which for Government fees and service charges run well into $100,000, and the moneys invested on the strength of these patents by the inventors themselves or by their friends total at least $500,000. Taking these data and the total number of patents issued by the Patent Office up to date as a base, we come to the enormous sum of $400,000,000.
>
> As our principal revenue is a commission from patents we succeed in selling for our clients, our directors, as a matter of course, give very careful consideration to the commercial value, both domestically and internationally, of the patents this company handles and spends money on. It is therefore evident that we must be in a position to have a fairly accurate idea to what extent the above-mentioned $400,000,000 expenditures were justified. From the frivolous nature of most of the inventions submitted, we do not hesitate to state that the greater part of the above-mentioned $400,000,000 was utterly wasted and lost, as far as the inventor is concerned.
>
> The different methods employed by certain interests to encourage poor inventors to spend their hard-earned dollars on patent applications and other fees for valueless inventions border on the criminal.

Right Hon. Mr. MEIGHEN: Who would be inducing anybody to spend money on a patent? Usually you cannot keep the inventor down.

Mr. VAN KOOLBERGEN: I agree with you, senator; I will even go so far as to say that there is a sickness that we call " inventionitis."

Right Hon. Mr. MEIGHEN: Who tries to take advantage of it?

Mr. VAN KOOLBERGEN: I haven't the different names with me, but there are certain interests. I would not say the patent attorneys as a body do it, but there are quite a few, one of whom sends out a big sheet after a man has written to him. This is called a certificate, and states:

> We have examined your invention and have come to the conclusion that it is very ingenious and will be profitable. There is no doubt that you should immediately protect yourself.

After seeing the nature of the invention I have come to the conclusion that such action was bordering on the criminal.

Right Hon. Mr. MEIGHEN: I see.

Mr. VAN KOOLBERGEN: (reading):—

To climax this tragedy we found that 92 per cent of the inventors that we have contacted since June last and who are holding the above-mentioned valueless patents, are on direct relief to-day, having spent from $150 to $35,000 each, and for which they have nothing to show but some official Government sealed documents.

If these inventors had been given honest advice by experienced and practical men before being encouraged to apply for patents, or if the Patent Bureau had demanded a statement under oath by competent authorities as to the feasibility and commercial possibilities of the invented article, to be attached to each patent application, much of the above $400,000,000 as well as great agony would have been saved these would-be inventors.

Of course, all of the inventions submitted to us were not valueless, but, even if an invention is worth while and the inventor has obtained an uninfringeable patent, he is still at an enormous disadvantage. Having spent, probably, his last cent in making models, patent attorney's services, etc., he is unable to protect himself when a financially strong concern infringes on his patent.

Amongst the patents submited to us there is one which is now embodied in every radio receiver on this continent, and, perhaps, in this world, and for which the inventor should perhaps have received his just reward. He commenced legal action with the result that when $3,800 in legal fees were absorbed and he had no further means to conduct his case, he had to drop it and, therefore, was deprived of considerable revenue, and that regardless of the fact that both the Canadian and United States governments gave this man exclusive rights for the use of his invention.

I have obtained permission to mention the name. It is J. L. Latraverse, who is a cousin of the Hon. Mr. Cardin.

Hon. Mr. DANDURAND: May I ask you if the form that you are reading now has for its object the amendment of the Bill?

Mr. VAN KOOLBERGEN: Yes.

Hon. Mr. DANDURAND: Because we are working on a Bill touching patents.

Mr. Van KOOLBERGEN: Exactly.

Hon. Mr. DANDURAND: And I do not see yet that you are leading towards the improvement of this Bill.

Right Hon. Mr. MEIGHEN: As I understand him he wants a clause making it the business of the Patent Office to satisfy itself as to the commercial utility of the invention. That is to say, before the applicant gets a patent which will only lead him into further expense, the Patent Office will make up its mind that it is something worth while by reason of the demand for its sale.

Mr. VAN KOOLBERGEN: And at the same time, senator, to prevent what O. Henry would call "a genteel racket."

Right Hon. Mr. MEIGHEN: But that would not stop the unscrupulous patent attorney encouraging inventors to apply.

Mr. VAN KOOLBERGEN: If it was necessary there would be a sworn statement by a qualified man, otherwise, of course, he could not make application.

Right Hon. Mr. MEIGHEN: I see. If the attorney had to take an affidavit that in his judgment it was all right, his reputation would suffer if he put in affidavits that were nonsense.

Mr. VAN KOOLBERGEN: The Government could even go so far as to appoint men.

Right Hon. Mr. MEIGHEN: A sort of blue-sky law for patent people.

Mr. VAN KOOLBERGEN: I do not want to intimate that patent attorneys as a whole do this. Far from it. I believe I have some very good friends among them. In all lines of business we have good men and bad men, but why should we allow such things to continue if they can be avoided?

As far as my own experience is concerned, I may say it has certainly not paid us for the last five months to investigate over 1,000 patents of which only 38 were of more or less value. You might very well ask who is to judge them. We have five directors on our board, one of whom to-day is the chief engineer of one of the foremost oil companies in Canada, and who at one time was chief engineer of the Canadian National Steamship Company—a man of very high standing.

Right Hon. Mr. MEIGHEN: You feel that you have competent men to pass on this, and you say that out of about a thousand only 38 were worth considering?

Mr. VAN KOOLBERGEN: If I said 38 I made a mistake. It is only 28.

Right Hon. Mr. MEIGHEN: And all the others were valueless?

Mr. VAN KOOLBERGEN: All the others were valueless, and money was spent on them. Naturally if such a condition did not exist we would save all that work and money.

Right Hon. Mr. MEIGHEN: Where did you operate before you came here?

Mr. VAN KOOLBERGEN: In the patent business?

Right Hon. Mr. MEIGHEN: Yes.

Mr. VAN KOOLBERGEN: Never. I have been living in Canada for the past 28 years. I have been naturalized that long, and married here. My actual active experience in the patent brokerage business is only nine months old, but my hobby being inventions I have come in contact with quite a few men who have had patents. As a matter of fact, I was only 19 years old when I sold a patent for a gun to the German Empire.

Right Hon. Mr. MEIGHEN: They thought they needed it?

Mr. VAN KOOLBERGEN: They thought they needed it.

Have I said enough, or will I give a few more examples of what we have found?

Right Hon. Mr. MEIGHEN: I think you should go on.

Right Hon. Mr. GRAHAM: Use your own judgment.

Mr. VAN KOOLBERGEN: One large concern with ramifications in Canada and the United States both, has gone so far as to print an elaborate pamphlet inviting inventors to submit their inventions, and whosoever can read between the lines, will learn from these instructions the fact that the company will use, without regard to the rights of the inventor, the patents or inventions as it pleases.

I cannot help it, I must call a dog a dog and a horse a horse. I refer here to a pamphlet issued by the General Motors, under the signature of the president.

To our knowledge, most countries have made provision in their patent laws that certain inventions, especially for war purposes, shall be preserved for the country of which the inventor is a subject. This, we believe, is as it should be. However, many manufacturers misinterpreting the reason for such laws, have seen fit to make rules that inventions made by their employees shall be assigned to the firm for whom they are working. We know of at least two instances where valuable time and labour-saving devices invented by employees have

been adopted by their employers who are now reaping great benefits therefrom, and the inventors thereof are on direct relief to-day.

A very deplorable condition, not only deplorable for the inventor, but also deplorable for the community at large, is the following: We refer to an inventor who had succeeded in inventing something that would revolutionize the process of manufacturing certain articles, resulting in an enormous saving to the public at large, but demanding a preliminary outlay from the manufacturer. Such inventions are commonly known by the trade as "Nuisance Patents." We have proof that this inventor was given a very plausible contract when assigning his patent rights. He was paid a ridiculously small sum in cash, but promised a generous royalty payment on all goods processed with his invention. The joker in this contract, however, was that it did not bind the manufacturer to use this patented process, with the result that it was pigeon-holed and the poor inventor deprived of further income from his invention.

It may come as a surprise to you that most large concerns have highly competent patent departments, ostensibly for investigating the value of patents submitted, but, very often, in practice, for the purpose of finding ways and means to render patents valueless, to circumvent them, or to obtain them by paying almost nothing for same. Against this battery of highly trained legal talent and almost inexhaustible financial resources, the inventor stands alone and helpless.

About forty countries are subscribers to an international patent agreement, one part of which secures priority rights to the invention, for one year after the date of the original and first application for a patent. That has been discussed. I may say this, incidentally, that a couple of weeks ago I had a ruling on that from the Commissioner of Patents in London, England. I asked him if there was a possibility that a man who had obtained a patent in Canada could still, being a British subject, maintain rights in England and whether such a patent would be obtainable or not. The answer was that there would be no objection to the man applying for his patent and paying his fee, but if a patent were issued it would be very dubious whether it would be valid or not. So we advised the man in question not to apply.

If one examines the records of Patent Offices in the different countries—I am not talking about the Canadian Patent Office at all—it is quite evident that patents have been issued indiscriminately, and in many cases anticipating patents had already been granted for the same basic principle. We find that unfortunate patent holders have gone to tremendous legal expenses, ruining themselves totally, only to find in the end that the object for which they have been granted a patent, giving them the exclusive right to their invention, had been covered by a previous patent. Just lately two such cases have been settled in court and we have been informed that the poor patent holders lost besides their patents $40,000 in cash. We contend that any patent bureau issuing such patents should be responsible for this loss. I may be a little severe there.

It has come to our knowledge, and we have proof to substantiate our statement, that unscrupulous concerns across the line fleece holders of Canadian patents, and especially the holders of valueless patents, of great sums of money, by stating that the nature of their patents, is such as to promise fabulous returns if given in their hands to promote a sale of them. Sums ranging from $15 to $250 are demanded as advance payments from the Canadian patent holder for the sales help they offer. As a rule, once the payments are made, this is the last the poor inventor hears from them. I am referring to the inventors who have the patent mania, people who are obsessed about patents. When patents are issued to them they are pestered by circular letters from across the line, and the American companies are able to send out these letters because they get names and addresses of all the patentees. These circular letters promise fabulous

returns if the company is given the right to promote the sale of the patented article. But as I say, after the poor inventor makes his heavy payment, he never hears anything further, as a rule.

When I started this business I did not know of these things. We wanted to advertise in the Montreal Star, but that paper refused to take our advertisement. I pointed out that we had a charter and were not doing any harm, that we were just trying to sell patents and that we did not ask for any money in advance. But the paper claimed that there were abuses carried on in the United States, by the companies to which I have referred, and it would not have anything to do with the advertisements. Since then I have found that the newspaper man was perfectly right, but also we have the satisfaction that for some time now we have been permitted to advertise in that paper, because the Star has come to the conclusion that we want to do what is right and honest.

The CHAIRMAN: What do you suggest should be done to prevent the United States concerns from sending their literature to Canadians?

Mr. VAN KOOLBERGEN: Simply provide that the patents will not be issued for frivolous and useless things. The Patent Office should be more stringent over the issue of patents. If an intelligent person received a letter of the kind to which I have referred he would know how to treat it, of course. I have a couple of the letters with me, and can file them if you wish. The concern that runs the office that wrote this letter occupies a whole floor in a big building in Washington.

Hon. Mr. CÔTÉ: Mr. Chairman, I really do not think the evidence is relevant to the patent Bill. It may be evidence that should be submitted to the Postmaster General, who has the right to prevent the delivery of certain classes of mail. He can prevent people from using His Majesty's mail to promote a racket. But I do not think this evidence is relevant here.

Right Hon. Mr. MEIGHEN: It is not very important, of course, but the witness is asking for only one thing just now. He is suggesting that the Patent Office should be charged with the duty of seeing to it that patents are not issued without restriction on valueless inventions.

Hon. Mr. CÔTÉ: That part I understand. But I was referring to his statement about the circularizing of inventors.

Right Hon. Mr. MEIGHEN: He is showing how they are victimized because patents are issued without reference to their commercial value.

Mr. VAN KOOLBERGEN: The very fact that patents are granted in our opinion, and in the opinion of those able to judge, on frivolous, silly, unfeasible, and valueless inventions, encourages the poor would-be inventor. I wish I could emphasize that more, because that is one of the most important things in my statement. Because he possesses a patent, he is invariably under the misapprehension that the Government, by granting that patent, puts its seal of approval on his invention and, as a consequence, he grasps at every opportunity offered to him to put his invention before manufacturers, in the hope of a speedy sale. The very fact that he has got a patent, which he can show, encourages and strengthens him in his mania. I am referring here not to the intelligent inventor, nor to the honest and up-to-date patent attorney. But I hope to impress the committee with regard to the abuses that are going on in connection with other classes of people.

In our dealings we have come across a number of individuals who take hold of such valueless patents for the purpose of promoting companies, or for the purpose of inveigling others to put up cash, ostensibly to enable the inventor to exploit the same, but invariably for their own benefit. Of course, investors should investigate. But how can we blame the poor, unsophistocated investor for putting up ready cash when his is shown an official Government document, giving the inventor the exclusive rights to his invention, and the investor the

belief that the Government has approved of the invention? In our humble opinion, the Government by granting patents for such inventions, is partly responsible for the fact that such practices can flourish unhindered.

We had submitted to us by one man nine patents on which he was allowed to spend over $2,000 for patent fees, in different sums, for a mechanically impossible contrivance in the nature of a perpetual motion machine. Bent by age, hungry and wanting, this man, with tears in his eyes, contended that he ought to have received a Nobel Prize, and was quite indignant when we informed him that, in our opinion, his invention was worthless, ridiculing us for our attitude towards his Government-approved invention. Gentlemen, that is what we have found.

Right Hon. Mr. MEIGHEN: Would you put on record the directions of your firm?

Mr. VAN KOOLBERGEN: With pleasure. One of the directors is holding his position with us perhaps in such a way that he would not like it to become public property.

Right Hon. Mr. MEIGHEN: Yours is a limited company?

Mr. VAN KOOLBERGEN: Of course anyone can get information.

Right Hon. Mr. MEIGHEN: Of course.

Mr. VAN KOOLBERGEN: But I will hand in the name of the directors with pleasure.

The CHAIRMAN: Any questions?

Mr. VAN KOLLBERGEN: I have an English patent. May I refer to it?

Right Hon. Mr. MEIGHEN: You say there is such a provision in the English law?

Mr. VAN KOOLBERGEN: Yes. I have the application for a patent in England here which gives five laws.

May I be allowed to make one more suggestion. There was a question of revenue, and that the Patent Office would not get sufficient. If I was an inventor, and my Government would in every possible way protect my invention, and it should be a financial success, would it not be much better, and would not I as a citizen gladly pay a tax on that patent, and would it not be much better to tax the inventor when his invention is successful rather than mulct the would-be inventor of any such funds? After the first year the patentee pays £5 and up to £16. Supposing I have an invention in my hands, I should be very glad to pay my Government 20 per cent of the proceeds I would get as a tax for the privilege of being well protected. I think any inventor would feel the same as I do. There is a suggestion for you gentlemen to raise a couple of million dollars.

Right Hon. Mr. GRAHAM: That is on the successful inventions?

Mr. VAN KOOLBERGEN: Yes, on the inventions that are sold. I am not a law-maker. As I say, I should be glad to pay a fifth of my revenue to my country to protect my interests.

Hon. Mr. CÔTÉ: Have you ever patented articles yourself?

Mr. VAN KOOLBERGEN: Once I paid $280 to be told in the end that there was a prior invention. The patent attorney who made the application did not know the difference between capacity and inductance. I had to do the whole thing myself.

Mr. MAYBEE: Mr. Chairman, may I speak to what might be called a question of privilege?

The CHAIRMAN: There are some other witnesses to be heard yet.

Mr. MAYBEE: I shall be only a few minutes.

The CHAIRMAN: Mr. Allen is the next man on the list.

