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Comm.on Banking and Commerce,
1947.

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SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

THURSDAY, FEBRUARY 20, 1947

TUESDAY, FEBRUARY 25, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.

Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

ORDERS OF REFERENCE

HOUSE OF COMMONS,
THURSDAY, 13th February, 1947.

Resolved:—That the following Members do compose the Standing Committee on Banking and Commerce:—

Messrs.

Abbott,
Argue,
Arsenault,
Beaudry,
Belzile,
Black (*Cumberland*),
Blackmore,
Bradette,
Breithaupt,
Cleaver,
Cote (*St. Johns-Iberville-Napierville*),
Dechene,
Dionne (*Beauce*),
Dorion,
Fleming,
Fournier (*Maisonneuve-Rosemont*),
Fraser,
Fulton,
Gour,
Hackett,
Harkness,
Harris (*Danforth*),
Hazen,
Ilsley,
Irvine,
Isnor,
Jackman,
Jaenicke,
Jutras,
Lesage,
Low,
Macdonnell (*Muskoka-Ontario*),
MacNaught,
McIlraith,
Manross,
Marquis,
Maybank,
Mayhew,
Michaud,
Nixon,
Picard,
Pinard,
Quelch,
Rinfret,
Ross (*Souris*),
Sinclair (*Ontario*),
Stewart (*Winnipeg North*),
Strum (Mrs.),
Timmins,
Tucker—50

(Quorum 15)

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon; with power to send for persons, papers and records.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

TUESDAY, February 18, 1947.

Ordered,—That the following Bill be referred to the said Committee:—

Bill No. 16, An Act to amend The Patent Act, 1935.

Attest.

R. T. GRAHAM,
Deputy Clerk of the House.

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TUESDAY, February 18, 1947.

Ordered,—That the following Bill be referred to the said Committee:—

Bill No. 11, An Act respecting Export and Import Permits.

Attest.

R. T. GRAHAM,
Deputy Clerk of the House.

THURSDAY, February 20, 1947.

Ordered,—That the said Committee be empowered to print from day to day such copies in English and French of its minutes of proceedings and evidence as the Committee may, from time to time, determine, but not to exceed on any subject of reference 1500 copies in English and 500 in French, and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the quorum of the said Committee be reduced from 15 to 10, and that Standing Order 63(1) (*d*) be suspended in relation thereto.

Ordered,—That the said Committee have leave to sit while the House is sitting.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE HOUSE

THURSDAY, February 20, 1947

The Standing Committee on Banking and Commerce begs leave to present the following as its

FIRST REPORT

Your Committee recommends:—

1. That the Committee be empowered to print, from day to day, such copies in English and French of its minutes of proceedings and evidence as the Committee may, from time to time, determine, but not to exceed on any subject of reference 1,500 copies in English and 500 in French, and that Standing Order 64 be suspended in relation thereto.

2. That the Committee's quorum be reduced from 15 to 10, and that Standing Order 63 (1) (*d*) be suspended in relation thereto.

3. That the Committee have leave to sit while the House is sitting.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, February 20, 1947

The Standing Committee on Banking and Commerce met at 11.30 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Blackmore, Bradette, Cleaver, Fleming, Fraser, Fulton, Gour, Irvine, Isnor, Jackman, Jaenicke, MacNaught, Maybank, Nixon, Quelch, Rinfret, Ross (*Souris*), Stewart (*Winnipeg North*).

Mr. Jackman, on behalf of the Committee, congratulated Mr. Cleaver on his re-appointment as Chairman of the Committee.

The Chairman read the Orders of Reference respecting Bill No. 16, an Act to amend the Patent Act, 1935, and Bill No. 11, an Act respecting Export and Import permits.

On motion of Mr. Irvine,

Resolved,—That the Committee report to the House requesting permission to print, from day to day, such copies in English and French of the Minutes of Proceedings and Evidence as the Committee may, from time to time, determine, but not to exceed on any subject of reference, 1,500 copies in English and 500 copies in French.

On motion of Mr. Maybank,

Resolved,—That the Committee report to the House requesting that its quorum be reduced from 15 to 10.

On motion of Mr. Belzile,

Resolved,—That the Committee ask leave to sit while the House is sitting.

On motion of Mr. Jackman,

Resolved,—That an Agenda Committee be appointed, consisting of the Chairman, and Messrs. Blackmore, Fleming, Fraser, Irvine, Moore and Rinfret.

On motion of Mr. Fleming,

Ordered,—That the Clerk secure 60 copies of The Patent Act, 1935.

On motion of Mr. Jackman the Committee adjourned to the call of the Chair.

TUESDAY, February 25, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Beaudry, Black (*Cumberland*), Blackmore, Cleaver, Cote (*St. Johns-Iberville-Napierville*), Dechene, Dionne (*Beauce*), Dorion, Fleming, Fraser, Fulton, Gour (*Russell*), Harkness, Hazen, Irvine,

Jackman, Jaenicke, Jutras, Lesage, Low, Macdonnell (*Muskoka-Ontario*), MacNaught, McIlraith, Marquis, Mayhew, Michaud, Pinard, Quelch, Rinfret, Sinclair (*Ontario*), Stewart (*Winnipeg North*), Strum (Mrs.).

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents and other officials of the Patent and Copyright office; Mr. Christopher Robinson, Vice-President of the Patent Institute of Canada.

The Committee proceeded to the consideration of Bill No. 16, An Act to amend the Patent Act, 1935.

The Honourable, the Secretary of State, made a brief statement.

Mr. Mitchell was called. He explained the different clauses of the bill and answered questions.

In the course of Mr. Mitchell's examination, the Clerk was instructed to secure, for members of the Committee, copies of the Report of the Commissioner of Patents for the year ended March 31, 1946.

Witness stood aside and Mr. Robinson was called and questioned.

At 12.55 p.m., witnesses retired and on motion of Mr. Low, the Committee adjourned until Friday, February 28, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
February 25, 1947

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: As you know bill 16 is now before this committee, an Act to amend the Patent Act. If it is the wish of the committee we will first hear the minister who will give a general statement in regard to the amended Act. He will be followed by the Commissioner of Patents who will give in detail the amendments introduced by bill 16 and the reasons for them. Is it the wish of the committee that we now hear the minister? (Agreed).

Hon. Mr. GIBSON: Mr. Chairman and gentlemen: I am glad to have the opportunity to present this bill at an early date. As I stated when I introduced the bill it creates certain rights as to the extension of time for filing patent applications and extension of time for payment of fees. We give those privileges to inventors of other countries where we receive reciprocal rights.

In the United States they have an Act granting similar benefits called the Boykin Act. It expires on the 8th of August, 1947, so if inventors in this country are to receive the benefits of it it is important that we should have our amendments passed here in time for them to take advantage of the Boykin Act before it expires on the 8th of August.

When I spoke on the bill on second reading I mentioned the fact that in section 2 we are amending the salary of the commissioner. In the draft bill that was presented it read:

> The Commissioner shall hold office during pleasure and be paid such annual salary as may be determined by the Governor in Council.

It was thought at that time that the control of the salary would be in the hands of parliament when they passed the estimates of the department, but on further consideration it was thought we ought to put in the maximum salary of $8,000 that had been recommended in the Gordon report. I said at that time that I intended to move an amendment to the effect that section 2 be amended by inserting after the word "salary" in the fifth line the following words, "not exceeding $8,000". If the committee would see fit to bring in a recommendation on that basis then it would undoubtedly carry when it comes before the committee of the House.

I want to refer to section 4 of the Act which enacts section 19(*a*) of the Patent Act. It is the same as in the British Act. The only change that has been made is that the Minister of National Defence is substituted for the First Lord of the admiralty, or the corresponding officer in Great Britain. As to section 19(*b*) of the Act, having to do with patents relating to atomic energy, the purpose is to bring our Patent Act in conformity with the Atomic Energy Control Board Act which was passed at the last session of parliament. There are other minor amendments for which the commissioner will explain the necessity.

In regard to the tariff of fees I should like to say that we have the lowest tariff in the world at the present time.

Some criticism was made of the work of the Patent Office. In justice to the staff I must say they are working under very extreme difficulties at the present time. The Patent Office is very crowded. They have suffered during the war

from a shortage of staff. We secured authority to increase the staff but after a competition had been held to secure patent examiners we found that very few applicants had the qualifications required. It has not been easy to get men with the high qualifications that are required for the patent staff.

With the increase in the fees it will be possible to print patents and make them available to the public. At the present time Canada does not print any patents. Anyone who wants to get the particulars of a patent must come to Ottawa and obtain drawings in the Patent Office. It is inconvenient; it is an expensive way of doing it. We find that rather than do that very often they write to Washington and secure copies of the identical patent. We feel that it will be quite a step forward to do our own printing of patents. At the same time the fees that are recommended will continue to be about the lowest in the world. We feel we should not make them any higher than is necessary in order to make it as easy as possible for Canadians to secure patents.

As to the work in the Patent Office it is interesting to note that of the applications for patents that come in about 90 per cent are foreign patents, so that the fees that we will receive on those patents will come chiefly from other countries.

Mr. MACDONNELL: May I ask a question? Is the percentage of foreign patents so high because we are used in any way as a kind of trial trip?

Hon. Mr. GIBSON: No, I think so many inventions are patented abroad, and they all file their patents in Canada to preserve their rights in this country. The commissioner will explain any of the details of the Act or answer any questions that are required.

The CHAIRMAN: Are there any questions that any of the members would like to ask the minister?

Mr. FRASER: I should like to ask the minister if he does not think the fees could be increased sufficiently so that the salaries offered to these applicants could be raised? We would likely get a better quality of applicant if they were offered a decent salary.

The CHAIRMAN: You are referring to the examiners?

Mr. FRASER: Yes. As the minister said 90 per cent are foreign patents. I do not see why we should keep our fees at rock bottom and not take in enough money to look after the examiners.

Hon. Mr. GIBSON: Of course, the salaries are not set by the Patent Office. The salaries are set by treasury board. The scale of salaries is set on the advice of the Civil Service Commission. Those who are employed in the Patent Office are, of course, civil servants, and their salaries are set on the recommendation of the Civil Service Commission.

Mr. IRVINE: Which board fixes the salary?

Hon. Mr. GIBSON: The Civil Service Commission advises on the salary and the treasury board approves it.

Mr. FRASER: A patent examiner would have to have technical knowledge?

Hon. Mr. GIBSON: Yes.

Mr. FRASER: And therefore they would be skilled men and would require and demand a decent salary. What are they paid now?

Hon. Mr. GIBSON: I will ask Mr. Mitchell to answer that.

J. T. Mitchell, Commissioner of Patents, called:

The WITNESS: The patent examiners are graduate engineers from a recognized university, usually with one or two years in the field before they enter the Patent Office. They come in as associate examiners at a salary of about $2,580 and go up to $3,300. I say approximately that.

Then there is an avenue of promotion from associate examiner to examiner. The examiners go up to $4,200. From the time that an associate examiner comes into the office it will probably take him ten years before he reaches the grade of examiner because these positions in the grade of examiner are usually caused by vacancies or there may be a development in an art which requires an examiner to be appointed to that art. Then we appoint an associate to the particular art which is being developed.

Mr. FLEMING: I should like to ask the minister a question or two if the question is proper.

Th CHAIRMAN: Before you do that, does that fully answer your question, Mr. Fraser?

Mr. FRASER: It does, but it also proves that a technician or engineer would be a whole lot better off in private industry than in the Patent Office because it takes him ten years even to get into the class up to $4,200.

The WITNESS: At the beginning of last year the maximum and minimum salaries of associate examiners were increased. As I said, he starts now at about $2,580 and goes up to $3,300. They increased the maximum last year, and they increased the minimum. In other words, they used to come in at $2,100. Now they come in at $2,580. Increasing the minimum in that way was to take care of conditions as they exist today, and increasing the maximum was to give him more or less a living salary when he came to the top of his grade in about six years time. He gets an increase of $120 a year. Last May there was an increase of $120 which was an extra supplement to what they had in previous years. That was after recommendation by the Civil Service Commission and approval by the treasury board.

By Mr. Fraser:

Q. If they went into industry they would get at least $3,500 to start with?—. A. Of course, I could not tell you that.

Q. Do you think if the fees were increased that would look after the additional salary?—A. An increase of fees might have two reactions. You could, of course, increase the salaries by that means. On the other hand, it might act as a deterrent to people filing applications in Canada. One thing that Canada does want is access to the inventions of other people so as to get the know-how and be able to put those inventions into practice for the benefit of industry in Canada. If you raise the fees so high that it acts as a deterrent to people filing applications in Canada than they are not going to be able to come to the Patent Office and find out exactly what has been invented and whether it would be advantageous for them to get in contact with the inventor or patentee to secure rights in Canada.

Q. How far down are we from the United States?—A. You mean the fees?

Q. What are the United States fees? We are the lowest.—A. Their fees are $30 on filing the application and $30 as a final fee, $1 for all claims exceeding twenty on filing and another $1 payable on all claims exceeding twenty on issue of the patent.

Q. What are they in the United States?—A. That is the United States.

Q. What are they here?—A. In Canada at the present moment there is a $15 filing fee and at the present moment $20 final fee, and 50 cents for each claim over twenty-five on filing.

The intention at the present time is to increase those fees to $20 on filing and $25 on issue of the patent, and to make it $1 for each claim over twenty on filing the application.

Mr. MACDONNELL: May I make one comment? It does seem to me that regardless of where the money comes from in view of the fact that the minister has said, as I understood him to tell us, that the work has been to some extent

held up by the fact that sufficient skilled examiners have not been available surely that raises a prima facie assumption that the amounts involved as remuneration are not large enough.

Hon. Mr. GIBSON: Of course, during the war there was a great shortage of skilled personnel in any case.

The WITNESS: During the war there were about 25 per cent of the examiners' staff who joined the armed forces, or joined other departments of the government directly interested in the successful prosecution of the war. Instead of having twenty-eight examiners we had about twenty-one. The work increased. Unfortunately for the patent office the work increased in Canada much more rapidly than it increased in the United States or Great Britain. That is on a percentage basis. We had only one or probably two years in which there was a falling off of patent applications. In 1941 and 1942 applications in Canada increased materially until in 1946 the number of applications received was about 4,000 or 40 per cent more than had been received in other years in the last ten years.

Mr. FLEMING: I was wondering if the minister would tell us what representations have been received that have led to some of these sections in the bill? From where have representations been made? Have any of these sections been requested by bodies like the Patent Institute, and in the case of the secrecy provisions have those been introduced in any sense at the request of the Department of National Defence?

Hon. Mr. GIBSON: The only representation that we have received has been in regard to the printing of patents. There has been a desire on the part of the Patent Institute that we should have patents printed. That is what led us to take this action this year. No other representations have been received in regard to the other contents of the bill.

Mr. FLEMING: None in regard to section 4 dealing with the matter of secrecy?

Hon. Mr. GIBSON: No.

Mr. FLEMING: The Department of National Defence has not taken any interest in that as yet?

Hon. Mr. GIBSON: The Commissioner of Patents can tell us the tie-up his department has had with the Department of National Defence. I am not personally informed as to that.

The WITNESS: In 1939 the office made arrangements with the Department of National Defence and also the Department of Munitions and Supply that they would send officers to the Patent Office to examine applications as they were filed to see whether they would be useful to the country in the prosecution of the war. A great many applications emanated from the United States and Great Britain. They came from government departments in those countries and they were held in the utmost secrecy. They asked that we hold them in secrecy in Canada also under the provisions of the War Measures Act.

Mr. BLACK: We can hardly hear the witness at all.

The WITNESS: We were asked to hold them in secrecy under the provisions of the emergency rules which were in force during the war and the Defence of Canada Regulations. These applications were made secret. Some of them belonged to our government. Some belonged to foreign governments.

With emergency legislation passing out at the end of March something will have to be done to safeguard the secrecy of these particular patents, particularly those belonging to Canada.

By Mr. Fleming:

Q. Do I understand there are a number of patents already to which similar secrecy provisions have been applied since 1939?—A. There are a number of patents, and they have never been published. They have been held in secrecy.

Q. Can you give us the number?—A. I could not tell you the number, but I can tell you we had about 5,000 applications in secrecy of which about 1,000 have been released from secrecy on the request of the patentees or their attorneys. Those applications have been released in the country from which they emanated. As soon as they are released from secrecy in those countries the attorneys notify the Patent Office, and the Patent Office immediately releases them from secrecy and they are dealt with as ordinary applications from then on. At the present moment we have probably about 3,500 secret applications. A good many of those emanated from Great Britain, from their departments of aircraft construction and supply. A great many also emanated from United States government agencies. We are holding them until these government agencies release the applications and permit them to be handled in the ordinary manner.

Q. Do I understand that no patents have been issued in the case of any of these secret applications?—A. Patents have been issued but they have not been delivered and they have not been published. Patents have been issued but we are holding many patents in secrecy at the present moment.

Q. About 3,500 of them?—A. Those are applications. Do not confuse applications with patents. An application is not a patent until it matures to a patent.

Q. 3,500 is the number of applications?—A. Applications, yes.

Q. Still on the secret list?—A. They are still on the secret list. They are being released from secrecy at the rate of about 15 weekly. About 15 a week is the release that is going on at the present moment.

By Mr. Stewart:

Q. I should like to know what happened to patents which have been registered in Canada which belong to enemy corporations? Does the Patent Office still hold them or are they surrendered to the Custodian of Enemy Property?—A. Patents issued to nations at war with Canada were not delivered. They were held in the Patent Office and the custodian was notified. As soon as the patent was issued the right to it was vested in the custodian. Then the patent was held in the Patent Office, and with the concurrence of the custodian licences were granted to Canadian manufacturers to manufacture under those patents at a very low royalty.

Q. Were many such licences issued?—A. The number of licences granted is not very large, although there are some. I think there are two hundred patents involved altogether. There is not a large number involved.

Mr. JAENICKE: I should like to ask the minister if he would make a general statement describing the provisions of the conventions and international agreements into which we have entered? Will they restrict our legislation and will they affect section 19A, that is the new section pertaining to secrecy? For instance, you said a moment ago that applications for secrecy were received from countries other than the United States. Will the new section make any provision for that? The only applications for secrecy which can be made are by the Minister of National Defence, so far as I can see. Could we have a general statement in regard to the international situation?

The CHAIRMAN: That question of yours is quite involved; I wonder if you would be willing to let it stand and the commissioner will answer it?

Mr. JAENICKE: Yes, only I thought it would give us a good background to know what our international relationships are.

The WITNESS: Canada is a signatory to the Hague Convention, but Canada did not sign the London Convention. The Hague Convention was revised at London, but we did not sign it. At the present moment we are bound by the Hague Convention. I think it was signed in 1924.

The CHAIRMAN: I would suggest, Mr. Mitchell, if it is agreeable to Mr. Jaenicke that you take his question under advisement and read a statement to the committee, a prepared statement. It is quite an involved question.

Mr. JAENICKE: That will be quite satisfactory.

By Mr. Jackman:

Q. May I ask the witness a question in regard to his answer to Mr. Stewart's question about enemy patents in this country? I think you mentioned the fact that about two hundred were involved. Were those two hundred in regard to patents pending or were they the total number of issued patents?—A. The total number of patents to Germany and to the Axis countries was about eight thousand. Of those eight thousand there were some three thousand in which there were non-enemy interests. Therefore, the number of patents which are wholly enemy owned was in the vicinity of five thousand, between four thousand and five thousand.

Q. Did we make available to Canadians the operating rights to any of those patents?—A. To any of those patents for which they cared to ask for a licence.

Q. About two hundred and fifty were involved?—A. About two hundred were involved, in so far as licences are concerned. They are principally medicinal; there are a great number of them for medicinal purposes.

Q. May I ask a question on another subject, that of the salaries for the associate examiners and the examiners? Has the commissioner the comparable figures for the American Patent office?—A. I can get them.

Q. Do you know, off hand, whether they are about the same as in Canada or are they substantially higher?—A. They are higher, but of course living costs in the United States are much different, perhaps higher. Then, there are housing conditions and other things.

Q. And taxation?—A. And taxation, so that probably the result is you cannot make a true comparison. Our salaries here are about the same as the salaries in Britain where an examiner would receive about eight hundred pounds, going up to eleven hundred pounds or probably twelve hundred pounds which would give him in the vicinity of $5,000 a year. Now, that is for an examiner there, but they go right down in a series of grades to assistant examiner and even below assistant examiner. People are taken in to be tried out. They get about three hundred and fifty pounds per year.

Q. Is the Patent Office in the United States located in Washington or is it elsewhere?—A. It is at Gravellypoint at the present time with the administration part of the office in Washington. Gravellypoint is five or six miles out from Washington. The administration part is in Washington.

Q. Perhaps the commissioner would be good enough to put in the record a short table of the comparative salaries?

The CHAIRMAN: I have made a note of it.

Mr. STEWART: There is one other question I should like to ask. Could the minister tell us what the gross revenues and gross expenditures of the patent office were for the last fiscal year?

The CHAIRMAN: I will make a note of that; that will be tabled.

Mr. FRASER: Whatever is received from royalties should go into that, Mr. Chairman; it should include royalties.

The CHAIRMAN: I did not hear that, Mr. Fraser.

Mr. FRASER: That would include royalties?

The CHAIRMAN: Yes, the gross revenues and gross expenditures of the office.

Mr. FLEMING: I want to ask a question in general terms, but may I just comment on that last question. I think if the commissioner is going to table figures on income and expenditures of the Patent Office, he should go back for more than one year. I would suggest he should go back for the last ten years. Those figures are, no doubt, readily available.

Hon. Mr. GIBSON: Do you want them back to 1936 or 1937? I can give them for every year up to 1946.

Mr. FLEMING: Suppose you start with the present Patent Act, 1935.

Hon. Mr. GIBSON: This table only goes back to 1936-1937.

Mr. JACKMAN: This is just the office revenue, I take it; it has nothing to do with the royalty revenue. I do not understand how the Patent Office gets the royalty revenue.

Hon. Mr. GIBSON: The custodian would get the royalty revenue. This gives the receipts, salaries, the patent record receipts, etc. These expenditures are divided under the headings of salaries, patent records and other expenditures. This table shows a surplus for each year. For 1936-1937, the receipts were $463,849.76 and the total expenditures were $230,028.54. I can give you a breakdown of that under the heading of salaries, patent records and other expenditures.

The CHAIRMAN: I would suggest the minister should simply read the tables and we can file the details in our records.

Mr. MICHAUD: Is there a surplus for each year?

Hon. Mr. GIBSON: Yes,

Year	*Receipts*	*Disbursements*
1936-1937	$463,849.76	$230,028.54
1937-1938	452,150.37	234,128.87
1938-1939	379,052.88	220,109.48
1939-1940	364,141.92	220,795.10
1940-1941	349,641.23	224,506.89
1941-1942	366,799.68	235,230.82
1942-1943	362,288.02	244,026.07
1943-1944	381,658.03	216,142.21
1944-1945	405,439.87	223,418.41
1945-1946	439,356.59	239,826.69

Mr. IRVINE: So, the department is solvent?

Hon. Mr. GIBSON: We have had a surplus every year of between $233,000 in 1936-1937 and $199,000 in 1945-1946.

Mr. FRASER: I think we should be shown also the amount you have been receiving from royalties because that constitutes receipts from patents, too.

Hon. Mr. GIBSON: Those receipts are shown in the custodian's account. He receives the royalties which come from the patents.

Mr. BEAUDRY: Were these figures for patents only or patents and copyrights?

The CHAIRMAN: I would suggest the committee might like to have a copy of the report of the Commissioner of Patents which will give the committee a breakdown of these composite figures. If it is your wish, I will obtain a copy for every member of the committee. The report has been tabled, of course, and you may have it, but I will obtain a copy for each member.

Mr. BEAUDRY: May I repeat my question? Are these figures for patents and copyrights or for patents only?

Hon. Mr. GIBSON: That includes copyrights also.

Mr. BEAUDRY: Could we have a breakdown showing the gross revenue from each?

The CHAIRMAN: I am obtaining a copy of the report for every member of the committee.

Mr. BEAUDRY: I do not know whether the report shows it; I have not a copy of it here. I would like to have a report of the breakdown as between revenue and expenditure for copyrights on the one hand and patents on the other hand.

Hon. Mr. GIBSON: This is all set out in the commissioner's report. The detail is there.

Mr. BEAUDRY: Thank you.

By Mr. Fleming:

Q. I wonder if I might ask a couple of general questions? The commissioner has made some criticism about the administration of the department and I would like to get at the basis of it. What is the opinion of the commissioner as to the Patent Act in general? The trouble does not lie, I suggest, in the Patent Act in general, is that correct? A. The Patent Act is a very good Act. It does not lie in the Patent Act.

Q. The nub of the criticism which has been made is lack of staff in the department? A. Lack of space, primarily, and lack of staff.

Q. Both of those things? A. Both of those things.

Q. Is it twenty-two or twenty-four examiners which you have at the present time? A. We have twenty-four. Three examiners have been appointed within the last month which brings the total to twenty-seven. I asked for ten in August last to fill the vacancies in our staff as well as to take care of the extra amount of work which has been accumulating. Up to the present moment, we have received three.

Q. Does that indicate, Mr. Commissioner, in your opinion that had you obtained the ten it would have been sufficient to meet the need?—A. No, ten this year would be sufficient. I asked the former Secretary of State for sixteen, six for next year. Each examiner who comes in has to be taught. It takes about a year to do that. If you brought in sixteen men, it would take sixteen examiners to teach them. You are not going to have much output in that case, so you have to bring them in slowly in order that they may be taught and, at the same time, not interfere too much with the handling of applications pending.

Q. Subject to your capacity to absorb new men and train them, what, in your opinion, is the total number of examiners required to adequately handle the number of applications coming in?—A. It depends entirely upon the extent of the search required. At the present moment we search Canadian patents as thoroughly as possible. With regard to American patents, if the application has been filed in either Britain or the United States, we ask the attorney to supply the data of prior patents cited from the foreign country. We have facilities for making the search of British patents. British patents are available in the office for search since the year 1617, and up to the present day. United States patents are available in the patent office for search for the last ten years. This involves some 350,000 United States patents. They are all classified and open to search if anyone wishes to see them.

Q. I have not got a full answer to my question concerning the commissioner's statement of his opinion as to the number of examiners required to give adequate service to the public, subject to the capacity of the department to absorb and train them?—A. I should say if we had a total of 50 patent examiners and we had a clerical staff of about 110 or 120, we would be able to handle the patent situation. However, that does not include the printing of the patents, understand that. I am simply dealing with the applications in the office, for the clerical staff to handle that much work.

The CHAIRMAN: Then, would you care to answer the second half of Mr. Fleming's question as to how many of those new examiners you could absorb yearly without unduly handicapping your office work.

The WITNESS: That is this year?

By Mr. Fleming:

Q. Or in any year; I assume it would take four or five years to build up your staff?—A. Yes.

Q. You asked for ten this year?—A. Yes.

Q. Ten were authorized?—A. No, there were only twenty-two applicants and of those there were only seven people found to be qualified, and so far only three were appointed. However, ten were authorized.

Q. But you have only obtained three?—A. Yes.

Q. Does that go back, in your opinion, to the question which Mr. Fraser asked? Are you offering them enough money to receive applications from suitable applicants?—A. No, there are a number of people who have called at the office who would like to have come into the Patent Office, but one of the determining factors was beyond the control of the Patent Office. It was the housing situation in Ottawa.

Q. I have heard of that before.—A. Now, that was the situation.

Q. One of the many subjects upon which you have touched was the subject of staff, the examiners. I take it there would have to be a corresponding enlargement of your clerical staff?—A. Yes.

Q. What about the matter of space; would you enlarge upon that?—A. At the present moment we have in the Langevin Block about 7,500 square feet; we have about 3,000 square feet in the Hope Building; we have about 1,500 square feet—that is floor space about which I am speaking—in the Trafalgar Building. I asked the former Secretary of State for 50,000 square feet of floor office space and 20,000 square feet of storage space but the Public Works department has not been able to give us the required accommodation.

Q. Will you say a word, Mr. Commissioner, about the organization of your office? You have spoken about examiners. You have been the Commissioner of Patents for some years now?—A. Since 1935.

Q. Will you describe the structure of your office?—A. Of my own office?

Q. From yourself down?—A.—Well, of course, the commissioner's office is administrative, and all matters regarding the examination of patents which have come to a state of conflict are referred to the commissioner.

Q. Personally?—A. Yes. All applications which are final rejections made by the examiners are subject to appeal to the commissioner. All applications received under section 65 for compulsory licence are dealt with by the commissioner.

Mr. STEWART: Will you speak a little louder, please? We cannot hear you down here.

The WITNESS: Shall I go over it all from the beginning?

Mr. STEWART: No.

The WITNESS: All matters appertaining to compulsory licences are referred to the commissioner and there are hearings in connection with that work. During the war the commissioner also supervised licences for the printing of French publications in Canada, and also the granting of licences to manufacture under enemy-owned patents, with the approval of the custodian. Now, with regard to other powers; the commissioner also has to sign all patents that issue, and patent correspondence, such as personal inquiries by people regarding patents and applications which are pending in the office. The other correspondence to the Patent Office with respect to patent applications in process of examination

go directly to the examiners. They attend to that. That is to say where the examiner has made a report and the reply comes in, that correspondence is handled directly by the examiner. In the case of an appeal from an examiner's decision, that is referred to the commissioner. The commissioner is also open at all times for consultation by the staff in the handling of any particular application with which they may be having difficulty.

By Mr. Fleming:

Q. Where is the bottleneck at the present time? You have given us a lengthy review of your own duties, and it seems to me it would be quite enough to keep any one man pretty busy.—A. I think it is adequate, I assure you.

Q. Is there any possibility of easing the bottleneck by any change in administrative set-up of your duties? You require a period of years in which to build up an examining staff. Is there any other place in which you can ease the present bottleneck?—A. The present bottleneck takes place in the examination of applications, and the delays in attorneys replying to examiners' reports. They are largely on that ground. When the examiners report is sent out the attorney has six months in which to reply. If he takes his time in replying; of course it causes congestion. There are very few applications ever filed at the Patent Office where a patent issues immediately. They usually require about three examinations, and it is these examinations which take up the time and naturally result in building up this backlog of cases in the office which you cannot get rid of.

Q. I take it that your statement is that the bottleneck at the present time is on the examiner level?—A. Yes, it is at the examiner level. I may say that in the United States where they usually have seven hundred examiners lately there has been a request for three hundred additional examiners, bringing their examiner staff up to one thousand. They handle 70,000 to 75,000 applications a year. We handle on the average about 10,000.

Q. Would you give us the statistics of the number of applicatons pending? We had some discussion about that the other day. Would that be in this report that you are going to file with the committee?—A. Yes, the report gives that; the number received.

Q. It would indicate the statistics as to the number pending and the length of time they have been pending? Would it give us a breakdown of that by years?—A. You cannot do that because the cases carry on from one year to another, and a great many of them may be ready for allowance, and although it has taken so many years to deal with all the cases you would get a wrong impression from a breakdown like that. There are applications in the office now filed about 1934 or 1935, and they have been in conflict for three or four years. There are five or six cases involved in conflict. We cannot get the conflicting parties down to an agreement among themselves as to who owns the invention, and until that is done you cannot dispose of these applications. When an application is in conflict, in one case it involved as many as twenty-five applicants on the one conflict; all the other applications filed in that particular art and pending in the office, were necessarily held up until the conflict was decided, until they clear the conflict absolutely.