Mr. MAYBEE: Possibly Mr. Allen may cover this question. It is the question of the circularization of inventors by attorneys. I desire to state, in the absence of the president of the Institute, that that is a practice which the Canadian Institute of Patent Solicitors has been endeavouring to curb with all possible means at its disposal. There is a provision in the Act governing patent attorneys which, if properly administered, the Patent Office itself could be of great assistance in curbing that abuse. I refer to the provisions of section 16 of the present Bill, whereby for gross misconduct or any other cause which he may deem sufficient, the Commissioner may refuse to recognize any person as a patent agent or attorney either generally or in any particular case. I would suggest that when the Patent Office is put in a position properly to administer the Act, that section could be invoked to curb the abuse to which the last speaker referred.

Hon. Mr. CAHAN: That has been very effectively enforced, I think.

Mr. VAN KOOLENBERGEN: May I answer that statement?

Right Hon. Mr. MEIGHEN: All right. It looks to me to be pretty sensible.

Mr. VAN KOOLENBERGEN: The inventor feels ashamed and humbled and never puts in a complaint.

Hon. Mr. CAHAN: A similar provision in the present Act has been very effectively enforced in a number of cases.

The CHAIRMAN: Now, Mr. Allen.

Mr. F. R. W. ALLEN (Vice-President of the Canadian Institute of Patent Solicitors): Mr. Chairman and honourable members, I do not come before you to-day as representing the Canadian Institute of Patent Solicitors, but as representing the Montreal Board of Trade.

In the very nature of its being it represents not only manufacturers but all branches of trade, the dealers in goods, the customers that buy them, in short it is the general public interest that I want to call your attention to. I shall discuss this Bill briefly from that point of view.

The very evident intent of this Bill is to increase industry and to foster the development of new inventions. It is believed that some measures that have been proposed to accomplish this end are going to have exactly the opposite effect. The reasons why have been dealt with by previous witnesses, and I do not propose to tax your patience by going over that ground again and again.

There is one point, however, that has not been touched on to any great extent. Mr. Smart touched on it slightly. That is, the reality of this alleged menace of the foreign owner of Canada patents. I have been engaged in the practice of patent law for something over thirty years, and I cannot say that in that time I have seen any definitive case of a foreign owner of a Canadian patent holding up industry. There may be such, but I have not encountered it. I have encountered cases though where Canadian owners of Canadian patents are reluctant to grant licences. In some cases they are quite justified. They have a certain small market. It is necessarily small by reason of our limited population. They need the whole of that market to justify the expenditure for plant and so on to enable them to operate economically and to sell their product at a reasonable price. If a would-be rival comes in and wants to get a licence to cut into that territory and split this already limited market, it is going to produce a condition that will increase the cost of goods to the consumer, which will possible result in both the original manufacturer and the licensee getting into financial difficulties. So that there is a very good reason sometimes why licences should not be granted.

Right Hon. Mr. MEIGHEN: That would be a case where he is making it himself. He does not have to license then.

Mr. ALLEN: Exactly, sir.

Right Hon. Mr. MEIGHEN: No one would think of making him give a licence on a patent in commercial production.

Mr. ALLEN: No, sir, I do not believe the Patent Office would consider such a thing for a moment.

Hon. Mr. CAHAN: It has no power.

Mr. ALLEN: But that man who wants to chisel in on somebody else's business is the type of individual who complains about patentees holding up industry. This thing happened to me over and over again. A man comes in and he says, "There is an article, it is selling well. Can I make it?" I look at it, a patent mark is on it, and I see the patents are still in force. I tell him that he cannot. He goes away very much disgruntled. He does not want to start a new industry, he wants to chisel in on somebody else's business. Quite often the article is imported, made in the States, for example. Now, it is not always the patentee's fault. He sells his product in the States to a jobber, who ships those goods into Canada. I would say it was quite reasonable to grant a licence to a Canadian manufacturer, but I cannot see the equity in depriving him of his patent possibly as might result under this Bill. The foreign patentee realizes very often that the market in Canada is not sufficient to justify the establishment of a plant here. It is very often difficult enough to get a Canadian manufacturer to take up the manufacture of an article even where there is a limited market demonstrated.

Right Hon. Mr. MEIGHEN: Of course, that case would not be in controversy at all, because there would be no application just for a licence. It is only some person who wants to make the article who would apply for a licence.

Mr. ALLEN: That is the difficulty. It is this type of man who creates the impression that there is a menace to Canadian industry.

Right Hon. Mr. MEIGHEN: But it would never pay that American manufacturer to have a plant in Canada as long as he was permitted just to import, he would far rather do that, and consequently, unless you are going to have compulsory licence provisions, we get nothing. He is manufacturing on a big scale over there and can supply the Canadian market from his American plant. A man comes along and says, "I am ready to put capital in and supply the Canadian market." It is only in that event that the question arises why should not he get a licence.

Mr. ALLEN: There is no reason why he should not.

Right Hon. Mr. MEIGHEN: That is all the Bill calls for.

Mr. ALLEN: I am not talking against the compulsory licence provisions. I believe they are good and necessary. I am talking of the sometimes unwarrant cause of complaint. The American or foreign manufacturer in any country will manufacture in Canada as soon as it is expedient to do so.

Right Hon. Mr. MEIGHEN: But it will not be expedient for him at all to do so if he is not made to do it.

Mr. ALLEN: The question of tariff of course enters into the question very largely.

Right Hon. Mr. MEIGHEN: Yes.

Mr. ALLEN: With the tariff against him he has to consider if it is expedient to manufacture here.

Right Hon. Mr. MEIGHEN: There is not much tariff protection if the article is not made in Canada.

Mr. ALLEN: That is true.

Right Hon. Mr. MEIGHEN: So the patent law has to come in and co-operate with the tariff to encourage Canadian production.

Mr. ALLEN: But with automatic voiding the situation is wide open.

Right Hon. Mr. MEIGHEN: Your argument would go against automatic voiding.

Mr. ALLEN: Yes. To automatically void the patent of a foreign owner when it is the guilt of a third party, the jobber in a foreign country, is not equitable. I am not speaking against granting a licence to a bona fide Canadian manufacturer if he wants to manufacture. This situation is a little bit clouded by reason of the way in which the statistics of patents are reported in the Annual Reports of the Commissioner of Patents. They are classified according to the residence of the inventor.

I have a tabulation here—I am not going to worry you with it except to put it on a basis of averages and percentages. For a period of the last eight years, for every hundred patents granted, 11·3 were granted to Canadian residents, 9·8 to persons resident elsewhere in the British Empire, 65·9 to persons shown as residents in the United States, 13·1 to the rest of the world. That makes a percentage of 11·3 to Canadian residents against 88·7 to residents elsewhere. As against that there is a record of 78·1 assignments or licences. Now, if we deduct one or two licences for each of those Canadian patents to Canadian residents, say 20, we still have 50 some licences and assignments to be accounted for, which obviously must be registered against these patents that are listed as being foreign.

Right Hon. Mr. MEIGHEN: You think a great part of them are assigned to Canadians?

Mr. ALLEN: A great many of them are, sir. Some of them are assigned at the time they are applied for, some afterwards. Or, it may be only a question of licences. As has been pointed out, there is a considerable percentage of patents—

ALLOCATIONS OF CANADIAN PATENTS BY RESIDENCE OF INVENTORS

AND

RATIO OF ASSIGNMENTS AND LICENCES TO PATENTS

(Tabulation of data in Appendices A and G—Reports of Commissioner of Patents for 8-year period ending 31st of March, 1934)

Year	Total Patents Issued	Canadian Residents	Residents in balance of Empire	Residents of United States	Residents of all other countries	Total outside Canada	Assignments and licences
1934	9,122	982	892	5,998	1,250	8,140	6,577
1933	10,241	1,003	1,004	6,826	1,408	9,238	7,354
1932	11,124	1,084	1,044	7,465	1,531	10,040	9,001
1931	11,262	1,109	1,150	7,298	1,705	10,153	9,190
1930	10,401	1,169	1,089	6,586	1,557	9,232	9,505
1929	9,335	1,265	935	5,947	1,188	8,070	8,227
1928	9,518	1,285	905	6,287	1,041	8,233	7,011
1927	10,018	1,232	911	6,962	913	8,786	6,409
Totals	81,021	9,129	7,930	53,369	10,593	71,892	63,274
Average	10,127	1,141	991	6,671	1,324	8,986	7,909
Per cent of whole	100	11·3	9·8	65·9	13·1	88·7	78·1
Per cent on external							89·1

Hon. Mr. CAHAN: Can you tell from the statistics who are the assignees?

Mr. ALLEN: No, sir, the statistics do not show that.

Hon. Mr. CAHAN: That is very important for the purpose of the discussion, whether they are assigned to American or Canadian concerns.

Mr. ALLEN: I may say that in many cases they are assigned from the actual inventor, first, to an American concern, and then to a Canadian concern; or a licence is granted to a Canadian concern.

Hon. Mr. CAHAN: I should like to have those statistics. When you come to ascertain who are the ultimate assignees, I think you will find great difficulty.

Mr. ALLEN: So far as I know, the only way to ascertain that is to go through the assignment records.

Hon. Mr. CAHAN: And you have not done it?

Mr. ALLEN: No, sir.

Hon. Mr. CAHAN: That is all I wished to understand. The record you give does not cover that point.

Mr. ALLEN: No, it has not attempted to segregate those assignments. I am simply dealing with numbers.

Now, of these 88·7 patents a large number are of such a nature that they will never come into commercial use. It is more or less immaterial what is done with them except as a matter of principle, and except to take care of the odd one or two, the small percentage among them that may be valuable inventions and for which the market is not ready. So, it seems to me, that deducting from this 88·7 per cent those that are not serious in any case, and offsetting the assignments against the remainder, we will find that the patents that really signify in Canadian industry are pretty well either owned by or licenced to Canadian manufacturers. It has been my experience that the foreign patentee is always anxious to find a market.

Hon. Mr. CAHAN: I do not want to interrupt, but I can find no data in the Patent Office, where all the assignments are kept, which justify that suggestion.

Mr. ALLEN: Sir, I can only repeat that I believe the only way in which that can be answered is to go through the assignment records assignment by assignment.

Hon. Mr. CAHAN: Therefore I only wish it to be taken as a personal opinion, because the facts are not available.

Mr. ALLEN: It is a question of probabilities from the figures that are available.

Hon. Mr. CAHAN: Very well.

Mr. ALLEN: Now, I said a number of these inventions would never be significant enough to be a menace.

Right Hon. Mr. MEIGHEN: Except to the inventor.

Mr. ALLEN: Yes, except to the inventor, sir. You have already heard of more or less worthless inventions. There are two classes of inventors: the man who is inventing and developing along the lines of his own business. He deals with something that he is familiar with and of which he knows the ins and outs. Then there is the inventor who has an inspiration or a brilliant idea—or thinks he has—and insists on getting a patent relating to a subject that he knows nothing about. The chances against him are tremendous.

It is also a peculiar thing that some of the apparently silly inventions make money, and that other inventions that look to be 100 per cent in the way of novelty and ingenuity, and that have excellent patent protection, can never be developed. Possibly it is because they are so far ahead of commercial conditions.

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Right Hon. Mr. MEIGHEN: Could the Patent Office, within reason, equip itself to decide upon the commerciability of a patent?

Mr. ALLEN: I am afraid it would be very difficult.

Right Hon. Mr. MEIGHEN: And a very hazardous thing to undertake.

Mr. ALLEN: A very hazardous thing to undertake. At the present time the Bill specifies, as one of the requirements, that an article in order to be patented must be useful.

Right Hon. Mr. MEIGHEN: That would be complied with if the Patent Office said " If it is used it will be useful," but that would not enable the Patent Office to say, " Though it is useful it could not be sold to the advantage of the inventor."

Mr. ALLEN: That is hardly possible to say in advance. It may appear useless to-day and be highly useful in five or ten years. It goes back to the same question of the three-year limit.

Now, there is one other point in connection with section 39, on chemical patents. This particular aspect, I do not believe has been brought out before.

Right Hon. Mr. MEIGHEN: Speak a little louder, please. I do not believe everyone can hear you.

Mr. ALLEN: There are two classes of chemical patents. One relates to a new process for making an already known product; for instance, a new process for making table salt, or acetic acid, or anything you like. In that case there is no question that the patentee is not entitled to a claim for a product. The other class is a new product, a new resin, such as Mr. Smith spoke of. There the invention is primarily in the product, not in the process. The product is what you are selling, and there may be a dozen ways of making it. But the product is the essential thing; that is where the invention really lies, and if the patentee is going to be limited to the process, he is going to be deprived of the fruits of his invention. Now, the tendency of the British Act to relieve him has been pointed out. We had previously no limitation upon it. The present section was introduced into the Act; it was amended, as has been pointed out, and now, the proposal in this Bill is to revert and to increase the restriction to deprive the inventor of what is his real invention.

Hon. Mr. CAHAN: Just a moment. The present bill, as amended, is in the express terms of the English Act, except in one respect, and in that respect we are quite willing to adopt the additional clause and the additional amendments of the British Act, namely, that if a contest arises as to whether the process is distinctly different, the Commissioner or the court is to assume that if the product is the same the process is the same, prima facie, and that that prima facie assumption must be rebutted by distinct and relevant evidence. Now, with the addition of that clause as to the prima facie assumption that when the substance is the same that the process is the same, we have exactly the English Act down to the present day.

Mr. ALLEN: I agree, sir, but I do not think it goes far enough.

Hon. Mr. CAHAN: That is a fair and legitimate argument. I thought you were basing your argument on the fact that we were not living up to the British practice.

Mr. ALLEN: No, sir.

Right Hon. Mr. MEIGHEN: You think that if the product is new the patent should cover the product as well as the process?

Mr. ALLEN: I do, sir.

Right Hon. Mr. GRAHAM: What good would the process be if it did not make the product, if it did not produce something?

Right Hon. Mr. MEIGHEN: What I think you mean is this: What value would a patent on the process have if you did not have a patent on the product, because probably it could be produced by a dozen methods?

Mr. ALLEN: The original process is probably a rudimentary thing. Usually it is susceptible of improvement, and usually it is improved in a series of steps extending over a period of years. It occasionally happens as the result of others becoming interested upon the publication of patents, and developing other superior processes. In such a case there is no blockade either way. The original inventor who has, we will say, a claim on the product, is desirous of getting the new process. He will be willing to purchase it or take a licence from the subsequent inventor. If he is going to save money and make his product cheaper, he will benefit. Alternatively, the second inventor could acquire a licence to make the product, or perhaps for so much of the original process as would be necessary for him to carry out his improved process; and if there was any difficulty the compulsory licensing provisions of some sort are there.

Hon. Mr. CAHAN: I think you have touched upon what seems to be one of the most interesting phases of this discussion. But there is one alternative that, it seems to me, you do not put clearly. An inventor, through a number of years, has discovered a process, and as a result of that he produces a certain kind of shellac or varnish, or a chemical compound or something of the sort.

Right Hon. Mr. MEIGHEN: That is new.

Hon. Mr. CAHAN: That is new, Now, another inventor going through a long series of expensive experiments finds that as a result he has produced a substance which is identical with the previous one. Is he to have any benefit from the result of his long and expensive experience in developing the new process? It strikes me and the argument has been presented to me, that if he discovers a new and distinct and different process he should not be placed entirely in the hands of the other patentee who previously discovered another process to produce the same sort of shellac, or whatever it may be; but that the new man, having gone on for years and having developed a process should not be refused a patent in the first place, and secondly, have the new process invented by his skill placed in the hands of the first inventor. There is something there that must be met.

Mr. ALLEN: As I understand the situation, he is not deprived of a patent on his invention, which is a new process. In this case he has not invented a new product at all, but simply another way of producing the first inventor's product. So he is not entitled to sufficient protection on the product. He gets then a patent on his important process.

Right Hon. Mr. MEIGHEN: But he cannot use it, because he cannot produce the product?

Mr. ALLEN: Perfectly true.

Right Hon. Mr. MEIGHEN: All he can hope to do is to sell it to someone else.

Hon. Mr. DANDURAND: Has the first inventor invented the product, or simply the process?

Right Hon. Mr. MEIGHEN: Both. It is a new product, which was never known before. The argument that stuck in my mind all morning was that if you give a patent on the product you put it out of the power of anyone else to produce a better process, because he cannot get a patent on it. Mr. Allen says that he can get a patent on the process, but not on the product. I say, what good is that? He could perhaps sell that process to the man who has the patent on the product, but that would be a very doubtful asset, because the man who has the patent on the product is likely producing it cheaply enough to meet the market requirements, and he does not need to bother with the man who has a patent on another process.

Hon. Mr. CAHAN: So far as I know, in the English practice, and in France —I do not know about the United States—you cannot obtain a patent on a product of that kind to which we have been referring, but only a patent on the process. The decisions in England show that very clearly. What my learned friend is suggesting, was introduced into our Act without due consideration.

Mr. ALLEN: May I answer Senator Meighen's question first? Any business arrangements are made as a matter of expediency. If it is expedient or more profitable for the original inventor who holds the product patent, to acquire a subsequently developed process, he is going to do so every time.

Hon. Mr. CAHAN: At his own terms.

Mr. ALLEN: Not necessarily, sir. Because the other process is always hanging over his head.

Right Hon. Mr. MEIGHEN: Why does the man who holds the patent on the product need to bother? He is already producing in sufficient quantities to meet the demand.

Mr. ALLEN: The man who gets a patent on the new process can obtain a licence entitling him to make use of his process.

Right Hon. Mr. MEIGHEN: There is no provision like that.

Mr. ALLEN: Perhaps not, in section 40, but that provision could be inserted. I think that section 27 of the British Act pretty well takes care of that situation. Perhaps I have answered Mr. Cahan's question at the same time that I have been replying to Senator Meighen's.

Hon. Mr. CÔTÉ: Mr. Chairman, perhaps I may be allowed to inform Mr. Cahan that this afternoon, when he was out of the room, Mr. MacRae said that in 1923 when section 17 was incorporated in our Act it was suggested that it follow the wording of the English Act, that is that the word "or" should be used and not the word "and." But he went on to say that representations were made at the time against that, and that the word "and" was used, because of a compromise that was reached.

Hon. Mr. CAHAN: I am instructed that the word "and" was inserted without the same serious consideration being given to it that this committee now is giving it.

Hon. Mr. COTE: I am not making a statement, I am simply repeating what was said by Mr. MacRae before you came in, Mr. Cahan.

Hon. Mr. CAHAN: I have looked up the matter and I do not think Mr. MacRae and I would differ as to how that word was used.

Hon. Mr. DANDURAND: I do not remember whether the Bill was sent to a standing or special committee of the House of Commons or of the Senate in 1923. If it remained in the Committee of the Whole in both Houses, we could easily find what discussion took place. However, that would not change the situation we are now facing.

The CHAIRMAN: Mr. Robertson, have you a question you want to ask?

Mr. E. BLAKE ROBERTSON (representing Canadian Manufacturers Association): In view of the statement that Senator Dandurand has just made, I would much prefer to look to the Journals of the House and Hansard to find out what is actually on record. It is a matter of very distinct recollection to me that the phraseology of the present Act was produced not only after very mature consideration but after very strenuous representations being made to have the section read as it now reads in the law. I was a party to those representations.

Hon. Mr. DANDURAND: I have a vague impression that in the Senate we dealt with the Bill in Committee of the Whole.

Mr. ROBERTSON: I would like to refresh my memory. I was a party to it.

Hon. Mr. CAHAN: No doubt. My friend has been a party to a great deal of what has been done in connection with the patent Act. But I have been informed that when that change was made, that is when the word "or" was changed to "and", it was done without any appreciation by the Senate or the House of Commons that thereby they were making a complete innovation in British law and making it possible to give a patent on a substance instead of on a process. But there can be no doubt or misapprehension at the present time, because I think honourable members are thoroughly conversant with the situation now.

Mr. ALLEN: I will not attempt to say what was done in 1923, because it is a matter of record that can be looked up.

Right Hon. Mr. GRAHAM: All committees do not have their proceedings recorded as we are doing here.

Mr. ALLEN: My own recollection is that in 1923 the Bill was printed with the word "or" and that it was subsequently changed to "and", as passed.

Hon. Mr. CAHAN: That is my information.

Mr. MACRAE: Mr. Chairman, I distinctly remember that largely on the representation of Dr. Ruttan, who was then president of the National Research Council, the change was made. You will find that the record shows that to be so. There were definite representations from chemists and others interested in the chemical industry which caused the change to be made.

Mr. ALLEN: There is one other point that I believe has not been touched upon. It links up with those sections, particularly section 63, which provide a number of new conditions necessary to the continuance of a patent. I refer to section 70, which has to do with the restoration of patents under certain named conditions. But it makes no provision whatever for restoration of a patent because of failure to use available Canadian materials, or because of the use of more than 40 per cent of imported materials, or because of the failure to make these returns.

Right Hon. Mr. MEIGHEN: That is to say, if the revocation were because of those things, there is no provision for restoring the patent, if the things were cured?

Mr. ALLEN: No sir.

Hon. Mr. CAHAN: That is a good suggestion.

Mr. ALLEN: Our Canadian Patent Act is a curious mixture of the British and American Acts. We have sections from the laws of both countries, where the conditions are different from those obtaining here, and we have some provisions that are peculiarly Canadian. One such provision was our longer time for filing, in our original Act, and that became, I think inadvertently, what it it is to-day. Now the suggestion is to narrow that time down to make it correspond with the situation that exists in the United States, which country has the most restricted time for filing, so far as I know, of any country in the world. And the United States Act has a peculiarly tricky provision. You can file in the United States within the convention year, and you are perfectly safe if you have a previous application filed elsewhere. If you happen to file outside that convention year and your foreign patent happens to issue first, as a result of operations of another Patent Office, the inventor is deprived of a patent in the United States. Now, that works in, to some extent, with the American system, but it nevertheless is quite a hardship. The present Bill proposes to introduce that here. I believe it is an excessive restriction, and that the time for filing should be practically in accordance with the requirements in all principal countries in the world; that is, the application must be

filed before publication, or before patenting elsewhere. Or if that occurs within a year from the foreign filing, the inventor then has the convention year. That seems to me to be a happy medium.

My closing remarks will be this, that the development of industry and of inventions cannot be coerced or compelled. It is dependent on conditions, over which the inventor has no control. Neither has the manufacturer nor the patent law any control over them, and to endeavour to control these conditions, or to coerce industry to move in the face of prevailing conditions, seems to be attempting an impossible task. It appears to me that the only possible result will be the discouragement or strangulation of industry. I thank you.

The CHAIRMAN: Is Mr. Gerin-Lajoie present? He was to give us a memorandum.

Right Hon. Mr. MEIGHEN: He has agreed to have it ready for Tuesday morning. We will go over it then and meet the Committee in the afternoon.

The CHAIRMAN: Do any other gentlemen desire to give evidence before the Committee?

Mr. THOMPSON: Yes, sir.

The CHAIRMAN: Very well, Mr. Thompson.

Mr. J. H. THOMPSON (Chief Engineer, Canadian Marconi Company, Montreal): Mr. Chairman and honourable members, I wish to express the appreciation of my company for the privilege of appearing here. I had not intended to say anything if points which we wished to bring up had been emphasized by others.

The question I desire to draw to your attention is the importation of patented articles before they can be manufactured in Canada economically. I think the Bill ought to be clear beyond all doubt that a Canadian inventor be permitted to import articles which his patents cover as long as it is not economically possible to manufacture then in Canada. There seems to be no good reason why the Canadian public should by law be compelled to pay perhaps three or four times the amount for an article manufactured in Canada which could be imported. The other point I desire to discuss is with regard to the three year limit. It was mentioned this morning by one gentleman. It comes under section 53. I want to give one illustration of how that would work hardship. We run a ship-to-shore service—wireless telegraphy and aids to navigation. We have a number of patents on aids to navigation. It would be folly to exploit those patents at present in a commercial way. Any of you gentlemen are probably familiar with the present condition of the shipping world. Ship owners will not spend one cent more than they have to, and it will be probably several years before they are in a position to take advantage of any devices we may have which will help in navigation.

The only other point I wish to stress is that in this Bill it is desirable to remove as far as possible ambiguity as to what patent owner may do. It is very definite what the patent owner may not do. Only two days ago it became evident there is a discrepancy between intent and interpretation. The point was raised with regard to patents in Canada which are not being used. It was stated by the speaker at the moment that the interpretation was that those patents would become ineffective and null at the end of three years. The Hon. Mr. Cahan, I think, then stated that that was not so, they would be covered by 2 (h) of the Bill. That was Mr. Cahan's intention, but it was not the interpretation of the legal gentlemen who have been here for these sittings. If it was not the interpretation of the legal men here, it may be presumed that the same interpretation of the legal men will be made by other legal men throughout the country. I think that point could very well be taken care of by a short paragraph in the Act stating what the intention is. My other point is in regard to the three year limitation. It occurs to me that Mr. Cahan's object could very

easily be covered without penalizing Canadian manufacturers, by stating that foreign patent owners within three years be obliged to assign their patents or grant a licence under them to Canadian concerns who are fully equipped to manufacture that article to an extent capable of supplying reasonable public demand.

That is all, gentlemen. I thank you.

The CHAIRMAN: Any questions to be asked Mr. Thompson? I thank you, Mr. Thompson.

Do any other gentlemen desire to be heard now?

Mr. ALLEN: Is it the pleasure of this Committee that I file the tabulation to which I referred?

The CHAIRMAN: Yes.

Mr. ALLEN: I will provide a typewritten copy for the Secretary.

The CHAIRMAN: Yes.

We will now adjourn to meet on Tuesday after the Senate rises.

The Committee adjourned until Tuesday, March 5.

MEMORANDUM *RE* SENATE BILL "A" BY CANADIAN INSTITUTE OF PATENT SOLICITORS

This Bill, which originated in the Lower House as Bill 7, is intended to enable reorganization of the Patent Office and to effect certain alterations in the provisions relating to obtaining and maintaining patents and relating to legal proceedings in connection with patents. The purpose of certain of the amendments is to eradicate alleged abuses in obtaining and exercising patent rights and to stimulate existing industry and facilitate establishment of new industries.

Proposals to reorganize the Patent Office are noted with great satisfaction, as the need for this has been long felt.

After careful consideration of the measures proposed to cure the alleged abuses and to stimulate industry, it is submitted their adoption will not only fail to produce the desired results but will have results directly opposite those desired and will also have additional highly undesirable results.

The most objectionable features fall into three main groups, namely,

(1) those relating to obtaining patents,
(Sections 26 (2); 30; 39; 47 (1); 66 (1) second item, and 66 (2)).

(2) those relating to maintaining patents,
(Sections 2 (*h*); 44; 52 (1); 53; 56; 63; 64).

(3) those relating to legal proceedings,
(Sections 53; 55; 56; 60).

Obtaining Patents

Complaints have been widespread that the Patent Office has been dilatory and also that it has been precipitate in its actions. These seemingly contradictory complaints have been well founded, each in its own sphere. Delays are a matter of internal organization and it is believed will be cured by the projected reorganization of the Office. The precipitancy complained of has to do with premature allowance of patent applications. The facilities of the Patent Office have been and are inadequate for a proper determination of what is patentable. Premature allowance of patent applications deprives the applicant of opportunity to put his application in proper form as result of information gained, usually by prosecuting an application in some other country which does give a reliable examination as to patentability. Premature allowance results in granting of patents which are partially or wholly invalid. This condition is often a great hardship on the patentee and is contrary to the public interest.

Certain sections of the Bill would, if enacted, compel earlier filing of applications and would hasten their progress through the Office to such an extent that the present bad conditions would be made worse and the number of partially or wholly invalid patents greatly increased. The root of much complaint of foreign owned Canadian patents dominating Canadian industry is that the foreign patentee has been given a patent for more than he is entitled to and, not unreasonably, is endeavouring to exercise the patent to its full face value.

While it is obviously desirable that the relative positions of the inventor and the public be known as soon as possible, mere hastening of issue of patents does not produce this result if the hastening is at the expense of a true disclosure of relative positions. If hastening issue of patents results in issue of wholly or partly invalid patents, both the inventor and the public are misled and the

resulting confusion is worse than any uncertainty arising out of delayed issue of patents.

The facilities of the Patent Office are so seriously inadequate that it has no reasonable certainty that the patents it issues are issued in compliance with the Act, especially section 7.

The present deplorable condition has compelled inventors who wish reasonable assurance of the validity of their Canadian patents to defer filing in Canada or to delay prosecution of their applications until the patentable novelty of the invention has been ascertained by prosecution of an application in some country which does make a thorough and reliable examination as to novelty, usually the United States. The Canadian application is then put in corresponding condition. The inventor and the public both benefit from the practice as the territories of each are clearly defined.

It is admitted that the time for filing applications is too large at present but the lesser time proposed by the Bill is too limited.

It is difficult now to avoid premature allowances, and if the times for filing and for replying to official actions and for paying final fees are reduced, as contemplated in the Bill, the only possible result will be a large increase in the number of wholly or partially invalid patents that will issue. Such a condition would be detrimental to inventors, manufacturers and the public at large through the resulting confusion and uncertainty.

Limitation of time for filing as proposed in section 26 (2), would have the further detrimental effect that in many instance inventors would be deprived of patents to which they were otherwise entitled, solely because of the action of foreign patent offices over which they have no control. The proposed limitation is more severe than in any principal country excepting the United States and is not necessary in order to relieve industry of the uncertainty pointed out in the note to section 26. The relief can be obtained by a less drastic limitation.

The final measure to hasten issue of patents is that of commencing the term of the patent on the date of application (Section 47 (1)), instead of from the date of sealing, grant or issue, as at present. It is believed this change would not shorten the prosecution period in the case of an inventor who wishes a valid patent. He will prefer to sacrifice some of the life of the patent in order to obtain a valid patent. The effect would be to penalize him for his care in obtaining the clearest possible distinction between what he is entitled to and what is in the public domain or is the exclusive property of others.

The most serious objection to dating patents from application is that they cannot be made effective from that date, as proposed in section 55 (2), without creating an intolerable condition or else radically altering the Act, as will be dealt with later. Injustice and confusion would result, more especially while the Patent Office continued to suffer from inadequate facilities for examination. The present system of dating is more practical and convenient.

At this point, it is appropriate to consider stop orders, amendments after allowance and renewals after forfeiture, as these are all important factors in obtaining valid patents. Stop orders are used to prevent, if possible, premature allowance by the Patent Office and to give applicants opportunity to make use of information obtained from prosecution in other countries. Amendments after allowance and renewals after forfeiture are the means used by applicants to remedy the evil effects of premature allowance resulting from deficiencies of the Patent Office. These features of practice are highly beneficial to all concerned as they contribute largely to the granting of valid patents.

Expediting issue of patents by the measures proposed would be very detrimental while the present condition of the Patent Office persists, but certain of these measures would be beneficial after the Patent Office is reorganized and functioning with adequately increased facilities.

Maintaining Patents

The amendments proposed by the Bill and falling in what has been termed the second group appear to have been drafted with a view to stimulating industry and protecting it against exploitation or obstruction by patentees who do no actual manufacture, especially foreign patentees. Unfortunately, the desired results cannot be accomplished by the means chosen.

The amendments in question apparently are based on two fundamentally erroneous conclusions, namely,

First.—that unworked patents are an obstacle to industrial development, and

Second.—that commercial working of inventions can be stimulated or compelled by threat of voiding patents therefor.

A patented invention becomes commercialized if it has commercial merit and when economic conditions permit—and not otherwise or sooner. The certainty that a patent is valid and will continue in force for a reasonable time is the most effective means of combating and overcoming adverse economic conditions and hastening commercial development. Invention and commercialization of inventions cannot be coerced.

In examining the preceding statements and the amendments proposed by the Bill, it is essential to have clearly in mind the nature of invention and of patents and the relation of patents to industry.

An invention is, strictly speaking, the intangible result of a mental process. It is a thought or idea and must not be confused with the tangible expression of the idea. The inventor can keep his idea to himself, in which case no one benefits, or he can disclose it. Once the idea is disclosed, it is beyond the control of the inventor or anyone else. It is possible, however, to control the practical application of the idea since application lies in the realm of tangible things.