Hon. Mr. GIBSON: They cannot be forced to agree.

The WITNESS: No. And there is an appeal—when this office finishes with a conflict application there is an appeal to the Exchequer Court—the cases go there and there is a delay again on the same procedure.

By Mr. Fleming:

Q. I take it that there are no statistics available which would advance that information?—A. No. You could not get a table of that kind.

Q. Just one more question and I will sign off. Is the backlog volume increasing? Has it been increasing in recent years?—A. It has been increasing since the first year of the Patent Office.

Q. Yes. Now, has the increase been rapid in recent years?—A. The increase is rapid at the present moment on account of the war, but it was not rapid right up until 1939. We are not holding the line and starting to deal with the cases which have built up the Patent Office. We started in 1935 with nineteen examiners. In 1938 we had twenty-eight examiners. In 1939 we asked for three more examiners. In January of 1939 we got one man. We could not get the others at all in Canada. They were engaged in commercial enterprise and would not enter the office. During the war we could not add to the staff because the men were all otherwise employed. Since the cessation of hostilities we have been making every effort to build up the staff, and our last application to the commission was to give us ten additional examiners, with the results that I have already indicated.

The CHAIRMAN: You have referred to the great delay which occurs where disputes arise as to the ownership of patents—

Hon. Mr. GIBSON: Conflicts.

The WITNESS: Conflicts, yes.

The CHAIRMAN: Are you people lacking in power to resolve these conflicts? Is there any additional power that you would like, that you think you should have now?

The WITNESS: We have sufficient power under the Act and a certain amount of latitude in dealing with applications which come before the office. During the war it was, of course, quite impossible to correspond with foreign applicants whose cases were in conflict. Since ninety per cent of such cases emanate from foreign countries nearly all the people involved in conflict in the office are foreigners. During the war it was quite impossible to correspond with a great many of these people, and a great many conflicts have carried over from these six years of the war. It is only now that we are again able to get replies. That is why applications have been pending for a long, long time—due to the war.

By Mr. Irvine:

Q. What are the academic qualifications required of an examiner?—A. He would need a basic degree in engineering or chemical science. Some of them have their master's degree in science, and they have to have two years of practical experience. They are also required to be graduates of a university of recognized standing.

By Mr. Beaudry:

Q. Am I right in my understanding of your answer to a former question relating to another matter that if you had a large staff you might still have problems arising from outside the office which would still create this backlog?—A. That is quite true. Even in the United States with all they are doing they still have it and there always will be a backlog.

By Mr. Macdonnell:

Q. In connection with this matter of conflicts to which you referred, I think you described cases where there were as many as fifteen people in conflict in respect of a certain patent; and then you went on to say that naturally your branch and everyone else would be held up unless they could clear up the conflict which existed?—A. That is right.

Q. It must be extremely difficult to define where there is an actual infringement; and I am wondering if you would care to say something to enlighten the

committee on that: whether there is any legislative change which could be made to overcome that or, if that is clearly a matter for the scientist. It seems to me that you might have someone here who could give us a statement as to that.

The CHAIRMAN: That bothered me. That is why I asked Mr. Mitchell if he needed any more legislative authority.

The WITNESS: It is purely a matter for the scientists. I think Mr. Robinson, the vice-president of the Patent Institute of Canada, who is here, could tell you something about the attorneys' end of it, those working outside, and the nature of a lot of these delays. When an application is put in conflict the first thing the office does is try to ascertain if there has been a corresponding conflict in any other country in which these applications may have been filed; and, if so, what was the outcome. Conflicts in the United States go on for sometimes many years. In Canada we may be awaiting the outcome of these conflicts in the United States before endeavouring to proceed to deal with the conflicts in Canada; and it is only fair that they should be allowed time for that to be done.

By Mr. Macdonnell:

Q. They should be allowed that time, regardless.—A. Otherwise they are going to jeopardize their interest and possibly take away a right which is theirs. I do not think it would be fair to take away, or even to interfere with those rights. For that reason we have to wait until the report is out to see what the information is; then we have to go ahead and try to clear it up here. If the case is still in conflict we have to decide the scope of each claim and which claims are in conflict. As I have said already there were as many as twenty-seven cases in conflict at one time by one examiner in the particular case I mentioned.

Q. I am still a little perplexed as to what it seems to mean. It means, perhaps inevitably, that we are a little dependent on progress in the United States, but they may have been a little dilatory over there; and you think there is no escape from that.—A. There is no escape from that. I think probably Mr. Robinson could answer that question.

The CHAIRMAN: Would you care to give us an illustration of one of these cases of conflict?

The WITNESS: The conflict of which I was speaking, of course, was in the washing-machine field, with respect to which there is a large industry in Canada. I cannot tell you anything about it because it is secret. Applications for patents themselves are secret and I cannot divulge any details of them to anyone until after the issue in conflict has been resolved and the patent issued. You can then see our files. If the minister cares to give the committee permission to investigate any particular case, of course, that can probably be arranged. Otherwise, I shall have to follow the usual procedure.

By Mr. Jaenicke:

Q. Are there any cases in which conflicts take place in Canada where they have to wait upon the outcome of a conflict in the United States before the Canadian conflict can be dealt with?—A. Not as a rule, because United States law is entirely different from Canadian law. In Canada you can only get a patent if you are the first inventor. In the United States it is the man in the United States who introduces the invention into the United States. There is also in the United States certain requirements of diligence. You cannot delay too long. Now, we have not got that requirement of diligence here. It might help if we had.

Q. But there is nothing in the International Convention that would prevent us from proceeding with an adjustment of our own conflict without waiting for the outcome over there?—A. There is nothing of an international nature that

would prevent us dealing with conflicts. The international convention deals principally with priority, and a few other rights flowing from that, but it does not touch on conflicts.

By Mr. Fulton:

Q. Why could we not say the first man to apply for registration of a patent in Canada should be entitled to it in the same way as they do in the States?—A. We might do that to a certain extent, but I do not think it would be practical. I do not think it can be done.

The CHAIRMAN: Gentlemen, we have with us available to give evidence Mr. Robinson, the first vice-president of the Patent Institute of Canada. Would it be well now to stand aside this first discussion and hear from him? I would think that he would have the points pretty well clarified as to delay.

Mr. FLEMING: May I ask one more question, Mr. Chairman?

The CHAIRMAN: Yes, Mr. Fleming.

By Mr. Fulton:

I think the commissioner would be prepared to elaborate the answer he gave. If he cannot do that, why not?—A. We cannot do that because of the international convention. We have allowed them a certain period of time within which to apply in Canada after filing their patent application in the foreign country. We could not go against our international obligations.

Mr. MACDONNELL: That raises the question as to whether we should take it to the international convention.

The WITNESS: That might be a matter to be brought before the next international convention. I expect there will be one next year, but there has been no revision since before the war, and it was usually revised every ten years. It might be that something worth while could be brought up at the next international convention.

Mr. MACDONNELL: So we are at a disadvantage because we are following a system which is apparently more generous than that followed in the United States.

The WITNESS: I think we are more generous in some ways than the United States. Of course, the United States people may not think so. That is a matter of opinion.

By Mr. Fleming:

Q. I would like to ask the commissioner about examiners. Is there anything that can be done to expedite the recruiting of additional personnel? What I am particularly interested in is this: Is there anything that can be done at all by way of recruiting additional training personnel for the purpose of expediting the training of personnel so that we could build up an examining staff faster than we are doing at the present time within the department?—A. I could absorb some ten associate examiners each year until my staff was up to a total of fifty examiners. These ten examiners would have to come in for training under the direction of staff examiners. In other words, when a man comes into the office he first of all has to go through the Patent Act and find out what the statutory requirements for patents are. He then gets applications of a simple nature to examine. He is instructed as to how to examine them. When he has completed his simple examinations they are brought before the examiner who confers with the associate to see whether or not he is proceeding the right way—just like teaching.

Hon. Mr. GIBSON: It is like training apprentices.

The WITNESS: Yes, you have to go through the training, it cannot be acquired otherwise.

By Mr. Fleming:

Q. Is there no way by which you could expedite that procedure by recruiting, let us say, training personnel?—A. With fifty examiners we would have most of that backlog taken care of. As a matter of fact, the man who came in this year might start to be useful next year and the following year he would be able to do a trained man's work. As a matter of fact you sometimes find that at the end of the training period he can do as good work as examiners who have been with us for fifteen years. His standing depends on the capability of the man, and we find that as a rule it takes about three years to train him. After that he has a definite value to the office. Unfortunately, it is not infrequently the case when we have trained a man he leaves us and goes into private practice in an outside office. As a matter of fact recently we had two very well trained men leave us to go into private practice in an outside office. They both went to very well known firms of patent attorneys at very much larger salaries. But the point is that they got their training in the patent office. We trained them for outside interests. And I do not think that is altogether fair to us.

Q. That is not unknown. My other question has to do with printing. Anyone who has had anything to do with printing will appreciate the importance and the difficulty of printing. What is done in the way of printing now? Is it just that you need more fees; or, is there some question of ability involved? —A. I really could not tell you what stood in the way of it because the act of 1935 provided for the printing of patents.

Q. Who has held if off? Why has it not been done?—A. The fact of the matter is it probably would have been done before this. The war upset tremendously what we were trying to do. We were getting along very nicely up until 1939. We were getting well ahead every year. We had discussed the possibilities of printing. We approached the Printing Bureau back about 1920 or thereabouts and they gave us a price of $19.00 per patent for fifty copies. Their price to-day for seventy-five copies of a patent is $62.50 which means that we would have to spend, if we went to the Printing Bureau to get that done, $650,000 each year for the printing of Canadian patents, from which we would derive a revenue of probably $20,000 a year.

Q. For whose decision is the printing waiting now?—A. The printing is waiting until we get the money, until we get the space. When we get the space we are going to print by an offset photographic method of printing. It has been investigated. I went to the United States on the instructions of the former Secretary of State. We estimate we can print 75 copies of each patent, taking the average patent as 15 pages and a page and a half or two pages of drawings, for $15.35.

By Mr. Macdonnell:

Q. Do you mean to say that a government department wanted 400 per cent profit?—A. I do not know whether it was profit. It is not the same process at all. We are going to use an offset printing process.

The CHAIRMAN: A much cheaper type of printing but you think quite good enough for your purpose.

The WITNESS: The United States government are reprinting 100 copies of United States patents by private enterprise. It is let out to a private company and they are printing them for $13.75.

Mr. FLEMING: As against the figure of the King's printer of $62.

Mr. MACDONNELL: More than 400 per cent.

Mr. FLEMING: I think we ought to be in the printing business.

The WITNESS: This is the offset process. That is the type of printing which we propose to do. The drawings are at the back. I should like you to look at the drawings. You can see what we are proposing to do.

By Mr. Fleming:

Q. This is the offset process?—A. Yes. We can print those for 25 cents a copy.

Q. That is good enough for anybody?—A. I should imagine so.

Q. But I am still asking who is going to make the decision on the printing? Is that your decision or is that a matter for the Governor in Council?—A. It is a matter for the Governor in Council. Section 25 of the Patent Act says this:

> 25. The Commissioner shall, in each year, cause to be prepared and laid before parliament a report of the proceedings under this Act, and shall, from time to time and at least once in each year, publish a list of all patents granted—

which we do in the *Patent Office Record*—

> and may, with the approval of the Governor in Council, cause such specification and drawings as are deemed of interest or essential parts thereof, to be printed, from time to time, for distribution or sale.

Q. It comes down to this then that the decision to print will have to be taken by the Governor in Council, and up to the present time the war has interfered, the shortage of paper and printing facilities?—A. And do not forget space.

Q. Space, and then the matter of expense.—A. The office was contemplating printing in the very same manner as one of the other departments of the government, the statistical branch. They print all their own reports by the offset process. They have a very nice plant. We looked through the plant. They gave us a figure. We investigated very carefully, and our investigation of their plant gave us a figure of about $15.

By the Chairman:

Q. Have you obtained estimates or tenders from the printing trade as to what this offset printing will cost?—A. We asked two of them to give us a figure and they would not touch it.

By Mr. Mayhew:

Q. Would there be any great volume that you would be printing?—A. The volume we would be printing?

Q. The volume in offset printing is certainly a very great factor. The initial setup is a terrific expense.—A. We timed all the operations at the Bureau of Statistics, the preparation of the plates, the setup and then the printing process. We investigated each step, and the number of people employed in each step.

The CHAIRMAN: Gentlemen, would it meet with your approval to ask Mr. Mitchell to make whatever statement he cares to make in a general way on the bill and the reasons for the proposed amendments? Then we will proceed to deal with the bill a section at a time. I have one other suggestion to make. It does seem to me that perhaps the question of space is one reason why there has been a delay. If this office is spread around in three different buildings and has wholly inadequate space it might be that the committee would care to make an inspection of the space now occupied by the department and make a recommendation in that regard. It may be helpful.

Mr. MACDONNELL: Could we not send the steering committee to do that?

The CHAIRMAN: A small committee would serve.

Mr. FLEMING: I thought there was someone you were going to call on now.

The CHAIRMAN: I would rather have the general statement first.

Mr. STEWART: We are not going to discuss the clauses of the bill now?

The CHAIRMAN: Oh no, a general statement first from the commissioner.

The WITNESS: I will run through the sections.

Mr. MAYHEW: Are we here to discuss the bill or are we here to discuss the economic operations of the department and its general work?

The CHAIRMAN: I do not think we should get too far away from the order of reference, but I do think if in the course of our inquiry as to this bill amending the Patent Act we gather any information that would be helpful to the department perhaps we might pass it on.

Mr. BLACKMORE: Hear, hear.

The CHAIRMAN: All right, Mr. Mitchell.

The WITNESS: Section 3 of the bill is to facilitate giving information to commercial companies in Canada as to patent applications filed in Canada of a nature similar to issued foreign patents. On the information which the office may give an industry may start up in Canada without being hampered by a patent. For instance, if a patent is issued in the United States and an application is not filed in Canada a Canadian industrial concern may see this United States patent and ask us if a corresponding application has been filed in Canada. If we answer "no" and they are clear under all other sections of the Act they may go ahead and manufacture in Canada without any possibility of infringement or being held responsible for using this particular invention. Section 3 of the bill refers to sections 11 and 12 of the Act. The provision as to section 12 of the Act is to allow the office to look after secret applications which have been filed during the war at the request of foreign countries so that they will not be thrown open to ordinary examination, with the possibility of leakage of the information contained in them, after March 31 when the temporary legislation ceases to be in effect. That is the object of that.

In Great Britain they have secret patents. In the United States they have secret patents. This particular section deals only with patents owned by the Canadian government, not by any other.

The purpose of section 19 (*b*) of the Act is only to bring it into harmony with the Atomic Energy Act so that we may work with them as closely as possible and see that applications filed pertaining to atomic energy are dealt with in the manner provided for by the Atomic Energy Act or the rules and regulations under that Act.

Section 5 of the bill deals with the repeal of section 23 of the Act. We repealed it for the reason that it refers to patents issued prior to the 13th day of June, 1923. The last patent issued prior to the 13th day of June, 1923, must have expired on the 13th day of June, 1941, so that the section does not really fulfil any useful function now.

The reason for the amendment to section 26 is to clarify the section. There is nothing of any moment in it. It is a mere case of clarifying the section. Section 26 (1) of the Act reads:—

> 26. (1) Subject to the subsequent provisions of this section, any inventor of an invention,

and in subsection 2 it says:—

> Any inventor or legal representative of an inventor.

The reason for amending section 26 (1) is to bring it into harmony with subsection 2, namely "Any inventor or legal representative of an inventor."

There are some smaller amendments which may be made to that section

but they do not alter its import at all. Section 9 of the bill refers to section 28 of the Act. Its purpose is to permit the filing of applications in Canada at this late date when those applications could not have been filed during the war.

There may have been various reasons. We have been a little generous here because it does not necessarily have to be a war reason. It may be that the person who wants to file his application here did not find it expedient at that time to file in Canada but now he wants to come into Canada and file his application. Of course, if he comes in and starts an industry we may be quite pleased to have him. I do not know.

Section 28 allows the filing of applications in Canada which might have been filed or should have been filed during the war years, but as to which the inventor was unable to file his application in Canada for personal or other reasons.

Section 10 of the bill, referring to section 29 of the Act, is a rather debatable section in some ways. I want to explain that we require an oath in a Canadian application, and there are only three countries in the world which require oaths to be filed with the patent applications. They are the United States, Canada and Newfoundland. I do not know how that first came into the Patent Act. Probably it was copied from the United States. It may have some use. Personally I do not know that it has much use. However, it is in the Act and we wanted to clarify when the oath should or may be filed.

Section 11 of the bill has to do with the fee. There is nothing in that.

Section 12 of the bill refers to section 31 of the Act. It is amended to clarify it. There was some doubt as to what "action" was. The only action that there is in the patent office is examiner's action. We clarified section 31 to bring out that the action on which it depended there was the examiner's action.

Section 13 of the bill refers to section 32 of the Act. During the last few years we have found on a number of occasions joint inventors had made a certain invention and had disagreed as to filing an application. The result was that an application could not be filed.

We are making provision here that if all the inventors will not make an application one of them may do so. We are not depriving the other inventors of the right to come in. If they want to come in and join with the first inventor they are at liberty to do so under the Act. Apart from that there is a section in this bill which will provide that they can have the register in the patent office corrected as to the title to the invention or patent if so desired. It is merely to correct a condition that exists. I think it should be corrected because it has prevented applications being filed as to a great many useful inventions, and knowledge of them being disseminated throughout the country.

Section 14 of the bill is merely a change of the fee.

Section 15 of the bill deals with a typographical error.

Section 16 of the bill deals with what will be section 52 (*a*) of the Act. If any assignment of ownership to a patent is presented in the patent office we do not inquire whether the assignment is a good assignment or not. If everything appears to be in order and it is signed by the contracting parties we simply register the assignment, but let us suppose there is an application for a patent and an assignment is filed which is a fraudulent assignment.

There was no provision in the Act for going to the Exchequer Court to correct the register of the patent office. This section of the bill is merely to correct the register, the ownership of title to the patent. It has nothing whatever to do with purging the register of lapsed patents. It is only to correct the ownership.

Secion 73, deals with the tariff of fees for the purpose of printing. During the sitting of this committee it has been represented to me that section 77 of the

Act which is dealt with in section 18 of the bill should be repealed in toto and not merely by way of an amendment to the section. I suppose that will be discussed at a later date.

The CHAIRMAN: Is there anything more?

By Mr. Beaudry:

Q. Do I understand you are the commissioner both of patents and copyrights?—A. Yes, there is a connection between copyrights and industrial designs. There is a very close tie between industrial designs and patents and you cannot separate them.

Q. Would you be good enough to tell me what the rank is of the highest French-speaking officer in your department?—A. The highest ranking French officer in the department at the present moment is the assistant commissioner. The late assistant commissioner retired a year and a half ago, but he was off for six months due to illness before that. As a matter of fact, the new assistant commissioner was appointed last week.

By Mr. Lesage:

Q. Just one question; Section 52A is there any special procedure in connection with that?—A. That would come under the procedure of the Exchequer Court and would be governed by the rules of that court.

Q. Would notice be given?—A. They would have to serve the office.

Q. Is there anything in the Act or would it be at the option of the clerk?—A. No, they would serve the office with the notice because we would be the party to it. We would produce our books and say, "Here is the situation; we did register this. It is registered under so-and-so and here is the assignment."

Q. It would not be by way of ex parte procedure?—A. There might be an ex parte procedure because it might be so obvious it is fraudulent that it might be by way of ex parte procedure.

Q. Who is going to decide that? Would it be according to the rules of the Exchequer Court?—A. It would be decided by the Exchequer Court. The Exchequer Court has full powers in this matter.

The CHAIRMAN: Would the committee care to hear a general statement from the vice-president of the Patent Institute, before we go into the bill clause by clause? All those in favour?

Some Hon. MEMBERS: Agreed.

Christopher Robinson, Vice-President of the Patent Institute of Canada, called:

The WITNESS: Mr. Chairman, at this stage there is not very much, on behalf of the Patent Institute, I can usefully say. We think that the purposes of the bill are good and, in general, we agree with the proposals made. We have some suggestions to make concerning the phraseology of some of the provisions. We will also offer some suggestions concerning possible additional provisions covering one or two points. We think it would be useful to deal with them since the Act is being amended. We have some criticisms of the inclusion of certain provisions but whether, Mr. Chairman, it is desirable that those be put forward at this stage, before the bill is being considered section by section—

The CHAIRMAN: Is it your intention to attend the committee meetings during the entire course of our enquiry?

The WITNESS: Yes, sir.

The CHAIRMAN: Then, in that event, if you will indicate to the committee when we reach the sections upon which you wish to speak, I think that would be the proper procedure.

Mr. JACKMAN: I wonder if Mr. Robinson would tell us what the Patent Institute is? What are some of the problems as seen through the eyes of the institute? Who supports the institute?

Mr. IRVINE: That is the information I desire, too; will you tell us about the Patent Institute, its relationship to this department and so on?

The WITNESS: The Patent Institute of Canada is an association of what you might call, shortly, patent attorneys. Actually, they are people, some of whom are members of the Bar and some of whom are not, but generally the principal occupation of whom is to give advice to people who have invented something they desire to have patented, or to manufacturers who may desire to undertake the manufacture of some article and wish to know whether they are likely to get into patent trouble if they do. All the members of the institute are principally, if you like, professional advisers on patent matters, some of them being members of the Bar and some not.

By Mr. Michaud:

Q. How many members are there in your institute, approximately?—A. We have about forty Canadian members, we have about twenty British associates and I should think probably thirty to forty foreign associates.

Q. Are all the individuals who perform your functions, members of your institute?—A. No, the institute does not cover all people who engage in this profession in Canada.

By Mr. Jackman:

Q. May I ask you whether the leading patent solicitors of this country are members of your association? Have you a good representation among them?—A. There might be a difference of opinion on that. I can say this, most of the people who are in this profession in Canada are members of the institute.

By Mr. Jaenicke:

Q. It is not a compulsory society, a society such as the Law Society where everyone must be a member?—A. No, not at all.

Q. It is a voluntary organization?—A. Yes.

By Mr. Fulton:

Q. Have you any special relationship with the Patent Office or the commissioner?—A. No.

Q. It is just a matter of grace and courtesy?—A. We have no special relationship except that we are, naturally, in contact with the Patent Office all the time because that is our job.

By Mr. Irvine:

Q. Are you good friends?—A. Sometimes; I think perhaps occasionally we make the commissioner's life a burden.

By Mr. Jackman:

Q. The members pay fees and they keep a central office going?—A. Yes.

Q. You are the vice-president. Is this just a position of honour for you? Is your main source of income from your private practice or are you engaged full time by the institute?—A. No, my main source of income is from my

practice. There is no income provided for the officers of the institute with the exception of an honorarium for the secretary. All the officers are carrying on their ordinary practice.

Q. Even the secretary?—A. Even the secretary.

By Mr. Michaud:

Q. You are not like the high officers of a labour union?—A. No, we are not a very large organization because the number of people who are engaged in this profession, if you took them all, both in and out of the institute, is not very great.

By Mr. Jackman:

Q. How old is the organization?—A. It goes back to 1926. It was incorporated in 1935.

Mr. FLEMING: I think the suggestion that we call on Mr. Robinson as we read the provisions of the bill section by section is a good one. However, I wonder if there are any general representations he may desire to make other than the views he has already expressed?

Mr. RINFRET: Perhaps you have some general information you wish to give the committee?

Mr. JACKMAN: Mr. Robinson may want to make some general statement in regard to how the Patent Act operates in Canada. Are there any particular difficulties? Are you labouring under any particular difficulties, or is it too easy for people to get patents in Canada?

The WITNESS: I should say the statute is a good one but, like every statute, there are possibilities for improving it. I think the main difficulty is the difficulty which the commissioner has mentioned, that is with regard to the insufficiency of space and the insufficiency of staff in the Patent Office to take care of the work. This is a most unsatisfactory condition and one which I think everyone agrees should be cleared up as soon as it is possible to do so. As the commissioner indicated, it cannot be done over night because the Patent Office is suffering from the results of years, if you like, of neglect. This office has not been given the staff or space it should have been given. The result is the work has just piled up in the Patent Office.

The difficulty in that connection in this country is that you get a patent for seventeen years from the date from which it is granted. From the date of the grant you have a monopoly on that invention for seventeen years. The theory of the thing is that you can only obtain a patent on something from which the public has never had any benefit before. You can only obtain a patent on something which is new. In the United States they say, "Well, if you will disclose to us this new thing of which you talk and which should be of general benefit to the public, we, in return for such disclosure, so that anyone who reads the patent will be able to put it into practice, will give you a monopoly for a certain term of years. This will only be for a limited term, the idea being when the monopoly is over, the public will have the full benefit of your invention." The alternative would be to have the inventor keep the secret and the public would not have any benefit from it.

By Mr. Michaud:

Q. Would you happen to know what period of time is granted in the other countries?—A. Yes, in the United States, it is seventeen years from the date of the grant; in England, it is sixteen years from the date of the application; in France, it is twenty years from the date of the application; in Germany, it was eighteen—

By Mr. Rinfret:

Q. From the application or the grant?—A. From the application. The difference between the North American way of dealing with it and, in general, the European way of dealing with it, is that in North America, both in the United States and Canada, the patents run from the date of the grant. As a result, if the granting of the patent is held up, the term of the monopoly may, in effect, be extended. Once you have filed an application—let us say you are making an article upon which you have applied for a patent—you are entitled to mark it "patent pending" or "patent applied for"; all the members of the committee have seen those words. This mark has no legal validity at all. So long as the patent has not been granted anyone is perfectly free to make the thing which is covered by the patent application.

The difficulty arises in this way: if the article is one which would cost a lot of money to manufacture, or one which would entail a large capital expenditure, either in building a factory or something else, the manufacturers could not take a chance on doing that because they know that some time or another—they cannot tell when—the patent is going to come out with the result that if some thing is not covered by the patent application—unless it is the kind of thing that can be made in large volume and at low capital cost and quickly it is very unlikely that anyone is going to assume the risk of starting to manufacture, because you might have to stop in two weeks; he could have three years. That is why it is desirable that applications should be brought out of the Patent Office as quickly as possible; they should be either definitely refused or granted as soon as possible.

By Mr. Jaenicke:

Q Is that the fault of the Patent Office always, or sometimes the fault of the attorneys?—A. I think it is possibly the fault of both; because there is no doubt about it that if the Patent Office is not in a position to force the thing on—there are certain legal delays attaching to the issue of a patent itself. For example, after you file an application the examiner considers it and he may rightly say you cannot have your patent or you cannot have the patent in as broad terms as you have asked for because there are, or there may be, other patents covering very much the same sort of thing. And now, when you receive a communication from the examiner under the Patent Act you have a period of six months in which to answer that letter. It must be answered within six months otherwise the application is vacated. It is quite true that in a great many cases probably the full six months is taken; but the average lapse of time under the present provisions before there is any action by the examiner is far over six months. It might be possible, particularly if the Patent Office were up to date in its work eventually to cut that time down a little bit; but in almost all countries they do give a term of about six months. Some give longer. A few give as little as four months. But you have got to consider the difficulties of a man who may be living in South Africa or Australia who has applied for a patent in Canada. A letter has to go out to him; and then probably some patent attorney in Australia has to get in touch with his client and they have to exchange some correspondence to arrive at a decision as to what to do about it and then they have to write back. The six-month limit is not I think on the whole unreasonable; but by and large I think the great delay under present conditions, is not the fault of the Patent Office staff but it is delay within the patent office; and there simply are not enough examiners to examine these cases and act on them as soon as they come in, as would be desirable. As an indication of the sort of thing that can be done under satisfactory conditions you must consider the United States before the war. Not now, of course. They made beginning

in the middle '30's—a concerted effort to bring their work more up to date. For one thing they increased the number of their staff enormously, with the result that just before the war you got the first action by the examiner; that is, you got the first letter from the examiner in anywhere from four to six months, if your application had not failed. In the United States the time limit is now about fifteen months. In Canada I think it is considerably longer than that. The important thing, as the commissioner indicated, is to get more space and more staff and bring the work up to date. If that were done it would be much easier for the Patent Office in dealing with applications to get on with the job. There are cases, of course, where a person representing a client takes advantage of the opportunity for delay. I have no doubt done it myself—taken advantage of the fact that the work is so far behind. Some members of the committee are no doubt members of the Bar and they know that their professional obligations in certain cases may be, to be fair to their client, to apply the rules of court in a way that is most advantageous to him. But that does not mean that looking at it as a member of the public, you may think that these rules are, first, the best ones to have. You may well think it would be desirable to have different rules, rules which would not make that sort of thing possible.

By the Chairman:

Q. I take it that once an application for a patent is filed in most instances the applicant is reasonably well-protected?—A. Well, he is protected in this way that he has established an official date on which he must have made his invention, because he must have made his invention by the time he filed his application. Once he has filed it he is protected from the point of view of somebody else coming along and getting in ahead of him, that he and not they are entitled to the invention.

Q. Yes?—A. And mind you that protection is not absolute.

Q. No; but if he finds anyone entering the field on a temporary basis, which anyone can do.—A. Yes.

Q. If he finds anyone entering the field he can then—perhaps they are trying to take advantage of this time limit—he can then press for the grant of his patent?—A. Well, in exceptional cases like that he can get what is called a special order from the commissioner for immediate action on his application. If you can make a showing that you are going to be prejudiced by the normal delays in having the case taken up for consideration within the Patent Office you can get an order from the commissioner directing the examiner to take that case out of its turn. For example, in a case such as you are suggesting, where someone is infringing, is using your invention, and you want to get your patent out. But that is something which has to do naturally with the benefit to the applicant—

Q. I was coming to that. I was just prefacing my question, leading up to a further point. Then, the way our present legislation sits, the applicant can extend the seventeen year benefit which he has under a patent perhaps another three or four years by being dilatory in prosecuting his application.—A. Well, I think perhaps that is putting it a little high. In the first place, the applicant has got to answer the action by the examiner within six months. He cannot put it off any longer than that. If the Patent Office were able to deal with the applications and with the replies on their official actions promptly you could very much cut down the length of time that it takes an application to go through from the time of filing to the time of the issue of a patent. It would depend pretty much upon the individual case. Some cases, of course, are a great deal more difficult than others. But, if the Patent Office were fully staffed they would be able to cut down the time within the office. And I think it is fair to say this, that in cases where the answer to an official objection to an examiner is not a full answer

the examiner would be in a much better position to hold the applicant's answer up until, let us say, you have got the full answer; or, he could say: now you have not given us a full answer and your application is abandoned.

Q. Answering now as a member of the general public and not as a patent attorney, what would you say as to an amendment to the present act to make the patent term extend for only seventeen years from the date of application?—A. Well, I think seventeen years from the date of application would be rather short. I might say, Mr. Chairman, that there have been a great many suggestions, particularly in the United States, for the limiting of the time of the patent by reference to the date of filing. On this basis, for example, a patent might run not for twenty years from date of filing and not for seventeen years from date of granting—in a great number of cases where applications have been pending for a very long time that would be perfectly satisfactory, and a satisfactory provision if the work of the Patent Office were up to date; but so long as the work of the Patent Office is not up to date it might work very great hardship on the applicant.