A patent is a contract between a government and an inventor whereby, in consideration of disclosing his invention or idea so that it is available to the public and in further consideration of agreeing to give the public free use of it eventually, the inventor is granted an exclusive right to the practice and enjoyment of the invention for a specified time.

As disclosure is irrevocable and as the status quo cannot be restored, revocation of the governmental grant is inequitable unless it is clearly established that the inventor has failed to discharge his obligation under the contract. The inventor can be in default on one ground only, namely, that the invention is not available to the public. This default can occur either through failure to disclose or through imposition, during the life of the patent, of conditions which prohibit the public availing themselves of the invention.

Fundamentally, the patent is granted as a reward for disclosure, and, in the majority of cases, disclosure satisfies the requirements of the public. It is emphasized, the inventor has fulfilled his whole obligation when he discloses his invention, provided he does not derogate from his act by attaching prohibitory sale or license conditions to use of the invention so that it is not available to the public.

There is no obligation on the inventor to practice the invention himself and there is no equitable basis for depriving him of his patent merely because he does not do so, provided the invention is otherwise available to the public, i.e., through licences.

The basic reasons for granting a patent are to encourage disclosure of inventions and to encourage and assist establishment of new manufactures, in each case through promise of exclusive right to apply the invention during such period as is reasonable for development and for recovery of investment and realization of a profit.

Any patent system which does not conform to the above or which makes continuance of the exclusive right uncertain, defeats its purpose. To appreciate the truth of this, one only need compare the patent systems of various countries with the development of inventions therein. The United States, with the most liberal patent system in the world, has produced the greatest development of new inventions. Spain, which definitely voids patents in a few years if proof of commercial working in the country is not furnished to the government, has practically no development of invention.

The development and commercialization of inventions is one of the most hazardous of business undertakings. It usually requires a long period of time and the investment of considerable capital; first in research and development and later in manufacturing equipment. It has been stated on good authority that the average lapse of time between invention and commercialization is ten years.

Commercialization depends upon many things, usually beyond the patentee's control, and in most cases, must await the favourable adjustment of these conditions.

In order to justify expenditure of time, energy and money in the face of unavoidable and uncontrollable adverse conditions, it is absolutely essential that the investor be able to maintain control of the invention for such period of time as is reasonable for development thereof and for subsequent recovery of investment and realization of profit. This control is obtained only through patents and, if the protection of patents is lacking or is liable to be snatched away, the development seldom will be undertaken. A patent law which threatens to void or render a patent ineffective at an arbitrarily fixed date will not alter these adverse conditions but will only make it more difficult or impossible to surmount them.

Obviously, economic conditions, public whim and the like are not governed by the Patent Act and do not take cognizance of its provisions. It is the Patent Act which must take cognizance of conditions affecting industry.

Some of the conditions are:—

(*a*) " . . . . shall work the patented invention on a commercial scale within Canada" (Section 63 (1) (*a*)), that is to say ". . . . manufacture of the article or carrying on of the process . . . . in or by means of a definite and substantial establishment . . . ." (Section 2 (*h*)).

(*b*) Use materials manufactured in Canada so far as they are available.

(*c*) Import not more than 50 per cent by value of materials used.

(*d*) Within thirty days after the close of each calendar year, make returns to the Commissioner stating whether or not each patented invention is worked on a commercial scale in Canada and, if not, why it is not.

The Bill does not definitely give the patentee any period of grace after issue of the patent within which to arrive at working on a commercial scale and therefore, if an invention was not being commercially worked before issue of the patent, it would be impossible to state at what date after issue the patent became void. By inference from Section 63 (6) and the provisions of the International Convention, the period would be three years from issue. The combined effect of Sections 52 (1) and 63 (1) (*a*) is that a patent becomes void if it is not commercially worked, presumably within three years but perhaps sooner. Automatic voidance of patents solely because of non-working or importation is contrary to the International Convention to which Canada is a party. Section 63 contains licensing provisions and Section 64 contains revocation provisions, in each case effective after three years. As a patent must be in force in order to be revoked or licensed, it appears there is a serious contradiction which must be cleared up.

It is conceivable that in specific cases where an abuse exists by reason of non-compliance with provisions such as the foregoing, patents might be

voidable but voidance should, in justice, be subject to consideration of the particular circumstances in each case and should not be automatic and based upon arbitrarily fixed and unvariable provisions which do not take into account the constant change of conditions.

According to the Bill, patents will be automatically void for non-compliance with provisions arbitrarily fixed without reference to actual conditions under which industry must operate.

In many instances Canadian made materials while available are not suitable and in many other cases it is not possible to ascertain the source of the materials. The imported material may be of necessity more than 50 per cent of the value. Furthermore, a patent would be void because of oversight or delay in making the annual returns, within thirty days. In the case of large industries owning or licensed under a large number of patents, it would be practically a physical impossibility to make the return within the time specified. In the case of telephones, radios, cash registers, calculating machines, typewriters and other machines including elements from many different patents, it would be impossible to state accurately if the inventions covered by these patents had been commercially worked within the definition of Section 2 (*h*).

The annual returns would not serve any useful purpose and are very objectionable in that they would encourage piracy of patents through giving to the public information that should be confidential. Under Section 11, these returns would be open to public inspection.

Section 70, which provides for restoration of lapsed patents, is limited to lapses for certain specified causes and does not include provision for restoration after voidance for non-use of Canadian materials or for use of more than 50 per cent imported material or for failure to make returns.

It is noted that the provisions of Section 63 (1) (*b*) and (*c*) are tariff measures rather than patent law and do not appear to have any place in a patent act.

The combined effect of Sections 32 and 63 is to void patents under conditions contrary to the terms of the International Convention to which Canada is a signatory along with over thirty other countries.

Commercialization of an invention very often takes a great deal longer than three years, and if a patent is subject to voidance at the end of three years, or at any time, merely because it has not been possible to develop the invention to the point of being worked commercially, development of inventions will practically cease and new industries which might have resulted will not come into being. Numberless instances can be cited where, with all the resources of large corporations, it has not been possible to commercialize inventions in less than five to fifteen or more years. It frequently happens also that after an invention has been commercialized, changing conditions render it temporarily uncommercial. To be of any use, a patent must carry on through such periods and avail its owner in a later and more propitious period.

If development of inventions ceases, the large number of persons employed therein will be thrown out of work. If patent protection is withdrawn, many industries in Canada, especially the smaller ones, which exist because of patent protection will be unable to compete with importations of low priced foreign goods and will be driven out of business, thus further adding to unemployment.

In Section 64, inclusion of failure to work on a commercial scale as a ground for revocation is objectionable, particularly in sub-section (4) where only one year extension is possible. While the original order might have been reasonable under then existing conditions, a change in conditions might easily make it impossible or prohibitively costly to work on a commercial scale within the one year extension of time. The time should be adjustable according to circumstances and there should not be any pre-fixed limit.

The difficulty in connection with use of the expression " work on a commercial scale " in Sections 63 and 64 is chiefly that, while the definition of working on a commercial scale has been taken from the British Act, none of the safeguarding clauses of Section 27 of the British Act have been taken with it. In consequence, the effect is altogether different in the Bill.

In short, the whole fabric built around the idea of compelling industrial development by threat of voiding patents or making them useless against an infringer (Section 53) will create an intolerable situation which will have results directly opposite those desired.

It is believed that Sections 40 and 41 of the Patent Act if invoked and properly administered will afford full protection to Canadian industry against exploitation or strangulation by foreign owners of Canadian patents and it is also believed that any substantial increase of restrictions will react to the disadvantage of Canadians.

It must be remembered that in many countries, foreigners obtain certain benefits of patent law only if the laws of their country give reciprocal privileges. These privileges would probably be lost to Canadians by imposition of conditions such as proposed.

Any substantial increase of restrictions would serve merely to stifle invention and impede industrial development without giving any commensurate benefit, except possibly in a few cases.

A meritorious invention will almost invariably come into commercial use when the surrounding conditions are favourable and the fact that an invention is not in commercial use is usually an indication that the surrounding conditions are not favourable. There may be isolated instances where an invention could be commercialized but is not, because of onerous conditions imposed by the patentee. Such cases can be dealt with adequately under Sections 40 and 41 of the existing Patent Act. Any enactment for wholesale voidance or emasculation of patents at the end of short arbitrarily fixed periods, would do infinitely more harm than good, as has been pointed out.

There are those who complain that patents, especially patents of foreigners, are an obstacle to development of industry in Canada. It has been pointed out in this connection that approximately 90 per cent of Canadian patents are granted to foreigners. Such a statement does not take into account that many of these patents have been sold or licensed to Canadian manufacturers and are the basis of industries presently operating in Canada. The Report of the Commissioner of Patents for the year ending March 31, 1934, shows in Appendix G that, during the year, 982 patents were granted to Canadians and 8,140 were granted to persons resident elsewhere (including 892 in the Empire). In Appendix A, the report also shows registration of 6,577 assignments and licences during the year. These figures speak for themselves.

In most cases, the patentee is only too anxious to have his invention used in Canada and would license its use on very reasonable terms or would manufacture in Canada if there was sufficient market. If the patent were voided, the situation would be worse, as it would be open to anyone to import and undersell the Canadian manufacturer who would probably end up by importing also.

In the five-year period ending March 31st, 1934, only eleven petitions for compulsory licence were presented. If there had been a large number of petitions with unsatisfactory results one could say the present system was not satisfactory and was in need of amendment. In absence of any substantial number of petitions, one can conclude only that there is but little demand for licences, that cannot be settled by private agreement; that there is substantially no obstruction of industry by unworked patents or, alternatively, that there was no willingness to pay a reasonable royalty such as would be exacted under the provisions of the compulsory licence sections of the Act.

If any amendment of Sections 40 and 41 of the Act is deemed necessary to incorporate requirement for working on a commercial scale, it would appear necessary to follow closely the text of Section 27 of the British Act. The requirement of Section 63 (1) (*a*) (Bill) or Section 40 (1) (*a*) (Patent Act) should be revised to remove the onerous and unwarranted requirement that every patentee shall practise the invention in Canada. There is no such requirement in the British Act and, as previously stated, there is basically no obligation on the inventor to practise his invention. He has performed his part of the contract when he discloses the invention so that it is available to the public.

Inclusion of a provision to the effect that acceptance of a compulsory licence would not be acknowledgment of the validity of the patent, would be of great value in many cases.

It appears from the Bill that a patent is regarded as a dangerous monopoly which must be curbed whereas, in reality, patents are neither dangerous nor monopolistic under the Patent Act but are generally beneficent. The basis of all patent law is the Statute of Monopolies (21 Jac. 1 C.3), the purpose of which was to end monopolies. A patent is not a monopoly since it is fundamental to the grant that the invention must be available to the public. One of the limitations applied by the Bill is that of dating a patent from the date of application (Section 47). According to the explanatory note accompanying the section, the purpose is to hasten issue of the patent but, from the remarks of the Honourable the Secretary of State in introducing the Bill, it appears the real reason is that the present life of eighteen years from issue is considered too long. (House of Commons Debates Jan. 25, 1935, page 212.). Experience in other countries is to the contrary and it is to be noted that within the last twenty years the life of British, Australian and New Zealand patents has been extended by two years to a total of sixteen. In Germany and Italy, the life has been extended by three years to a total of eighteen. Similar action has been taken in other countries. It has been pointed out the life of British patents is sixteen years from application but no mention is made of the statutory provisions for extending the life of a British patent up to a total of twenty-six years or more in cases where an inventor has been deprived of benefit of his invention. (Patents & Designs Act 1907, Sect. 18.) Many inventions are so far in advance of industrial development that it is only in the last year or two of a patent or even after expiry of a patent that any return on investment can be obtained. As periods of sixteen, seventeen, eighteen and twenty years have not been found too long in highly industrialized countries such as Great Britain, Germany, Italy, Belgium and the United States, it does not appear that eighteen years is too long in a country such as Canada where industrial development is in its infancy and requires every assistance.

Moreover, the dating of a patent from application causes much confusion and inconvenience.

In addition to the situations that would arise under Sections 52 and 63, as already pointed out, a further intolerable situation would arise from the combined effect of Sections 11 and 55 (2). According to Section 55 (2), anyone who manufactures or sells between the date of application for patent and the issue of patent is guilty of infringement, notwithstanding that the application is kept secret according to Section 11 and the manufacturer cannot possibly ascertain that he is infringing. These two sections taken together would create so much uncertainty and place manufacturers in such perilous position that it is doubtful if much new manufacture would start.

Under British law, infringement does not occur until after acceptance and publication of the specification.

Legal Proceedings

Section 53 of the Bill makes it impossible after three years to enforce a patent against an infringer unless the patentee was working the patented invention on a commercial scale. This section is obviously aimed at the foreign owners of Canadian patents but will operate disastrously to Canadian industry. As previously stated, the development of an invention to the point of commercial working takes years of time and large investment. If the patent cannot be enforced against an infringer, the way will be wide open for foreign manufacturers to import into Canada and by price cutting or by supplying part of a demand, the whole of which would be barely large enough to support a domestic industry, cause great loss to Canadian manufacturers who have started development of patented inventions but have not succeeded in commercializing the invention, or will discourage any attempt to develop and commercialize new inventions.

Maintenance of patents gives greater protection to new industry than tariff does and has the advantage that the protection is applied in specific cases where it will be beneficial and not to an entire industry where it might be contrary to public interest.

General

The Bill contains a further amendment seriously detrimental to the chemical industry, namely, in Section 39 (1), the substitution of " or " for " and." There does not seem to be any good reason why claim to an industrial product made by chemical process should be limited to one chemical process any more than a mechanical product should be limited to one mechanical process or to the operation of one machine. Use of the word " or " discriminates unfairly against the chemical manufacturer.

It is thought the correspondence files of the Patent Office will show clearly that the word " and " was substituted for " or," during passage of the 1923 Act, on the representation of many manufacturers who would have been adversely affected by use of the word " or."

The present Act was passed only in 1923. It has been amended twice since then. In the main it is quite satisfactory and its terms have been in large measure interpreted by the Courts. A complete revision and alteration of its terms would largely nullify this body of case law. Minor revisions of the Act can best await the result of administrative improvements of conditions in the Patent Office.

On the other hand enactment of the present Bill and particularly Sections 26 (2); 30; 47 (1); 66 (1), second item; 52 (1; 53; 55; 63 and 64 in their present form would:—

(*a*) hamper and retard industrial development and establishment of new industries in Canada;
(*b*) cause great loss and hardship to existing industry in respect of development work in progress;
(*c*) greatly increase the percentage of wholly or partially invalid patents issued, which is even now a great cause of discontent and apprehension;
(*d*) deprive inventors of the just rewards of their ingenuity;
(*e*) deprive Canadians of benefits they enjoy now under the patent laws of other countries;
(*f*) possibly necessitate Canada's withdrawal from the International Convention;
(*g*) contribute to unemployment;
(*h*) cause substantial reduction in the revenues of the government through the Patent Office and otherwise;
(*i*) encourage piracy of inventions;
(*j*) injure the prestige of Canada as a progressive nation and show her to be retrogressive.

The patent laws of all principal countries have become pretty well standardized in certain fundamentals which have been proved by long experience to be the most practical and beneficial. The tendency has been toward longer periods of protection and greater freedom from restrictions. The working requirements have been gradually liberalized as it was found that confiscatory provisions did not benefit industry. Terms of fourteen and fifteen years have been found too short and within the last twenty years Great Britain, Australia, New Zealand, Germany, Italy and other countries have increased the life of patents. It would be deplorable to have Canadian law more contrary to the general progressive trend, as would result from enactment of many of the sections of the Bill.

It would be a very dangerous experiment for a country, such as Canada, with limited industrial development and small domestic market due to small population, to depart from accepted principles of patent law which, through long and world-wide experience, have been found beneficial and stimulating to the development of industry.

6th SESSION, 17th PARLIAMENT, 25 GEORGE V, 1935

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL A, AN ACT TO AMEND AND CONSOLIDATE THE ACTS RELATING TO PATENTS OF INVENTION

No. 4

The Honourable Frank B. Black, Chairman

WITNESSES:

Mr. Harold C. Shipman, Patent Solicitor, Ottawa, Ontario.
Mr. Maurice Caron, Inventor, Ottawa, Ontario.
Mr. E. Blake Robertson, Ottawa, Ontario, representing General Motors Corporation.
Mr. C. H. Riches, Toronto, Ontario, representing Consolidated Mining and Smelting Co., Ltd.

FILED:

Names and addresses of Members of the Canadian Institute of Patent Solicitors

OTTAWA
J. O. PATENAUDE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Frank B. Black, Chairman

The Honourable Senators:

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Michener
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Sharpe
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Tanner
Taylor
Webster
White (Inkerman)
White (Pembroke)
Wilson (Rockcliffe)
Wilson (Sorel)

MINUTES OF EVIDENCE

THE SENATE,

TUESDAY, March 5, 1935.

The Standing Committee on Banking and Commerce to whom was referred Bill A, intituled: "An Act to amend and consolidate the Acts relating to Patents of Invention," reconvened this day at 3.30 p.m.

Honourable Mr. Black in the Chair.

The CHAIRMAN: Senator Meighen has a statement to make.

Hon. Mr. MEIGHEN: The committee will remember that before adjourning last week we asked those who had appeared before, solicitors and manufacturers and others, to get together a representative committee of their own and place their suggested amendments in specific form. They have done so, and I spent the forenoon going over those amendments. I have since been able to spend a little time with the author of the Bill, and so far as my duties are concerned I feel prepared to have the clauses up to No. 31 now discussed. I have of course gone over the whole Bill with that committee. I understand, though, that there are some other gentlemen here, from different parts of the country, who are desirous of being heard. I do not know how many there are.

The CHAIRMAN: Four, so far.

Right Hon. Mr. MEIGHEN: It will be for the committee to say whether we hear them before going into the Bill clause by clause.

Right Hon. Mr. GRAHAM: Would we not save time by hearing them first?

Right Hon. Mr. MEIGHEN: I think so.

Hon. Mr. PARENT: Mr. Chairman, last week I asked for a list of the members of the Canadian Institute of Patent Solicitors. A list was presented but it contained names only, without addresses; and it also stated that there were in England some members in affiliation, but the names of those affiliated members were not given. I think the committee should have the addresses of all the members whose names are given on the list, and also the names and addresses of all the members who are affiliated with this particular combine—if it is a combine—or Institute, so that we may know exactly with whom we are dealing.

The CHAIRMAN: Perhaps Mr. MacRae will supply the committee with this information.

Mr. MACRAE: I shall be very glad indeed to do so, sir.

Hon. Mr. GRIESBACH: Mr. Chairman, I should like to suggest that we be supplied with a pamphlet copy of the present Act.

Right Hon. Mr. MEIGHEN: Wherever there is any change, the sections of the present Act are pretty well covered in the explanatory notes opposite the sections of the Bill.

Hon. Mr. GRIESBACH: That is rather difficult to read, in another connection.

Right Hon. Mr. MEIGHEN: We can get copies of the Act.

The CHAIRMAN: If the committee so desires, we will now hear Mr. Harold C. Shipman, patent solicitor of Ottawa.

Hon. Mr. DANDURAND: I suppose all the parties who will appear before us have followed the discussion and will not cover the same ground that we have been over.

Right Hon. Mr. MEIGHEN: I hope not.

Mr. HAROLD C. SHIPMAN: Mr. Chairman and honourable senators, the clauses to which I would like to refer particularly are 63 and 64, which are the manufacturing and importation clauses. I have made copies of the clauses as I suggest they should read, and with your permission, Mr. Chairman, I shall be glad to distribute them to the committee. Section 63 deals with the manufacturing requirements in Canada and section 64 deals with the question of importation rights. Do you desire me to read the clauses as I have drafted them?

The CHAIRMAN: I think it would be better.

Hon. Mr. DANDURAND: You are about to read your own draft of these clauses?

Mr. SHIPMAN: Yes, sir, on sections 63 and 64. The Minister said, and I think correctly, that there should be some statement filed from time to time by those who are interested in the Patent Bill. His reference was to the question of requiring a statement to be filed pertaining to the manufacturer. I think he is wrong in that, that it should be in regard to importation. There are certain changes accordingly in these two sections, as I propose they should read. I think they will cover what the Minister desires, and at the same time I think they will do what Senator Meighen said was necessary, namely put teeth into the Act, so as to protect Canadian industry.

Right Hon. Mr. GRAHAM: Your proposals are to take the place of sections 63 and 64.

Mr. SHIPMAN: Yes sir. And those sections that I propose, read as follows:—

63. (1) Every patentee, except those governed by the provisions of this Act relating to the granting of patents in the public service, shall be subject to the following conditions:—

(*a*) Every patentee shall work his patented invention on a commercial scale within Canada sufficient to satisfy the reasonable requirements of the public with respect to the patented invention;

(*b*) The component parts or materials, which are manufactured or produced in Canada, shall be used so far as they are available in the manufacture or production of the patented article.

(*c*) Importation of more than 50 per cent—

This is a clause that was referred to quite extensively in the discussion.

—50 per cent in value of the parts or materials used in the manufacture or production of the patented article or in the assembling thereof in Canada, without approval of the Minister, shall not be deemed to be worked on a commercial scale in Canada

I am putting in the words "without approval of the Minister" because my thought is that he has access to the records of the Department of Trade and Commerce and various other departments, and he can satisfy himself that the patentee must bring in certain parts or certain materials to get the best results in the manufacture or production of that article. I do not leave it with the Commissioner, but with the Minister.

Now, if you will turn to memo B you will see what might be termed clause (*d*), to be inserted there:—

(*d*) Any importation approval given under above clause (*c*) by the Minister shall be in writing, a copy of which shall be attached to the Patent Office copy of the patent, and such approval shall state the specific parts or materials which may imported for use in the manufacture or production of the patent article or in the assembling thereof in Canada.

I put that in for the simple reason that clause (*c*) refers to 50 per cent. But if you want to import more it should be stated and made of record on the

patent, so that anybody considering taking any other action under this clause will have full access to and knowledge of what the minister has done in giving the privilege of importing more than 50 per cent.

> (2) The Attorney-General of Canada or any person interested may present a petition to the Commissioner alleging that the working on a commercial scale within Canada sufficient to satisfy the reasonable requirements of the public with respect to a patented invention has not been satisfied and praying that the patentee will be ordered to manufacture or to produce within Canada and to supply the patented invention at a reasonable price or to grant a licence or licences for the manufacture or production and use within Canada of the patented invention on reasonable terms.
>
> (3) If the parties do not come to an arrangement between themselves, the Commissioner shall proceed to hear and determine the matter, and if it is proved to his satisfaction that the patentee has failed to work on a commercial scale the patented invention within Canada sufficient to satisfy the reasonable requirements of the public with respect to the patented invention, the Commissioner may order the patentee
>
> (i) to manufacture or produce and to supply the patented article within reasonable limits at such price as may be fixed by him, and in accordance with the custom of the trade to which the invention relates as to payment and delivery;

That is in the present Bill.

> (ii) to grant a licence or licences for the manufacture or production and use of the patented invention as may be fixed by him;

That also is in the present Bill.

> in either case within and after such time as may be fixed by the Commissioner and on pain of forfeiture of the patent.
>
> (4) No order shall be made by the Commissioner under the provisions of the preceding section before the expiration of three years from the date of the issue of the patent.

That is in the Bill at the present time.

> (5) The Commissioner may, with the approval of the Minister, instead of hearing and determining the matter himself, refer the petition to the Exchequer Court, which shall have jurisdiction in the premises, and may make such order thereon as the Commissioner is authorized to make under this section.

That is in the Bill at the present time.

> (6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied.

And that clause is the same as in the present Bill.

Now I put in another clause. It is memo A on the third page of the copy. It is proposed to add after that:—

> A licensee under this section shall be entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licensee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Hon. Mr. PARENT: How do you protect the patentee with a thing like that?

Mr. SHIPMAN: The patentee is getting the royalty paid by the licensee, and as the licensee has no right, after establishing a business in Canada, to protect the business built up under the present Act, this gives him the right to defend the patent under which he is working.

Hon. Mr. PARENT: That is your view of the situation.

Mr. SHIPMAN: I think it would be beneficial to the licensee to have a right to protect the interest which he has built up in an establishment in Canada.

(8) Any decision of the Commissioner under this section shall be subject to appeal to the Exchequer Court.

That is in the Bill at the present time.

Section 64 takes an entirely different view from section 64 in the Bill. In this I am referring to the question of requiring the foreign patentee to acquire an importation licence before he is given permission to import into Canada. We are interested in manufacture in Canada itself, and my thought is that we should debar the man in a foreign country from importing into Canada if the article can be manufactured in Canada at all. The only way we can find out if it can be manufactured in Canada is to get the facts before the Commissioner and satisfy him, and I think this section 64, with the changes I have made and this importation clause will produce the desired effect.

(1) A patentee or his legal representative shall not import into Canada patented article upon which there is an existing Canadian patent without first obtaining from the Commissioner of Patents an importation licence.

(2) (*a*) A petition for such importation licence shall be made in writing under oath to the Commissioner by the patentee or his legal representative.

(*b*) Such petition shall embody a statement in reference to the following:

(i) Reasons as to why the reasonable requirements of the public within Canada would be better satisfied by importation of the patented article.

He must satisfy the Commissioner that the reasonable requirements of the public will be better satisfied by permitting him to import than by making the article in Canada.

(ii) That the patentee or his legal representative has exercised all reasonable diligence to have the patented article manufactured under reasonable terms and conditions within Canada without avail and shall attach substantiating evidence in reference thereto to his petition.

In other words, he must either try to get a manufacturing plant started, or someone licensed to manufacture in Canada, and he must substantiate his position by statements to that effect if he wishes to apply for an importation licence.

(iii) Shall state the country from which the patentee intends to import into Canada.

(3) The Commissioner, on receipt of such petition with the prescribed fee as hereinafter mentioned, shall publish notice of such petition in three consecutive issues of the Canadian Patent Office Record.

By doing so the Commissioner will give due notice through the official publication of the Patent Office to all concerned in Canada that an importation licence has been requested in regard to that patent; and that, I think, would be due notice to the general manufacturing public in Canada.

Hon. Mr. PARENT: The French version of the Canadian Patent Office Record comes out so long after the English version that the whole province of Quebec will find it no protection whatever.

Mr. SHIPMAN: Then the administration of the office should be amended so that the French copy would be gotten out properly.

Hon. Mr. PARENT: You are only looking at your own point of view. You are forgetting the rest of the world.

Mr. Shipman: I think it should be published as promptly as possible. There should not be any delay in getting out that copy.

> (4) The Commissioner at a time to be affixed, not less than thirty days from the last publication above mentioned, shall proceed to hear and determine the matter and if it is proved to his satisfaction that the granting of such importation licence will not unfairly prejudice any existing trade or industry or the establishment of any new trade or industry within Canada, he may grant such importation licence.
>
> (5) The patentee or his legal representatives shall within thirty days from the close of each patent year, transmit or deliver to the Commissioner of Patents a return, relating to each patent upon which an importation licence has been granted.

The minister was desirous of having a return placed on the records, and this, I think, gives the result that he was really trying to get. That return shall state:—

> the date, consignee, port of entry, destination, number and description of patented articles and value of each importation shipment into Canada during the previous patent year.

Now, my thought in regard to that return being filed in the Patent Office is that a manufacturer in Canada who, perhaps, is equipped to a certain extent to manufacture this pencil, say, does not know what quantity the Canadian market will consume. With a return of this nature on record at the Patent Office he has available to him at all times an opportunity of finding out that last year this patentee in the United States manufactured $25,000 worth, and imported a certain number of these pencils into Canada.

Hon. Mr. Parent: Would you get that information from the Canadian Institute?

Mr. Shipman: No. From the Patent Office. This return will be filed with the Patent Commissioner.

Hon. Mr. Parent: Not if you have a controlled list of men who have access to the department, like the Canadian Patent Solicitors.

Mr. Shipman: I am not interested in the Canadian Patent Solicitors.

Hon. Mr. Parent: You have used the word "Attorney" and this would describe exactly who would have access.

Mr. Shipman: No. The records in the Patent Office are public and available to anybody who wishes to look into them.

Hon. Mr. Parent: But everything has taken place before you have the record.

Mr. Shipman: No.

> The patentee or his legal representatives shall within thirty days from the close of each patent year, transmit or deliver to the Commissioner of Patents a return.

When that return is filed on a patent it is open for public inspection at any time by any manufacturer or other person in Canada in order to ascertain the amount of goods imported from the United States or any foreign country, and that manufacturer will then know whether there is a reasonable market in Canada and whether he should equip his factory to manufacture pencils, as I have suggested.

Hon. Mr. Parent: In competition with others.

Mr. Shipman: He will know if there is a sufficient market. Then under section 63 he may apply to the Commissioner of Patents for a licence to manufacture in Canada.

Hon. Mr. Parent: It is all right. I have no objection to your remarks at all.

Mr. SHIPMAN: It brings out the right point. If he sees that there is a market under the returns filed by the foreign importer, he will then realize that there is a possibility of turning his factory to production in Canada, and then under section 63 he can apply for a licence to manufacture in Canada.

Hon. Mr. DANDURAND: Although the patentee or inventor has obtained the right to import.

Mr. SHIPMAN: To import.

The next clause covers what I think you have in mind.

> (6) Such importation licence may be cancelled any time, upon six months notice being sent by registered mail to the legal representative, at the discretion of the Commissioner of Patents or upon a manufacturing licence being granted under the provisions of section 63 of this Act.

That covers the point you referred to.

> (7) Any patent in relation—

This refers to clause 53 of the Act, I think, in regard to taking action for infringement.

Right Hon. Mr. GRAHAM: Section 53 of the Bill or of the Act?

Mr. SHIPMAN: Of the Bill.

Hon. Mr. PARENT: Who is to send the notice under your paragraph (6)?

Mr. SHIPMAN: The Office of the Commissioner of Patents.

Hon. Mr. PARENT: That is not in the Article.

Mr. SHIPMAN: It is always so done under the Act.

Hon. Mr. PARENT: It is not mentioned who is to send the notice.

Mr. SHIPMAN: I think the Commissioner will have to send the notice in the regular way, because he is taking the action.

> (7) Any patent in relation to which the patented article is being imported by the patentee or his legal representative or with their consent or knowledge without first having obtained an importation licence in the manner as hereinbefore prescribed shall be considered as forfeited by the patentee for the time being by such importation, without an importation licence, or by a yearly return, as required under sub-section 5 above, not having been filed to the satisfaction of the Commissioner and no action for infringement of such patent may be brought in any court of competent jurisdiction during the continuance of such forfeiture.

You put the entire responsibility on the foreign patentee.

> (8) A patent forfeited under clause (7) seven above may be re-instated at the discretion of the Commissioner, upon filing of a petition for re-instatement and payment of the prescribed fee as hereinafter mentioned.
>
> (9) Any decision of the Commissioner under this section shall be subject to appeal to the Exchequer Court.

I think those clauses will bring into effect that you want to manufacture in Canada. Section 63 will require the manufacture in Canada, if it is at all possible. Section 64 will provide that anybody that wants to import under that patent must satisfy the Commissioner that it cannot be made in Canada, that he has made diligent search to find out if it can be made, and he must prove to the satisfaction of the Commissioner that it cannot be made before he gets an importation licence. That is my thought in regard to that section, that it will bring into Canada the fullest possible extent of manufacture.

Right Hon. Mr. GRAHAM: There is one place where you substitute Minister for Commissioner. I am not quite clear why you do that.

Mr. SHIPMAN: I do that in sub-section 1 (*c*) of section 63, that is, "the importation of more than 50 per cent in value of the parts or materials used in

the manufacture or production of the patented article or in the assembling thereof in Canada, without approval of the Minister, shall not be deemed to be worked on a commercial scale in Canada." My thought is that the Minister in that case should give consideration to it because he has access to the Trade and Commerce and other Departments of the Government which might have the facts relating to the manufacture of certain products. This information he might get with greater ease than could the Commissioner of Patents, and as the administrator of the Government he should be responsible for a clause of that nature.