Q. But you have already told us that he is reasonably well protected anyway. If anyone invades the field during the time the application is pending there is provision for very prompt action.—A. One difficulty about that is that you do not always know whether anybody is invading your field or not, particularly in the case of a foreign application; and, if you had to deal specially with a very large proportion of applications, had to get them dealt with specially it would very much decrease your difficulty. It is only in the very, very rare case—

By Mr. Rinfret:

Q. Would you be right in saying that there are absolutely no cases where the applicant is interested say definitely in delaying the application?—A. I certainly would not. Perhaps I have not made myself clear. The point I am trying to make to the committee is that from the public point of view everything should be done to prevent any abuse of formal procedure within the Patent Office and to get the patents out as quickly as they can possibly be got out. I do not think that the time limits that are in the act for answering official objections are unduly long.

By the Chairman:

Q. May I put it this way: from your experience, your wide experience as a patent attorney, can you foresee that any substantial harm or injury would occur to an applicant if an over-all ceiling of twenty years from the date of application should be written into the act?—A. Under present conditions, yes. Under conditions such as existed in the United States patent office before the war, I should say, probably not. And I emphasize again that I am speaking personally.

Q. Would you elaborate on the "yes"?—A. Because of the inevitable delays in getting the applications dealt with in the Patent Office.

Q. Do you know of any specific cases where infringements are taking place during this interim period between the date of application and the date of issue of the patent? Your answer "yes" rather involved that. That is why I asked that supplementary question.—A. No. It is difficult to put your finger on particular cases; but there is this point, that in a good many cases it may be undesirable for anyone to start in on the manufacture of, or to make much disclosure about an invention before a patent has been granted.

Q. Do you think an applicant would not embark upon a heavy expenditure getting ready for production until he actually had his patent?—A. Very often that is the position; and very often he is afraid to make much disclosure about

the invention, particularly if it is one that can be made fairly quickly and with low capital expenditure, because his patent may be delayed a long time and you do not know how many other people are going to come into the field.

Q. What would you suggest then as an over-all ceiling if the three-year period is not long enough? What would you suggest would be a proper period?—A. I haven't got the figures with me now. We did have at one time some figures on the average pendency of applications.

Q. Perhaps you could look them up and let us have them later.—A. It seems to me that in principle a reasonable ceiling might be one of seventeen years, plus the average pendency of applications now; that, possibly, to be reduced if it were possible to get applications out more quickly.

The CHAIRMAN: It is now five minutes to one. The agenda committee met and decided to recommend that our next meeting this week be on Friday morning at 11 o'clock. Shall we adjourn until Friday at 11 a.m.?

Mr. Low: I so move.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

FRIDAY, FEBRUARY 28, 1947

WITNESS:

Mr. J. T. Mitchell, Commissioner of Patents.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

FRIDAY, February 28, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Black, (*Cumberland*), Blackmore, Cleaver, Dechene, Dionne (*Beauce*), Fleming, Fraser, Fulton, Gour, Harkness, Hazen, Irvine, Isnor, Jaenicke, Jutras, Lesage, Macdonnell (*Muskoka-Ontario*), Marquis, Michaud, Quelch, Rinfret, Ross (*Souris*), Stewart (*Winnipeg North*), Strum (Mrs.), Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents and other officials of the Patent and Copyright office, and Mr. Christopher Robinson, Vice-President of the Patent Institute of Canada.

At the request of Mr. Jaenicke, it was ordered that the following correction be made in the printed minutes of evidence of February 25, viz:

In the three first lines of paragraph eight, for the words "Are there any cases in which conflicts take place in Canada where they have to wait upon the outcome of a conflict in the United States before the Canadian conflict can be dealt with?", substitute the following:

"Are there any cases in which conflicts take place in *the United States* where they have to wait upon the outcome of a conflict in *Canada* before the *United States* conflict can be dealt with?"

On motion of Mr. Jaenicke,

Ordered,—That there be printed 750 copies in English and 250 copies in French of the Minutes of Proceedings and Evidence relating to Bill No. 16, An Act to amend the Patent Act, 1935.

On motion of Mr. Fleming,

Resolved,—That Mr. Rinfret be appointed Vice-Chairman of the Committee.

The Committee resumed consideration of Bill No. 16, An Act to amend the Patent Act, 1935.

Mr. Mitchell was recalled. He read statements in answer to questions asked at the last sitting, and was further examined.

Mr. Fleming submitted a copy of Sessional Paper No. 101A, dated 18th July, 1946, and it was ordered that the said document be printed in this day's proceedings. (*See Appendix "A"*).

Examination of Mr. Mitchell was continued until 12.50 p.m., when the Committee adjourned until Tuesday, March 4, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

82895—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
February 28, 1947.

The standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. Shall we proceed?

Mr. JAENICKE: Mr. Chairman, before we proceed I wish to request correction of the record of the last meeting. On page 18 I am reported to have asked the following question:

> Are there any cases in which conflicts take place in Canada where they have to wait upon the outcome of a conflict in the United States before the Canadian conflict can be dealt with?

I think, Mr. Chairman, you will recollect that my question was just the other way about. It should read:

> Are there any cases in which conflicts take place in the United States where they have to wait upon the outcome of a conflict in Canada before the United States conflict can be dealt with?

Of course, that was my question. The answer and the previous evidence would indicate that.

The CHAIRMAN: Yes, thank you, Mr. Jaenicke; that correction has been noted.

Before we proceed with Mr. Mitchell's evidence, I should have asked the committee at our last meeting to indicate how many copies of the Minutes of Proceedings and Evidence of this committee with respect to bill 16 should be printed. The suggestion has been made to me that we should have 750 copies printed in English and 250 copies in French. What is your pleasure in that regard?

Mr. FULTON: I so move.

The CHAIRMAN: Mr. Fulton moves that in respect of bill 16—

Mr. FULTON: I asked a question, why so many? Normally, it is 500 copies in English and 200 in French. Is there any particular reason why we should vary that?

Mr. FLEMING: Does that include the number furnished to members of parliament?

The CHAIRMAN: That is the over-all number.

Mr. IRVINE: Must that motion go through to-day? The number we require might be determined by what sort of matter is contained in the report. If the question is not an urgent one, we might settle it some other day. Otherwise, I am in favour of printing the larger number.

The CHAIRMAN: In order to be safe, so we would not be short of copies of the first meeting, and as there was no authority from the committee, I took the responsibility for ordering a sufficient number printed. They are in your hands, now. As to the subsequent issues I am, of course, in the hands of the committee.

Mr. HAZEN: What does the clerk of the committee advise? He must have a good deal of experience in these matters.

Mr. FULTON: Will you tell us whether the 250 extra make much difference to the cost of printing?

The CHAIRMAN: Very little difference in the cost.

Mr. JAENICKE: I so move.

The CHAIRMAN: Mr. Jaenicke moves, in respect of bill 16, an Act to amend the Patent Act, that 750 copies be printed in English and 250 copies be printed in French of the Minutes of Proceedings and Evidence of this committee. All those in favour?

Motion carried.

Will you carry on, Mr. Mitchell, please? You might first table the information which you promised to give the committee when you were giving your evidence last Tuesday.

J. T. Mitchell, Commissioner of Patents, recalled:

The WITNESS: Mr. Chairman, there was a question asked with respect to international conventions for the protection of industrial property. I should like to read the following memorandum in reply to that question:

> The convention was signed at Paris, March 20, 1883, and revised at Brussels, December 14, 1900; at Washington, June 2, 1911; at The Hague, November 6, 1925, and lastly at London, June 2, 1934.
>
> The contracting countries constituted themselves into a union for the protection of industrial property.
>
> The protection of industrial property is concerned with patents, utility models, industrial designs and models, trade marks, trade names and indications of source or appellations of origin and the repression of unfair competition.
>
> On January 1, 1946, the general union comprised 37 member countries. Canada became a member on September 1, 1923, and adheres to the text of The Hague revision.
>
> This brief explanation of the union will be confined to patent applications and patents.
>
> Article 4 of the convention provides that any person who has duly deposited an application for a patent in one of the contracting countries, shall enjoy for the purposes of deposit in the other countries a right of priority during a stated period.
>
> The period of priority for patents is twelve months and there are regulations respecting the declaration to be made by the applicant of the date and country of first deposit, the proof of deposit such as a certificate from the proper authority and other formalities.
>
> In effect this section means that conforming to certain formalities any person who files an application in any country of the union may file the application in any other country of the union not later than twelve months thereafter and enjoy the rights and advantages he would have in the other country if he had filed the application not later than the filing in the first country. The rights and advantages of a patentee of any country of the union in any other country of the union are the same as those granted to nationals of that other country.
>
> Article 5 of the convention provides that 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 exclusive rights conferred by the patent, for example, failure to work, but in no case can a patent be made liable to such measures before the expiration of three years from the date of grant of the patent.

This means that a patentee may import the article manufactured in any of the countries of the union into the country where the patent has been granted for a period not exceeding three years from the date of grant of the patent. Importation and/or failure to work after three years would bring the patentee within the patent regulations of the country where the patent was granted, unless the patentee is able to justify the importation or non-manufacture by legitimate reasons. In the Canadian Patent Act there is provision for the commissioner to grant a licence precluding the importation of a patented article and either requiring the patentee to work the invention in Canada or permitting the manufacture by other persons.

There are other articles referring to the use of patented inventions used on board ships, aircraft and land vehicles temporarily or accidentally penetrating the country, the granting of temporary protection for goods exhibited at official or international exhibitions held in the territory of one of the contracting countries, the establishment of government departments for communication to the public of patents, etc., but the articles explained in detail are the main clauses dealing with patents.

Does that answer the question?

There was a second question asked dealing with a review of the printing estimates.

In January 1919, the Printing Bureau estimated the cost of printing a patent of average length at $22.90. This was for fifty copies in pamphlet form 11" x 8". With the yearly issue then at 7,200 the cost would have been $164,000.

In June 1925, the King's Printer gave an estimate for fifty copies of approximately $22.00 per patent. With the annual issue at 9,000 at that time the cost would have been $198,000.

In 1929 the office made another estimate of $21.90 per patent and with the yearly issue of 9,000 the cost would have been $197,000.

In 1931, a firm outside of Ottawa made a proposition for reproduction at a cost approximately $7.00 per patent for twenty-five copies but could not guarantee more than 50 patents per week or 2,500 yearly. As the patent issue was then 11,000 yearly the proposition was not further considered.

In 1935 an estimate for reproduction by a photographic process was submitted at a cost of $7.50 per patent for thirty copies. The yearly cost at that time for an issue of 8,700 patents would have been approximately $65,000. This estimate was not satisfactory as it was made on the basis that the work would be done in the Patent Office but was based on outside working hours and conditions.

Now, those are entirely different from the hours and conditions prevailing in the government service.

None of the above estimates took into account the editing or the cost of filing and storage.

In October 1946 the patent institute and the office thoroughly investigated the reproduction of patents by printing and photographic processes. In the first place an estimate from the Printing Bureau was obtained. For printing the letter press and making line cuts of the drawings their figure was $62.00 a patent for seventy-five copies or with an issue of 10,000 patents, a yearly cost of $620,000. In addition, the bureau stated they were not equipped to undertake such additional amount of work.

Some local firms were approached but they declined to estimate because they could not obtain space, labour or printing machinery. Firms outside of Ottawa are not considered desirable as there is always the risk of loss of irreplaceable papers in transport as well as the additional time required for such transport.

A method of reproduction already in use in another government department was selected for extended investigation. It consists of the formation by photographic process of printing plates from which any number of copies may be printed. It is thus a facsimile of the patent specification and drawing and there can be no compositor's errors and proof reading is eliminated. Reproduction or enlargement can be made but the size of copy selected for computing cost was 7" x 9½" which is slightly smaller than the 9" x 11" British and United States copies. The size of 7" x 9½" gives the most economical use of negatives and plates. Without going into further detail the various steps for preparation of copy, production of plates, press work, gathering, stapling, cost of material and labour, depreciation of equipment and other items were carefully considered and it was estimated that if the Patent Office undertook the work it could be done for $15.00 for seventy-five copies of each patent, or on an issue of 10,000 patents for $150,000.

I should like to say here that the average patent is about fifteen pages with about 1·75 or 2 sheets of drawing. The basis on which that is computed is the consideration of 1,000 patents, 1,000 regular patents considered during a continuous period.

This does not include the cost of the equipment necessary for the work. Such equipment consists of cameras, plate machines, presses, cutters, folders, staplers and other necessary apparatus. The cost of these amounts to $36,000.

I gave the figure last Tuesday of $50,000 for equipment. The actual figure we received was $36,000, so I erred on the safe side by saying $50,000.

In addition, filing racks for storage of the copies would be required from year to year. If you undertake the printing of patents, we will require about an acre of space in the basement of the building to carry copies of patents for the next ten or fifteen years. Copies will be placed in steel racks which will be set about 2 feet 6 inches apart. These racks will carry all the patents which we print. Copies will be drawn from there to send out to the public as required.

The estimated floor space for the printing establishment would be 6,000 square feet and filing space for ten years, 40,000 square feet. I think that is approximately the area I gave you.

In November, 1946, the commissioner of patents and another officer of the Patent Office visited the United States Patent Office in Washington to study their methods of printing and reproducing patents. In the United States the copy is edited in the Patent Office and the specifications to be printed are sent to their government printing office. Here, there is a section set aside for patents and no other class of work is done in that section. They have their own linotypes, monotypes, presses and all other necessary composing and printing devices. Normally, 104 copies of each patent are printed—4 on bond paper for special use and 100 copies on ordinary paper. For some classes of invention for which there is a great demand for copies an additional hundred copies are printed. In their printing office only the letterpress is produced. The reproduction of the drawing is done by outside contract by a plant in Washington. The Patent Office places the heading on the drawing before sending it there. In addition to reproducing the drawing this firm is forwarded the printed part of the patent from the printing office and assembles, staples, bundles and delivers the complete patent to the Patent Office.

The cost of each operation was supplied and in every instance it was below the figures quoted by corresponding Canadian bureau or firms.

The reproduction of exhausted copies and the printing of their *Official Gazette* which corresponds to the *Canadian Patent Office Record* were also studied and while the information obtained will be very useful it will not be dealt with here as it is not directly concerned with the original printing of the patents. It will be sufficient to state that the United States Patent Office produces their copies of patents at a cost of $26.80 for one hundred and four copies.

I want to explain in connection with the figure of $26.80, the patent specifications are printed and not photographed; only the drawings are photographed.

Mr. FLEMING: May I interrupt before the commissioner continues his remarks on the next item which is a rather different one? I should like to draw the attention of the committee to sessional paper No. 101A which was submitted to the House by the Secretary of State and which is dated July 18, 1946, and in which there is some material dealing with the subject of printing. It might be helpful to the members of the committee if a copy of this sessional paper were placed in the record of the committee proceedings.

The CHAIRMAN: Is it 101A dated July 18, 1946?

Mr. FLEMING: Yes, Mr. Chairman; fortunately I have a copy of it here. It is about two and a half pages in length. I think it would be helpful to have it on the record.

The CHAIRMAN: May I see it?

By Mr. Fraser:

Q. Mr. Chairman, may I ask the commissioner what the cost is of printing of what you call your monthly bulletin?—A. At one time it cost $50,000 a year.

Q. How many copies were made?—A. A thousand copies at that time. You may remember that the number was reduced to about 800 during the war but we have gone back again to printing a thousand copies.

Q. Is that monthly or weekly?—A. It is a weekly publication. It is done under the Patent Act, section 25 I think it is; the same section as deals with the printing of patents. But I want to point out that that amount of money, $50,000 which was originally voted has been reduced from time to time, down to about $30,000 to $35,000. I have with me two copies of the *Patent Record* which I think may be informative as to what happens when the cost is reduced. In October of 1932 the appropriations for printing were reduced considerably. In fact, they were all used up and we had to make a saving; we had to print the *Patent Office Record* by reducing the size of the drawings and also by putting three columns to a page instead of two columns as formerly. Also we were reduced to one claim, only one claim appended to each patent; and that materially interfered with the search being made at the Patent Office because the examiners did not have available to them the full set of claims usually submitted with the patent. The examiner's files consist of drawings submitted in connection with the application and in connection with each of these drawings claims related to the patent as shown in the *Patent Office Record* are attached. This material all used to be included in the *Patent Office Record*, and cutting down the *Record* materially interfered with examination in the Patent Office. Luckily that only went on for about six months, but those six months did cause quite a lot of trouble.

The CHAIRMAN: Mr. Fleming, would you care to indicate to the committee what part of sessional paper 101A you believe should go into the record?

Mr. FLEMING: Mr. Chairman, I think the whole of it might well go in. It is all germane to the matters discussed at the last meeting, and also to matters referred to by the commissioner.

The CHAIRMAN: Is it the wish of the committee that sessional paper 101A, dated July 18, 1946, a return to an order of the House, should be added as an appendix to to-day's proceedings?

Mr. FLEMING: Perhaps it would be helpful to the committee if I just read the headings as noted:

Office Accommodation
Staff
Printing of Canadian Patents
United States Classified Patents
Printing of Classification Manual
Classified Canadian Patents
Secret Applications

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Return 101A will be added as an appendix to to-day's evidence.

(Appendix A: Sessional paper 101A.)

The CHAIRMAN: Are there any further questions arising out of the statements which have already been read?

By Mr. Fraser:

Q. I have a question, Mr. Chairman: It was said that they would have to have additional equipment and extra space if they were to handle their own printing. You could not do that with what you have at the present time?—A. No, we could not. You realize that if you print seventy-five copies of ten thousand patents you will have 750,000 copies of patents in storage awaiting sale. And remember, that in the first year or two you may not sell fifty thousand or a hundred thousand. You may have to wait till they accumulate for ten years before you would be able to get anything like a good return on the number sold.

Q. Then there is another question I want to ask: This space which you would have to have would have to be fireproof, and you would have to have a certain amount of air-conditioning so your records would not be destroyed?—A. Yes, and preferably it would require to be on ground level so that the weight of that accumulation of paper, amounting to many tons, would not put undue stress on the walls of the building. I may say that in the United States they sell about four million to 4,250,000 copies of patents yearly, giving them a revenue of about $1,000,000 at the present rate of 25 cents per copy.

By Mr. Jaenicke:

Q. From what you said, Mr. Mitchell, I understand that you would be precluded under section 65 and section 66 of the Act from taking any action until after the expiration of three years?—A. Oh, definitely; it states that in section 65.

By Mr. Lesage:

Q. It is the same as the British Act, is it not?—A. It is the same as the British Act. It was copied from the British Act verbatim with certain changes made to suit our Canadian conditions. I think you will find that in the first paragraph in section 65.

Q. After the expiration of three years?—A. After the expiration of three years, yes. You will also find at the end of section 65, subsection (3) it states:

> . . . . it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay.

You will find that in subsection (3) of clause 65 of the present act.

By Mr. Stewart:

Q. Would you give us an interpretation of "undue delay"?—A. Well, "undue delay" means after the expiration of three years. If there is an abuse of the patent by the public not being supplied with the patented article to an adequate extent or on reasonable terms, or also if it is interfering with certain trade or industry in Canada, then any time after three years is undue delay. They may come in anytime but as a matter of fact if they come in immediately after the three years the patentee would probably be given six months in which to show reason why licences should not be granted.

Mr. STEWART: Thank you.

By Mr. Hazen:

Q. Do you make copies of patents?—A. Well, at the present time copies of patents may cost you anywhere from $2.50 to $4; and we have been issuing about four or five thousand copies per year, giving us a revenue of about $12,000, somewhere about that. A great many manufacturers in Canada do not come to the Patent Office for copies of their patents. They ascertain whether a patent has been granted in the United States and if it has been granted in the United States they send to that counry and obain a copy of the printed patent. They used to sell them at ten cents but they now sell at a quarter. Their libraries are built up by obtaining copies from the United States Patent Office. We hope to be able to do that in Canada with respect to Canadian patents.

Q. Do you recommend that this photographic process be adopted now?—A. I think it is a very good process. I have seen it. I have seen it in operation at a department plant. I have seen the specifications and everything that is printed there and they are very readable. It would fill the bill I think very well.

Q. Have you any conception of what to charge per copy if that process were used?—A. The charge would be twenty-five cents per copy.

By Mr. Lesage:

Q. But you would have to have space?—A. We would have to have space.

Q. And you will be able to take a lot of files out of your own office?—A. My own office is crowded up with files now.

Hon. Mr. GIBSON: We want to move the old office.

The WITNESS: That is one of the difficulties we are up against.

By Mr. Hazen:

Q. At twenty-five cents per copy what amount of revenue would you expect to get from the sale of copies?—A. You must keep this in mind that at the present time the inventor himself is paying for the cost of printing with the result that anything we get out of the printing is really velvet. Anything we get from the sale of patents is clear, so that one can't say what we may expect to get. I know a great many industrial firms in Canada who have asked me a number of times about the printing of patents. I have asked them what their requirements were and they have told me that their requirements in the United States are a thousand copies of patents a year. Now, a thousand copies of a

patent is quite a lot, but if we could supply say five hundred copies in Canada they would buy them here, and then they could get the remainder in the United States.

By Mr. Fleming:

Q. It really comes down to this: At the present time you are operating at a substantial profit in the department but the service you are giving to the public could be extended to this printing?—A. Quite true. I agree with you there.

Q. And I think it is a matter of general agreement that the services rendered by the Patent Office would be far more complete if you were to print these patents.—A. It is not complete at all; as a matter of fact it is not functioning in a proper way to help industry. That is what we are aiming at.

Q. In other words, we are not giving the public the service it requires?—A. I warn you not to go too far in this matter of deductions. I might say that in the United States during the last ten years they have had deficits in seven years. In the year 1943 they had a deficit of $1,047,000; and in the year 1944 they had a deficit of $1,112,316. As you expand the privileges of the Patent Office in the way they should be to serve the public you have to take good care that you stay within workable limits.

By Mr. Timmins:

Q. I think you said that at the present time the cost of copies of patents is $4; is the present price $4 for a copy of the patents?—A. At the present time you get certified copies for that price. It is not $4 in every case; it ranges from around $2.50 to $4.

Q. And you get a copy of a similar patent in the United States for— —A. For twenty-five cents.

Q. For twenty-five cents?—A. Yes.

Mr. LESAGE: The other day I sent over for two copies and the charge was fifty cents; how was that?

The WITNESS: You got two copies of the *Patent Office Record.* We are talking now about the cost of typewritten copies of patents.

Hon. Mr. GIBSON: We are talking about individual patents.

The WITNESS: Yes, individual patents. You see, what you got was copies of the *Patent Office Record*, such as I have here, and they sell for twenty-five cents each. I may tell you that the twenty-five cents per copy does not pay for the cost of printing.

Mr. FLEMING: You had better give Mr. Lesage his money back.

By Mr. Timmins:

Q. Mr. Commissioner, you charge $4 now?—A. Yes.

Q. Then at the present time the department must be making money?—A. No, they are not making money because these copies are all prepared by typing and we maintain a staff of from seven to eight girls who do nothing else except type these copies.

Q. Then our system is either antiquated or is too extravagant.—A. I would not say it was antiquated nor would I say it was extravagant; it is not progressing as rapidly as it should though. It is not antiquated; you can't get away with that.

Q. I did not mean it that way.—A. There are cases both in the United States and in Great Britain where they still typewrite copies of patents.

Q. If we were to go into this business of printing about which you have been speaking would we be making any revenue from it in the long run or would we be facing a deficit?—A. No. We would make revenue from it. I do not think there is any doubt about that.

Mr. FLEMING: And we could give far better service to the public.

Hon. Mr. GIBSON: Oh, yes.

Mr. LESAGE: You have the building?

The WITNESS: We would have to have a new building; of course, that is assuming that we are going to get the equipment.

Mr. TIMMINS: This new paragraph No. 17; is it in any way to take care of this anticipated process?—A. Yes, that is to take care of the printing of patents. The applicant there is paying for the printing. Really that is what it amounts to; although as one of the gentlemen who was here Tuesday said, he thought our fees were ridiculously low and he wanted to raise the fees to provide adequate salary increases in the Patent Office.

By the Chairman:

Q. Mr. Mitchell, would you care to indicate to the committee the reason why it is preferable that the printing should be done within your department?—A. The reasons why the printing should be done in the department are these: if you have got to send a file of patents away for a week to the Printing Bureau to have them printed, then after they come back you have to go through each patent application to find out that everything is there, check it all over, before you put it back into the file again. Now, sending patents out of Ottawa—or even if the work were done here in Ottawa—sending out takes up a lot of time and also involves possibility of loss of material from the file, even the loss of the patent; and we cannot run that risk. We cannot take a chance on losing patent documents. As you know, there is only one copy in the Patent Office; there is no duplicate. Therefore, we must not take a chance on losing any of those documents. That is perhaps the most important reason why the printing should be done on our premises.

Q. Do I understand from that reply that you are suggesting the printing should be done by the King's Printer but in your branch?—A. I do not care where they do it; whether they want to send their staff over to do it, or if they follow the same procedure as is followed in the department to which I have already referred, where they have their own employees and do the work on their own premises.

Q. And I think you want to avoid the very high cost the King's Printer has given you as an estimate?—A. Undoubtedly.

Q. And if this lithographic process can be done with equal convenience on the premises at a quarter of the cost, it would seem to be preferable.—A. I think it should be done on the premises to avoid all possibility of loss of documents, and also to provide the cheapest form of printing adequate for the purpose, and so that they can be sold to the public at a reasonable cost.

By Mr. Stewart:

Q. From your own point of view do you not think it would be better that the staff which is responsible for this photolithographic process should be under your direction?—A. I think so. I think we should have a director of printing. As a matter of fact, I think the officer who went down to Washington with me is the proper person to undertake it. He has been looking after all this sort of thing in the Patent Office for the past several years.

Q. And that would keep everything entirely under your own jurisdiction?—A. Absolutely, under the direct supervision and direction of the Patent Office.

By the Chairman:

Q. Mr. Mitchell, owing to the fact that you require considerable additional space for the business of the Patent Office as you are now carrying it on, and owing to the need for considerable extra space for the printing and storage of

patents, I would like to ask you as to whether there would be any objection to the location of your office being on the outskirts of Ottawa rather than in the middle of the city?—A. No there is not, because the majority of the work done in our office is by correspondence; but it would of course be inconvenient to local attorneys if we were moved far out of the city.

Q. How about the experimental farm?—A. That would be adequate, splendid.

Mr. STEWART: Have you got your eye on any location at all?

The WITNESS: Yes, I have, sir; as a matter of fact the Records building. If we could get two or three floors there, it would be adequate space for us in which to deal with patent applications and also to serve the public.

The CHAIRMAN: Is it fireproof?

The WITNESS: It is a fireproof building.

The CHAIRMAN: What would you think of the setting up immediately of a subcommittee of this committee to visit the present office space of the department of patents and to bring in a recommendation, a rather detailed recommendation on printing and on space?

Mr. STEWART: It is a very good idea, Mr. Chairman. I think it should be done.

Mr. FLEMING: Is there any question about it being within the scope of our authority?

Hon. Mr. GIBSON: We would very much like to have a recommendation from the committee, particularly on the space question.

The CHAIRMAN: Well, is it the wish of the committee that we would have a subcommittee of say five; I do not think we should have too large a subcommittee.

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: I would ask each of the parties to turn in the name of its nominee for that subcommittee; and to make certain that they will be willing to work, because there will be quite a little bit of work to be done; and I think personal visits should be made to the present offices and conferences should be held with the commissioner and with the printing establishments and whatnot, to bring in a really considered and worthwhile report. I will be very glad to have those names then, if I may, early next week. We will appoint the subcommittee at our next meeting and ask them to go to work right away.

By Mr. Fleming:

Q. Just before we leave the matter of printing, Mr. Chairman, there is one question I would like to ask Mr. Mitchell: does the offset process not offer definite advantages over ordinary printing when it comes to the matter of the reproduction of drawings?—A. Yes, it does.

Q. Quite apart from the cost?—A. Quite apart from the cost. Of course, it is very much cheaper, but the United States have found it expedient to have their drawings all reproduced by the offset process. They are photographed directly. There are no mechanical errors that can creep in at all in the reproduction of drawings.

Mr. STEWART: If we have finished this part I should like to take up another aspect.

The CHAIRMAN: There is one more report to table.

By Mr. Fraser:

Q. I want to ask Mr. Mitchell one question. In the new bill we have before us the fees are being raised about 20 per cent?—A. Yes.

Q. Not any more than that. If those fees were raised say 30 per cent they would still be under the United States fees and they would pay for the printing of the patents?—A. They will pay for the printing of the patents as it is.

Q. Yes, I know that, but it would give you that little bit extra to go on.—A. You will find we have based printing on so much per patent. Suppose there are 8,000 patents issued this year, 10,000 next year and 15,000 the year after; the basis on which the printing is made is correct. It will cover all increases except in the cases of materials and wages. What I mean is $15 per patent will cover the whole thing. It does not matter whether you have 10,000 patents or 15,000. With 15,000 you have the extra revenue from the filing and the final fees. It has been suggested, and it was seriously considered when preparing the new tariff of fees, that the filing fee should be the same as the final fee, namely, $25. Afterwards it was thought that if we put it up $5 in each case there could be no complaint but it might stand $10 on the filing fee. The present filing fee is $15, so that a filing fee of $25 and a final fee of $25 would not be out of the way.

Q. The filing fee now is $20?—A. It is $20, yes.

Q. What I am getting at is could that not be raised to $25?—A. It could, but I would not go beyond that because you are stretching the limit, you know

Q. Yes, I know it does that, but I feel that would help the situation.—A. Undoubtedly it would provided, of course, that people continued to file applications in Canada. Of course, the filing fees are a secondary consideration. What they want in Canada is to get protection and start industries. Therefore, I do not think that putting up the fee another $5 and making it $25 for filing would be a deterrent in any way.

The CHAIRMAN: I expect we will reach section 17 of the bill after we have the report of our special sub-committee and I would hope that report would contain pretty conclusive material as to costs of printing, and so on. Perhaps we will deal with that point then.

By Mr. Timmins:

Q. May I ask a question before you go on? I have before me a summary prepared in respect of your revenues during 1946. It shows a surplus of receipts over expenditures of approximately $200,000. It also shows that on the basis of the increased fees one may expect a surplus in 1947, or whatever the current year might be, of about $330,000. I was going to ask the commissioner if I might leave this with him so he may examine it. It may be of some use when we are determining the question as to what extent the fees should be increased.—A. Is that an extract taken from the commissioner's report?

Q. From your report.

Mr. STEWART: We have it here.

The CHAIRMAN: I hope all the members of the committee have received this blue report I asked should be sent to you.

Mr. LESAGE: It is referred to in No. 1 of the minutes and proceedings of the committee.

Mr. TIMMINS: I should like to ask a question. I have not the report before me.

The CHAIRMAN: I am sorry if you did not get one. I will see that you get one right away.

Mr. GOUR: From the point of view of safety will this new building not be much inferior if it is not built outside of town? What if a bomb should be dropped? It might destroy this building if it were in the city. If you are going to put up a building there is plenty of space in my riding and it would

be much safer. I make the suggestion that we should be careful as to this matter. We should start to put these buildings outside of the big towns. We have lots of room in my riding.

Mr. LESAGE: What about Rockland?

Mr. GOUR: Rockland is a nice town for that purpose.

The CHAIRMAN: Did you want to bring up anything before the third report is read?

Mr. STEWART: It is a matter outside of what we have been discussing.

The CHAIRMAN: All right, Mr. Mitchell.