Right Hon. Mr. MEIGHEN: Mr. Shipman, we cannot consider the detail wording of 63 and 64 just yet, of course, but we are glad to have your ideas. We can consider them when we come to those sections in the Bill.

My only observations are:—

First, you seem to assume it is always going to be a clear-cut question, to be answered yes or no, shall this article be manufactured in Canada. As a matter of practice it will practically never be that. It will be a question of how much under all the circumstances can be reasonably required to be manufactured in Canada. The wording of your amendments does not provide for control of such detail. It seems to assume the Minister will say, "Yes, it can be;" or, "No, it cannot be." That pervades all your verbiage.

Second, I think the Minister would have to break the eight-hour-day Act to ever comply with these requirements.

Mr. SHIPMAN: I think what you refer to first is covered by what I have added in sub-section (*d*).

Right Hon. Mr. MEIGHEN: In one place only. The Committee will have to decide whether that is the proper method; or some such method as the Bill provides; or the English method, which now is sought to be substituted for the present.

Mr. SHIPMAN: Yes. My thought on the British one is that it is rather cumbersome in regard to our practice. Practically the substance of this amendment of 63 and 64 is the working basis of your manufacture and importation at the present time in your Patent Act.

Right Hon. Mr. MEIGHEN: It is worth considering.

Mr. SHIPMAN: It is the basis of it, with certain amendments to comply with the thought of the Minister that you must put something in which will make the foreign manufacturer carry on manufacture in Canada, and will make the record available in the Patent Office, so that a manufacturer may at all times have available information as to the amount of the product that is being manufactured in a foreign country and imported under that patent. In this way he will know whether he has a chance of competing in the Canadian market with the product that is being produced under that patent in the foreign country.

Hon. Mr. DANDURAND: You give a complete monopoly of the Canadian market to the inventor or the patentee by prohibiting importation of the foreign manufactured article.

Mr. SHIPMAN: So long as he imports under the proper conditions at the discretion of the Commissioner.

Hon. Mr. DANDURAND: No. Suppose the Commissioner decides the article must be manufactured in Canada, that would be the article which would be on the market in Canada.

Mr. SHIPMAN: Yes. He has either to come in himself and manufacture in Canada, or he must grant a licence to some Canadian establishment to manufacture in Canada.

Hon. Mr. PARENT: His negotiations take a year or two, the thing manufactured may be selling daily in the United States, but would not reach this country in the meantime.

Mr. SHIPMAN: Under my clause 64 he would have an opportunity of importing the article from the United States during that time while he was getting equipped to manufacture in Canada.

The CHAIRMAN: Any further questions?

The next witness is Mr. Maurice Caron.

Mr. MAURICE CARON: Mr. Chairman and members of the Committee, I should like first to take the part of the Canadian inventor. Very few of the representations made before you have been on the part of the inventor himself.

Hon. Mr. PARENT: Whom do you represent?

Mr. CARON: I am an inventor myself, and I should like to speak for my own case.

Hon. Mr. PARENT: Do you represent yourself or anybody else?

Mr. CARON: I do not represent anybody at all.

The CHAIRMAN: Except yourself.

Mr. CARON: Yes. I practise as a patent solicitor, but just now I want to speak as an inventor.

I have here a patent which I secured myself in Canada. I filed in 1927, and it was granted on March 19, 1929.

The invention relates to certain signals for the safety of motor cars, tram cars, railways, aeroplanes. Its purpose is to show the actual motion or non-motion of the vehicle without being dependent on the control of the operator. I mean to say that any action by the vehicle, whether an operator is in it or not, would be shown by a system of lights.

Right Hon. Mr. MEIGHEN: Automatic?

Mr. CARON: Automatic. I took this patent first of all and showed the invention to the Police Department. I had a model made on a car. Well, it was approved. I took it to the railway companies, and they thought it was a good thing too. I submitted that in the province of Quebec to the Treasury Department, who look after the roads traffic apparently, and they thought it would do very well.

Hon. Mr. PARENT: What department, the Treasury Department?

Mr. CARON: Yes.

Hon. Mr. PARENT: You are wrongly informed.

Mr. CARON: They told me all the regulations were under that department because they collected the fees. I went to see the Deputy Minister. They said they would like to have this system in the province of Quebec, but of course it would be better if it were adopted there after all the other provinces had agreed to it also.

I sent a model and a copy of the specifications to a man in Regina, and he had it tried out there. They thought it was all right, it should be used. Then I went to Detroit. It was approved there too. In the department they thought it was very good. We had one on a street car here in Canada that operated for three months without failing.

Right Hon. Mr. GRAHAM: On a street car where?

Mr. CARON: Car 824 in the city. But they could see that orders for cars were getting quite small, motor cars were taking the place of the street car, and of course they did not want to go in for it right then, although they put it in the specification of seven cars that were being built for the Ontario Radial Commission, radial trains going outside of Toronto. It was not accepted, it did not go very far that way, because it meant the changing of all the other cars, and they did not want to go to any extra expense at the present time.

So here we are now in 1935, and so far as Canada is concerned I have not been able to do anything with this article, although it is submitted to be good and useful.

Hon. Mr. DANDURAND: For the time being.

Mr. CARON: For the time being.

Hon. Mr. PARENT: Your invention has travelled a lot, it has gone to Detroit and all through Canada, but has met with no success. Now, what have we to do with that?

Mr. CARON: That is just a question.

Right Hon. Mr. GRAHAM: You are after the limit of time for manufacture.

Mr. CARON: Yes, that is what I want to get at.

I went over to General Motors in the first place. They told me, " Here is the position that we have to take. At the present time we have a few improvements to put on motor cars as selling points, and if we put anything out the other manufacturers will take something out too, and naturally it is going to make the cost of our cars more costly, and it only means expense for us at the present time. We want to use the material which we have on hand now. We have spent money in buying patents and we have spent money in developing certain improvements on motor cars, and we are adopting those as the necessity arises to promote the sales. We will get in touch with you. We like the thing very much." I came back.

Right Hon. Mr. GRAHAM: You ought to get a pass.

Mr. CARON: It should be attended to. I saw them two years after. They told me the reason then was the production of motor cars was going down and that the addition of an article on the car that costs a few cents meant a lot. They said that they often figure to the fraction of a cent. So that stopped it for the time. Now under the present conditions I inquired again and they are just going to think it over; they think that within a couple of years it might come out, because they have pretty well run out of their improvements, and motor cars are mostly selling to-day on what they look like, and the gadgets that they have, and the safety of the cars, because most cars take you pretty well where you want to go—they do not get stalled very often. So within a couple of years I may do something with this problem. But if the conditions of the law were at present as they are proposed in the new Bill, this patent would have been dead in 1932 and I would have no means of using it. And it would mean that General Motors in Canada could go ahead and use it when they liked it, and not pay any royalties to anybody. Worse than that, they could import the article from the United States, just as they pleased. So any restrictions on patents will eventually mean that the patent will be allowed to die out.

Right Hon. Mr. MEIGHEN: Have you a United States patent?

Mr. CARON: Yes, sir.

Right Hon. Mr. MEIGHEN: And could the article be imported from there?

Mr. CARON: Oh, yes. It could be manufactured in the United States and I would get a profit from that, but labour in Canada would lose. I filed in the United States on March 2, 1927, but my patent is not yet out. I have a chance to do business in the United States with the Stewart-Warner Corporation, on account of their being independent of the automobile manufacturers, such as Chrysler, General Motors and others. These motor car manufacturers have got together and pooled their patents. If an invention is made in the Chrysler factory it belongs to Chrysler or his company, but he is under an agreement with Dodge Brothers, or a company independent of them, say Packard, to let Dodge or Packard use it, provided Dodge or Packard will let Chrysler work under any Dodge or Packard patent. So they tell me it would not be to their

advantage to buy this patent and pay me for it, because they would be giving the privilege to their competitors. In other words they keep pretty well out of patents, except those developed in their own factories, but they tell me that they buy a lot of material from other manufacturers. So they suggested that I should see some specialty manufacturers and get them to adopt my patent, and then these motor car companies could buy it if they wanted to. If the demand was created by one manufacturer, they all would have to buy it from the specialty manufacturer.

I have a reply from the Stewart-Warner Corporation, in which they say that the article has merit, and as far as they can see it works very well. I gave them a demonstration of it, and they say that it can be manufactured at a low cost and installed in combination with their speedometer without very great installation cost. But they tell me that they do not want to enter into any agreement for the present, until I have a United States patent. They say they are not in a rush for it, and that they will experiment with it if I wish. I have told them to do that, for I am anxious to get money as soon as possible. I expect the United States patent will come out in the course of seven or eight months.

Hon. Mr. DANDURAND: When did you apply?

Mr. CARON: I applied in the United States on March 2, 1927.

Hon. Mr. PARENT: And you have had no answer as yet?

Mr. CARON: Oh, yes, I have lots of answers. As a matter of fact, I have had too many answers, I think. But I am pointing out that my patent in Canada will be almost too old to use, before I can start to use it, and that in the United States I will be given a patent just about the time I can start to do some business. So there is really nothing to gain by rushing a Canadian patent through, because in many ways we are subject to United States conditions. Our modes of manufacture and the developments of our products are pretty much along the same lines, and we cannot do much here in advance of the United States manufacturers. If they cannot get their patents until a certain length of time after they have started to experiment, or after they have the article in the manufacturing condition, they will not take patents in Canada. And I would not, if I were in their place. A lot of them have told me that they would not take patents in Canada if the limitations are too strict. So we will have nothing to gain by these strict limitations, because there will be no means of preventing importation. I know that importation can be controlled to a certain extent by the tariff. Some people say that the tariff should be so designed as to create work here, and some say that we should let goods in and make other goods to ship out. There are the two views. The tariff may be effective on commodities, but I doubt very much if it can ever be effective on specialties, or novelties. Novelties are necessarily the subject matter of a patent, especially in Canada, because there would not be a patent granted unless it was a novelty. The United States is in a position to manufacture novelties much quicker and in larger quantities than we are. And they can export them to Canada, and we Canadians will buy them, no matter what the price, no matter how much duty we have to pay. The thing will have to get old before interest in it is lost, and before it is brought in as a commodity, and then perhaps the tariff would be effective in restricting importation into Canada.

I cannot say where we would get any benefit by making strict regulations as to the working of a patent. It seems as though there is a big attack with regard to American inventors and patentees who have a company representing them here or who sell in Canada. Where would we be if Americans did not make the inventions? They are good for the world in general. We use them and we want them and in the long run they create work in this country. A lot has been said against the conditions for the patentee in England and it might

appear that the restrictions are severe there, but they are not. First of all, an inventor can get a patent in England for almost anything. It does not have to be absolutely new, so long as it can be manufactured. I think Mr. Van Koolbergen made a bad mistake in his statement. The last clause in an English patent reads as follows:—

> And lastly we do by these presents for us, our heirs and successors, grant unto the said patentee that these our Letters Patents shall be construed in the most beneficial sense for the advantage of the said patentee.

This appears to be the reverse of the proposed Bill here which would make conditions very hard on the patentee. The patentee has not much chance in the first place, and I think he should be helped right along.

Right Hon. Mr. GRAHAM: Only a small percentage of them win.

Mr. CARON: Yes; that may be true. I have an example here, another invention of mine. It is a post-marking machine, for marking letters as they go through the post office. With the present machines it has been found that there are a considerable number of letters get through without being marked, and the Post Office Department considers that every stamp which is not cancelled is a loss to the country. The figure that the loss runs into the millions in a certain number of years. I have seen improvement after improvement made in these machines for a number of years, and I thought that they were on the wrong principle, so suddenly I got the inventive bug and thought of a certain principle that would prevent these slips being made. So I built up a totally different machine and tried it out and it worked very well. Now I am about to apply for patents, and I have to protect myself in quite a number of countries, including Canada and the United States. These machines are made in only a few countries and exported to others. You can realize the difficulty that I will have in getting these machines adopted by the governments.

Hon. Mr. DANDURAND: There is only one client in each country?

Mr. CARON: Yes, only one client. And the client may be blue while I am red, or I may be blue and the client red.

Hon. Mr. PARENT: And what colour will the machines be?

Mr. CARON: They may be of various colours. Now if I secure a patent and it comes out very quickly, as is the intention of the Department, I probably will never benefit from that patent in this country at all, while in the United States I know for a fact that it will be a number of years before I can get a patent out. That gives me a chance to go ahead, and at the same time I am protected because I have applied in that country. If I file in Belgium, for instance, the patent is liable to come out within two or three months after the date. Under the proposed regulations in this Bill, I must file within twelve months of my first application. I know that is directed against the American inventors, but it is forgotten that the Canadian inventors may not secure patents only in the United States. A Canadian may want to protect himself all over the world. For instance, I may have reason to apply in any foreign country, I may have some deals that I am trying to put through, I may enter into negotiations. I am not a Belgian, but a Canadian, and I want to derive some profit in Belgium. I think we should give the same advantage to others from those countries. But if this patent comes out from Belgium within six months, then I must file in Canada before the year is up.

Right Hon. Mr. MEIGHEN: Why not? What hardship is there in that?

Mr. CARON: It is a hardship, because I would want to know, for instance, what I can get in Germany or in the United States. The Patent Office in Canada is not equipped to be able to tell us just what we are getting in the line of a patent. We are supposed to get a monoply, but I do not consider it a monopoly. In fact, it is anything but a monopoly. In the first place, under the

conditions we must manufacture within a certain time, or the patent is void. In the second place, we do not know whether the patent is good or not. I filed this application that I have here with 51 claims. I got a report from the examiner, who apparently looked pretty well through the classification of the material he had, because I had seached before—

Right Hon. Mr. MEIGHEN: But surely you do not expect that we will allow you to go to some country like Belgium or Switzerland and get out your patent there and delay making your application here? If you feel you would like the security that attaches to a patent which is thoroughly investigated before being granted, say in the United States, you can go there, and all you have to do here is apply within one year of your application.

Mr. CARON: In Canada.

Right Hon. Mr. MEIGHEN: Yes. Just put in your application.

Mr. CARON: Yes, but then there is no way of delaying my patent in Canada.

Right Hon. Mr. MEIGHEN: There is plenty of delay provided, and you can get further delay under the amendments we are thinking of now.

Mr. CARON: Well, perhaps; but that would be required.

The CHAIRMAN: That is really his point, I think.

Mr. CARON: I can show this reason too: there is always the money question.

Hon. Mr. BALLANTYNE: How long a time do you want?

Mr. CARON: I should think, in order to give us a chance of filing in different countries, we should have a year after the issue of the first patent.

Right Hon. Mr. MEIGHEN: Of what good is that year to you? Suppose you are in the United States, before the issue of the patent is to be delivered you know what you are going to get; you know of your allowances. What is to hinder you applying then?

Mr. CARON: We can perhaps have our laws arranged, but the inventor here has nothing to do with the laws in France, Belgium, and England. He must file in those countries.

Right Hon. Mr. MEIGHEN: Within the convention period.

Mr. CARON: Yes.

Right Hon. Mr. MEIGHEN: And the same here.

Mr. CARON: Then if I do file there and the patent comes out suddenly—

Right Hon. Mr. MEIGHEN: You still have a year from the time of application.

Mr. CARON: I must have my application filed here within a year, and then it probably would be granted before any examination made in the United States, and we cannot get along without that. It seems a far-fetched argument, but I do not think we can get along and have a patent of value unless we do that.

Right Hon. Mr. MEIGHEN: Suppose you file in another country first, say the United States, and then desire to come in under the convention—that is clause 27, which refers to foreign patents; I am not talking of 26 at all—all you have to do is to file here either within a year of the filing in the United States or before you get your patent in the United States whichever is the later. Now, in the case of the quickest possible action in the United States, which is what you fear, you at least will know what you are going to get in the United States before the patent issues. You are notified, I understand, of the allowance or acceptance. The patents come into issue at a fixed time, and you know what you are going to get and have the benefit of that research in the United States, and can file your application here. That is all you have the right to do under the convention. Now, suppose you don't do that, you lose your priority of application, which I do not think is a very important thing, and under 26 you can go anywhere, as a Canadian, with no reference at all to an outside patent.