The WITNESS: The third report is as to the professional staffs in Great Britain, the United States and Canada, a comparison of the salary ranges of the officials. In Canada the Commissioner of Patents has a salary range of $6,000 to $7,000. Seven thousand dollars is the maximum under the statute.

By Mr. Lesage:

Q. Has it always been like that or was it higher at times?—A. It was much higher. In 1927 it was $8,000. There was no minimum. It was $8,000 in 1926 and 1927.

By Mr. Fleming:

Q. What do you think it should be Mr. Commissioner?—A. Well, perhaps I am without price.

Q. You are not interested in the money.—A. The assistant commissioner of patents has a range of $4,200 to $4,800.

By Mr. Lesage:

Q. Excuse me, but was it ever higher?—A. Yes, in 1928 it was $5,000.

Q. There is no amendment provided in bill 16 to correct that situation as in your own case?

Hon. Mr. GIBSON: It is not set by statute, except for the salary of the commissioner.

The WITNESS: There is one principal examiner at a salary of $4,200 to $4,800. There is an inequality there, I must say, because the principal examiner gets as much as the assistant commissioner.

By Mr. Lesage:

Q. How can that be corrected, by the Civil Service Commission?—A. The Civil Service Commission would have to rectify the assistant commissioner's salary range.

Q. It should be done.—A. Well, I think it is obvious from this. There are twelve patent examiners—

Mr. FLEMING: The minister is taking a note of it.

The WITNESS: There are twelve patent examiners at $3,300 to $4,200. There is one patent classification examiner at $3,300 to $4,200. There are twelve associates, three of whom are now receiving from $2,400 to $3,300. The other day I think I mentioned $2,520, but there was an increase of $180 given by the Civil Service Commission with the sanction of the treasury board. I think they start now at approximately $2,580. There is a bonus of about $180.

By Mr. Stewart:

Q. Is that a cost of living bonus?—A. I think it is something like that.

By Hon. Mr. Gibson:

Q. There is one question I should like to ask. Is that the establishment of the office or can some of the associate examiners be promoted to patent examiners when they are qualified?—A. They will be.

Q. You are not limited to twelve patent examiners?—A. No, we ought to have a very much larger number than that. There ought to be a principal examiner for each subdivision in the office. First of all there should be a principal examiner for each of the sections of the office. At the present moment there is an electrical section, a mechanical section, a chemical section, and a classification section. We have only one principal examiner. There should be a principal examiner for each section. Then each section should be built up with examiners and associates. There should be an adequate number of associates for each examiner.

By the Chairman:

Q. If my memory is correct you told the committee at the last meeting that an associate examiner would have to wait perhaps ten years to be appointed an examiner?—A. Yes.

Q. Why should that be? Why should a graduate engineer have to wait ten years before earning an appropriate salary?—A. I was not thinking of the present establishment, because in the present establishment as soon as associate examiners acquired adequate knowledge they would be moved up. I am thinking of an establishment having fifty examiners. In such an establishment in about ten years time associates would be eligible to take on an examinership.

Q. What encouragement is there for a young university graduate if on entering the service he knows he is going to have to wait ten years before he gets anything like the type of salary industry would pay him in two or three years?—A. Well, he gets his annual increment which he does not get outside, and also certain privileges they have in the service which they do not have outside.

By Mr. Lesage:

Q. I understand that is not the present situation of associate examiners?—A. The associate examiner at the present moment is probably not in a very enviable position.

Q. How long does he have to wait?—A. At the present moment I would say we have four or five examiners going out which means that four or five associates will go up immediately. Then there is the question of the development of new arts. For instance, in late years the plastic art has developed tremendously. There should be another examiner there. However, you are going to make your office top heavy if they are all examiners and there are no associates. You have got to balance it. It is the idea of balance you must keep in mind.

Mr. IRVINE: Perhaps if we could get them all in the Moral Re-armament Movement they might not want any more salary.

By Mr. Jaenicke:

Q. I understand it is excellent training for a young engineer?—A. It is.

Q. Do we lose many after they have been there for a few years?—A. Of my own knowledge if we go back to 1920 or 1921 we lost Mr. Neville and Mr. Savage who went to the United States to large companies there. After a few years Mr. Neville was receiving a very nice salary, and Mr. Savage is one of the partners of a large firm. In 1924 another examiner went to San Francisco or Los Angeles. As a matter of fact he is now the senior partner of the firm he joined then. I do not know whether or not that means anything, but he is the senior partner of that firm.

By Mr. Stewart:

Q. What would be your turnover rate? How many men do you lose outside of retirement?—A. Going back to 1926 or thereabouts we had one of our examiners—in fact, he was assistant to me, and a very well qualified fellow, too—who left and joined the General Electric Company. He got a very much larger salary than he was getting with us, practically double what he was getting with us. Then, as I said, we had two who left last year.

By Mr. Lesage:

Q. Was the personnel ever reduced by the action of the government?—A. Oh yes. In 1924 the staff of the patent office was reduced by 22 from 115. There were 22 employees dismissed in 1924.

Q. Who was the minister then?—A. I do not recall the gentleman's name. We were with Trade and Commerce then.

By Mr. Fleming:

Q. What was the reason for the reduction at that time?—A. I am afraid I am not a mind reader. I do not know.

Q. Has that had any effect on this backlog of work?—A. Absolutely. That had one of the worst effects. It started to really materialize then.

Q. There are a couple more questions I have arising out of this matter of the increase in the backlog. I notice from the table on page 13 of your report that from the time of the establishment of the patent office in 1872 there is almost a steady, unbroken increase in the number of patents issued?—A. Yes.

Q. Up to 1921. There was a drop in 1922 and then a very large increase in 1923. As a matter of fact, more patents were issued in 1923 than in any other year in Canadian history?—A. Yes.

Q. Then there is a sudden drop in 1924. I presume that is owing to the fact you just mentioned, that drastic cut in your staff?—A. That is owing to that fact. I want to explain the 1923 increase to you. With the increase of patent applications in the Patent Office the backlog had become so drastic that a regulation was brought out curtailing the search in the Patent Office to Canadian patents only. They were not allowed to search the United States or Great Britain or use any textbook or anything else. The result was that a great many patents were issued at that time of very doubtful validity. I will read the rule to you so you will know what it was. This is the 1923 rule.

> In the examination of an application the investigation as to novelty and patentability shall be confined to the search of patents previously issued by the Patent Office, and such investigation shall not extend further and no reference other than such patents shall be cited as a reason for amendment or rejection.

Q. Perhaps it is fortunate those patents have all expired now.—A. I want to point out, if I may, that rule was only deleted in 1935.

Q. When the new Act came in?—A. Yes. I took that up personally because it was not fair to the people who were applying for patents, and some of the men in the office felt it was a reflection on engineers to pass some of the patents they were passing.

Q. So there may be a question as to the validity of a good many of those patents issued up to 1935?—A. Well, I cannot . . .

Q. There is that possibility?—A. There is that possibility.

Q. Then from that point on the rate is fairly uniform until we get down to 1933. Then there is a very steady reduction from that time on. It has been running along fairly uniform in recent years at a much lower rate than previously.

I am wondering if the reduction in the number of patents issued annually is attributable to stricter standards of examination or to the fact that a backlog has been piling up with which you have not been able to cope for reasons of lack of staff or inadequate space?—A. The real backlog started principally with the much more thorough search that is made nowadays and the combing of applications very carefully in the Patent Office. They take longer to go through, and necessarily there is a backlog. I should like to point out to you that 10 per cent to 14 per cent of all applications filed annually are finally rejected, and they do not appear here at all. They do not appear in this. There are final rejections. Those people withdraw their applications or allow them to go altogether so that they cease to be applications.

Q. As to the matter of the backlog, has the backlog been increasing in recent years?—A. Yes, I suppose it has. It has been increasing but not at the rate that you might think from this report.

Q. I was not drawing any conclusion as to the rate of the increase from the report itself because the figures are not adequate to permit drawing a conclusion on that point, but I wanted to get your answer on that. The backlog has been increasing in recent years?—A. It has been increasing. I want to point out something to you. In 1921, you will notice we had a very large number of patent applications. This was due to the fact that we had a new Patent Act at that time. We gave much better conditions for filing and people made haste, even though we tried to curtail it, to file their applications so as to come under the old Act.

Then we go on to 1935. You will notice that in 1936 there is an increase again and that was due to the new Patent Act, because people wanted to file under the old Act which was much more liberal than the new Patent Act. People wanted to get their applications on file.

As I explained the other day, the number of applications in Canada increased during the war while in the United States they fell off considerably. Instead of having approximately 75,000 cases in the United States in the year 1944, they had only 54,165. If you look at our records for the year 1944, you will find our figures were above our average, about 11,000. We had many more applications filed in Canada, on a percentage basis, than were filed in the United States. I am speaking of the increase.

In the United States for the fiscal year ending in 1945, there were 66,037 applications while normally the United States would have between 75,000 to 78,000 applications. During the war the applications in the United States fell off but in Canada, for some unknown reason, the number of applications has risen.

By the Chairman:

Q. Your report shows that during the last four years—that is 1943 to 1946 inclusive—your office has received something over 48,000 applications and has granted only approximately 29,000 patents?—A. Yes.

Q. Would you care to tell the committee what your backlog is now?—A. I could not tell you that because we would have to obtain the figures for the abandoned cases.

By Mr. Lesage:

Q. What do you mean by "abandoned cases"?—A. Abandoned cases are those which have been prosecuted before the office and usually for reasons which have cropped up in the office; the inventor finds he cannot obtain a valid patent, so he abandons his application. I think that is the main reason. A forfeited application is one in which the inventor has not paid his final

fee. The other day—as a matter of fact last Monday—I sent down to the storage 1,300 cases, 1,000 of which had become abandoned and 300 forfeited during the last year.

Q. What would the number be, approximately, since the beginning?—A. I could not tell you that. Since the commencement the number of abandoned cases would probably run between 70,000 and 80,000—that is, since the commencement of the Patent Office.

By Mr. Fleming:

Q. What is the average length of time between the date of filing the application in your office and the date when the examination of it commences?—A. I should think at the present moment it would be about eighteen months or perhaps twenty-one months; it would be about that. I may tell you that is not something that is happening in our office alone. The United States office is faced with the same situation.

Q. I hope not in quite as acute a form as that?—A. As a matter of fact, it is almost as acute. There was a gentleman up here with me this morning. He had an application before the United States Patent Office for about fifteen months before he got action. Then, when he requested a second action the office informed him he would get it within a year.

Q. Without trying to put the blame on anyone, but simply attempting to draw attention to the situation, that is not adequate service for the public?—A. No. During the years 1939 to 1946, the Patent Office has lost one examiner by death. I am going back to 1939 and 1940. Actually, the staff was reduced to nineteen patent examiners from twenty-eight during the years 1939 to 1946. It is only now that we are starting to get the staff built up again, and, even at this date we have not got the men we want.

By Mr. Lesage:

Q. Mr. Mitchell, in the February 18th issue of the Canadian Patent Office Record, I noticed that the patents which were issued for that week indicated that the date of application was sometime in 1943. Do you know if they have a similar record in the United States?—A. Yes, they have.

Q. Have you examined the record to ascertain the relationship between the date of application and the date of issue for patents in the United States?—A. Well, I have, but I did not examine it for that purpose. I examined it because it had been mentioned that a period of twelve years had elapsed from the date of application to the issuance of the patent in Canada. I only picked out those cases in which the applications had been in the United States office for the past ten years.

By Mr. Fleming:

Q. I was not concerned with those individual cases, I was concerned with the average service which this public office is giving to the public. I am not trying to put the blame anywhere. I think the commissioner has indicated to us the difficulties under which he has been labouring with regard to staff and building space. However, I wish to draw attention to the fact the public is not receiving good service?—A. The public is not getting good service, but undoubtedly it is getting efficient service. The public receives quality service but not quantity service.

Q. It is efficient so far as your personnel can make it, but you have not the personnel. The net result is that the public is receiving poor service?—A. That is true.

By Mr. Stewart:

Q. Has the commissioner found any cases where those who apply for patents have tried to lengthen the time between the date of application and the date the patent was granted?—A. There are many cases of that.

Q. What is the reason for it?—A. There are many reasons. We have attorneys who come to us and say, "you are issuing our patent too promptly; I have not made application in all the foreign countries. If you issue it now you are going to cause us a tremendous financial loss." Then, we are asked to withdraw it.

Q. Would this be a reason? Would it be an indirect attempt to lengthen the seventeen-year period?—A. No, I think it is a direct attempt to obtain all the protection obtainable in all the countries in which the inventor desires to file patent applications. You see, when a man has an invention, until he has obtained a patent he has a very debatable article for sale. He has not a commodity to sell at all. When he obtains a patent he has something to sell. The inventor might want to get as strong a patent as possible in that way. He desires the United States and other countries to examine the corresponding applications in that country to see what art is against that invention.

When the inventor obtains his patent, it has passed through three offices. He approaches someone to obtain adequate capital to manufacture the article. If it is found a patent was issued in Canada with twenty-eight claims and the corresponding patent was issued in the United States five years later with three claims, they come to the Patent Office and say, "why did you issue this patent with invalid claims"? The office is in a dilemma. The office has to either play along with these people and give them as strong a patent as they are entitled to or else their outside financial dealings will probably be jeopardized.

By Mr. Isnor:

Q. Mr. Mitchell, dealing with those 1,300 files which you have sent to storage, in view of the scarcity of storage space and the cost of maintaining that space, what is the object in sending those files to storage instead of returning them to the persons who submitted them?—A. You cannot return them to the persons who submitted them. You must keep the original application in the office as part of the permanent files in the office. We cannot keep them in the Langevin Block because we have no room. So, we store them in the Justice building.

Q. But they are abandoned?—A. They are abandoned and they are dead. You cannot gain access to those applications; they are secret.

Q. Why keep them?—A. It might happen ten or fifteen years after these have been filed away that someone comes along with an invention. This person goes to the Exchequer Court. It may be that the inventor or the person who is supposed to be infringing the patent may say, "this thing has been in use for the last fifteen years; as a matter of fact, John Jones filed an application with regard to it with the Canadian Patent Office in such and such a year." The court then comes to us and requests us to produce the record.

By Mr. Timmins:

Q. How long would you keep those abandoned applications?—A. We had a paper shortage and we obtained a special dispensation to destroy those abandoned applications in 1928.

By Mr. Isnor:

Q. After how long a period?—A. About 1872, up to about that date; approximately 40,000 or 50,000 were destroyed.

Mr. ISNOR: It appears to me to be a waste of money.

By Mr. Hazen:

Q. I should like to refer to a question which was asked by Mr. Fleming a minute or two ago. I should like to ask Mr. Mitchell what the average length of time is between the time the examiner starts to work and the patent is either granted or refused?—A. You cannot obtain an average there because if the

attorneys will answer the examiner's first letter fully the patent might be ready to go to issue. However, there might be some reason why the attorney would not want the patent to issue.

Q. What do you mean by, "go to issue"?—A. To be allowed by the Patent Office; then, the patent is issued. Until the patent is issued it is a mere application. When the patent is issued it becomes a grant from the government, you understand. The inventor has a Right as soon as the patent is issued, but while the application is pending in the office he has no Rights.

By Mr. Timmins:

Q. It might, at the last minute, be thrown out?—A. It might be thrown out at the last minute, you cannot tell.

By the Chairman:

Q. Mr. Mitchell, I do not want you to consider this question a criticism of you or your department, but I do think we should have more concrete evidence as to the backlog. It is apparent from the evidence I have heard to date that you have been working under very adverse conditions; you have not sufficient staff and you have not enough office space. So far as I am concerned I hope this committee will bring in a report which will strengthen your hands and ensure you receiving adequate office space as well as a substantial increase in your staff. In order to justify such a recommendation I think the committee should have more detail concerning the problem. I should like to know a little about the backlog and how much it has increased in the last few years. I know that you are, perhaps, reticient in giving that information but I think the committee should have it. Armed with that information, this committee could make a rather strong report?—A. As a matter of fact, I should like to give you information concerning the backlog, but it means going through all these cases.

By Mr. Fleming:

Q. How much work does it mean? Is it possible to submit it later in the form of a written report?—A. It would be an approximation. It would not be the actual figure.

Q. Perhaps if it was a written approximation it would serve our purpose?—A. I can give you an approximation.

By the Chairman:

Q. Here is the situation; you had a substantial backlog prior to 1943. Since 1943 you have had 48,000 applications of which only 29,000 patents have been granted. You have told us that ten per cent fell by the wayside, that is, they were withdrawn or something of that sort. This indicates to me, in a nebulous sort of way, that your backlog is of serious proportions. I think it justifies a very sound report on the part of this committee to see that you get proper staff and proper office accommodation.

By Mr. Lesage:

Q. What is the situation so far as staff is concerned in the United States?—A. They have a very large staff.

Q. Do they?—A. They have seven hundred patent examiners at the present time and they are asking for an additional three hundred which will bring their staff of examiners up to one thousand.

Q. Do they have the same backlog, too?—A. They have a very large backlog; as a matter of fact it is something like ninety thousand.

Q. I see by the United States *Patent Office Gazette,* I think it is of September, 1946, pages 272 and 273, that on seven patents issued applications were filed as follows: three in 1943; two in 1942; one in 1939 and one in 1933, ten years before.

The CHAIRMAN: You had a question, Mr. Fleming?

Mr. FLEMING: I was going to ask the commissioner if he had finished reading that report with respect to staff.

Mr. STEWART: Do you think it is necessary for the witness to read that? Do you not think it might well go in as read?

Mr. FLEMING: I agree to that, Mr. Chairman; and I would suggest that it be printed in the record and not taken in as an appendix.

The WITNESS: Then, Mr. Chairman, I will continue:

PROFESSIONAL STAFFS

Canada

1	Commissioner of Patents	$6,000 to $7,000
1	Assistant Commissioner of Patents	$4,200 to $4,800
1	Principal Patent Examiner	$4,200 to $4,800
12	Patent Examiners	$3,300 to $4,200
1	Patent Classification Examiner	$3,300 to $4,200
12	Associate Examiners (3 New)	$2,400 to $3,300
28	Total	

Entrance to the examining corps is by examination given by the Civil Service Commission. The qualifications required are graduation in applied science from a recognized college or university and preferably two years industrial or similar experience. The present entrance salary of an Associate Examiner is $2,400, with annual increases of $120. Examiners, Principal Examiners and the Assistant Commissioner rise by $180 annually.

Great Britain

1	Comptroller General	£1,650
3	Assistant Comptrollers General	£1,360
7	Superintending Examiners	£1,000 to £1,150
30	Senior Examiners	850 to 1,000
94	Higher Grade Examiners	650 to 850
180	Examiners	450 to 650
	Assistant Examiners	250 to 450

This is a total of 315 on December 4, 1937. There were increases in salaries since that time but the present salaries and staff is not known. Entrance to Assistant Examinerships is by competitive examination set by the Civil Service Commission. There are age limits but apparently graduation in engineering is not required. The subjects of examination include English, Mathematics, Physics, Pure Chemistry, Translation from French, Spanish, Italian or German, Mechanical and Electrical Engineering, Inorganic and Organic Chemistry. The salaries of Assistant Examiner rise by annual increments of £18. After five years of service Assistant Examiners who have shown that they possess the necessary capability are automatically advanced to the grade of Examiner. The Examiners

scale is subject to an "efficiency bar" at a lower range than the maximum of their grade. This information is taken from a notice of examination for assistant examiner dated February 1, 1936.

United States

Executive Division

1	Commissioner of Patents	$8,750 to $9,800
3	Assistant Commissioners of Patents	7,175 to 8,225
1	Solicitor	7,175 to 8,225
1	Chief Clerk	6,230 to 7,070
1	Librarian	5,180 to 6,020
1	Assistant Librarian	2,980 to 3,640
1	Chief Draftsman	3,640 to 4,300
1	Assistant Chief Draftsman	2,320 to 2,980
10	Total	

Examining Division

7	Examiners-in-Chief (Appeal Board)	$7,175 to $8,225
4	Law Examiners	6,230 to 7,070
3	Supervising Examiners	6,230 to 7,070
66	Primary Examiners	6,230 to 7,070
68	Assistant Primary Examiners	5,180 to 6,020
203	Patent Examiners	4,300 to 5,180
69	Associate Examiners	3,640 to 4,300
72	Assistant Examiners	2,980 to 3,640
29	Junior Examiners	2,320 to 2,980
521		

Classification

1	Examiner of Classification	$6,230 to $7,070
2	Asst. Primary Examiners of Classification	5,180 to 6,020
11	Patent Classification Assistant	4,300 to 5,180
1	Associate Classification Assistant	3,640 to 4,300
15		

Interference

5	Primary Examiners	$6,230 to $7,070
1	Assistant Primary Examiner	5,180 to 6,020
3	Patent Examiners of Interference	4,300 to 5,180
9		

This is a total of 555 on the professional staff as of December 1, 1945. The staff has been very considerably increased since then and is being added to every month. A flat increase in salaries of 14 per cent has been granted since that date.

Entrance to the examining corps is, in ordinary times, by examination given by the Civil Service Commission and a prerequisite to entrance to the examination is graduation in engineering from a recognized college, university or engineering school. The present entrance salary is $2,320 per year as a Junior Patent Examiner. After three months satisfactory service a Junior

Examiner is eligible for promotion to Assistant Examiner at $2,980; after three and a half years in the office to Assistant Examiner at $3,640 and after six years to Patent Examiner at $4,300. Positions in the higher grades are filled by promotion when vacancies occur or new divisions are created.

Mr. JAENICKE: How many patents can an examiner examine in a day on the average?—A. That of course is a very difficult question to answer. I had one case when I was an examiner which took me six weeks to read.

Q. But some you could examine in a day?—A. Some are quite simple, so simple that you could examine two in a day, but some of them take three or four days.

Q. I see that last year we had 14,778 applications?—A. Yes.

Q. You have nineteen examiners?—A. Nineteen.

Q. In order to deal with all those applications they would have to examine about three a day, according to my figures.—A. Yes, they would have to; yes.

Q. And they cannot do that?—A. It is not humanly possible. In the United States the examiner handles about 2·85 cases per week.

Mr. LESAGE: I understand that depends on the type of case?

The WITNESS: Yes, it does. As I said, in the United States they give about 2·85 cases per week to an examiner, and in Great Britain I think it is about 2·50 cases per week per examiner. Our examiners—

Mr. FLEMING: They work a shorter day.

The WITNESS: The United States work a longer day but they have a day off. Our examiners would have to handle about fifteen cases a week, and it is not humanly possible to handle that volume.

Mr. JAENICKE: That is the way I figured it out, that is about what they would have to do in order to deal with your present backlog of over 14,000 cases.

The CHAIRMAN: Are there any further questions on this phase of the matter?

By Mr. Stewart:

Q. Mr. Chairman, I have a matter here which I would like to bring to the attention of the commissioner and ask him if he could give us any information about it. This is the case of a young Canadian who was four years in the armed services, three years of which were overseas, and who served in the radar branch of the R.C.A.F. When he came back he decided he would like to open up a little business for the distributing and assembling in this country of radios, parts of which were manufactured outside of Canada. He was advised by his patent attorney to write to Canadian Radio Patents Limited, a company which I believe holds all the patents and formulae. He wrote as follows:

> Canadian Radio Patents Ltd.,
> 150 Bay Street,
> Toronto, Ontario.
>
> GENTLEMEN: We are very interested in bringing across from the United States radios for distribution throughout Canada and also in the assembling of radios from firms in the United States and England.
>
> Can you please inform us what the set-up is and the procedure necessary in following out the above,—as we have been referred to you, as you are in complete control of licensing in Canada.
>
> Thanking you, I remain,
>
> Yours truly,
>
> Bernard ROSENBERG
> M. A. GRAY & Co.

He got this letter back from Canadian Radio Patents Limited; and it is this letter particularly about which I want to ask my questions:

CANADIAN RADIO PATENTS LIMITED,
159 Bay Street,
Toronto, Ontario.

November the 29th, 1945.

Mr. Bernard ROSENBERG,
M. A. GRAY & Co. Ltd.,
616 Main Street,
WINNIPEG, Manitoba.

Dear Sir: This will acknowledge receipt of your letter of November 26th in which you request information on the patent situation in Canada covering the importation and sale of American and British-made radio receiving sets.

Canadian Radio Patents Limited owns or controls in excess of 600 patents applicable to the domestic radio receiving set field, which include the major Canadian General Electric Company Limited, Canadian Westinghouse Company Limited, Northern Electric Company Limited, Canadian Marconi Company and Rogers Majestic Limited. In the opinion of our patent attorneys and engineers, a number of these patents are basic in the art and it is virtually impossible to make and sell modern domestic radio receiving sets without infringing upon one or more of the patent rights owned or controlled by this Company.

The Canadian Patent Act requires reasonable manufacture of the patent article in Canada and, in compliance therewith, this Company has required each of its licensees to establish manufacturing facilities in Canada. In addition to the requirements of the Patent Act, we feel that the manufacture of radio sets in Canada rather than importation from the United States or England is another step towards maintenance of maximum employment in Canada. Consequently, as a matter of general policy, we have not licensed the importation and sale of American or British-made radio receiving sets in Canada.

Yours very truly,

And now, could the commissioner tell this committee, has this man any redress whatever?—A. No. He can become a licensee of Canadian Radio Patents Limited if he has the necessary money to put into the equipment to manufacture in Canada. But you see they cannot give him a licence to import because that would be contrary to section 65 of the Patent Act; that would be an abuse of patent if they gave him a licence to import. Radio Patents Limited have eighteen companies in Canada, large companies, all manufacturing radios. I had occasion within the last year to take this matter up with them and I wrote and asked them what the average royalty paid on radios was and I found that the average royalty paid on all makes of radio, ranging from those priced at $30 a set to those costing $250 and upward, is $1 per set.

Q. And does that not suggest that this Canadian Radio Patents Limited is a sort of holding corporation for patents in Canada and that they are not particularly interested in getting revenue from the patents but rather are interested in restricting trade and manufacture of these radios in Canada?—A. I do not think they are interested in restricting trade at all. I think they are helping trade because they are allowing no company to come in unless that company is manufacturing and distributing in Canada. They do allow and

encourage the use of the patents by the manufacturer. All anyone has to do who wants to get into the business of manufacture using these patents is to have the sum of $1,000 which they can put up to cover any royalties which might become in arrears. Aside from that they will have no difficulty in getting a licence for the manufacture within Canada.

Q. Does that mean that anybody can get a licence?—A. Anyone, if he has sufficient money to go ahead and manufacture. There is no restriction.

Q. Is there not an agreement between this company, Canadian Radio Patents, and other foreign companies whereby there is no importation of radio sets into Canada?—A. The importation of radio sets into Canada is a violation of the patent grant. It is an infringement of patent.

Q. Is that not also an infringement of tariffs to some extent?—A. Well, that is a different thing altogether. They probably pay duty on the parts they bring in, but the Patent Act and the tariff are two different subjects.

Q. But they are sometimes inter-related?—A. Well, I do not want to get into tariffs, because I do not know anything about them.

Q. Does the commissioner know if as the result of this licensing there is an agreement whereby prices are set in Canada?—A. Prices cannot be set, because you can go into any retail store and price a radio there and go down to some other retail store—take any of the popular makes you like such as Rogers Majestic, Philco, General Electric; you can get machines of that kind in any store. Pick out any model that you want and go around the different stores and you will find that the difference in price, ranges anywhere from $10 to $15. And your trade-in allowances are about the same. In other words, there is real competition in radio business.

By Mr. Jaenicke:

Q. I would like to follow this up by some more questions. What do you consider is implied by the term "manufacture"; let us use radios as our example.—A. There are certain parts of radios, of course, which are not subject to patent at all; and if you want to import into Canada some types of chassis, or some types of base, you can do so without any violation of a patent. You could also import probably many pieces of apparatus which are not patented or on which the patents have run out. You could bring in all sorts of coils and you can buy them abroad. But the actual patented parts should be made in Canada. In the assembly there are many parts which are not patented at all, and there are many parts which can be brought in from abroad, and you can bring all items in without any infringement of patent.

Q. Supposing I were to make application to you under section 65 of the Act with respect to radios, let us say the manufacture of tubes?—A. Yes.

Q. Tubes are imported, are they not?—A. Yes, some tubes; a good many tubes are made in Canada.

Q. Made right in Canada?—A. Oh yes, they are made in Canada. You are talking about the tubes. I want to point out something. I happen to know about it, and it is this; that these large companies in Canada are servicing my radio, and a great many others, of 1928 or 1930 vintage, and they are making these tubes of the old type, tubes that we used to pay $4 and $5 for previously and you can buy them to-day for $1.85 or $1.75. And I happen to know that that was a voluntary reduction made by the manufacturing companies. They are performing a real service in providing tubes for these old sets and they are taking a loss in doing it.

Q. Just one more question, Mr. Mitchell. Suppose there is an application before you under section 65 for a licence on the ground that the invention is not being worked?—A. Yes.

Q. What do you consider then to be the working of an invention, the manufacture of a product? How far would you go in distinguishing between

assembly and manufacture? To what extent would you consider the importation of parts as being embraced within the term "manufacture"?—A. It depends entirely on what the percentage of assembly was at any given time in Canada; that is to say the parts entering into the assembly. If you import a large number of parts, and if they are all manufactured to size and you have only to shove them in; that is not assembly in the proper sense of the word; it is fitting parts manufactured abroad to actual size and not merely to put them together. Assembly means a little more than that. It means assembling. You buy your base and your parts and your wiring. You take the several patented parts you have purchased in Canada and then you start from rock bottom and assemble. If you simply bring in a base which is bored and drilled for every part you have got to mount such as a post, and you have all your pieces of wiring cut to the proper lengths, and bent in the proper way, and you simply put them together, that is not manufacturing.

Q. Let us take the case of a radio where we merely manufacture the box or cabinet in Canada and all the other parts are imported. Would you consider that to be manufacturing?—A. No. As a matter of fact, in Canada the consoles or boxes are made by furniture manufacturers. They are purchased by the Canadian radio people directly from the manufacturer. Each one has his own design. They purchase those and then they build the radio. They standardize it so they can put it on line production and put it in at a very reasonable cost. They build it much more cheaply than can be done by individual effort where you have to cut your parts, make them, bend them and put them together. They can do it much more cheaply with the result that the Canadian public are benefiting from that and are getting radios at a reasonable rate. They are getting a radio on which they are paying the minimum royalty.

By Mr. Stewart:

Q. To revert to radio tubes for a few minutes, I believe that the patents relating to tubes have concentrated in Thermionics Limited?—A. Yes.

Q. I also assume that the commissioner has read the McGregor report on Canada and International Cartels. It states at page 48:

> The licensees of Thermionics Limited are permitted to sell radio tubes only in accordance with schedules of prices, terms and conditions of sale established by Thermionics Limited.

A. What is the date of that report?

Q. 1945.—A. I am talking mainly from 1946 information which I have myself, because after that came out I wrote to these companies asking what the conditions of operation are now, and I have those conditions.

Q. And as a result— —A. As a result of that I think they probably have been modified, but I think a great deal of the stepping down was a voluntary stepping down by the companies themselves.

Q. You would say now that there is no agreement at all about schedules of prices in Canada?—A. I would not say that because there is bound to be some sort of control, but I do not think the control is such that you would say it is obnoxious.

Q. That might depend upon the definition of "obnoxious", of course.—A. That is quite true, but from my point of view I cannot see that it really is.

By the Chairman:

Q. Would you say the present condition of control is that the control is not against the public interest?—A. I do not think it is against the public interest.

The CHAIRMAN: Gentlemen, it is a quarter to one. I understand that next week the House is going to resume the debate on the address. It has occurred to me that in that event perhaps the members of the committee would be willing to hold a considerable number of committee meetings next week. Am I right in that conclusion?

Mr. STEWART: Hear, hear.

Mr. FLEMING: It depends on what you mean by a considerable number.

The CHAIRMAN: Perhaps the odd afternoon meeting as well as mornings. We will meet on Tuesday. Before the meeting adjourns there is one matter I wish the committee would attend to. At the meeting called by the chief government whip only the chairmen of committees were appointed. I hope that I will be able to attend and to preside over most of the meetings of this committee, but I should like the committee to appoint a vice-chairman, if they would, to take the chair any time I require to be absent.

Mr. FLEMING: I would nominate Mr. Rinfret. He is a member of the steering committee.

Mr. MICHAUD: I second the motion.

The CHAIRMAN: All those in favour? (Carried).

Mr. STEWART: There is one other point. We have got the report of our last meeting very quickly. I congratulate whoever was responsible for it and I hope that we can obtain the following ones just as speedily.

The CHAIRMAN: We will do the best we can.

Mr. FLEMING: What bill of fare are you proposing for the next meeting?

The CHAIRMAN: I thought we would go into the bill a clause at a time. I will consult with the chief clerk to find out as to whether the reference to the committee must be widened in order that we may bring in the report, which I know the committee desires to bring in, with regard to office space, staff and the like.

The committee will stand adjourned until 11 o'clock Tuesday morning.

Mr. FLEMING: Just one moment. There is the matter of the representative from the Department of National Defence.

The CHAIRMAN: I have taken that up with Dr. Solandt. He is discussing it with the minister. When section 9 of the bill, which is the secrecy section, is before the committee an official from the Department of National Defence will attend and give evidence.

Mr. FLEMING: Will it be Dr. Solandt?

The CHAIRMAN: Either Dr. Solandt or if he feels there is some one in his department better fitted to give evidence before the committee it will be someone else.

Mr. FLEMING: I should think we will reach that point on Tuesday.

The CHAIRMAN: He is to be here Tuesday.

APPENDIX A

SESSIONAL PAPER No. 101A

THURSDAY, July 18, 1946.

DEPARTMENT OF THE SECRETARY OF STATE

CANADA

By the Honourable Paul Martin.

Question: by Mr. Graydon:—

1. During the past year has the Secretary of State received a memorial from the council of the Patent Institute of Canada.

2. If so, upon what date was the said memorial received.

3. What steps have been taken by the Government to institute any or all of the reforms outlined in the said memorial.

Answer: To stand as an Order for a Return, tabled herewith.

PAUL MARTIN
Secretary of State of Canada.

July 17, 1946.

Answers to Questions of Mr. Graydon:

1. Yes, a memorial was received.

2. The date on which the memorial was received: June 14, 1946.

3. Office Accommodation.

The Secretary of State Department has made repeated efforts to obtain accommodation for the Patent Office and in 1939 had been promised (by the Department of Public Works) that additional space would be given in the Langevin Block in October 1939. Unfortunately the war intervened and the space promised was retained by the Post Office Department. This department was moving one of its branches (air mail) to the new Post Office (corner of Sparks and Elgin streets) but this space was taken over by the Department of Defence and so prevented the Post Office making the transfer.

Staff—

There is at present before the Civil Service Commission a request for additional patent examiners and the Civil Service Commission has advised that advertisements for these positions will be published within the next few weeks.

Printing of Canadian Patents—

This has been considered on many occasions. In January 1919, the Printing Bureau submitted an estimate of $22.90 per patent printed (for fifty copies).

The matter was again considered in 1929 and an estimate cost of $21.90 per patent was made (for fifty copies). The cost for that year would have been $200,000 and to print all Canadian patents issued up to that time would have cost $7,500,000.

The matter was again considered in 1935 to reproduce patents by the roto-print process, a form of photolithographic reproduction. The department estimated the cost would be about $90,000 annually. This process would not have been as satisfactory as printing and would have entailed the purchase of special machines and the enlargement of the photographic staff and quarters and would have required more filing space than printed copies of the patents.

In the past year the cost of printing patents by the United States Patent Office was nearly $600,000 or an average of $19 per patent. This figure of $19 taken as a basis for printing the present annual issue of Canadian patents would amount to $145,000 (the issue of patents in Canada, as in other countries has declined during the war years due to absence of members of the staff on war work). It is doubtful if the printing of patents would greatly increase the number of copies sold in Canada unless the Canadian patent could be sold at the same price as the United States copies of patents, that is 10 cents per copy. This is because 70 per cent of all Canadian patents correspond to United States patents. If the office sold five times as many printed copies as it sells of typed copies the revenue at 10 cents per copy would amount to about $2,000. If the price charged per copy was greater than 10 cents, say 50 cents, the patentees would buy United States copies at 10 cents.

The matter is under further consideration as the cost of storing unsold copies would increase proportionately each year and office space is not at present available.

United States Classified Patents—

Copies of the United States patents for the last ten years have been classified and are available to the patent examiners and on request are made available to patent attorneys and the public.

Printing of Classification Manual—

The cost of printing the Canadian Classification Manual would be $1,100 for one hundred copies. This manual must be used in conjunction with books of definitions of which there are eight volumes. The printing of these books is estimated at $42,000 for one hundred copies (Printing Bureau estimates). It is not seen that the demand would be sufficient to justify this expenditure.

Classified Canadian Patents—

The classified Canadian Patents in the examiners' rooms are made available on request to the public. To duplicate this for a public search room would entail the reproduction of drawings and principal claims of over 435,000 patents and would probably cost some hundreds of thousands of dollars. The matter is under further consideration as it would entail a very considerable increase in the classification, clerical and photographer's staffs as well as additional filing space.

Secret Applications—

Applications for patents are held in secrecy at the request of the British, United States and Canadian government departments. Examination is made only on petition by applicants so as to ensure absolute secrecy. The United States Commissioner of Patents ordered the removal of all patent application from secrecy but it should be known that a large number of the applications were never removed from secrecy or after the removal were returned to secrecy.

The Canadian Patent Office removes applications from secrecy at the request of the applicant with the approval of the department which asked for secrecy. The matter of secret patent applications is one affecting other allied nations. The majority of secret applications emanate from the United States and Great Britain and the latter country has expressed grave concern over removal of patent applications from secrecy without authorization of the ministries on whose requisition the applications were made secret.

(NOTE: Under the Canadian system there is no possibility of leakage of information).

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

TUESDAY, MARCH 4, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.
Brigadier G. P. Morrison, Branch of the Master-General of Ordnance, Department of National Defence.
Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

ORDER OF REFERENCE

TUESDAY, March 4, 1947.

Ordered,—That pursuant to the recommendation contained in the Second Report of the said Committee, presented this day, the said Committee be instructed to inquire into the administration of the Patent Office in regard to staff, office space and equipment, and to report to the House in relation thereto.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE HOUSE

TUESDAY, March 4, 1947.

The Standing Committee on Banking and Commerce begs leave to present the following as a

SECOND REPORT

Pursuant to an order of the House dated February 18, 1947, your Committee is considering Bill No. 16, an Act to amend The Patent Act, 1935.

Your Committee recommends that it be empowered to inquire into the administration of the Patent Office in regard to staff, office space and equipment, and to report to the House in relation thereto.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 4, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Argue, Belzile, Black *(Cumberland)*, Blackmore, Breithaupt, Cleaver, Fleming, Fraser, Gour, Harkness, Irvine, Jackman, Jaenicke, Jutras, Lesage, Macdonnell *(Muskoka-Ontario)*, Marquis, Michaud, Pinard, Quelch, Rinfret, Stewart *(Winnipeg North)*, Strum (Mrs.), Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents; Mr. Christopher Robinson, Vice-President, Patent Institute of Canada; Brigadier G. P. Morrison, Master General of Ordnance Branch, Department of National Defence, and Major J. H. Ready, of the Judge Advocate-General's office.

On motion of Mr. Irvine,

Resolved,—That the Chairman report to the House recommending that the Committee be empowered to inquire into the administration of the Patent Office in regard to staff, office space and equipment, and to report to the House in relation thereto.

The Committee resumed consideration of Bill No. 16, An Act to amend The Patent Act, 1935.

Mr. Mitchell was recalled. He read a statement on the backlog of patent applications in the Patent Office, and was further examined.

Clause 1 of the Bill was adopted.

Clause 2 was allowed to stand.

On motion of Mr. Fleming, clause 3 was amended by inserting in the proposed new section 11 of the Act, in line 16, after the word "inventor", the words *"if available"*.

At this stage, Brigadier Morrison was called and, by unanimous consent, the Committee proceeded to sit *in camera*.

Brigadier Morrison made a brief statement and was examined.

Witnesses retired.

By unanimous consent it was ordered that the following members constitute a subcommittee to visit the Patent Office and report to the Main Committee, namely: Messrs. Fraser, Jaenicke, Lesage, Marquis and Quelch.

The Committee adjourned to meet again this day at 4.00 p.m.

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AFTERNOON SITTING

The Committee resumed at 4.00 p.m.

Members present: Messrs. Belzile, Cleaver, Fleming, Fraser, Gour, Hackett, Harkness, Jaenicke, Jutras, Lesage, Marquis, Quelch, Rinfret, Sinclair *(Ontario)*, Stewart *(Winnipeg North)*, Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents, and Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.

The Committee resumed its consideration of Bill No. 16, An Act to amend The Patent Act, 1935.

Mr. Mitchell and Mr. Robinson were recalled and further examined.

Clause 5 was carried.

On motion of Mr. Lesage, clause 6 was deleted.

On motion of Mr. Marquis, clause 7 was amended as follows:

In line 16, delete the words *"as section twenty-five"*;

In line 17, for the number "25" substitute *"26"*;

In line 20, for the word "others" substitute the words *"any other person"*;

In line 39, after the word "filed" add the word *"either"*;

In line 43, strike out the words "a foreign" and substitute therefor the words *"any other"*.

Clause 7, as amended, carried.

On motion of Mr. Lesage, clause 8 was deleted.

Several amendments to clause 9 having been submitted by Mr. Mitchell and Mr. Robinson, it was agreed to let the said clause 9 stand for further consideration.

Clauses 12, 13 and 15 carried.

On motion of Mr. Lesage, clause 16 was amended by striking out the word "of" (being the second last word of line 30), and substituting therefor the word *"to"*.

Clause 16, as amended, carried.

Clauses 17 and 18 stand.

At 5.40 p.m., witnesses retired and the Committee adjourned until Wednesday, March 5, at 4.00 p.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, March 4, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, if you will come to order now, we have a quorum and we will proceed.

There are two or three matters I would like to bring to the attention of the committee before we go on with the evidence of Mr. Mitchell. The first is in regard to the appointment of a small sub-committee to bring in a report to this committee with respect to office space, staff and printing. I have received the names from three of the parties but I still require the name of the Social Credit Party representative on the sub-committee. Mr. Quelch, or Mr. Blackmore, is that name available yet?

Mr. QUELCH: I think we were both out towards the end of the last meeting, Mr. Chairman; this is the first information we have had with respect to this matter.

The CHAIRMAN: We better let that matter stand then, and before the close of today's meeting perhaps you could give me the name.

Mr. FRASER: They couldn't get around to doing anything now until some time next week, until this snow lays down a little bit.

The CHAIRMAN: The clerk advises that this committee should ask for additional powers from the House before we would be able to bring in a report such as the committee wishes to make. I asked the clerk to draft a report which I will now read:

> Pursuant to an order of the House dated February 18, 1947, your Committee is considering Bill No. 16, an Act to amend The Patent Act, 1935.
>
> Your Committee recommends that it be empowered to inquire into the administration of the Patent Office in regard to staff, office space and equipment, and to report to the House in relation thereto.

The CHAIRMAN: What is your pleasure, gentlemen?

Mr. IRVINE: I move the adoption of that draft report.

Carried.

The CHAIRMAN: The commitee will recall that near the end of our last meeting Mr. Mitchell was asked to make a separate report with regard to the backlog of work that has piled up at the Patent Office. Mr. Mitchell now has that report and I will ask him to read it.

Mr. J. T. Mitchell, Commissioner of Patents, recalled:

The WITNESS: To determine the backlog of patent applications now in the office a survey of the examiners' records has been made, the increase in the number of applications filed noted, the reduction in the staff during the war years detailed and the inconvenience and delay caused by insufficient space and cramped quarters explained.

The total number of applications awaiting examiner's action is approximately thirty-one thousand four hundred. Of this total two thousand eight hundred have a stay-of-proceedings under rule 25 of the rules, regulations and forms. This rule provides that an applicant may ask that no action be taken by an examiner for one year from the date of filing. Of all applications filed in a year twenty-five per cent are incomplete, incorrect or have some other informality. Under section 31 of the Patent Act the applicant has a year from the filing of his application to complete it. The incomplete applications are not withheld from the examiner but a notation is made on the case and normally the examiner does not act on the application until it is complete. In most cases the year does not elapse before the application is completed but as new incomplete applications are filed from day to day the number of incomplete applications remains fairly constant at twenty-five per cent. Thus in a year's filing of twelve or fourteen thousand applications over three thousand will be awaiting completion before action is taken.

These two items add up to fifty-four hundred applications which can be deducted from the total of thirty-one thousand four hundred leaving twenty-six thousand awaiting action. This statement is only approximate in that some of the incomplete applications may also be included in those which have stop-orders or delayed action requests. In round numbers the total may be said to be twenty-six thousand eight hundred. Without a survey of each and every application in the office to determine its condition only a close approximation can be given. Such survey would require weeks of time of the whole staff and would further delay the work without in any way reducing the backlog. Another thing to be considered is that in the total of twenty-six thousand eight hundred are included two thousand five hundred replies by applicants to the Office action which have not yet been reviewed by the examiner. Many of these may conform to the examiners' requirements and when they do the further examination is greatly lessened. As they are an unknown quantity they cannot be deducted from cases awaiting action.

Under normal conditions an examiner would have before him about eight months' cases or between three or four hundred new cases. No matter what may be done you cannot have an examiner with no new cases awaiting action as he then would have no work to do. As there are now twenty-five examining divisions in the office three to four hundred applications would mean that seventy-five hundred to ten thousand new applications would always be before the examiners. However, for the purposes of this committee I do not intend to compute the backlog in this way and shall not subtract those numbers from the total.

It may be asked how this backlog has accumulated in the last six or seven years. There are three main causes: the increased number of applications filed, the reduction of the staff and the insufficient and scattered office accommodation.

In the first place in the six years preceding 1940 a total of about sixty-three thousand eight hundred applications or ten thousand six hundred yearly were filed. From 1940 to 1946, inclusive, there were sixty-seven thousand four hundred and fifty or eleven thousand two hundred yearly. While this is only an average of six hundred a year increase it is noteworthy because in the United States, Great Britain and other countries the applications fell off as much as forty per cent during the war years. In eleven months of this fiscal year the increase continued with 15,600 applications already filed.

In 1939 the office had twenty-eight examiners. In December, 1941, an examiner in the mechanical division died. An examiner in the metallurgical division left the office in January, 1942, to join one of the war offices. He never returned and at the termination of the war resigned to enter private practice. An examiner in the fuel oil division joined the Royal Canadian Navy in September, 1942, and returned to the office in April, 1946. A radio examiner left the office in January, 1942, and returned in April, 1946. An electrical

examiner resigned in August, 1943. Another examiner in the electrical division was absent from August, 1942, to November, 1943, on war work. Another electrical division examiner was in the army from January, 1942, to February, 1943. The examiner of agricultural machinery was in the army from January, 1943, to January, 1946. A chemical division examiner resigned in January, 1946. This was a loss since 1941 of nine examiners for varying periods but for a total time loss of twenty-seven years and five months. Five of the nine examiners have since returned but in the four vacancies caused by death and resignation there has been one replacement and that in February of this year. And I want you to note that twenty-seven years and five months. That is very important from the standpoint of service to the office by the examiners who were absent on war duty.

A comparison of the total staff during the war years should also be included as the clerical divisions have been greatly handicapped. On January 1, 1939, there were ninety permanent and twenty-four temporary professional and clerical employees, in all one hundred and fourteen. On January 1, 1946, there were sixty-four permanent and thirty temporary employees or ninety-four, that is, twenty less than at the beginning of the war. On February 1, 1947, there were sixty-four permanent and thirty-three temporary or ninety-seven employees which is still seventeen under pre-war establishment. Decreases in the clerical staff were caused by death, marriage, transfers and resignations and such replacements as the Civil Service Commission have made have been with clerks who had to be trained in the work. The commission has not been able to supply all the clerks asked for.

Immediately before the outbreak of war additional office space in the Langevin block was to be provided. This was to consist of all the second floor and half of the top floor of the building. One-half of the basement for filing space was also to be allotted. The space to be acquired was by removal of some branches of the Post Office Department into the new city post office. The Department of National Defence took over the new post office building and the transfers were cancelled. At the present time the Patent Office occupies about one-half of the second floor, one large room on the fourth floor and a storage room in the basement of the Langevin block. In addition some of the staff are on one floor of the Hope building, Sparks street, on part of a floor of the Trafalgar building, Queen street at Bank, and in a couple of rooms in the Fraser building, Queen street. There are also stores and files housed in the Sovereign building, Bank street near Queen, and in the basement of the new Supreme Court building. The patent files are in cases in the corridors of the Langevin block and on the second floor extend from Elgin to Metcalfe streets. The transfer of files to and from the different buildings and the separation of the examining divisions not only slows up the work but militates against efficiency.

In concluding this statement I wish to bring to your attention that applications, particularly from European countries, are being filed at an increasing rate and that under the relief provisions of the amending Act a still greater number may be expected. Without relief the backlog will still further increase.

Conditions in Canada are not different from those in other countries which have also large backlogs. The augmentation of the staff in the United States Patent Office has already been referred to.

The WITNESS: Now, to show the delay that takes place in offices such as in the British Patent Office, I have in my hand a certificate issued in Great Britain. I will just read you a part of it: "this certificate is issued in response to a request made on the 19th day of November 1945"; and the certificate is dated the 3rd day of May 1946, which is six months later. I have hundreds such as this in the office. And this is the type of case which keeps back our applications.

With regard to space I have an order in my hand dated June 15, 1918, which reads as follows:—

DOMINION OF CANADA
PATENT OFFICE

Department of Agriculture,
Ottawa, June 18, 1918.

Memorandum for the Deputy Minister.

The actual space now in use by the Patent Office in the Langevin block and in the Queen street building is eleven thousand five hundred and ten square feet, and with this space there is considerable congestion, many of the rooms being over-crowded.

A great deal of the space in the Patent Office is taken up with the records of our issued patents which must be kept in a convenient way for our examiners and the public, apart from the large classification of patents, on which the examiners rely entirely for the performance of their duties.

Our scientific library is overflowing and we have been obliged to infringe upon its space with the overflow of issued patents from the Record Room.

The rooms occupied by the examiners (19′ 9″ × 11′ 6″) should not be used for more than two examiners with their classifications. In many instances, we are obliged to place three men in this size of room. This interferes with efficiency.

Our Queen street storage building has now reached its limit for space, and we have been obliged to erect shelving in the centre of small rooms, increasing the difficulties in searching.

For the want of more space, the continuance of the classification of the United States patents is practically suspended, being obliged to store these copies in the store-room in the basement of this building and the examiners as a whole are greatly disappointed with this delay. Furthermore, for want of space, we have been obliged to place a staff of clerks in all the available corners of the library. I would therefore, respectfully recommend that one half as much more space be provided for the Patent Office i.e. 17,000 square feet.

I cannot too strongly urge that the Patent Office be allowed to retain its present quarters. The Record Room has been provided with steel files, at a very great cost purposely made for the Record Room. The same may be said of our Scientific Library.

To meet the present need, as above suggested, increased accommodation should be provided on the floor we now occupy, or immediately above the first floor, the flat between our own offices and the Patent Office Library.

Below is a rough diagram of the ground floor of the Langevin Block. The Patent Office occupies part of the first floor, as indicated, in addition to the library space on the attic floor. If the second floor was assigned to the Patent Office, the present requirements would be satisfied, that is to say, all the space on the three floors from the red line in the plan, looking east.

(Sgd.) W. J. LYNCH,
Chief of Patent Office.

In 1921 Mr. O'Halloran, Chief Commissioner of Patents, wrote a letter dated January 3, 1921. This was written to Mr. Hunter:—

> Referring to your letter of the 5th ultimo and previous correspondence *re* office accommodation for the patent and copyright office. I beg to advise you that a patent examiner returned to duty to-day after a long sick leave, and as there is no room available for him he must remain idle until additional office accommodation is provided although his services are badly needed.

That is back in 1921. I also have a number of letters which I myself have written, going back as far as 1934.

Mr. FRASER: But since 1921 you have had additional space made available to you, have you not?

The WITNESS: I have had about 3,000 feet. We asked for 17,000 or 18,000 feet.

The CHAIRMAN: If the commissioner is willing I would suggest that this material be handed to the subcommittee and that they would incorporate as much of it as they deem wise in their report.

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: I suggest to the committee that perhaps now you might care to carry paragraphs 1, 2, and 3 of the bill, which brings us to the secrecy sections; and we have here to-day a representative from the Master General of the Ordnance Branch in regard to secrecy, perhaps you would care to hear him?

Shall section 1, which is the short title, carry?

Carried.

The CHAIRMAN: Does section 2 carry?

Mr. LESAGE: There was an amendment to section 2. Was it not the intention that the annual salary should not exceed $8,000?

The CHAIRMAN: Now we are on section 2. The minister has an amendment to make so that the new section, which is subsection 3 of section 4 of the Patent Act, will read:

> The commissioner shall hold office during pleasure and shall be paid such annual salary not exceeding $8,000 as may be determined by the Governor in Council.

Mr. MARQUIS: Does that read, not exceeding $8,000?

The CHAIRMAN: Shall be paid such annual salary not exceeding $8,000 as may be determined by the Governor in Council.

Mr. FLEMING: What was the substance of the recommendation of the Gordon Royal Commission with respect to the salary attaching to the office of commissioner?

The CHAIRMAN: I will have that for you in a minute.

Mr. IRVINE: How does that $8,000 maximum salary compare with what private industry might be prepared to pay for a man having equal capacity?

The WITNESS: On page 39 of the report of Royal Commission (the Gordon Commission), the Commissioner of Patents salary is indicated at $8,000. Personally I was not consulted. I do not know what was asked. No representative of the Patent Office was present as far as I know. I know that I was not.

Mr. FLEMING: You say it does not go too far?

The WITNESS: As a matter of fact, I prefer to leave that entirely in the hands of the committee.

Mr. MARQUIS: Do you object to that provision?

The WITNESS: I have never asked for an increased for myself and I do not intend to.

Mr. LESAGE: It has been $8,000 for some time, hasn't it?

The CHAIRMAN: The estimates of 1928 show that in that year the Commissioner of Patents was paid $8,000.

Mr. MACDONNELL: Which year?

The CHAIRMAN: The estimates of 1928.

Mr. MACDONNELL: And it has been reduced since then?

The CHAIRMAN: Yes.

Mr. MACDONNELL: Why.

The CHAIRMAN: Oh, well, that is a moot question I suppose.

Mr. STEWART: I think we should investigate this a little further. I would like to know how long the commissioner has been in the service?

The WITNESS: I have been in the service now twenty-seven years.

Mr. STEWART: When did you become commissioner?

The WITNESS: In 1935.

Mr. STEWART: What was your salary then?

The WITNESS: The salary then—I got a range from $6,000 to $7,000; it had been reduced from $8,000 to $6,000; then they gave me this range from $6,000 to $7,000.

The CHAIRMAN: If the committee question this section with the minister's amendment in it I would have to ask that it stand in the absence of the minister. If you question it I will just mark it "Stand".

Mr. STEWART: What I was suggesting was that he was paid $8,000 in 1928; the cost of living has increased considerably since then.

The CHAIRMAN: That section will stand.

Mr. IRVINE: If you want to make it more I see no reason why it should stand.

Mr. JACKMAN: I presume when the cut was made in the salary of the commissioner that was the time when a general cut was introduced applicable to the whole of the civil service.

The WITNESS: I could not tell you that.

Mr. JACKMAN: Was that in 1932 or 1933?

The WITNESS: 1930.

Mr. IRVINE: Mr. Chairman, I would like to ask a question of the commissioner. I do not know whether it can be answered. I was wondering what would be the likely salary paid by private industry to a man of the same capacity as the Commissioner and who had been employed for a similar number of years? Is there any way of knowing that?

The WITNESS: I am afraid not.

Mr. FLEMING: I should like to have the minister here before we dispose of this finally for this reason. It is not enough simply to have the section passed in the amended form because the bill does not give anybody any assurance that the salary is going to be raised to the $8,000. All it does is to empower the Governor in Council to determine the salary in a sum not exceeding $8,000. I think the minister ought to be prepared to tell us whether the salary is going to be increased in pursuance of that power if the section passes. I think the committee ought to know that.

Mr. MACDONNELL: And in view of the recommendation of the Gordon Commission.

Mr. STEWART: I think we ought to let it stand.

The CHAIRMAN: I will mark the section "stand." Section 3 of the bill.

3. Sections eleven and twelve of the said Act are repealed and the following substituted therefor:—

"11. Notwithstanding the exception in the next preceding section, the Commissioner, upon the request of any person who states in writing the name of the inventor, the title of the invention and the number and date of a patent said to have been granted in a named country other than Canada, and who pays or tenders the prescribed fee, shall inform such person whether an application for a patent of the same invention is or is not pending in Canada.

RULES AND REGULATIONS

Regulations and forms.

12. (1) The Governor in Council, on the recommendation of the Minister, may make, amend or repeal such rules and regulations and prescribe such forms as may be deemed expedient

(*a*) for carrying into effect the objects of this Act, or for ensuring the due administration thereof by the Commissioner and other officers and employees of the Patent Office; and

(*b*) for carrying into effect the terms of any treaty, convention, arrangement or engagement which subsists between Canada and any other country;

(*c*) for ensuring the secrecy of applications for patents and of patents, in the interests of the safety of the State; and

(*d*) in particular, but without restricting the generality of the foregoing, with respect to the following matters:—

(i) the form and contents of applications for patents;

(ii) the form of the Register of Patents and of the indexes thereto;

(iii) the registration of assignments, transmissions, licences, disclaimers, judgments or other documents relating to any patent; and

(iv) the form and contents of any certificate issued pursuant to the terms of this Act.

Effect.

(2) Any rule or regulation made by the Governor in Council shall be of the same force and effect as if it had been enacted herein."

Mr. FLEMING: On section 3 would you mind taking sections 11 and 12 separately? I have different comments to make on each. They are both in section 3 of the bill.

The CHAIRMAN: Section 3 of the bill repeals sections 11 and 12 and substitutes in lieu thereof—which would be in lieu of both of them—a new section 11.

Mr. FLEMING: And 12.

The CHAIRMAN: Under section 11 you can discuss both the old sections 11 and 12—

Mr. FLEMING: And the new sections. Section 3 repeals the old sections 11 and 12 and substitutes the new 11 and 12. The new 12 is a part of section 3 of the bill.

The CHAIRMAN: We will discuss the new section 11 first.

Mr. FLEMING: On the new 11 I should like to make a comment. This amendment in lines 16 and 17 introduces a question that I think is worthy of a moment's consideration. It proposes that "the Commissioner, upon the request

of any person who states in writing the name of the inventor, the title of the invention and the number and date of a patent", and so on, "shall inform such person whether an application for a patent of the same invention is or is not pending in Canada."

I am sure there are many cases where the name of the inventor is not available to the enquirer.

Mr. LESAGE: You only have to say "if available".

Mr. FLEMING: What I would suggest is that we insert in line 16 after the word "inventor" some such words as "if possible" or "if available", because I am told in many cases the name of the inventor is not available.

Mr. MARQUIS: How can it be decided if it is possible or available?

Mr. LESAGE: I think the minister is ready to accept such an amendment.

The CHAIRMAN: The words "if available" are acceptable.

By Mr. Jaenicke:

Q. The amendment is for the purpose of facilitating the work in the office, is it?—A. Yes, it is.

Mr. FLEMING: But not to tie unnecessarily the hands of an enquirer because the name may not be available. I would be satisfied with that.

The CHAIRMAN: Mr. Fleming moves that section 3 of the bill, insofar as it deals with section 11 of the Patent Act, be amended by adding the words "if available" after the word "inventor" in the third line. All those in favour of the amendment?

Mr. IRVINE: How could he supply it if it were not available?

The CHAIRMAN: If the Act says he shall supply it I suppose it is mandatory.

By Mr. Macdonnell:

Q. Let me ask this question. Is the commissioner satisfied that those words will do the trick, in other words, that no question will arise as to who is to determine whether the name is available or not? Is there any point there?—A. Many applications filed in Great Britain are filed by companies, or they are filed on instructions from abroad, and the inventor's name may not necessarily appear.

Q. That is my point.—A. Although it is supposed to appear. Then we get a copy of a patent and we are asked if there is a corresponding case in Canada. If we have not the name of the inventor, and should there be half a dozen applications filed of the same nature, it means we have to read every one before we can determine which one corresponds to the foreign patent submitted. With the inventor's name we can pin it right down without any trouble.

Mr. LESAGE: This is only a suggestion, but instead of saying "if available" would it not be better to say "or that the inventor is not known".

Mr. MARQUIS: On the same line—

Mr. LESAGE: I should like an answer to that.

The WITNESS: That comes down to very much the same thing.

By Mr. Lesage:

Q. Would it come to the same thing?—A. I think so.

The CHAIRMAN: The commissioner is content with the words "if available".

Mr. MACDONNELL: That answers me.

The CHAIRMAN: Mr. Fleming moves this amendment. All those in favour of the section as amended.

Mr. MARQUIS: Before it is carried, if some person wants to have information as to a patent he may send a letter to the Commissioner of Patents and may not know the name of the inventor. The name might not be available to him but it might be available to the Commissioner of Patents. If he has the number or designation of the patent it would be important for this person to get the information. Yesterday I sent a cable to England and I had an answer this morning, "It is impossible to give you the information". I gave a description of the invention. I do not know how much use it will be to have that amendment. If you make it "if available" will it be available to the person who requires the information or will it be available to the Commissioner of Patents?

Mr. IRVINE: It will be available to neither.

The WITNESS: It is available to the person making the request who then sends it to the commissioner.

By Mr. Marquis:

Q. If the person who makes the request has not the name of the inventor or holder of a patent how can he make it available?—A. He can send a copy of the foreign patent and if it is not given in the foreign patent he might say, "It is not available to me and I do not know who the inventor is. I am asking you now to make a search on the subject matter of the invention and to tell me whether an application has been filed emanating from that foreign country with this information in it."

Q. And this has nothing to do with a Canadian patent.

The CHAIRMAN: Shall the new section 11 as amended carry?

Carried.

By Mr. Jackman:

Q. May I ask the commissioner whether any priority is given to requests of this nature over ordinary searches?—A. Yes, we give priority to those. They invariably deal with Canadian companies which are probably going into the commercial field on that particular invention. They want this information so that they will know whether they are infringing on a patent or whether they will be stopped in their endeavour with the issue of a Canadian patent. We give preference to those. We usually furnish information of that nature within not more than one week.