Mr. CARON: After the patent issues in the United States?

Right Hon. Mr. MEIGHEN: You do not come in and file your foreign patent. You just come in here with an original application, the same as if it was a new invention, or you can come in under 26.

Mr. CARON: No, not under 26; not if the United States patent is out. It must be before the issue of any patent. The United States patent will come out within a year.

Right Hon. Mr. MEIGHEN: If it is five years—

Mr. CARON: In the case of the postal machine I must file in about sixty-five countries. We cannot change their laws, and the patents will come out at any time from three months on.

Right Hon. Mr. MEIGHEN: You know ahead of time when it is going to come out and what it is going to be.

Mr. CARON: Yes, but I haven't any chance to get any action from the United States.

Right Hon. Mr. MEIGHEN: Oh, yes, you have. We cannot allow you to go all over the world and delay your patent here. We allow you to get to the stage where you know what you are going to get, and you know it is going to issue at a certain time; then we say you must apply here.

Mr. CARON: Very well. If I do apply in the United States and the time comes that I have a report on my invention and I see what I am going to get, I can file in Canada before it is issued, if it is more than a year; but in most other countries I cannot. I am tied. Their laws won't permit.

Right Hon. Mr. MEIGHEN: No other country will make you file any earlier than the patent issues.

Mr. CARON: In France it must be filed within a year.

Right Hon. Mr. MEIGHEN: Of what? The application?

Mr. CARON: Yes.

Right Hon. Mr. MEIGHEN: We cannot help that.

Hon. Mr. PARENT: But still, the Canadian inventor will suffer.

Right Hon. Mr. MEIGHEN: No, because in France, as in any other country, they limit it to the year; and they cannot do any worse than that, because the convention will not allow it. Then you have to apply within a year of the application for the foreign patent. That is their law. We cannot change that. It does not help you in the slightest if we give you a longer time, because you have to go into France within a year of your application in the United States.

Mr. CARON: If I filed in France and the patent came out at the end of one year, I am liable to have a patent within three months. If I had a year under that I could wait on what I am going to get either in Germany or the United States.

Right Hon. Mr. MEIGHEN: You want us to do what no other country on earth is doing.

Mr. CARON: We have done it here.

Right Hon. Mr. MEIGHEN: That is where we have been made goats of. France is not doing it and the United States is not doing it. You say we should wait until you tramp around the world—

Mr. CARON: There are some countries that do it.

Right Hon. Mr. MEIGHEN: The United States don't do it.

Mr. CARON: They give a fair examination, and a patent that is considered of better value.

Right Hon. Mr. MEIGHEN: Very good. That ought to satisfy you. Come in within a year of your application there, or before the patent issues.

Mr. CARON: I feel that we would not get very much protection.

Hon. Mr. PARENT: Will you tell us what you are aiming at, and what you want us to consider? We have heard of your troubles; now, what do you want?

Hon. Mr. GRIESBACH: Let us have it in a good loud voice.

Mr. CARON: This is one of the first times I have spoken before an assembly.

Hon. Mr. PARENT: What do you desire us to do?

Mr. CARON: There is another question that I bring here. I have not heard anything mentioned about it before. I am speaking on the side of the inventor. When the Canadian inventor gets a patent, as I mentioned, it is supposed to be a monopoly, but I hear that a patent may be seized in an execution, the same as any other material.

Right Hon. Mr. MEIGHEN: Mr. Smart has advised me that that is not the case.

Mr. CARON: I know for a fact that there is a section in the Ontario law which states that patents are seizable. I had a case of a client of mine who had a patent which was apparently infringed. The case came before the court in Montreal, and she lost. The costs were against her.

Hon. Mr. MEIGHEN: Was she the patentee of the infringer?

Mr. CARON: She was the patentee and the infringer besides. It infringed on a patent of a United States firm. She could not pay the costs against her, but she had a second patent, and the plaintiffs knew she had it. They transferred this judgment to Ontario in some way—I am not a lawyer, but I know it happened—and under this section of the Ontario law they seized that patent and advertised it for sale on a certain date in Ottawa.

Right Hon. Mr. MEIGHEN: Of course, that is not our business, Mr. Caron. Even so, Mr. Smart thinks you have the law wrong there.

Mr. CARON: I didn't believe it was legal, but still it was done. I cannot see how a province can come along—

Right Hon. Mr. MEIGHEN: We cannot prevent them.

Mr. CARON: I was contending, sir, that until such time as it is handed over to the patentee it is not exactly property, but a question of right.

Right Hon. Mr. MEIGHEN: That is not something within our jurisdiction. The province decides what is an asset and what is not, and if it says you can seize something we cannot stop it.

Mr. CARON: I understand that in the United States it cannot be seized from the inventor, but if it is assigned it becomes property because it has been paid for. I wondered if the right could not be protected in some way, because we have nothing to protect the inventor at all.

There are other matters relating to different questions.

Right Hon. Mr. MEIGHEN: You can take those as we come to them.

The CHAIRMAN: Have you anything further, Mr. Caron?

Mr. CARON: If I have an opportunity to bring out the points as the sections are going through, I have some material prepared.

The CHAIRMAN: You will have the opportunity.

Are there any questions, gentlemen?

The CHAIRMAN: Now, Mr. Blake Robertson wants to make some refutation of the evidence given by one of the former witnesses.

Mr. E. BLAKE ROBERTSON: (Canadian Manufacturers' Association, Ottawa): Mr. Chairman and gentlemen, I appear to-day on behalf of General Motors. At your last meeting the witness, Mr. Van Koolbergen, made this statement:

> One large concern with ramifications in Canada and the United States both, has gone so far as to print an elaborate pamphlet inviting inventors to submit their inventions, and whosoever can read between the lines will learn from these instructions the fact that the company will use, without regard to the rights of the inventor, the patents or inventions as it pleases.
>
> I cannot help it, I must call a dog a dog and a horse a horse. I refer here to a pamphlet issued by the General Motors, under the signature of the president.

This is the elaborate document.

Hon. Mr. PARENT: Is General Motors an American company?

Mr. BLAKE ROBERTSON: General Motors Corporation is a United States company; General Motors of Canada Limited is one of the same family. The "elaborate pamphlet" to which the witness referred is this pamphlet which I would ask to be distributed. I think in view of the publicity which has been given to the statements made—

Right Hon. Mr. MEIGHEN: Maybe we cannot read between the lines.

Mr. ROBERTSON: Well, you have the pamphlet before you and you have the same opportunity as the previous witness had.

Hon. Mr. GRIESBACH: What page of the evidence are you referring to?

Mr. ROBERTSON: I am referring to Mr. Van Koolbergen's remarks at page 106.

In view of the publicity which was given to the statement made by the previous witness, and in view of the fact that his remarks and allegations are embalmed for all time in the parliamentary records, I think my request is not unreasonable when I suggest that the Committee might, with perfect propriety, publish in full this very small pamphlet which I have handed to honourable members. If my suggestion is agreeable to the Committee, my remarks will be very limited; if not, my remarks will be more extended because the allegation is very serious.

The CHAIRMAN: I suppose you intend to deny the allegation?

Mr. ROBERTSON: I not only intend to deny the allegation, but also to quote from the pamphlet to which the previous witness referred.

Right Hon. Mr. GRAHAM: You can get it on the record by reading it.

Mr. ROBERTSON: If it is the wish of the Committee I shall be glad to do so.

The CHAIRMAN: Is it the wish of the Committee that this pamphlet should become part of the record?

Hon. Mr. PARENT: If this pamphlet is questioned we shall have also to print objections to it. I do not know where this will end.

Hon. Mr. GRIESBACH: Is it necessary to incorporate this pamphlet in the records? What do we want to do that for? On behalf of this company Mr. Robertson denies the allegation.

The CHAIRMAN: He wants to put it in the record.

Hon. Mr. GRIESBACH: This evidence is for our guidance in coming to conclusions. We cannot help people drawing inferences from it. Having made his statement I think the matter should end there. The time of the Committee should not be taken up in a discussion of this sort. I do not approve of the publication of the pamphlet in the minutes. So far as I am concerned, we have heard enough right now.

The CHAIRMAN: Is it the pleasure of the Committee that this pamphlet be included in the record?

Some Hon. MEMBERS: No.

Hon. Mr. DANDURAND: I think it will suffice for Mr. Robertson to say there is nothing in this pamphlet to justify the allegation, and then to leave the document with the Committee to form part of the record without its being printed.

Right Hon. Mr. MEIGHEN: That will be all right. You state briefly, Mr. Robertson, just why that allegation is not correct. It will go down as evidence.

Mr. ROBERTSON: That would be very easy, were it not for the remark made by that witness that you have "to read between the lines" to get the inference which he drew. He said such inference was quite easily drawn from the pamphlet as a whole. There are a few outstanding portions of the pamphlet which, I think, amply answer the charge that was made. This pamphlet, over the signature of the president of the company, says:—

> Outsiders do bring to the Corporation—

The CHAIRMAN: Just a moment. You are going now to speak to this as briefly as you can, and we are not to publish the pamphlet. Is that the understanding?

Mr. ROBERTSON: I have never seen a Senate Committee act other than fair, and I am quite willing to abide by the decision.

The CHAIRMAN: Let us have a clear understanding. Is it the pleasure of the Committee that this pamphlet be printed in the record?

Some Hon. MEMBERS: Yes.

Some Hon. MEMBERS: No.

Right Hon. Mr. MEIGHEN: I think Mr. Robertson should be allowed, in view of what was said, to give his succinct reasons for establishing his denial of the allegation made. Then if he wishes to have one of these copies attached to the printed report, there is no reason to object. He provides the copy; it does not cost us anything.

Hon. Mr. CASGRAIN: That is right.

The CHAIRMAN: Then we are to take it as the view of the Committee that the pamphlet may be published?

Hon. Mr. CASGRAIN: No, he supplies copies himself.

Hon. Mr. PARENT: The Committee is in possession of this document. We can read it.

Mr. ROBERTSON: Yes, Senator, but the public are not, and the press carried the report of the previous witness.

Hon. Mr. MURPHY: Supporting the suggestion made by Senator Meighen, I notice at the end of the pamphlet a clause stating that additional copies will be mailed if requests are addressed to the Secretary, and so on.

Mr. ROBERTSON: Yes, Senator Murphy, that would answer the question so far as the members of this Committee are concerned; but I do not know how many thousands of people who read the press report which went out from this Committee last Thursday will write and ask for a copy. Consequently the company will rest under this unfair allegation for all time.

Right Hon. Mr. MEIGHEN: We are going to allow you to give your reasons for the denial.

Hon. Mr. DANDURAND: You do not need to read the whole booklet.

The CHAIRMAN: We will not decide in regard to the publication of this pamphlet until we have heard Mr. Robertson's denial.

Mr. ROBERTSON: I have wasted a lot of time with the object of trying to save time. Had I proceeded the pamphlet would now be on the record.

The CHAIRMAN: Proceed, please.

Mr. ROBERTSON: My first quotation is a third of the way down on page 4:—

> Outsiders do bring to the Corporation a few novel and useful ideas each year, and it is the purpose to handle these to the mutual advantage of the inventor and the Corporation.

I pass over the balance of that page, and the whole of the next page, and then continue with the second paragraph on page 6, headed "Information Required." This paragraph says:—

> The inventor should say what he believes to be his invention and specifically indicate the particular new feature he wishes to sell. Patents or patent applications give the best possible evidence of this. He should also state the basis on which he would propose to deal with General Motors.

I miss the next two paragraphs. Then I quote the paragraph headed "Patentability is Necessary."

> The inventor has nothing to sell unless his device possesses such useful novelty that a U.S. patent is obtainable. This patentability can only be determined by prosecuting an application in the U.S. Patent Office. To require an issued patent in all cases would often cause unnecessary expense and delay. Therefore devices submitted by inventors located within the United States will be considered if presented in sketches and descriptions, dated and witnessed, preferably before a notary. These witnessed papers give no patent protection, but do protect patentable features against unauthorized use by General Motors. The Corporation agrees not to take any advantage of an inventor submitting a patentable idea not yet legally protected, but wishes to emphasize the fact that nothing that General Motors can do would protect the inventor against the activities of third parties. Patent applications may be filed after submission to General Motors, if this seems advisable because of interest on the part of the Corporation, or for other reasons. The inventor must take the responsibility of deciding when an application is advisable, and must remember that delay in filing may result in the loss of his rights.
>
> Inventors residing outside the United States should file a patent application before submitting a device to General Motors.

I submit, gentlemen, that if it were the intention of General Motors to appropriate devices which are brought to their attention, as was alleged by the witness last Thursday, they would not advise the parties with whom they enter into correspondence to get a patent before they consult them, or to apply for the patent, or in the event of having done neither, to have the right certified by a notary, which would be clear evidence of first invention.

As I stated before, the witness said, " You have to read between the lines ". to get the real gist of this. I have taken what I regard as the important portions, but I think the statement having been made, and the publication being so small, requiring only two pages of your daily record to contain it, the whole pamphlet should be published.

Hon. Mr. CASGRAIN: Why don't you read between the lines?

Hon. Mr. DANDURAND: You have read sufficient to justify your protest.

Right Hon. Mr. GRAHAM: I think, Mr. Robertson, the public is more apt to read your rebuttal in the way you have presented it than if you had put in the whole pamphlet.

Mr. ROBERTSON: Thank you, Senator.

The CHAIRMAN: You have taken the main paragraphs, Mr. Robertson, and I do not think there is any need to have the whole booklet published.

Mr. ROBERTSON: I have read what I regard as the important parts.

The CHAIRMAN: Our next witness is Mr. Riches.

Mr. C. HAROLD RICHES (Consolidated Mining and Smelting Company): Mr. Chairman and honourable members, I regret that I was retained on this brief only some twenty-four hours ago. Consequently I have not had really sufficient time to prepare a comprehensive survey by reading very closely the minutes of the proceedings of your Committee.

My instructions are to the effect that the Consolidated Mining and Smelting Company feel that the proposed Bill is a decided improvement on the present Act, and that only some small changes are required in the wording.

I may say, gentlemen, that we are patent solicitors, and that our clients consist practically entirely of purely Canadian manufacturers and Canadian inventors. In other words, we do not represent any Canadian subsidiaries of foreign organizations. In speaking therefore on the two sections to which I intend to direct my remarks, I do so purely from the consensus of opinion gathered over the past number of years in our general work.

Right Hon. Mr. MEIGHEN: You are speaking for the Consolidated Mining and Smelting Company only?

Mr. RICHES: Yes. Their views in this respect coincide with a number of views of other of our clients whom I am not mentioning.

Right Hon. Mr. MEIGHEN: But who are Canadians only?

Mr. RICHES: Canadians only.

In the first place, section 26 of the proposed Act limits the filing in Canada to within twelve months of the filing date of the first foreign application. Mr. Cahan has no doubt realized the privileges that foreign inventors have had in Canada under present section 7. We have found in a number of cases that patent protection by patents obtained by foreign companies last anywhere from twenty to twenty-nine years, and I believe in one case thirty-one years, through taking advantage of section 7 of the present Act. I believe the proposed change is to make filing before the allowance of the first foreign application. This would mean, of course, a mere difference of two years. It is my contention, gentlemen, that if there is going to be any loosening we should bring our filing requirements into alignment with those of the United States. An application from a foreign inventor may be filed in the United States after twelve months of the filing date of his first foreign application, provided he takes the issue of his United States patent before the issue of his first foreign patent.

Right Hon. Mr. MEIGHEN: Are you speaking of a man applying in the United States for a patent who has already applied somewhere else?

Mr. RICHES: Yes.

Right Hon. Mr. MEIGHEN: Tell us in what position he is?

Mr. RICHES: He has his choice of two things, either filing in the United States within twelve months of the filing date of his first foreign application, or filing in the United States after that twelve month period provided he takes the issue of his United States patent before the issue of his first foreign patent.