Q. May I digress for a moment? Does the Patent Office have any difficulty as the result of awarding a patent on some new application and subsequently finding out that the idea was not a novel one and it has been patented in another country? Do patent offices throughout the world run into those difficulties?—A. That is not the section of the bill we are dealing with but I shall be pleased to answer it.

Q. Another time will do just as well.—A. I will be pleased to answer it. The fact is every country which makes an examination of patents runs into that difficulty.

Q. Another time will do.—A. I can give you something more definite than that at another time.

The CHAIRMAN: We have now reached the secrecy sections.

Mr. FLEMING: Mr. Chairman, you have not yet called section 12. I should like to make a comment on 12.

The CHAIRMAN: Section 12 has an amendment in regard to secrecy, (*c*) and (*d*). If you are content we will call the witness and he will be able to answer questions on all of the secrecy sections. Is that satisfactory, Mr. Fleming?

Mr. FLEMING: With the qualification that I think there is much more in section 12, subsection (*c*) than there is in section 4 of the bill enacting 19 (*a*). In other words, the power proposed in 12 (*c*) to be given to the Governor in Council to make regulations "for ensuring the secrecy of application for patents and of patents, in the interests of the safety of the state," goes far beyond the terms proposed in section 19 (*a*) because section 19 (*a*) in clause 4 of the bill has to do with patents to be assigned to the Minister of National Defence. The provisions of 12 (*c*) are not confined to the secrecy of applications or of patents that are assigned to the Minister of National Defence. It seems to me they go far beyond the scope of the new secrecy section, 19 (*a*), far beyond it. I think we have got to restrict the language of 12 (*c*) in the light of what form section 19 (*a*) is to take when it leaves the committee.

Mr. LESAGE: I agree completely with Mr. Fleming.

The CHAIRMAN: I entirely agree but I thought perhaps it would facilitate the work of the committee if, now that we have reached the question of secrecy, we should hear the witness who is here and ask him what questions the committee wishes to before dealing with section 12 at all.

Brigadier G. P. Morrison, Master-General of the Ordnance Branch, called

The WITNESS: Gentlemen, I might explain that our function, in so far as patents are concerned, has been strictly limited to date to making recommendations for the retention of a patent on the secrecy list, and alternatively that a certain article is a worthy patent or that we do not consider it is a worthy patent. I come from the technical branch which deals with that part of it.

What I might term the legal aspects of the problem have been handled by our legal branch which is represented by our Judge Advocate General's Branch. I have with me here Major Ready from the legal branch. I think he knows more about the legal aspects than I do, which happens to be nothing at all.

Speaking for the M.G.O. Branch from the secrecy point of view we feel that for the protection of the—I use the word "state"—we must or should have some mechanism by means of which patents or applications for patents may be placed on a secret list and issued only to and for the benefit of members of the commonwealth or any other countries that are allied with us in defence, or by virtue of any other treaties we may have that would give them the right to those patents. This is purely a personal opinion, but we would like to see the law so made that the inventors of the country are protected so that the fruits of their endeavours cannot be taken away from them by what we might call a too narrow interpretation of the term "secrecy" on the part of any official of the Department of National Defence.

Thirdly we would like to see the regulations or the Patent Act so written as to protect our minister. We are all human and we may make a mistake and recommend that something be placed on the secrecy list, money might be paid for it, and after careful examination by the Patent Office it might be discovered the invention was well known and our minister had been—

Mr. FRASER: Hoodwinked.

The WITNESS: Hoodwinked. I think that represents the technical soldier's point of view without any legal restrictions.

NOTE:—From this stage, the Committee held its proceedings *in camera* until adjournment at 12.45 p.m.

AFTERNOON SESSION

The committee resumed at 4 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. Shall we leave the secrecy section and carry on with section 5 of the bill?

Some Hon. MEMBERS: Agreed.

Mr. LESAGE: On section 5, Mr. Robinson of the Patent Institute has some objections to the renumbering of the sections.

Mr. FLEMING: That is 6.

Mr. J. T. Mitchell, Commissioner of Patents, recalled:

The WITNESS: Yes.

Mr. LESAGE: "Section 23 of the said Act is repealed"; and it is that which brings up the reference.

The CHAIRMAN: Mr. Robinson, would you care to come up here where you are handy?

Mr. LESAGE: Yes, and I will want to make some observations on section 6, relating to renumbering.

The CHAIRMAN: Shall section 5 carry?

Mr. FLEMING: We have no objection to section 5, Mr. Chairman.

Section 5 carried.

The CHAIRMAN: We are now on section 6, the renumbering section.

Mr. LESAGE: Mr. Chairman, I respectfully submit that this should never have been put into law, especially when you come to consider what is comprehended under the general term jurisprudence.

Mr. FLEMING: These numbers are well set. They have been referred to in cases. What is to be gained by renumbering them?

Mr. LESAGE: I think we should agree that we should not renumber them.

Mr. HACKETT: Unless one has to consider—what is it we call them, citators?

Mr. LESAGE: Yes, citators.

Mr. HACKETT: Yes, the full realm of the old books would become useless.

The CHAIRMAN: It has been moved that section 6 of the bill be deleted. Those in favour please signify?

Motion agreed to.

Mr. FLEMING: That means that all the sections of the bill will have to be renumbered.

The CHAIRMAN: We are now on section 7, who may obtain patents.

Mr. LESAGE: We should delete that section 25. We should delete the words, "as section twenty-five"; and replace the number "twenty-five" by the number "twenty-six".

Mr. FLEMING: Yes, that should be done.

Mr. LESAGE: It is only for the purpose of renumbering.

Mr. HACKETT: Are all the words underlined new?

Mr. LESAGE: That is the only new part, that which is underlined. What is it for, Mr. Mitchell?

Mr. RINFRET: I understand it is to clarify subsection 2.

The WITNESS: Yes, to clarify that with respect to 2, and to bring in the legal representative. Subsection 2 says, "any inventor or legal representative of an inventor who applies;" section 26 said, "any inventor of an invention". It missed off the legal representative, which should be inserted to make it agree with subsection 2 (*b*).

The CHAIRMAN: Mr. Robinson has some remarks he wishes to make on this section. Is it the wish of the committee that he be heard now?

Mr. LESAGE: There is one thing first, before we hear Mr. Robinson; in subsection 2 would it not be more clear if the word "either" was added immediately after "filed"?

Mr. HACKETT: After what?

Mr. LESAGE: "Filed." in line 39; "either" because there is a choice.

Mr. FLEMING: It is not clear.

Mr. LESAGE: And in line 23 we find the words "foreign country"; everywhere else in the Act they say "in any other country".

The CHAIRMAN: "In any other country"?

Mr. LESAGE: Instead of "foreign". Everywhere else in the Act that is what they say.

The CHAIRMAN: "Any other country".

Mr. BELZILE: That is in line 23.

Mr. LESAGE: Yes.

Mr. HACKETT: What change do you want to make in line 39?

Mr. LESAGE: "Either or".

The CHAIRMAN: You say there is the word "or" which appears at the end of subparagraph (*a*)?

Mr. LESAGE: Yes, that is it.

The CHAIRMAN: Have you any other comments before we hear Mr. Robinson? I will put all the amendments at one time instead of putting them individually.

Mr. JAENICKE: Are you objecting to these words "foreign country" when it says "any other country"? You will find Canada is always connected with that when it is used that way, but yiu will find Canada is not in here.

Mr. LESAGE: Well, "any other country" is quite clear.

Mr. JAENICKE: Have you any objection to that term "foreign"? Any other country is foreign to Canada. There should be no objection to that.

The CHAIRMAN: All right, Mr. Robinson.

Mr. ROBINSON: There is only one other point that the patent institute would like to raise and it is in connection with section 26, particularly section 26-1-(*a*); which now reads in the bill:—

(*a*) not know or used by others before he invented it, and

The institute would suggest that the word "others" be changed to "any other person". The words "any other person" were used in the statute from about 1870 odd until 1923, and for no reason that anybody can find out they were changed in 1923 to "others"; and as it stands now they are inconsistent with some of the other provisions of the statute, particularly section 61. Everyone has always gone on the assumption that if one other person could prove that before a given inventor made an invention, he had made that invention, then

the subsequent inventor could not get a patent. That is, if I make an invention today and file application for it the position should be that if any other person can show that before I made my invention he had made it then I should not be able to get a patent. But the way the section reads now because of the use of the word "others" there must be at least two, and it might be a perfectly confidential disclosure; that is, the two people would really be one. It is a distinction that really does not seem to us to make very much sense.

The CHAIRMAN: Are there any other questions?

Mr. MARQUIS: You would substitute "any other" by "some person".

The CHAIRMAN: Are there any other questions before I put the amendments?

Mr. HACKETT: Just let me ask who represents the institute?

Mr. ROBINSON: I do.

Mr. HACKETT: In section 61 we have in the fifth line "by some other inventor". Then we have further down in (*b*) "such other inventor"; and then, again, "such other inventors". Is there any distinction now made between inventor and a person? Should we not put inventor here instead of person?

Mr. ROBINSON: If you argue that "person" is to be preferred, your argument would have been better if section 61 had said "person"; because there should not be a distinction between inventor and person for these purposes. The question is a simple one. Prior knowledge about it does not necessarily presuppose an inventor or presuppose any invention. The question is simply did someone before this man apply for a patent of this alleged invention.

Mr. HACKETT: I am going to ask the Chairman if he would take a note of that, that when we are making these changes it might be well to be consistent and make the changes in section 61 as well.

The WITNESS: In section 26, 1, (*a*), "not know or used", of course the words, "by any other persons" do not necessarily mean an inventor; and the clause, "not known or used by any other person" is favourable to "any other inventors."

Mr. HACKETT: Yes, all right; but what I am asking now is whether section 61 should also be corrected.

The CHAIRMAN: Yes. I have made a note of that. Thank you, Mr. Hackett.

Mr. MARQUIS: But this term "inventor" supposes a man who has made an invention and refers to an inventor and not to a person. A person might use an invention and not be an inventor.

Mr. HACKETT: That may be the complete answer.

The CHAIRMAN: I will be glad to check it. Shall I put the proposed amendments?

It is moved by Mr. Marquis that section 25, be amended to read section 26;

And that the word "others" in line 20 be deleted.

Mr. LESAGE: No. First of all in line 16, that the words "twenty-five" be deleted.

The CHAIRMAN: I have deleted that.

And that section 25 be changed to read section 26.

Mr. MARQUIS: Be renumbered, yes.

The CHAIRMAN: Yes.

Mr. FLEMING: We will have to take into account the opening words of the bill.

The CHAIRMAN: Oh; thank you very much. And that in line 16 the words "twenty-five" be struck out, and—

Mr. LESAGE: You don't have to put "twenty-six" there.

The CHAIRMAN: And that the words "section twenty-five" in line 16 be deleted.

He further moves that the word "others" be struck out in line 20 and that the following words be substituted in lieu therefor, "any other person";

And he further moves that in line 39 the word "either" be added at the end of the line after the word "filed"; and he further moves that in line 43 the words "a foreign" be struck out and that the following words be substituted in lieu therefor, "any other". All those in favour of the motion covering these amendments please signify.

Carried.

Shall the section as amended carry?

Carried.

Mr. HACKETT: What do you think about the word "seven"—that section 26 of the said Act be repealed and the following substituted. Was there something to be done there? Was section 25 to come out?

The CHAIRMAN: Yes, we did that.

Mr. MARQUIS: We called it section 26.

The CHAIRMAN: Now, what about section 8 of the bill?

Mr. FLEMING: It ought to come out too, for the same reason.

The CHAIRMAN: It is moved by Mr. Lesage that section 8 of the bill be deleted. All those in favour?

Carried.

On section 9:

Mr. LESAGE: Should we go into this one? It is controversial.

The CHAIRMAN: I beg your pardon?

Mr. LESAGE: This is a very difficult section and I think Mr. Robinson has strong objections to present on it. Perhaps we had better not start a discussion on that just now.

The CHAIRMAN: There is no reason why we should not do a little work this afternoon.

Mr. LESAGE: All right.

Mr. BELZILE: This will be section 28(*a*).

Mr. LESAGE: Yes. First let us take that 28(*a*); replace the words "twenty-seven" by the word "twenty-seven (*a*)" after "section twenty-eight". That will require putting an (*a*) after the number twenty-eight.

The CHAIRMAN: Right. All right, Mr. Robinson.

Mr. ROBINSON: Mr. Chairman, this section, as one of the members of the committee remarked, is a very difficult one. The Patent Institute of Canada has given a great deal of consideration—

Mr. LESAGE: Mr. Robinson, before you go on, I think there were a couple of amendments the commissioner was ready to put forward. It would be my suggestion that it would be better for him to place those before the committee before you start your discussion. I think you have a couple of amendments, Mr. Mitchell?

The WITNESS: Yes, I have.

Mr. LESAGE: Maybe it would be better, before we proceed to hear Mr. Robinson, if Mr. Mitchell would put his amendments.

The CHAIRMAN: All right.

The WITNESS: That insertion 28(*a*) of the bill, "at any time" should be deleted, and substituted therefor "in the case of rights relating to patents of invention which arose on or after September 2, 1939, and".

Mr. FLEMING: What is the reason for that date? Did the war not break out 3rd of September 1939, and this country came in officially on the 10th?

The WITNESS: In every official document I have looked at in the form of Defence of Canada regulations, and Trading with the Enemy regulations and all the others, they take the date September 2, that is the date posted. September 2 was taken from those precedents.

The CHAIRMAN: That was the date on which Britain declared war. Now, what other amendment do you propose?

The WITNESS: In section 28(2) after the word "which"; delete "and have become payable"; and insert "should have been repaid". Then after the word "Act" delete "since" and insert "on or after".

In section 3 delete the words "provided by section 25 of this Act for the filing of applications for patents of invention", and after "which" delete the word "rights" in line 3. That is line 25 on that page. Cancel the word "rights" and insert therefor "the rights which had not expired on the second day of September, 1939, or which rights"—

By Mr. Lesage:

Q. Yes, but you should say "provided under this Act".—A. Yes, "provided under this Act". I beg your pardon, "rights provided under this Act".

Q. What do you think of adding "relating to patents of invention"?—A. Yes, that was another. "The rights under this Act relating to applications for patents of invention".

By Mr. Fleming:

Q. "Rights under this Act"—A. "Under this Act relating to applications for patents of invention."

By Mr. Lesage:

Q. Applications only?—A. Applications.

Q. Why do you say applications? Could you not say "relating to patents of invention"?—A. We are dealing with applications. Further down in line 30 it says, "Applications upon which patents have been granted as well as to applications", and so on. That is to keep the nomenclature the same throughout. It would be "under this Act relating to applications for patents of invention which had not expired". In line 30 after "granted" insert "during that period".

Q. Did you delete "rights" in line 26, the last word of line 26?—A. Yes, I think that was deleted.

Q. "Or which have arisen"?—A. "Or which have arisen".

Mr. FLEMING: Give us that last one again, please.

The CHAIRMAN: Line 30, add after the word "granted" the words "during that period."

Mr. LESAGE: Mr. Chairman, there is the word "and", "during that period and."

Mr. CLEAVER: Does that require "and"? I do not think so. No, it does not.

The WITNESS: Line 47, after the word "patented" insert "by the same inventor."

By Mr. Fleming:

Q. This is subsection 4?—A. Subsection 4.

By Mr. Marquis:

Q. Insert which words?—A. "By the same inventor." Line 48 after the word "any" insert the word "other", "in any other country." Line 49, delete "other than a country with which Canada was at war." On page 6 of the bill cancel "first day of September" and insert "second day of September."

By Mr. Hackett:

Q. Does that not get us into a conflict? Canada did not go to war until the tenth, did she?—A. Our defence of Canada regulations, regulations as to trading with the enemy and other regulations of that nature all refer to the second day of September.

By Mr. Fleming:

Q. Do they not all say "since the second of September" or "after the second of September"?—A. It may be that.

Q. My impression was they were to take effect immediately at midnight on the second of September because the state of war which actually broke out on the morning of the third was dated back to the first minute of that day as far as those regulations were concerned. It may be a small point.—A. I only want to get these points in and then afterwards they may be discussed.

By Mr. Lesage:

Q. Why do we say here, "in any of His Majesty's dominions or possessions"? Nowhere else in the act will you find that. You always say, "in any other country." This is the only place you will find it. I do not see why you use those words.

By the Chairman:

Q. They would seem to be needless?—A. They are needless.

Q. "Patented in any other country."

Mr. MARQUIS: Delete "in any of His Majesty's dominions or possessions."

The CHAIRMAN: Yes, "patented by the same inventor in any other country."

The WITNESS: Page 6, line 8, delete the word "eight" and insert "seven", "1937." There is no correction in section 5. Then we add a subsection 6 to section 28 which reads as follows.

By the Chairman:

Q. Is it long?—A. No.

> Nothing in the provisions of this section shall be deemed in any way to affect or to operate in derogation of any rights as to the revival or restoration of any lapsed rights to or in respect of any patent of invention applied for or acquired under the provisions of this Act which may be asserted or claimed by any person under and in virtue of the stipulations of any treaty of peace or convention entered into on behalf of Canada and ratified by parliament with any country with which the allied and associated powers are or have been at war, with regard to industrial property or otherwise affecting patent rights.

By Mr. Lesage:

Q. May I intervene here to remark that if you put in subsection 6 you cannot delete the words in line 49 on page 5, "with which Canada was at war." —A. The reason why I deleted that was that this committee has always impressed on me that this is peacetime legislation. The one reason I took that out was on account of that.

Q. But subsection 6 has no meaning if you take that out.—A. Quite so. I would have to leave in there, "with which Canada was at war." I would require to leave that in.

The CHAIRMAN: You leave in the words, "other than a country with which Canada was at war."

Mr. FLEMING: Which line?

Mr. LESAGE: Line 49 on page 5.

By Mr. Fleming:

Q. In subsection 4?—A. In subsection 4.

Q. Why do you bring in "allied and associated powers" in subsection 6?—A. The reason I brought that in was this. I have since learned there are certain peace treaties and certain treaties only now in the making, and I wanted to be perfectly clear I was not bringing in something here that was going to be at variance with anything the government might do.

By Mr. Lesage:

Q. Parliament is going to ratify.—A. Yes.

Mr. FLEMING: In other words, you do not think it is enough to confine that to "countries with which Canada is or has been at war"?

Mr. LESAGE: It is confined to that.

Mr. FLEMING: Why bring in "allied and associated powers"?

Mr. LESAGE: Because the treaties of peace are signed by the associated and allied powers.

Mr. FLEMING: Yes, but they are entered into on behalf of Canada and ratified by parliament. Is that not a sufficient definition?

The WITNESS: I suppose it is.

Mr. FLEMING: It is a matter of definition. I still do not see why you have to bring in a definition in those terms, "with any country with which the allied and associated powers are or have been at war." Is it not sufficient to say, "country with which Canada is or has been at war"? We are not going into a definition of the scope of the treaty. We are simply trying to identify it.

The WITNESS: I think you are perfectly correct there.

Mr. FLEMING: Why bring in these others?

The WITNESS: I think that could be deleted.

Mr. LESAGE: "With which Canada was at war".

Mr. FLEMING: "With which Canada is or has been at war". That is at the end of the new subsection 6.

Mr. LESAGE: If I understand it correctly it is because there are some peace treaties signed now which are not ratified by parliament and there are some special conventions as regards patent rights, especially between Italy and Canada, for instance.

The WITNESS: I understand from the newspapers that in the treaty restoration of certain rights has been made to Italy under Annex 15.

By Mr. Stewart:

Q. What rights are these? A. Rights in connection with industrial property. They involve all rights in industrial property.

Q. Does that mean patents that were registered by Italians in this country revert to them? A. I read it that way. I may be wrong. I think it is under Annex 15 of the peace treaty with Italy that they were restored to Italy. Those rights in industrial property were restored.

By Mr. Lesage:

Q. On certain conditions? A. On certain conditions.

Q. Under certain conditions and certain limits of time.

Mr. STEWART: Could we know what those conditions are?

Mr. LESAGE: We will know when parliament has to ratify the treaty. If you read the amendment which was put forward it says "entered into on behalf of Canada and ratified by parliament."

Mr. STEWART: Are we not being asked here to legislate on something we do not know anything about?

Mr. LESAGE: No, they will have to be ratified by parliament.

Mr. STEWART: We do not know what we are legislating for.

Mr. HACKETT: You do not think that is something that is peculiar to this Act, do you? There are a few words here that I am not sure add anything to the statute. In the second line we have "or to operate in derogation of". Does that add anything to the word "affect"? Are we not just as far along if we say that nothing in the provisions of this section shall be deemed in any way to affect the rights as to the revival and restoration, and so on. Does "or to operate in derogation of any" add anything to it? It seems to me that is cumbersome, fulsome and without value.

Mr. FLEMING: Mr. Chairman, perhaps Mr. Hackett might have added the word "tautological" there, but nevertheless "in derogation of" is a pretty good statutory expression. I do not see that it does any harm.

Mr. HACKETT: "In derogation of" is included in "affect". I am not going to stick out for it, but it does seem to me we are getting a lot of very verbose enactments.

Mr. JAENICKE: Can we not head the whole section up by saying, "subject to any treaty which Canada may enter into"?

Mr. HACKETT: That is another question which might come up, but when you have the word "affect" have you not in that everything that is imputed in the words "or to operate in derogation of any"?

Mr. MARQUIS: Do you contend that is a repetition?

Mr. LESAGE: It is a limitation.

Mr. HACKETT: It is a diminutive which is included in "affect".

The CHAIRMAN: I have made a note of that.

Mr. HACKETT: Then there is another one a little further on, "claimed by any person under and in virtue of the stipulations". It seems to me that "by any person in virtue of the stipulations" should be sufficient. I do not see that "under" adds anything to it.

Mr. LESAGE: In French you would say "en virtue".

The CHAIRMAN: Delete the words "under and".

Mr. HACKETT: Yes, and above that "or to operate in derogation of any".

Mr. RINFRET: You would leave the word "any" in.

Mr. HACKETT: Yes.

The CHAIRMAN: Asserted or claimed is another.

Mr. HACKETT: It struck me there you might assert a right for somebody as distinct from claiming it for yourself, but I am quite willing to say "asserted" and let "claimed" go.

The CHAIRMAN: Shall we hear from Mr. Robinson?

Mr. LESAGE: There is another subsection, I think.

The WITNESS: I do not think so.

Mr. LESAGE: No. 7? Did you not intend to add something with regard to the representations of the Canadian Manufacturers' Association?

The WITNESS: Yes. I am willing to let this stand because I wish to discuss this later on.

The CHAIRMAN: All right, Mr. Robinson.

Mr. ROBINSON: Mr. Chairman, the Patent Institute finds itself in some difficulty in approaching this section in the bill as amended.

As one of the members of the committee said, this is an extremely difficult subject. The members of the institute feel this section is dangerous in many ways because, although it is a draft, the language is, in the view of the members of the institute, very likely to lead to difficulty when it comes to interpretation by the courts. The section as presented in the bill is practically identical except for the changes in the dates with sections 5 and 7 of chapter 44 of the statutes of 1941. In the view of the institute that statute was not a satisfactory statute for a number of reasons. First of all it sets out—and this is true of the bill—in the first subsection to deal generally with everything and then makes that subject to the granting of reciprocal rights. In subsequent subsections it goes on to deal specifically in somewhat different language with the kind of things already dealt with in subsection (1).

For example, subsection (1) says, in the case of rights relating to patent inventions which arise after September 2 and under particular conditions, a British subject or national of any other country which extends reciprocal privileges may accomplish any act, fulfil any formality, pay any fees and generally satisfy any obligation prescribed by the laws or regulations of Canada relating to the obtaining of patents or invention. Now, it would be hard to find broader words with which to deal with the whole subject of extension. As I pointed out, this is made subject to the granting of reciprocal rights by foreign countries.

Subsection (2) says,

> Fees which have become payable under this Act since the second day of September, 1939, may at any time until the expiration of a period of six months from the coming into force of this section, be paid with the same effect as if paid within the time prescribed by this Act.

Subsection (1) has already legislated in favour of fees but legislated only in favour of Canadian citizens, British subjects or nationals of any other country which extends reciprocal privileges. This section legislates with regard to fees without any limitation at all. You come again to the same sort of difficulty when you come to subsection (3). There are contradictions between the next subsections. The proposals which have been made by the commissioner of patents have been, I think, probably the best proposals that could be made to clear up what was, in the view of the institute at least, fundamentally an unsatisfactory sort of provision to accomplish purposes which everyone agrees it is desirable should be accomplished.

For example, subsection (1) says,

> In the case of rights relating to patents of invention which arise on or after September second, 1939 . . .

Now, it is not quite clear what that means because a right to a patent of invention probably arises at the time of the making of the invention. I do not think that is really what was meant, I think what was meant was that any of the time limits say, for filing an application in Canada or for doing other things under the Act which had not expired on that date should be extended. Yet, curiously enough, that is what subsection (3) deals with specifically. I could go on at some length pointing out that sort of difficulty which the institute feels is

likely to arise under that section. With this difficulty in mind the members of the institute have given very careful consideration to the whole matter. I should say here that the members are entirely in agreement with the purposes which are aimed at in this section. They have proposed a revision of this section, which, in their view, covers more concisely and with, therefore, less danger, the difficulty arising because of the conflict of provisions on the same subject in diffeerent subsections. I think all the members have copies of the proposed subsection. They were distributed, but I have some extra copies here in case some member has not one.

This section is designed to accomplish exactly the same object as the section in the bill except for one important point. The section in the bill would allow a patent which was granted by virtue of that section to be granted for the normal term of seventeen years. The result of that might be, therefore, that someone who had made an invention and published it on September 3, 1937, and would therefore have had to file in Canada on September 3, 1939, to be within the normal time limit for filing could file up to within six months of the passing of this Act, or September 30, 1947. In other words, he could file eight years later than he would normally have had to file and thus obtain a patent for the full seventeen year period. His patent would be granted in 1950 and expire in 1967, whereas if he had filed within the normal time his patent would have expired in 1958 or 1959.

The members of the institute which includes not only patent attorneys in private practice, of which I am one, but also includes patent attorneys working for Canadian companies who are interested in the manufacture of these articles, as well as the holders of patents, unanimously agree that that is not a satisfactory result. Someone is going to get into this country now and secure very special privileges which he could not secure except for this legislation. We feel he should get a somewhat shortened term on such a patent, particularly having regard to this fact: in this country since November, 1939, there has been in force an order in council known as the Patents, etc., Emergency Order, 1939.

Under that order it has been possible for anyone who filed outside the normal statutory time limit to secure from the Commissioner of Patents an extension of the time for filing his application if he could show he was not able to act within the normal time limit because of circumstances arising out of the war. The result of the existence of the order since 1939 has been that anyone who has any kind of case for not having come in within the normal time limit has been able to come in and get an ordinary patent. Therefore, this legislation is going to benefit only or substantially at least those people who could perfectly well have come in before but, for some reason or other, decided at the time they did not want to bother. Now, as there is legislation which offers those persons a chance, they will come in. In the view of the institute at least the primary reason for passing any legislation on this subject in Canada is to enable Canadians to get rights under foreign legislation which are made subject to the granting of reciprocity by other countries. I think a good many members of the institute would have felt, had it not been for that, there would have been no need to have this legislation at all, since everyone who has had a case has been able to come in all right. The members of the institute, therefore, do feel strongly that anyone who does come in now should not get a patent which is going to expire perhaps as late as 1967, whereas it should have expired eight to ten years earlier.

Mr. HACKETT: Can you say what has been done in the United States, Great Britain and other countries?

Mr. ROBINSON: Yes, the United States has put in a provision to exactly the same effect as the one of which I am speaking, notwithstanding the fact

that in the United States during the war there were no special priveleges to allow anyone to get in outside the normal time limit. The United States had no order or law corresponding to our patents emergency order of 1939. Therefore, anyone who was unable to get in in the United States within the normal time limit could get a patent in the United States only by virtue of this legislation which is known as the Boykin Act. Notwithstanding that fact, the United States limited any patent such a person could get to twenty years from the date he made his first application in any country.

In England, they did have a Patents etc., Emergency Act of 1939, one section of which was in exactly the same terms as the extension section of which I have been speaking in our patent order. So far, I have not seen the English legislation which, I understand, is at least in the discussion stage and is intended to match the American Boykin Act. I understand legislation is being cast in England largely for the purpose of enabling British subjects to secure the benefits of the Boykin Act in the United States.

Mr. FLEMING: Which expires on the sixth of August?

Mr. ROBINSON: I think it expires on the eighth of August, 1946. You have to get an application on file in the United States before August 8, 1946.

Mr. HACKETT: 1947.

Mr. ROBINSON: 1947, I am sorry. Now, coming back to the section proposed by the institute, subsection (1) says,

> Subject as hereinafter provided, the commissioner shall extend to the thirtieth day of September, 1947—

It may be that it would be preferable to say six months after the passing of the Act. Frankly, we put the 30th of September, 1947, because it makes the operation of the section easier and it is probable that this Act is going to be passed before the 31st of March. You could put the 30th of September, or, if it were preferable, you could say six months after the passage of this Act.

Mr. LESAGE: What would happen if we gave certain rights to German subjects by a treaty which treaty would likely be signed after the 30th of September, 1947.

Mr. ROBINSON: If we are giving rights?

Mr. LESAGE: Yes.

Mr. ROBINSON: Such persons have to come in under the normal time limit.

Mr. LESAGE: But they could not, it would be after the peace treaty.

Mr. ROBINSON: I think it is inconceivable any peace treaty would give rights to Germans beyond the rights which were given to anyone else. If there were special provisions in this legislation that treaty rights should, so to speak, override the legislation, the result would be that an Englishman would have to file before the 30th of September, 1947, but a German whose peace treaty might be signed in 1950 would be able to file in 1952; that would not be right.

Mr. LESAGE: But if we signed the peace treaty, what then? You will have a contradiction in your law.

Mr. ROBINSON: This legislation being in force, presumably the government or parliament would have some say about what was to be done about German industrial property rights.

Mr. MARQUIS: Perhaps we might include that section 6 after your section 28A as it is drafted now, to make that reservation.

Mr. ROBINSON: We do not hold any very strong view about that, but our view is this; if such a section were going to give the Germans, the Italians and Japanese greater rights than were given to anyone else, then the provision should not be in there and if it is not, then it is unnecessary.

The CHAIRMAN: I think Mr. Lesage's point is this; it may well be that the treaty will not be signed in time for any German to apply now, and if the treaty is signed after the expiration of this time limit and the treaty gives certain rights, obviously Canada should respect those rights.

Mr. ROBINSON: Perhaps those rights could be given by special legislation if it became necessary at that time.

Mr. LESAGE: It would be special legislation but it would be contradictory to this provision.

Mr. ROBINSON: Possibly an amendment could be made to cover that when the time comes.

The CHAIRMAN: You would suggest amending the Act after the peace treaties are signed, if that is necessary?

Mr. ROBINSON: Yes, because in our view, it would be extremely unlikely that would be necessary.

Mr. FRASER: Would not that P.C. 3558 which was signed on December 30, 1946, concerning German patents in London, be taken into account in connection with that?

Mr. ROBINSON: That is only concerned with granted patents, sir, not applications.

The CHAIRMAN: Perhaps some German would want to apply for a patent after the peace treaty was signed and I would think we would meet that situation when it arose.

Mr. LESAGE: I think section 28A with subsection (6) which was proposed covers this point in advance. When parliament ratifies the peace treaty, you will not have to amend the Act. I think when the peace treaty is ratified by parliament the Act becomes the law of Canada and you would not have to amend this Act which you would have to do under Mr. Robinson's proposal.