Hon. Mr. GRIESBACH: But that is not within his control. He cannot control the period within which the patent will come out in the United States, can he?

Mr. RICHES: Purely by a matter of prosecution, sir. You will realize that in addition to the Patent Office having some responsibility in connection with the issue of a patent, the patent solicitor also has some. If a Canadian inventor's application is filed in the United States, I would say that within one year the attorney who is prosecuting that case has a good idea of just exactly what is allowable and what is not.

Right Hon. Mr. MEIGHEN: Suppose an inventor in Ohio applies first in Great Britain. He can apply in the United States within a year of that applica-

tion in Great Britain, or if that year has expired he can still apply provided he is willing to and does actually get his patent before it issues in England?

Mr. RICHES: Yes, sir.

Right Hon. Mr. MEIGHEN: But if it turns out that the patent is delayed in the Patent Office until after it is issued in England—

Mr. RICHES: Then he either has an invalid patent, or if the English patent is caught in the search, or if by accident the English patent issued first, he will be thrown out, on the basis of prior patent.

Right Hon. Mr. MEIGHEN: And if it is not caught and he gets his patent, he has an invalid patent?

Mr. RICHES: Yes, sir.

Hon. Mr. GRIESBACH: And you say that situation can be controlled by the way in which the application is prosecuted? Mr. Cahan pointed out that it was possible for patent solicitors to hang things up for a year. I want to know if that is true in the United States at all.

Mr. RICHES: You are asking a rather pertinent question. It all depends on the instructions the patent solicitor receives, sir.

Hon. Mr. GRIESBACH: If you are instructed to delay things, you can?

Mr. RICHES: Yes, sir. To digress for a moment, last year we had a case where we received an application from Australia for filing in the United States. It was delayed somehow and we received the application the same day that the twelve months' period ran out. We filed the application and we got in touch with Australia to find out what was the latest date they could hold the Australian patent up. And December 12th, as I recall, was the last date that the Australian patent could issue, and we received the United States application on June 12th. We should have received it on June 11th to get it filed on the 12th. We were able by prosecution to get the allowance. We made three amendments to the application, we made an entirely new set of drawings, and we were able to get the allowance of the application in time.

Right Hon. Mr. MEIGHEN: It was after the year, so far as the Australian application was concerned, but by rustling the application in the United States you were able to get your valid patent.

Mr. RICHES: Yes, sir. Now, in regard to section 26 we must bear in mind all the way through this Act that we are serving Canadian inventors, Canadian manufacturers and the Canadian public. I do not think that these three classes will be well served by this section. And surely foreign industry and foreign inventors should not have more privileges than Canadian industry and inventors.

Right Hon. Mr. MEIGHEN: What importance do you attach to the claim that has been strongly urged here by a number of witnesses, that some of the foreign countries being larger than we are, have a better Patent Office, a more complete system of investigation, and that consequently it is of advantage for Canadian inventors to apply in one of those countries first, because if he gets a patent it will be more secure, and he will be in a better position to know what is worth while obtaining here. Once an inventor knows he is all right in the United States, for instance, he feels it is all right to come here. But because of the comparatively long time that it sometimes takes to prosecute an application in the United States, it is claimed that if we limit applicants to the one-year period here they will lose the advantage of prior search in the United States.

Mr. RICHES: I do not think there is much to that, sir.

Right Hon. Mr. MEIGHEN: There are many people against you in that opinion.

Mr. RICHES: I know that, sir. As to the Consolidated Smelting Company, we usually file in Canada and the United States simultaneously. We prepare two applications, and there is just one day's difference in the filing, owing to the time taken in mail delivery. We get our first action back from the United States Patent Office, say, within four months. That gives us a general survey of the prior art. We answer that as quickly as we can and get the next action back, say, in another three, four or five months. Within the year we have had two actions back.

Hon. Mr. DANDURAND: But in the meantime you do not make your Canadian application?

Mr. RICHES: No, sir. That is all in the one year. When we get the second action we have a pretty close idea of what we are going to have allowed, and if it is worth while we send out our foreign applications to come within the convention.

Right Hon. Mr. MEIGHEN: That is to say, you claim it is not necessary to have more than one year in the United States at all?

Mr. RICHES: No, sir.

Right Hon. Mr. MEIGHEN: You can get the benefit of their investigation within a year?

Mr. RICHES: Yes, sir. We took out the insulin patents in 1923 for Dr. Banting and Dr. Best. I think that possibly those were a set of the most important patents within our generation, because insulin was for the benefit of the people. And that is why it was patented. We patented that, with two patents in every country in the world. I believe we started in in 1922, and we had the whole thing cleared out before 1925.

Right Hon. Mr. MEIGHEN: How long did you take in the United States?

Mr. RICHES: Somewhere around two years. We ran into some German trouble.

Right Hon. Mr. MEIGHEN: That was over a year, anyway?

Mr. RICHES: Yes, but we knew before a year was out how we stood.

Right Hon. Mr. MEIGHEN: You were in a position to have the benefit of their prior search before the year was up?

Mr. RICHES: Yes, sir.

Hon. Mr. PARENT: Generally, how long does it take to get a patent in the United States, if one can be obtained?

Mr. RICHES: It depends on the speed of the prosecution. We are allowed six months to answer an office action. If the six months is taken up each time, it is going to mean that a few years will be required. But we can answer the action the next day, if we wish.

Hon. Mr. PARENT: And what about refusals? When they refuse, how long does that take?

Mr. RICHES: That depends a good deal on the prosecution, too.

Right Hon. Mr. MEIGHEN: It takes the same time, I suppose.

Mr. RICHES: I was going to bring up the subject of the working.

Right Hon. Mr. MEIGHEN: You heard Mr. Caron to-day?

Mr. RICHES: Yes, sir.

Right Hon. Mr. MEIGHEN: He gave a very specific instance.

Mr. RICHES: Yes, sir. Mind you, honourable senators, I am not making any suggestions. I did not have any time to prepare any specific suggestions as to changes, but I simply wished to pass a few remarks on the Bill as a whole, and with respect to recommendations that have been made before. There is

the question of the working. It has been brought up that certain inventions are not commercially feasible in Canada. My reaction to that is, that if an invention is not commercially feasible in Canada, why is it patented here?

Right Hon. Mr. MEIGHEN: Take Mr. Caron's case. It may not be commercially feasible for a time but he has to wait.

Mr. RICHES: I was going to bring that up a little later, sir, if I may. If the Canadian market is so limited that the invention is not commercially feasible for manufacture in Canada, there does not seem to be much reason for patenting it here. For if the invention is of any value, it is mostly likely patented in the United States, Great Britain and Germany, the three manufacturing countries, where it is commercially feasible.

Hon. Mr. GRIESBACH: How does the inventor know that? He does not know that until he has tried it, does he? The inventor is a simple-minded fellow who rushes out to get a patent, we are told.

Mr. RICHES: Sometimes he is, sir, and he usually loses his money on it. Then there are others. If I may mention a specific case, a man is working on a patent structure, and last year he filed somewhere around fifteen applications in Canada. This year we are turning out those same applications to get within the convention date. I think there are seven or eight countries altogether for each application. It is quite a patent structure. But I doubt if he will make a nickle out of it in Canada.

Right Hon. Mr. MEIGHEN: Then why not let him wait until the market develops, or until people take an interest in it? If you do not, there will be a perpetual importation of the article into Canada.

Mr. RICHES: Not necessarily, sir. Because if it is commercially feasible to manufacture in Canada, and the inventor in the United States does not want to manufacture here, why give him a patent in the first place to stop the Canadian manufacturer from making it?

Right Hon. Mr. MEIGHEN: A man like Mr. Caron invents something and he takes out patents in the United States and Canada. Now if we come along and say to him that he has got to manufacture within three years in Canada, he will say that he has not been able to negotiate any sale in Canada within that period, or that he has not been able to persuade anyone that the things can be made to pay.

Mr. RICHES: I was going to suggest there should be no revocation.

Right Hon. Mr. MEIGHEN: No what?

Mr. RICHES: That the patent should not be revoked for failure to work it. I was going to suggest that later; but I was going to bring in the fact that so many patents are obtained in Canada on inventions that are not economically feasible of manufacture.

Right Hon. Mr. MEIGHEN: They should not be granted in the first place.

Mr. RICHES: They should not be granted in the first place.

Hon. Mr. GRIESBACH: Do you mean to say that the Patent Office should exercise a discretion in that respect?

Mr. RICHES: No, sir. I do not think it is up to the Patent Office. I think the manufacturer in the States would take it into consideration himself.

Right Hon. Mr. MEIGHEN: You are talking only of the men in the States. What about the fellow here?

Mr. RICHES: I say that, if it is the case that some day it might be feasible, the patent in any case should not be revoked once it is issued.

Right Hon. Mr. GRAHAM: You are of the opinion that there should be no time limit?

Mr. RICHES: There must be some working clause, but I do not believe the patent should be revoked for non-working.

Hon. Mr. GRIESBACH: Then what do you say?

Mr. RICHES: That should be taken up in section 53, the infringement section; that is, that an infringement should not be sued upon until the patentee had commercially worked his invention.

The CHAIRMAN: You do not mean that a patent should be everlasting?

Mr. RICHES: Oh, no.

Right Hon. Mr. MEIGHEN: You think he should not be allowed to sue for infringement, but that his patent should still stand. What is the good of a patent if he cannot sue?

Mr. RICHES: What is the use of a patent if he does not work it?

Hon. Mr. GRIESBACH: It has a potential value.

Mr. RICHES: It is his property—

Hon. Mr. DANDURAND: But could not the manufacturer ask for a compulsory, licence, instead of infringing?

Mr. RICHES: Yes.

Hon. Mr. DANDURAND: There is a right there which he is infringing. He decides, contrary to the opinion of the inventor, that there is a market.

Mr. RICHES: Then he should have a compulsory licence available to him; but the inventor should not be allowed to hold the patent over the head of the manufacturer as a club.

Right Hon. Mr. MEIGHEN: Do you not think the licensing provision is sufficient to protect the public?

Mr. RICHES: That is the old section 40?

Right Hon. Mr. MEIGHEN: The present section 63.

Mr. RICHES: Personally I like the British section better.

Right Hon. Mr. MEIGHEN: What is that?

Mr. RICHES: The British, of course, have two classes: the licence of right—

Right Hon. Mr. MEIGHEN: We do not have that, but you like the British section outside of that?

Mr. RICHES: Yes, and I rather like that licence of right.

Right Hon. Mr. GRAHAM: The inventor does not have a very easy time.

Mr. RICHES: No.

Right Hon. Mr. GRAHAM: So I would judge from these gentlemen around here.

Right Hon. Mr. MEIGHEN: You would rather be a patent solicitor.

Right Hon. Mr. GRAHAM: I would rather be a patent solicitor.

Mr. RICHES: I disagree with you there, sir.

Right Hon. Mr. GRAHAM: Should we make this law more elastic for the benefit of the inventor? The inventor starts out, sometimes, with only his head and his hands, to work these things out. He has difficulty in finding any person to finance him. Now, if we make any strict regulation as to when his invention shall be put on the market, or worked, as you call it, then we leave him in such a position that some person with money can take advantage of his brains without compensation.

Mr. RICHES: Yes, sir.

Right Hon. Mr. MEIGHEN: But do you think the protection of the public is sufficient under the compulsory licensing clauses?

Right Hon. Mr. GRAHAM: I think so.

Mr. RICHES: If I may say so, sir, invention is almost stifled in Canada now, and I lay that partly to the present Act.

Hon. Mr. MURPHY: What is that?

Mr. RICHES: I say invention is almost stifled in Canada now. We have found in our experience, and we have represented, or dad has, for forty-five years past, possibly 100 to 145 small manufacturers, that each of these men has exactly the same story—in the first place, the administration of the Patent Office, and in the second place that question of section 7 of the present Act.

Right Hon. Mr. MEIGHEN: What is that?

Mr. RICHES: The filing requirement of the present Act.

Right Hon. Mr. MEIGHEN: He must file.

Mr. RICHES: Where the foreign manufacturer can file within two years of the grant of his first foreign patent it has meant that the small manufacturers of ploughs, and stoves, and all those lines, have not known where they were at. There is such a thing as coincident invention, and someone in the United States comes along with the same idea as the man in Hespeler, and by the time the man in Hespeler gets on to how he is going to patent it the United States man is in on it. In two cases we found these men didn't know where they were at.

Right Hon. Mr. MEIGHEN: The long time allowed the foreign patentee has worked to stifle the Canadian original inventor and patentee.

Mr. RICHES: Yes, sir.

Hon. Mr. PARENT: Suppose some of the members of this Committee wished to help the inventor, what then? It is extraordinary how much difficulty he may find himself in in getting his patent through even in the United States. I have right before me an example of an application for a patent on a calculating machine filed on September 19, 1912, and granted on August 4, 1931. You can imagine what trouble this man has gone through between 1912 and 1931 to get his patent.

Hon. Mr. DANDURAND: In the States or in Canada?

Hon. Mr. PARENT: In the United States.

Mr. RICHES: That just proves my point, gentlemen. It is 1933 before the Canadian application is filed, and eighteen years from then is 1951. From 1912 to 1951 that thing is protected.

Some REPRESENTATIVES: No, no.

Mr. RICHES: But who is going to manufacture it in the face of a patent?

A REPRESENTATIVE: Nobody knows anything about it.

Right Hon. Mr. GRAHAM: I do not know what we poor fellows on the Committee are going to do if you fellows don't agree.

Hon. Mr. CÔTÉ: It is stipulated under section 26 of the Bill that a person may obtain a patent, provided the invention is new, and all that sort of thing, and then that the article has not been in public use or on sale in this country for more than two years prior to the application. This, obviously, means the application in Canada.

Mr. RICHES: Yes.

Hon. Mr. CÔTÉ: What would you say as to two years within which to file the application in Canada after it is filed abroad, to bring the period into line with the principle adopted in the first part of the section, where two years are allowed after the thing is made public?

Right Hon. Mr. MEIGHEN: It has got to be his own thing.

Hon. Mr. CÔTÉ: It is his thing, but he has two years.

What would you say as to the idea of adopting the same principle with regard to the time of the application? If he has applied in a foreign country—

Mr. RICHES: At the present time we have what is known as a "stop order" which can be placed against a Canadian application and which will reserve action on that application for a year from the filing date. For instance, if I file a United States and a Canadian application for a company I put a stop order against the Canadian application to prevent any action.

Hon. Mr. CÔTÉ: That is manœuvering in the Patent Office. My idea is that we should get away from manoeuvering in the prosecution of patent applications, and get down to some fixed rule which would be quite independent of that and the time the patent would take to ripen in some other country. For instance, would not two years give you ample time to pass your claims in the United States Patent Office?

Mr. RICHES: Yes.

Hon. Mr. CÔTÉ: I know it is hard to draw the line, but if the line were drawn at two years, what would you think of that?

Mr. RICHES: That would simply prolong the life of the patent.

Right Hon. Mr. MEIGHEN: The extra year.

There is a difference between the time that should be allowed a man who has gone to a foreign country and applied for a patent before applying in Canada, and the man who has it in use in Canada. He can use it in Canada.

Mr. RICHES: Yes.

Right Hon. Mr. MEIGHEN: But it is another thing to allow two years to the man who applies in the United States, because he has only one year under the convention.

Mr. RICHES: Yes.

The CHAIRMAN: Now, that exhausts the list of those who have expressed a desire to appear before the Committee. Is it the pleasure of the Committee now to take up the Bill section by section?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Is it desired to have the discussion on the Bill, section by section, in the record?

Right Hon. Mr. MEIGHEN: Do we need to include this in the record?

Hon. Mr. GRIESBACH: No.

Right Hon. Mr. MEIGHEN: I don't think we do.

Hon. Mr. GRIESBACH: I think we ought to take a little time to consider it, and I suggest that we adjourn—

Right Hon. Mr. MEIGHEN: There are a few things that we can do.

The CHAIRMAN: Then the discussion, section by section, will not be reported.

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