Hon. Mr. GIBSON: It would be safe to assume that they would not give the enemy rights that were greater than we extend now to our allies.

Mr. MARQUIS: Their rights will not be interfered with. They will be able to protect their rights if they come in within the period specified, within six months or two years. They have the right now, but they cannot ask for that right.

Mr. LESAGE: Have you the peace treaty, Mr. Mitchell?

The WITNESS: No, I have not got it.

Mr. ROBINSON: I have seen only the newspaper report of the Italian peace treaty; and certainly that clause in the peace treaty would have required no special legislation at all and would have required no clause in this bill, because there is nothing in this that would be contrary to it. What the German treaty may be like, I do not know. But the difficulty is the difficulty that the minister just mentioned. It seems difficult now to pass legislation which might have the result of giving the Germans some more rights than are going to be given to British or American or any other allied countries.

The CHAIRMAN: On the proposed subsection 6 which the commissioner suggests, that subsection does not deal with any greater rights than are specifically given by the treaty.

Mr. ROBINSON: Well, it may give them greater rights indirectly, that is what I had in mind, because they would come in much later with their patent applications than anyone else and they might get patents which would be effective later than anybody else's patent. And not only that, the clause protecting third party rights in both the draft submitted by the institute and the section of the bill are based on applications, new applications with respect to

inventions at a particular date, the date of the passing of the section. If you give special treaty consideration to the Germans you might have this situation. Let us assume that the German treaty is signed in 1950—perhaps I am optimistic, but we will take that date—some Canadian in 1948 wants to manufacture something. He makes a survey of all Canadian patents, and he makes inquiries under section 11 of the Act, and he is assured that there are no patent applications; therefore he knows that he is free to go ahead. No more applications can be passed. He goes ahead and he starts manufacture. The German treaty is signed in 1950. By it somehow the Germans are allowed to come in at the end of 1950 and file an application, and Germans come in and file an application for the thing which our Canadian has been manufacturing for three years. He gets his patent and he says to the Canadian: you are infringing; because the Canadian is not protected.

Mr. LESAGE: What about the present provision?

Mr. ROBINSON: I am trying to deal with the kind of question that will arise on signing of the German treaty if this sort of clause remains in.

Hon. Mr. GIBSON: It is the worst kind of clause that could be in.

Mr. LESAGE: Yes.

Mr. ROBINSON: The tendency so far as I have been able to see from the newspaper reports would require nothing in the way of special legislation. That is, it does not give the Italians the right which it would give under the treaty subsection if this section were agreed to.

The CHAIRMAN: I may be stupid about this thing. Do I understand that you are arguing that we should now by the amendment we pass prevent the Germans from acquiring patent rights which may be assured to them if the peace treaty should be signed?

Mr. ROBINSON: No, sir. What we have in mind is this. If that does become necessary as a result of the treaty then legislation might be passed at that point, but any general treaty legislation now might have extremely undesirable effects, such as the case which I suggested of a Canadian who started manufacture and then found himself faced with a German patent.

The CHAIRMAN: I get your point; and perhaps it is this: your point is that if the German peace treaty should give certain rights to Germans which are in excess of the rights which we are now giving to others that those Germans should not be permitted to exercise those rights until the Patent Act goes back to the house and we amend it and similar rights are extended to others.

Mr. ROBINSON: That is partly the point; also that when such cases arise then this house should have an opportunity to determine exactly what protection they are going to give Canadian manufacturers against such patent rights.

The CHAIRMAN: Oh, yes.

Mr. ROBINSON: Whereas if the treaty provision is put in now—perhaps I am labouring this too much, because it is not perhaps, as I said at the beginning, a point on which the institute holds particularly strong views. We would not ourselves be inclined to put it in.

Mr. HACKETT: Your suggestion is this; you want to preserve the rights but not extend them. You are willing that they should have the rights for the period which they would normally have enjoyed the patent if they had got registration?

Mr. FLEMING: It is a little more than that. You want a twenty-year ceiling?

Mr. ROBINSON: A twenty-year ceiling; that is, not more than twenty years from the date of the first application; which is exactly the same point that I am making.

Mr. HACKETT: And what would happen if somebody had not made an application anywhere?

Mr. ROBINSON: You mean, if he makes his application in Canada?

Mr. HACKETT: Yes.

Mr. ROBINSON: Then it is simply a new application.

The CHAIRMAN: That concludes your representation. I think perhaps the committee would like to hear from Mr. Mitchell.

The WITNESS: I do not exactly know what section 28-1(*c*) means; "or appears to the commissioner". I do not exactly know what "or appears" means.

Mr. LESAGE: Surely it gives you larger authority.

The WITNESS: I do not think the commissioner should have any larger authority.

Mr. ROBINSON: I will tell you why we put that in. If you could say simply, such patentee or applicant is a British subject, and the country of which he is a national gives reciprocal privileges—if it appears to the commissioner. The difficulty is this. A man gets his patent and throughout the life of the patent it is open to anyone to attack the validity of that patent on the ground the country of which he is a citizen does not extend reciprocal privileges to Canada, or that the patentee is not a British subject, and the patent might be upset on those grounds. What we had in mind was that the commissioner is obviously the proper person to determine whether these countries do give reciprocal privileges; and the commissioner in giving a man a patent would have to satisfy himself as to whether or not that individual was a British subject, and also whether the country to which he belongs, if he is not a British subject, extends the reciprocal privileges.

Mr. LESAGE: Do you not think that is rather a broad subject? An applicant should be able to satisfy the commissioner, or anyone else, as to whether he is a British subject. Why not put it that way?

Mr. ROBINSON: If it appears to the commissioner that he is a British subject, sir. The point is this: by putting in "if it appears to the commissioner", or "if the commissioner is satisfied" then the patent once it is drawn is not open to attack on that formal ground; whereas, if you do not say "if the commissioner is satisfied" or "if it appears to the commissioner" any court may anywhere at any time try the right to a patent on those particular points. We also think that it would be well to put in that other provision, "or that the country extends reciprocal privileges".

Mr. HACKETT: If the commissioner made a mistake that would have no bearing on the fact.

Mr. ROBINSON: No. But there is some sort of provision under the patent emergency order of which I was speaking some time ago. The express provisions of that order are that the commissioner may grant an extension of any patent for any period of years if he is satisfied that certain conditions exist. Now, once the commissioner is satisfied that is so everybody knows where they stand—the patent has been granted on that basis, and it cannot be attacked once the commissioner is satisfied on grounds that the commissioner was not satisfied.

The CHAIRMAN: Gentlemen, I have a suggestion to make. I have listened to this discussion with a great deal of interest and I would like to make a suggestion now. We all appreciate very much the way in which the institute is helping in the revision of this bill, but I know very well that no two draftsmen will draft legislation in exactly the same way. Now, this is a difficult section to draft. I think that the commissioner is entitled to have his line of drafting followed. To me, it would seem to be rather unfair to our commissioner if we flash on him a brand new section drafted by someone else and

ask him to fit his views into some other person's drafting. I would think, Mr. Robinson, that the proper procedure would be for you to take the section as drafted and to indicate one, two, three, in every place where the institute has an objection to the section as drafted, and to indicate that objection, and then we will deal with those one at a time. But to come along with a brand new section is, I think, hardly fair to our commissioner.

Hon. Mr. GIBSON: Is there not a certain merit in having the section in the same form it was in before so that any decisions that have been made on previous legislation will be available for dealing with this section?

Mr. ROBINSON: So far as I know, sir, there are no decisions relating to the amendment to that 1931 legislation. There was one case in which there was the question of an extension. I should say, Mr. Chairman, that I have not discussed our ideas in detail with the commissioner. It seems to us that it would be difficult to take this section and deal with the difficulties which seem to us to arise in connection with it. We tried to do that, but we found that we were not covering points which we thought were necessary, that we could not do that without possibilities of duplication and contradiction, and that it would be much better done by suggesting a redrafted section.

Mr. FLEMING: Is the commissioner the draftsman of this section we have in the bill, and are these further amendments that we have to-day from the law officers?

The WITNESS: I discussed them with the law officers as a matter of fact.

Mr. FLEMING: It is going to be very difficult for the committee to sit in judgment on these different draftings. Mr. Robinson has indicated approval of the purposes of the section with one or two qualifications, and it is a problem of draftsmanship. Is there any merit in the Chairman's suggestion that we should ask the commissioner, Mr. Robinson and the law officers, or the draftsmen of the section, to confer on this matter before our next meeting? I do not think we want to sit in judgment.

The WITNESS: I wanted to refer to section 2 of this Institute draft so that you might know my objections. In section 2 of that draft Mr. Robinson, referred to a patent taken out in the United States and Canada on which the United States patent expired prior to the Canadian patent, and he thinks that in this particular section the Canadian patent should expire at the same time as the foreign patent, or the American patent. Now, what you are going to do there is this, you are going to throw the Canadian market open to American competition. The American market will be open to Canadian manufacturers as soon as the American patent expires and if the Canadian patent does last three or four years longer the Canadian manufacturer will have access to the American market provided he can meet the tariff walls and at the same time he would be protected as to his market in Canada. That is one point that you must take into consideration, and possibly the Canadian Manufacturers' Association have not looked on this in the way they should have. This is an opening of Canadian markets under patent to foreign patentees.

Hon. Mr. GIBSON: On the other hand, the Canadian Manufacturers' Association has suggested that we should curtail our patents to the life of the patent in foreign countries. I have a letter from the Canadian Manufacturers' Association on that ground.

Mr. HACKETT: What is the argument back of that?

Hon. Mr. GIBSON: I think the argument was that after the patent expired abroad the manufacturers in Canada could manufacture for export, that the man who holds the patent can manufacture for export even when the world market is open.

The WITNESS: There are third party rights in Canada, and if another party in Canada has his rights and is manufacturing in Canada he is protected also under the Canadian Patent Act in so far as there is any infringement; and he is open also to exploit the foreign market while also enjoying protection in the Canadian market. You have competition in the Canadian market with the patentee and the person who enjoys protection under the third party rights.

Mr. FLEMING: I do not know whether this suggestion of mine has any merit or whether that sort of thing has been done in committees in the past. It seems to me if the parties cannot come more closely to agreement on the subject of draftsmanship at least we could have a clearer definition of the points at issue between them. I would ask you to take that in hand before the next meeting.

The CHAIRMAN: I think the suggestion is a good one, but I think the parties would have to be at one as to what they want to achieve by the legislation. Mr. Mitchell has indicated he wants certain patent holders in Canada to have rights extending only to Canadian manufacturers.

Mr. HACKETT: It is not a matter of draftsmanship.

Mr. FLEMING: That particular point is, and that raised a question of policy. We have heard from Mr. Robinson indicating that in general he is in sympathy with the terms of the section. As I say, if there are points of it that require direction as to policy surely those can be isolated by conferences of the officials.

The CHAIRMAN: Would you care to express an opinion on that point as to policy?

Hon. Mr. GIBSON: No.

Mr. MARQUIS: Do you not think that section should stand?

The CHAIRMAN: All those in favour of the section standing?

Mr. LESAGE: Before we decide that might I ask the reporter to put on the record Annex XV of the Italian peace treaty because what I said to Mr. Robinson was true.

The CHAIRMAN: Would you mark it, please, and hand it to the reporter?

Mr. LESAGE: We do not have to have all the clauses. It is only part. It is section 1, subsection (*b*).

The CHAIRMAN: If you will clearly mark the part you want to go on the record it will go on the record.

Mr. HACKETT: It is an extract from the *Times*, is it?

Mr. LESAGE: Yes.

The CHAIRMAN: Have you marked it?

Mr. LESAGE: Yes.

The CHAIRMAN: Shall the section stand?

Mr. FLEMING: It is going to stand but can these officials get together before the next meeting?

The CHAIRMAN: I will see they get together.

Mr. STEWART: I should like to suggest we have the whole annex reprinted. It is not very long. I think we should have the whole thing there.

Mr. LESAGE: Not what relates to insurance.

Mr. STEWART: It is only a couple of clauses.

Mr. LESAGE: Part (*a*) of the Annex.

Mr. HACKETT: You have it in the blue book?

Mr. STEWART: This is the peace treaty.

Mr. HACKETT: It might be better if they got it from an official document rather than from a newspaper.

Mr. LESAGE: We give them rights.

"ANNEX XV

SPECIAL PROVISIONS RELATING TO CERTAIN KINDS OF PROPERTY

A. Industrial, Literary and Artistic Property.

1. (*a*) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving in Italy of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(*b*) Allied and Associated Powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Italy or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Italy or during the war, shall be entitled within twelve months after the coming into force of the present Treaty to apply for corresponding rights in Italy, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(*c*) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present Treaty during which they may institute proceedings in Italy against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the present Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Italy at the outbreak of the war or which are recognized or established under part A of this Annex, and belong to any of the Allied or Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Italy for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Italy of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Italy and its nationals. Nothing, however, in these provisions shall entitle Italy or its nationals to more favourable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Italy be required thereby to accord to any of the Allied and Associated Powers or its nationals more favourable treatment than Italy or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parites in the territories of any of the Allied and Associated Powers or Italy who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights conflicting with rights restored under part A of this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Italy, such permission shall take the form of a non-exclusive licence granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed

by the Conciliation Commission established under Article 83 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in part A of this Annex shall be construed to entitle Italy or its nationals to any patent or utility model rights in the terriory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in the definition of war material contained in Annex XIII of the present Treaty, made, or upon which applications were filed, by Italy, or any of its nationals, in Italy or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Italy shall likewise extend the benefits of the foregoing provisions of this Annex to United Nations, other than Allied or Associated Powers, whose diplomatic relations with Italy have been broken off during the war and which undertake to extend to Italy the benefits accorded to Italy under the said provisions.

8. Nothing in part A of this Annex shall be understood to conflict with Articles 78, 79 and 81 of the present Treaty."

The CHAIRMAN: Section 10.

Mr. FLEMING: Section 10 calls to mind the remarks of the commissioner in his opening at the first meeting of the committee in which he referred to the present necessity for an oath or affirmation to substantiate statements in the application. He pointed out that this is not to be found in the legislation of all countries, that probably it was borrowed from the United States, and if I remember correctly the commissioner's statement he did not see any particular value in it. I understand that a great deal of time is spent in checking over these oaths and affirmations, and that in the result they do not serve any practical purpose. Can we not approach this broader question in connection with section 29 of the Act at the same time as we are considering this proposed amendment?

Mr. HACKETT: Can we not also say there seems to be in much of the legislation of the United States a tendency to have income tax returns and all kinds of returns made to the government under oath. Personally that is repugnant to me. I think we should have laws and if people disrespect them they should be punished, but it seems to me it is an unfortunate characteristic of legislation in other countries which is not a desirable one. So far we have escaped putting people on oath that they are following the law. I think it has a tendency to lessen all respect for the law and to lessen all respect for an oath.

The WITNESS: Section 29, as it appears in the Act, is probably a deterrent to someone fraudulently trying to obtain a patent. I have never had a case like that appear in the Patent Office. I am only saying it is probably there for that purpose although a case like that has never cropped up.

Mr. HACKETT: Would it not be well to wait a little while?

Hon. Mr. GIBSON: It is already in the Act.

Mr. MARQUIS: It is already in the Act. It is only the filing of the oath or affirmation.

Mr. HACKETT: "Such oath or affirmation as the case may be shall be filed"—

Mr. MARQUIS: The inventor shall make oath.

The CHAIRMAN: The inventor is already required under the Act to make oath, and it is simply the time.

The WITNESS: The office is quite open to leaving out section 29 if it is found expedient to drop it in Canada. The office has no objection. I am only stating I think it was put there as a deterrent to fraud, but I have never known of a case of that nature arising in the Patent Office where anyone fraudulently tried to obtain a patent.

By Mr. Fleming:

Q. Does it add to the work of the Patent Office going over this requirement of the oath or affirmation?—A. It is a tremendous lot of work, and it is a nuisance in some ways. As I said, only three countries have it to my knowledge. They are the United States, Canada and Newfoundland. All other countries only have an application form. There is no other requirement at all.

Mr. FLEMING: My suggestion is we ask the commissioner to bring in an amendment for our next meeting dealing with the whole of section 29 that will have the effect of eliminating the present requirement as to an oath or affirmation. It is clear it does not serve any useful purpose.

Hon. Mr. GIBSON: You would have him file a statement?

Mr. HACKETT: Certainly.

Mr. FLEMING: Yes. As you will recall in connection with dominion succession duties you do not require any oath there. The province require an oath but not the dominion. Surely that is just as formal. An income tax return is also just as formal a return as an application for a patent. In fact, a great deal more may hinge on it than hinges on a patent as far as general interest is concerned in this country. We have got a clear statement from the commissioner that the taking of these oaths and affirmations is a nuisance and it involves a tremendous amount of work.

The CHAIRMAN: If the oath is deleted as has been suggested should we then add a penalty section for a false statement?

Mr. HACKETT: It is there already.

The CHAIRMAN: The oath carries a penalty under the code, but if we delete the oath I think we should check carefully to make sure.

The WITNESS: There is a penalty clause.

Mr. JAENICKE: Is there not a penalty section for anybody making a false statement?

The WITNESS: Section 53 of the Act says:

> A patent shall be void if any material allegation in the petition or declaration of the applicant in respect of such patent is untrue.

The CHAIRMAN: That is not a penalty.

The WITNESS: No, but it renders the patent invalid. If he says he is the first and true inventor and he is not the first and true inventor it renders it invalid.

The CHAIRMAN: Should there not be a mandatory penalty for making a false statement?

Mr. MARQUIS: There is no fine.

The CHAIRMAN: There should be.

Mr. LESAGE: You can add something to section 78.

Mr. FLEMING: It could be put in section 79 which has to do with offenses and penalties. You have four penalty sections, 78 to 81 inclusive. Something of that kind could easily be inserted there, and the commissioner could bring in in his report on amendments to section 29 an amendment to one of these penalty sections that would cover the case adequately.

Mr. BELZILE: What about the Criminal Code?

The CHAIRMAN: The Criminal Code already covers it if it is a false oath. If it is a false oath he is liable under the code but if we delete the oath then there should be a penalty under section 79.

Mr. HACKETT: What have we got in section 80?

> Every person who (*a*) wilfully makes or causes to be made any false entry in any register or book, or (*b*) any false document or altered copy of any document,

and so on. We could put something there.

Mr. LESAGE: Do you not find that the drafting of section 80 is very bad and there should be an amendment?

Mr. HACKETT: Pardon?

Mr. LESAGE: Do you not think that the drafting of section 80 is terrible?

Mr. HACKETT: Yes.

The CHAIRMAN: It is terrible.

Mr. LESAGE: It should be amended anyway. It cannot be left the way it is.

Mr. HACKETT: I think the commissioner would be glad to give a little paternal attention to that.

Mr. MARQUIS: It is pretty hard to commit an offense under that section.

By the Chairman:

Q. Would you do that, please?—A. I will do so.

The CHAIRMAN: I have been asked that section 11 should stand. Section 12.

Mr. FLEMING: Why are you allowing section 11 to stand?

The CHAIRMAN: I have been asked by the Patent Institute. They are not ready to make representations on it. Section 12.

> 12. Section thirty-one of the said Act is repealed and the following substituted therefor:—
>
> *Applications to be completed within twelve months.*
>
> 31. Each application for a patent shall be completed within twelve months after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within six months after any examiner, appointed pursuant to section six of this Act, has taken action thereon of which notice shall have been given to the applicant, such application shall be deemed to have been abandoned, but it may be reinstated on petition presented to the Commissioner within twelve months
>
> *Abandonment and reinstatement.*
>
> after the date on which it was deemed to have been abandoned, and on payment of the prescribed fee, if the petitioner satisfies the Commissioner that the failure to prosecute the application within the time specified was not reasonably avoidable. An application so reinstated shall retain its original filing date.

Mr. FLEMING: There is no objection to section 12.

The CHAIRMAN: Shall section 12 carry?

Carried.

Section 13. Perhaps some of the members would like to go back to the House for a few minutes before six o'clock. We will adjourn as soon as we have dealt with section 13 if you like to do that. While we are on the subject would you like to work tonight at 8.30 or would you rather not?

Mr. FLEMING: No.

The CHAIRMAN: Section 13.

13. Section thirty-two of the said Act is repealed and the following substituted therefor:—

Effect of refusal of a joint inventor to proceed.

32. (1) Where an invention is made by two or more inventors and one of them refuses to make application for a patent or his whereabouts cannot be ascertained after diligent enquiry the other inventor or his legal representative may make application and a patent may be granted in the name of the inventor who makes the application on satisfying the Commissioner that the joint inventor has refused to make application or that his whereabouts cannot be ascertained after diligent enquiry.

Refusal of applicant to proceed.

(2) In any case where

(*a*) an applicant has agreed in writing to assign a patent, when granted, to another person or to a joint applicant and refuses to proceed with the application; or

Disputes between joint applicants.

(*b*) disputes arise between joint applicants as to proceeding with an application;

Powers of Commissioner.

the Commissioner, on proof of such agreement to his satisfaction, or if satisfied that one or more of such joint applicants, ought to be allowed to proceed alone, may allow such other person or joint applicant to proceed with the application, and may grant a patent to him, so, however, that all persons interested shall be entitled to be heard before the Commissioner after such notice as he may deem requistie and sufficient.

Procedure when one joint applicant retires.

(3) Where an application is filed by joint applicants, and it subsequently appears that one or more of them has had no part in the invention, the prosecution of such application may be carried on by the remaining applicant or applicants on satisfying the Commissioner by affidavit that the remaining applicant or applicants is or are the sole inventor or inventors.

(4) Where an application is filed by one or more applicants and it subsequently appears that one or more further applicants should have been joined, such further applicant or applicants may be joined on satisfying the Commissioner that he or they should be so joined, and that the omission of such further applicant or applicants had been by inadvertence or *bona fide* mistake and was not for the purpose of delay.

When patent to be granted to joint applicants.

(5) Subject to the provisions of this section, in cases of joint applications the patent shall be granted in the names of all the applicants.

Appeal.

(6) An appeal shall lie to the Exchequer Court from the decision of the Commissioner under this section.

Shall section 13 carry?

Carried.

Section 14.

Mr. LESAGE: I have an amendment to section 14.

The CHAIRMAN: Section 14 stands. We will carry the ones that are in the clear.

Section 15.

15. Subsection two of section thirty-seven of the said Act is repealed and the following substituted therefor:—

Divisional applications if more than one invention claimed. Proviso.

"(2) If an application describes and claims more than one invention the applicant may, and on the direction of the Commissioner to that effect, shall, limit his claims to one invention only, and the deleted claims may be made the subject of one or more divisional applications, if such divisional applications are filed before the issue of a patent on the original application: Provided that if the original application becomes abandoned or forfeited, the time for filing divisional applications shall terminate with the expiration of the time for reinstating or restoring and reviving the original application under this Act or the rules made thereunder."

Shall section 15 carry?

Carried.

Section 16.

16. The said Act is further amended by inserting immediately after section fifty-two the following section:—

Jurisdiction of Exchequer Court.

"52A. The Exchequer Court of Canada shall have jurisdiction, on the application of the Commissioner of Patents or of any person interested, to order that any entry in the records of the Patent Office relating to the title of a patent be varied or expunged."

Mr. LESAGE: There is an amendment there.

The WITNESS: In line 30 "of" the second last word in the line, should be changed to "to". It should read "to a patent".

The CHAIRMAN: It is moved by Mr. Lesage that the word "of" should be deleted from line 30—the second last word in the line—and in lieu thereof the word "to" substituted. Shall the section as amended carry?

Carried.

Section 17:

Mr. FRASER: There was to be a change in the fees; is that right?

The WITNESS: Yes.

Mr. FRASER: I suggested that there be a change there and the commissioner said he was agreeable. I think that that section should be studied and the fees jumped up a bit.

Mr. FLEMING: An increase in fees has got to be tied in with an improvement in service to the public. Now, that is going to lead us into a wider field of inquiry. I do not suppose anybody would object to a modest increase in the fees as long as in return he is receiving an improvement in service which is commensurate. Now, this raises the same old question with which we started out about printing the patents, the increase of staff and improvements of facilities; and the point is: which is going to come first here, the egg or the hen?

The CHAIRMAN: I suggest we should increase the fees and hope that the service will follow.

The WITNESS: You cannot get the service without the fees being increased; or until the fees are increased.

Mr. FLEMING: Mr. Chairman, as far as I am personally concerned I have no objection to any increase of the fees as long as we are going to undertake the printing of patents and have those prints available at a modest fee; and the suggestion has been 25 cents.

The CHAIRMAN: The commissioner suggested the section be allowed to stand until we have had a report from that subcommittee.

Section stands.

Section 18:

Mr. FLEMING: That depends on section 17.

The CHAIRMAN: No, it is just the return.

Mr. FLEMING: The amounts depend on section 17.

The CHAIRMAN: Yes.

The WITNESS: Section 77 (18) as a matter of fact has outlived its usefulness and probably might be repealed, instead of just changing the fee. We have had no case of restoration under this section during the last fifteen years, and I do not know that we could have any restoration under it anyway.

The CHAIRMAN: Section 18 of the bill?

The WITNESS: Yes. I am referring to section 77 of the Patent Act, the restoration of patents.

Mr. FLEMING: Mr. Robinson could consider that and let us know his opinion at another meeting.

The CHAIRMAN: Very well, gentlemen, shall we meet at 4 o'clock tomorrow afternoon; the morning is taken up pretty well with caucuses.

—The Committee adjourned at 5.40 p.m. to meet Wednesday, March 5, at 4 p.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

WEDNESDAY, MARCH 5, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.
Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

WEDNESDAY, March 5, 1947.

The Standing Committee on Banking and Commerce met at 4.00 p.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Breithaupt, Cleaver, Fleming, Irvine, Isnor, Jackman, Jaenicke, Desage, Marquis, Quelch, Rinfret, Sinclair (*Ontario*), Stewart (*Winnipeg North*), Strum, (Mrs.), Timmins.

In attendance: Mr. J. T. Mitchell, Commissioner of Patents, Mr. Christopher Robinson, Vice-President of the Patent Institute of Canada, and Major J. H. Ready of the Judge Advocate General's office.

The Committee resumed consideration of Bill No. 16, an Act to amend The Patent Act, 1935.

Consideration of Clause 2 was again deferred.

Clause 3 was amended as follows:

By adding the word *and* immediately after the word "country" in line 3, paragraph (b) of section 12(1);

By deleting paragraph (*c*) as section 12(1).

Clause 3, as amended, carried.

Further consideration was given to clauses 4, 9 and 10, and Mr. Mitchell and Mr. Robinson were again examined in relation thereto. Several amendments to the said clauses were submitted and it was finally agreed to let them stand over until the next sitting for redrafting.

At 5.45 p.m. witnesses retired and the Committee adjourned until Thursday, March 6, at 4.00 p.m.

R. ARSENAULT,
Clerk of the Committee.

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MINUTES OF EVIDENCE

House of Commons,
March 5, 1947.

The Standing Committee on Banking and Commerce met this day at 4 p.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: If it is your wish we will go back over the sections which were marked "stand." Before proceeding I have a special request from our reporters that the members of the committee should talk one at a time and should talk a little louder in order that they will be able to take an accurate report.

Mr. FLEMING: And oftener?

The CHAIRMAN: Section 2 is marked "stand."

Mr. FLEMING: We were waiting for the minister on that.

The CHAIRMAN: The minister is willing that the section should carry without amendment, namely, without a ceiling, as the section stands without amendment. Is that agreeable to the committee?

Mr. FLEMING: The point on which I wanted some assurance from the minister was that if the bill does authorize payment of a salary of $8,000 the government will raise the present salary to $8,000, and that the section will not be allowed to remain a dead letter. I do not believe in legislating dead letters.

The CHAIRMAN: The proposal is that the section will stand as it is.

> The commissioner shall hold office during pleasure and be paid such annual salary as may be determined by the Governor in Council.

It was suggested at our last meeting there should be a ceiling not exceeding $8,000, but I am now asking the committee to approve the section as it stands.

Mr. BREITHAUPT: Is it agreeable to the minister that the ceiling be out?

The CHAIRMAN: That the ceiling be out. It may well be that at some time in the future the minister might deem it wise to recommend a salary in excess of $8,000, and with that ceiling in there it could not be paid without amending the Act.

Mr. STEWART: I think that would be a very wise suggestion because as was pointed out yesterday in evidence in 1928 the commissioner was paid $8,000, and now we are reverting to that today. I would be inclined to assume that the position of the Commissioner of Patents might be similar to that of a deputy minister in some ways. If that is so of course a salary of $8,000 would be out of line completely.

The CHAIRMAN: Shall the section carry without amendment?

Mr. FLEMING: I am still holding out for a statement from the minister as to what the government is going to do about it. I do not want to legislate a dead letter. There is nothing here that compels the government to do anything. I think the committee ought to know from the minister as to whether the government is going to increase the present salary and if so to what extent. That was the only observation I made on that section, and I still think we want that information. The thing will just remain a dead letter as far as the legislation is concerned. There is nothing in it that requires the government to do anything.

J. T. Mitchell, Commissioner of Patents, recalled.

By Mr. Lesage:

Q. Is there something about it in the estimates?—A. I do not know.

Mr. FLEMING: Is the minister coming?

The CHAIRMAN: He is not available. Undoubtedly we will have to meet again to clear the bill because we have some substantial amendments to deal with this afternoon. I want the committee to have the revised draft before them before we report the bill. If you are willing, Mr. Fleming, I would suggest that the section should carry, and before the committee reports the bill we can take the matter up again when the minister is here. I do not see that you are committing yourself in any way by allowing us to carry section 2 but withholding your vote on the reporting of the bill until you have an assurance from the minister.

Mr. FLEMING: It is not going to take us any more time if the matter stands. If the minister will just give us a one-sentence assurance, that is all I am asking for.

The CHAIRMAN: Are you content with my suggestion?

Mr. FLEMING: No.

The CHAIRMAN: All right, stand. Section 12.

Mr. BELZILE: Section 3 in the bill.

The CHAIRMAN: Section 3 in the bill is already carried.

Mr. FLEMING: No.

The CHAIRMAN: As to section 11 of the Act. We are now dealing with section 12. Section C is deleted.

Mr. RINFRET: And D relettered accordingly.

The CHAIRMAN: There will be a relettering. D will become C and the word "and" will be added to subsection B because of the deletion of C. Shall the section as amended carry?

Carried.

We come next to section 4 of the bill.

By the Chairman:

Q. Would you make a statement, Mr. Mitchell, please?—A. That is section 19A of the Act.

Q. Yes.—A. Section 19A has been redrafted in the following way.

Q. Would you read very slowly?—A. Section 12A, subsection (1) . . . .

Mr. FLEMING: It is 19A. You said 12A.

The WITNESS: 19A, subsection (1).

Mr. FLEMING: You said 12A.

The WITNESS: I beg your pardon. I mean subsection (1) of section 19A.

> The inventor of any improvement in munitions of war, as defined in the Official Secrets Act, shall, if required by the Minister of National Defence, assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention, and the Minister of National Defence may be a party to the assignment.

By Mr. Stewart:

Q. There is nothing in there about a transfer without valuable consideration?—A. There is nothing in there about consideration, but I am adding 1 (*a*):

> In the event that the consideration for such assignment is not agreed upon mutually by the assignor and the assignee, the amount of consideration payable from the assignee to the assignor shall be referred to the commissioner who shall determine the amount of consideration payable, provided however, that either the assignee or assignor may appeal the commissioner's decision to the Exchequer Court.

The CHAIRMAN: Carry on, Mr. Mitchell.

Mr. LESAGE: Would you like us to discuss that now?

The CHAIRMAN: I think that we had better discuss the entire section.

The WITNESS: Subsection 2 as revised reads:

> The assignment shall effectually vest the benefit of the invention and patent in the Minister of National Defence on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Minister of National Defence.

By Mr. Fleming:

Q. There is no change in that one?—A. No change in that one. I am just reading it as it is. Then subsection 3 in the draft is cancelled and the following is substituted:

> Any person who as aforesaid has made an assigment under this section to the Minister of National Defence shall, in respect of any covenants and agreements contained in such assignment for keeping the invention secret and otherwise in respect of all matters relating to the said invention, be for the purpose of the Official Secrets Act deemed to be a person having in his possession or control information respecting the said matters which have been entrusted to him in confidence by any person holding office under His Majesty, and the communication of any of the said information by such first mentioned person to any person other than one to whom he is authorized to communicate with by or on behalf of the Minister of National Defence shall be an offence under section 4 of the Official Secrets Act.

Mr. LESAGE: Mr. Chairman, that is a very lengthy amendment. I think it will be very difficult to discuss this—

The CHAIRMAN: I am suggesting that the commissioner should read into the record the full amendments. We will ask the reporting staff to transcribe them and to have sufficient copies made for every member of the committee, and they will be available at our meeting tomorrow.

Mr. LESAGE: Could we have them before the meeting?

The CHAIRMAN: Yes.

The WITNESS: I will get them to you tomorrow by 11 o'clock.

Mr. BREITHAUPT: Do they have to be read into the record? Could they not be handed over to the reporter?

The CHAIRMAN: The reason I am suggesting it should be read into the

record is for this purpose. This is what has finally been agreed upon by four different officials representing three different departments. I should like them to hear it and make sure they are in agreement before we consider it.

Mr. RINFRET: Would it not be simpler if we asked the three departments to redraft the whole thing as they have it now and put it before the committee?

The CHAIRMAN: If the committee will be patient I think we are near the end.

The WITNESS: You are pretty near the end. There is no more serious writing to this.

The CHAIRMAN: Carry on and finish as quickly as you can.

The WITNESS: Subsection 4 reads as follows:

> Where any agreement for such assignment has been made the Minister of National Defence may submit an application for patent for the invention to the commissioner, with the request that it be examined for patentability and if such application is found allowable, may before the grant of any patent thereon, certify to the commissioner that, in the public interest, the particulars of the invention and of the manner in which it is to be worked should be kept secret.

By Mr. Fleming:

Q. That is in place of subsection 4 in the bill?—A. Yes. Then subsection 9 of the bill will read—

The CHAIRMAN: Before we leave this, subsections 5, 6, 7 and 8 go in pursuant to this memorandum which I will hand you, Mr. Reporter.

> (5) If the Minister of National Defence so certifies, the application and specification, with the drawing, if any, and any amendment of the application, and any copies of such documents and drawing and the patent granted thereon, shall be placed in a packet sealed by the commissioner under authority of the Minister of National Defence.
>
> (6) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the commissioner, and shall not be opened save under the authority of an order of the Minister of National Defence.
>
> (7) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by the Minister of National Defence to receive it, and shall if returned to the commissioner be kept sealed by him.
>
> (8) On the expiration of the term of the patent, the sealed packet shall be delivered to the Minister of National Defence.

The WITNESS: Subsection 9 of the redraft reads:

> No proceeding by petition or otherwise shall lie to have declared invalid or void a patent granted for an invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid, except by permission of the said minister.

Mr. MARQUIS: There is no change?

The WITNESS: Yes, there is, "shall lie to have declared valid or void." Sections 10 and 11 remain.

In section 13—

Mr. FLEMING: How about 12?

The WITNESS: I think section 12 remains the same as the draft you have. Section 13, reads, "the governor in council may make rules under this section

for the purpose of ensuring secrecy with respect to applications and patents to which this section applies." The remainder is deleted.

There is a section 19B added which will take care of the deletion of section 12, subsection (*c*), which reads as follows:

> Section 19B. If by any agreement between the government of Canada and any other government it is provided that the government of Canada will apply the provisions of the last preceding section to inventions disclosed in any application for a patent assigned or agreed to be assigned by the inventor to such other government, and the commissioner is notified by any minister of the Crown that such agreement extends to the invention in a specified application, such application and all the documents relating thereto shall be dealt with as provided in the next preceding section.

Mr. LESAGE: Does that section replace the section 19B concerning atomic energy?

The WITNESS: No, section 19B is now 19C and in 19C the second paragraph is deleted.

The CHAIRMAN: Now, as arranged, gentlemen, you will all receive copies of these changes at eleven o'clock or sooner if possible. Shall we now turn to section 9 of the bill?

Mr. LESAGE: We received some copies of this draft before and I do not see much use in putting in subsection (1) (*a*) when we have to redraft the whole section.

The WITNESS: We will renumber it as number 1, 2, 3.

Mr. LESAGE: That will be done?

The WITNESS: Yes.

The CHAIRMAN: As to section 9 of the bill, I understand there are one or two matters of principle as to which the commissioner and Mr. Robinson are at variance and as to which we are going to ask the committee to make a decision. Mr. Commissioner, would you please state those matters which are at variance?

Mr. ROBINSON: It has been agreed between the commissioner and the institute that the text of section 9 which is to be used as a basis for discussion should be the text proposed by the institute of which I think all the members of the committee have a copy, with one or two minor changes which I can insert and which the members of the committee can write into their copy. If any member of the committee has not a copy, I have some extra copies here. The changes are these: in section 28A, subsection (1), line 3, the word "any" is changed to "such". Then, the rest of that line from and including the word "sections" is cancelled. The whole of the next line is cancelled and the next line up to and including the word "which", is also cancelled. What I will read to you now replaces it.

Mr. FLEMING: Will you repeat that?

Mr. ROBINSON: On line 3 of subsection (1) cancel everything after the words, "fixed by". Cancel the whole of line 4 and everything on line 5 up to and including the words "Act which" and substitute what I will now read to you for those cancelled words.

> — — time limits fixed by this Act for the filing or prosecution of applications for patents, or appeals from the commissioner or for the payment of fees as — —

The last word is "as". As revised, the opening part of the subsection would read,

> Subject as hereinafter provided, the commissioner shall extend to the thirtieth day of September, 1947, in favour of a patentee or applicant

such of the time limits fixed by this Act for the filing or prosecution of applications for patents, or appeals from the commissioner as for the payment of fees as expired after the second day of September, 1939.

There is one other minor change in subparagraph (*c*). Cancel the words, "it appears to", and after the word "commissioner" insert the words "is satisfied". Now, that text as amended, as I have just indicated, the commissioner and the institute have agreed might be taken by the committee as a basis for discussion.

Mr. FLEMING: What about the objection of the commissioner to subsection (2)?

The WITNESS: It still stands, I still object to subsection (2) because I think subsection (2) should be amended. I object to section 28A (1) (*a*),

by or on behalf of such applicants before the payment of the fee payable on the grant of the patent.

I think that is far too indeterminate a length of time. It might extend into years. There is nothing definite about that section and I object to that. However, Mr. Robinson assures me that can be straightened out.

Mr. FLEMING: Straightened out or struck out?

The WITNESS: He can overcome my objection.

Mr. FLEMING: That is quite an undertaking, I think.

Mr. JAENICKE: If I understand this correctly, section 28A is in addition to the proposed section 28.

The CHAIRMAN: You have before you the single page draft presented by the institute.

Mr. JAENICKE: This is what they proposed instead of section 28 here on page 5?

The CHAIRMAN: That is right. Now, the question arises as to the commissioner's objection. He objects to the last two lines.

Mr. FLEMING: Mr. Chairman, is there any other point involved there? I understood a different section of the bill contemplated an entirely new section 28, whereas Mr. Robinson proposes section 28, as I understand it, remain in the bill and that section 28A be added. Could you clear that up?

Mr. ROBINSON: Perhaps I have not made the point clear. What the chairman asked Mr. Mitchell and me to do yesterday was to discuss which section should be in the bill as section 9, whether the text which was to be discussed would be the text which was in the bill for section 9 as amended by the commissioner yesterday or whether it should be the text of section 9 as proposed by the institute.

The CHAIRMAN: Mr. Robinson, the question as I understand it, is one directed at the numbering of the sections. Would you please clear that up?

Mr. ROBINSON: The numbering of the sections results from this section 8 of the bill which contemplated certain renumbering. A section of the statute was cut out with the result there is now a section 28 in the statute. Therefore, the section of the statute which is to be inserted must be numbered 28A.

Mr. JAENICKE: You must have known then we were going to delete section 8 because we had these copies before we deleted that section of the bill.

Mr. ROBINSON: I had discussed that with the commissioner and the commissioner had indicated at that time he saw no objection to the cancellation of the renumbering provision.

The CHAIRMAN: We have reached a point in the argument where the commissioner says the last two lines of the draft which I have and on the new

draft, the last three lines of subparagraph (*a*) are objectionable as being too indefinite. The objectionable words are, "by or on behalf of such applicant for patent before the payment of the fee payable on the grant of the patent."

Mr. STEWART: What words would the commissioner suggest instead?

The WITNESS: I have no correction.

Mr. JAENICKE: I would like to have the commissioner's suggestion as to what is wrong with this drafting of section 28, or what used to be section 28.

The WITNESS: The objection which I have to the section proposed by the institute is this; you are waiting until the application becomes ready to mature to a patent. It may be three or four years before you invoke the section at all. Now, anyone who wishes to come under the section should come in under the six months provided by the bill and should not wait for three or four years sitting on the fence trying to decide whether he will jump one way or the other.

By Mr. Jaenicke:

Q. I think you misunderstood my question. Did you draft this section in the bill?—A. That was drafted originally by the office.

Q. With your advice?—A. Yes, in discussion with one of the members of the Department of Justice.

Q. Is it not all right the way it is?—A. This one here?

Q. Yours?—A. It is up to you gentlemen to discuss the matter. The matter has been opened by the institute and you can discuss it. I have no objection to discussing the form suggested by the institute at all. In fact, I think the discussion of it might be helpful to the bill. I want to get the bill through. The principles are the same although the method of arriving at it is different. Personally, I prefer to state definitely what you are doing rather than leave the section so loose; that is the point I wish to make.

Mr. JAENICKE: I should like to make my position clear. I would rather take the advice of our commissioner on these amendments, but I should certainly like to be told the difference between the proposed amendment as we have it in bill 16 and the suggestion made by the patent institute. At our last meeting it was stated this is a very difficult subject. Personally, I cannot understand all of it. Perhaps the commissioner will point out to us the difference between his proposal and the proposal of the institute in order to give us a better basis on which to form a judgment.

The WITNESS: Both proposals aim at the same objective; it is only the methods which differ.

By Mr. Timmins:

Q. Is there a difference of principle at all?—A. No.

Q. Is it only a difference of draftsmanship, then?

Mr. LESAGE: Not only that, but a very large discretion is given to the commissioner by the patent institute draft which is not given in the bill.

The WITNESS: I objected before to section 28A only in view of the fact the commissioner had a power there to which I am sure Mr. Fleming would object, as well as some others. I do not mean that personally, Mr. Fleming, and I quite agree with you on it. The section says:

if the commissioner is satisfied.

My objection to that is this; an applicant comes in and I am satisfied a certain thing is all right. Ten years after, when the matter comes into a court, it is said, "You cannot adjudicate on this because the commissioner was satisfied at that time that the application was properly presented."

Mr. MARQUIS: This is a bar to further prosecution.

The WITNESS: It is for that reason I objected to it. I think Mr. Robinson is prepared to try to clear that up.

The CHAIRMAN: I wonder if we could take one thing at a time. We are now discussing the objections of the commissioner to the last part of subparagraph (*a*). We have heard from the commissioner; shall we hear from Mr. Robinson?

Mr. FLEMING: Agreed.

Mr. ROBINSON: Mr. Chairman, the reason the last part of subparagraph (*a*) was put forward in the form in which it is was this: so long as the application for a patent is pending any objection to the granting of the patent in that application may be brought forward and the applicant has no way of knowing beforehand what objections will be brought forward to the granting of his patent as a result of the search made by the patent office. It was because of that inability of the applicant to know beforehand what objections might be brought forward and, therefore, his inability to know whether he needed the extension given by this section that we suggested he might be able to take advantage of the extension given by this section at any time during the pendancy of his application. We had in mind that the main thing from the public point of view is that once a patent has been granted the public, particularly, should know exactly what they are faced with, but during the pendancy of the application it should be open to the applicant to take advantage of the extension provisions of this section, if necessary, as the result of the objections brought forward by the Patent Office.

Mr. FLEMING: May I ask this question? There is no difficulty between Mr. Robinson and the commissioner up to the 30th of December, 1947. Now, what situation is likely to arise on the 1st of October which the commissioner has not the power or is not required by the section as now drafted to do substantial justice?

Mr. ROBINSON: During the pendancy of an application, perhaps some time in 1948, the examiner who is making a search might find there was some patent in a foreign country which would be a bar to the applicant for a patent under this section. He would cite that patent against the applicant. Until the time the examiner cited that patent the applicant might, conceivably, not know of its existence. The patent might be one which had issued on such a date that if the applicant could get the benefit of these extension provisions he would be entitled to have a patent over the foreign patent, where as, if he could not he would not be so entitled. Now, the difficulty is that he woud not know what he was facing until the examiner's report came forward, which would be likely to be well after September 30 next.

Mr. FLEMING: In case the application was filed before the 30th of September 1947?

Mr. ROBINSON: Oh yes. Only those applications filed before September 30, 1947, can benefit at all from these extension provisions.

Mr. FLEMING: You were taking the case of an application made and filed before the 30th of September, 1947. You were saying that after the 30th of September, 1947, a situation might arise where if the time were extended as you propose in these words the commissioner objects to, an opportunity or occasion might arise for the commissioner to reject an application which if these words are not there he is likely to allow?

Mr. ROBINSON: No, rather the reverse.

Mr. FLEMING: The reverse?

Mr. ROBINSON: The reverse.

Mr. FLEMING: I had not thought of that.

Mr. ROBINSON: If these words were not there then the commissioner might be bound to reject the application whereas if these words are there then the applicant could when he was faced with these objections overcome them asking for the extension granted by this legislation. The point is perhaps this; that the applicant so long as his application was pending could not know whether he would need the protection of this section or not and he would only find that out as the Patent Office makes objections to his application; so if you put a definite date, a definite time limit on the period within which he can invoke the provisions of this section, that may do him an injustice because after that time has expired something may be brought against him which he could overcome by invoking the provisions of this section at that time.

Mr. FLEMING: Your draft goes beyond the terms of the American act, does it not?

Mr. ROBINSON: I think not.

Mr. FLEMING: You think you are closer to the American act than the commissioner is?

Mr. ROBINSON: I do not think there is very much difference. I had not looked at the American act lately from that point of view. The commissioner and I have had no discussion on that aspect of it. I have a copy of it somewhere. I apologize, I am afraid I have not got it with me; I thought I had. That is something which perhaps will be easy enough to find out about. I would not be prepared to say that offhand.

The CHAIRMAN: Mr. Robinson, is there any reason why an applicant should not take a blanket request on it before September 30, 1947? You see section 28 (*a*) simply refers to the limitation of the time with respect to the filing or prosecution of an application for patent, appeals to the commissioner and to the payment of fees. Why should an applicant be called upon to make a blanket application for extension of time only in specific cases; why could he not make a blanket application, provided he did it before the 30th day of September, 1947?

Mr. ROBINSON: Well, Mr. Chairman, if there were a definite time limit in the statute such as the committee proposes I would certainly advise any client of mine to make in respect of every single application they have a request for a blanket extension. That is going to make a lot of additional work for the Patent Office if blanket applications are made, because it will probably be applicable to only about five per cent of the cases in respect of which such request is made.

The CHAIRMAN: Would that involve very much work? It seems to me that the section limits the mitigation of the time limit with respect to the filing or prosecution of an application for patent, appeals from the commissioner and for payment of fees. Why should not an applicant simply make a blanket request?

Mr. ROBINSON: Mr. Chairman, that could be done. It strikes us as being unnecessarily complicated and likely to cause difficulties from the point of view of the Patent Office and from the point of view of the applicant. It means that a request has got to be made in every single application filed under the provisions of this law. Whether or not they will fall under the provisions of this law, such a request would have to be filed in every single pending application; and it might involve a very substantial amount of work which might be avoided by a little care in planning.

The CHAIRMAN: What about the point the commissioner raised, that he wants these applicants to make the decision on or before the 30th of September, and he does not want them to delay, to reserve their decision in deciding as to which side of the fence they are going to jump? Is there any reason why these applicants should not make up their minds by a given date if the commissioner objects to an indefinite delay.

Mr. ROBINSON: Well, in the way in which you suggest that would be possible. It would then be necessary for every single applicant to put in a request for an extension in cases like this; that would be perfectly possible.

The WITNESS: In the suggestion by the Patent Office it definitely states that any prior part would have to be before, or any earlier working would have to be prior to the date of September 2, 1937. That is giving the two years in section 26. That would take away any possibility of coming across any patent at a subsequent date which would embarrass the applicant and which he thinks he could have got over had he known at an earlier date about this patent.

Mr. ROBINSON: I wonder, Mr. Chairman, if it would be possible to compromise the differences between the institute and the commissioner; if for both patents and applications some date later than September 30, 1947, were fixed as the terminal date for making an end of the request? Has the commissioner any views on what that date might be?

The WITNESS: I would say six months after the Act comes into force, and it terminates then. That would give you six months in which to make your application. Anyone knows that the amendments to the bill are going on. They know more or less the context and should be quite prepared to file their applications in the Patent Office prior to six months after the coming into force of this bill.

By Mr. Fleming:

Q. Have you any idea of the number of cases involved?—A. No. I think it would be probably three or four thousand.

Q. It would be easy to overlook the necessity for filing a request.—A. The Patent Office provides for all applications filed in the interim, and also those filed under this section. They may come directly under this; but they have to make application as to whether they are coming under this amendment to the Patent Act or are going to remain under the rules and regulations under which they filed their applications between the 2nd of September, 1939, up to the date of the coming into force of this Act.

Q. Those rules and regulations went as far as the others?—A. Quite true; but I say they still may elect to say that they shall apply to applications pending in the interim and also to patents which have issued in the meantime.

By Mr. Jaenicke:

Q. The whole legislation is for the purpose of putting these people back in the same position as they were in on the 2nd of September, 1939?—A. I want to do that.

Q. And give them a six months time limit within which to do it.—A. Yes, give them six months extra.

Mr. JAENICKE: I understand that is the object of the legislation put forward, and I think it is good legislation.

Mr. TIMMINS: Supposing the difficulty is not run into until after the period set in the Act?

The CHAIRMAN: May I ask a question to make sure that I thoroughly understand this? Do I understand, Mr. Robinson, that you have no objection at all to the deadline made of September 30 as to filing?

Mr. ROBINSON: Oh, absolutely not.

The CHAIRMAN: And your request for an extension is with respect to the patent applications that are already filed and are now in process of being prosecuted? Do you think that in some cases additional problems may arise?

Mr. ROBINSON: That is the difficulty, Mr. Chairman. A man might file on September 30, 1947, and it might be very difficult for him during that day to know whether he had to request an extension or not. The difficulty arises with applications that have been filed.

The WITNESS: The Act provides that all the citations prior to September 2, 1937, are not applicable in the prosecution of cases by the Patent Office; and then you have overcome that objection, that is in section 26.

Mr. ROBINSON: What is your proposal, Mr. Mitchell, for revision in subsection (*a*)?

The WITNESS: What I object to, Mr. Robinson, is this carte blanche as it were; that you can still leave it open.

Mr. ROBINSON: What do you propose in place of it?

The WITNESS: I do not know. I think it should terminate on a deadline of six months; or in this case, the 30th day of September, 1947; that it should terminate then. They have made their applications and they can derive the benefits of this Act. I do not think they should be allowed anything further than that. I do not think they should be permitted to carry the benefits of the Act with respect to their applications for an indeterminate time. They are allowed to come under this Act at any time before the payment of the final fee. As to invoking its provisions ten or a dozen years afterwards, I do not think that should be allowed.

By Mr. Lesage:

Q. What would you think of one year, which is the delay provided for in the peace treaties; twelve months after the coming into force of the peace treaties themselves?—A. You mean, in the bill?

Q. Yes.—A. Give them twelve months in which to do it?

Q. Yes.—A. In other countries, like the United States, it will expire on the 8th of August, 1947, and unless there is an extension made of that time they will not come under the terms of the peace treaty either for one year.

Q. But would that not be contrary to law?—A. When is the peace treaty coming into force?

Q. You might as well ask me when it would be ratified. When it is ratified. That may be in June or July.—A. That is a very indefinite period and one that would be difficult to put in the form of an amendment.

Mr. FLEMING: It would be better to have it fixed in the Act than to leave it to be determined by something outside.

Mr. LESAGE: I agree with that. My suggestion is merely that we might take this as an example and set a period of twelve months. What would be the objection to twelve months? I merely offer that as a basis for discussion. Would there be any strong objection to a period of twelve months?

The WITNESS: The only thing is that twelve months would be a tremendous amount of time to extend the benefits that would derive from an invention. Should you allow this extra time, this twelve months, I think that is too much.

Mr. FLEMING: And do you think that an extension of twelve months, such as has been suggested, would be rather out of line with what you are proposing to do?

The WITNESS: I tell you it is so foreign to what the office deals with that it is rather difficult to do that. The point is that we always deal with something very precise as a rule. After it comes from parliament it usually is very precise. I may say that I am not in the habit of having stuff like this before me, and it is very difficult to come to a decision.

The CHAIRMAN: Then, Mr. Mitchell, is there any other way out of this problem? If you would extend that deadline date for say another six months

and if an applicant pursues with reasonable diligence prosecuting his application would he not within an extra six months encounter all the potential problems that might arise?

The WITNESS: I would say, assuredly. The reason I say that is due to the fact that he has already filed in the country of origin of the invention; and it has probably been filed there four or five years—such as in Britain or the United States—and that means that he knows all the prior art, and he knows exactly what he is up against.

The CHAIRMAN: Are you content with the 31st of March, 1948, then, and meeting the point in that way? I would have thought that the applicant would receive full status by the extension of time for the filing of his application; but apparently there is some question about that. And now, that being so, what would be the point of extending the date line to March 31, 1948? Then it is up to the applicant. If he is not diligent; why, let him lose it.

The WITNESS: All right, providing he is ready to come in then, and providing his claim is in.

Mr. JAENICKE: I object to that. I think that the time is too long now. I object to any extension and I want to register my objection.

Mr. FLEMING: It is only a matter of another six months and it is going to clear up a lot of difficulties.

Mr. LESAGE: We would be giving that extra six months only for the second part of it.

Mr. JAENICKE: I am in favour of the patent legislation the commissioner suggests.

The CHAIRMAN: I do not mind freely admitting that I am a babe in arms on patent law.

Mr. JAENICKE: So am I.

The CHAIRMAN: We have been told, Mr. Jaenicke, that apparently potential problems may arise that would have led the applicant to file a different sort of application for patent had he known such facts. I do not think it is the wish of this committee or of the commissioner to deny any bona fide applicant the right intended to be given to him by this amendment.

Mr. JAENICKE: I cannot see why six months is not sufficient.

The CHAIRMAN: The only difficulty is the backlog which now obtains in the department and the consequent delay which will be absolutely inevitable in answering correspondence and that sort of thing; and since the institute know this law and feel that the extra time is necessary I would not want to set myself up and say: no, we will set an arbitrary six months limit in the law and you will have to abide by it.

Mr. JAENICKE: Yes, Mr. Chairman; but the institute are speaking for their clients and for themselves; but we have a duty to the public also.

Mr. FLEMING: Mr. Chairman, surely this is a matter of trying to do justice to all applicants—this whole question. I think it is clear from what has been said that issues may not be foreseen. If you are still getting applications filed up to the 30th of Setpember of this year issues may not be foreseen that may arise after that date. All that is suggested now is that you will provide another six months to allow any such issues or conflicts between applicants to arise so that justice may be done between all kinds of applicants; those patent applications which have come in under the wartime order and those which are coming in under this amendment. It is a matter of doing justice to all.

The CHAIRMAN: I think this discussion has been helpful. I have just one suggestion which has been made to me and it is that as to the contentious part of this section we will put a deadline of March 31, 1948; and that would amend the section to read March 31, 1948, instead of September 30, 1947.

Mr. JAENICKE: Have we discarded the bill we had before us, bill 16; if so, why did we do that? The commissioner suggested a certain amendment yesterday and I diligently wrote it down. I cannot read it now, but I presumed that at the suggestion of the Patent Institute the Commissioner was going to meet their wishes on our language, the way we have it in our bill.

The CHAIRMAN: I am afraid I will have to take some personal responsibility for that. I felt yesterday that since both parties were endeavouring to achieve the same end that our commissioner had a right, as a matter of right, to have his draftsmanship followed. At the suggestion of Mr. Fleming the parties met and had a conference today. This conference has agreed, including the commissioner, that the committee would accept the draft of the Patent Institute and would rule on certain points of principle that arise, but that the draft of the Patent Institute, in so far as draftsmanship was concerned, is entirely satisfactory to the commissioner. I wrote these various amendments just as diligently as you did yesterday and apparently they are now scrapped.

Mr. JAENICKE: Of course, I think it is absolutely out of order. If the steering committee had met with Mr. Robinson and the commissioner it might have been all right, but I am a member of this committee.

Mr. FLEMING: Surely this is a tempest in a teapot. What we are trying to do is to get the best possible draftsmanship of what we all admit is a very difficult section on an absolute subject. We had three different versions yesterday. We had the original bill. Then we had the amended version put forward by the commissioner. Then we had the Patent Institute coming forward with another version. They took exception to the draftsmanship of the bill. The suggestion was made yesterday, for the sake of helping out this committee, that Mr. Robinson, the commissioner, and the law officer drafting the bill might meet together. They have met together since last night and as I understand it they are suggesting to the committee now that the Patent Institute version might best serve as a basis on which the committee might now go to work. There are several points yet to be cleared up, but from the point of view of draftsmanship that is a suitable formula to work on.

Mr. JAENICKE: As a general remark I should like to say that I prefer our own law officer of the Crown in conjunction with the patent commissioner to draw up any amendments to our Act rather than any other institute or organization.

Mr. FLEMING: Surely it is perfectly clear that the law officers of the Crown sat in on this matter with the commissioner and Mr. Robinson. There were three individuals sat in to try to iron out the difficulties presented by three different versions, all for the assistance of this committee. The privileges of no member of the committee have been interfered with.

Mr. QUELCH: Would it not be possible for Mr. Mitchell, Mr. Robinson and the law officer to get together and submit an amendment to this committee that they can agree upon?

The CHAIRMAN: The commissioner agreed to this proposed amendment to A and Mr. Robinson agreed to it. Shall we carry on? I understand that B is satisfactory to every one. Now we come to C.

Mr. LESAGE: It would be easy to take away the powers that are given to the commissioner to which we object if we delete the words, "it appears to the commissioner either that". It would be a definite rule then.

Mr. MARQUIS: It would take away the power and the discretion given to the commissioner.

Mr. LESAGE: I do not know why the matter of "British subject" was put in there. I do not see the use of putting it there.

The WITNESS: There should be no exception there for a British subject at all. They can come in under the terms of the bill. If their country will give substantial reciprocal privileges they can come under the bill. There is no right to exempt them.

The CHAIRMAN: Mr. Robinson has no objection to that coming out.

Mr. LESAGE: "Of which the applicant is a national".

The WITNESS: "And the country of which the applicant is a national".

Mr. MARQUIS: Patentee or applicant.

Mr. LESAGE: Such patentee or applicant.

Mr. JAENICKE: What is it as proposed now?

Mr. LESAGE: It would read as follows, "The country of which such patentee or applicant"—

Mr. BELZILE: Start at C.

Mr. LESAGE: "The country of which such patentee or applicant is a national gives substantial reciprocal privileges to Canadian citizens."

Mr. QUELCH: Is that C?

Mr. LESAGE: That would be C if my amendment is carried.

Mr. JAENICKE: And everything else is struck out?

The CHAIRMAN: "Such patentee or applicant is a national of a country which gives substantial reciprocal privileges to Canadian citizens".

Mr. LESAGE: That is better English.

The CHAIRMAN: Is that satisfactory?

Carried.

Is there any objection to sub-paragraph 2?

Mr. FLEMING: The commissioner has an objection to that. It is on the question of importation.

The WITNESS: It is not only importation, but actually an application may be filed in the United States, and owing to the length of the prosecution there the Canadian patent filed under this section may absolutely go out and the United States patent might still be in force.

Mr. FLEMING: What has Mr. Robinson to say about that?

Mr. ROBINSON: Mr. Chairman, this proposed subsection 2 was put forward by the Patent Institute although it might appear to be against the interests of the people that most members of the Patent Institute represent, namely, the patentees, but it was put forward by the Patent Institute because in the view of the Institute it was to the public advantage that patents granted to people who had had very many opportunities to come into this country and get patents under the legislation which was in force all through the war but did not take advantage of it, and now take advantage of this very special legislation, should be somewhat restricted. However, it is certainly not a point on which the institute feels particularly strongly. The suggestion which was discussed with the commissioner this afternoon, and which I understood the commissioner might agree to in place of what is suggested here, was that instead of the life of the patent being 20 years from the date of the first application it should be 17 years from the date of the filing of the application in Canada. Mr. Mitchell, what do you say?

The WITNESS: What is that?

Mr. ROBINSON: Would you agree to 17 years?

The WITNESS: I would agree to that, but there is another objection also. This is the objection. I do not want a Canadian patent to expire before the foreign patent because it throws the Canadian market open to invasion by

foreign countries. I want Canadian industry to flourish to such an extent that at least it is able to take care of itself before the patent expires in Canada. My reason for saying that is that there are third party rights in Canada. You have to remember that. It is not an absolute monopoly you are giving at all. There are third party rights in existence. You have competition in Canada, but you do not want to have unfair competition from everyone coming in and dumping stuff in Canada because the patent in Canada has expired due to any legislation which we may invoke now.

Mr. FLEMING: Do you meet the problem by changing the last word of the section?

The CHAIRMAN: Whichever date is later.

Mr. FLEMING: You are going to get into hot water if you do that.

Mr. ROBINSON: I think that would be worse.

The WITNESS: We would have to redraft that. It would have to be redrafted altogether.

Mr. BELZILE: Your subsection is very good.

The CHAIRMAN: What about subparagraph 3?

The WITNESS: The principle of 3 is perfectly acceptable. It agrees very much with what we had in our own draft, that third party rights should be recognized.

Mr. FLEMING: Then we can leave over subsection 2.

The CHAIRMAN: Leave over 2.

Mr. FLEMING: I think we can indicate to the commissioner, can we not, that we think the point is well taken. We do not want to see the Canadian patent expire before the foreign patent. Is there any serious objection to that from the point of view of Mr. Robinson?

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

Mr. FLEMING: It should not be difficult to phrase the section as long as that principle is to be preserved.

Mr. ROBINSON: I have no doubt if you sat down to draft it it would be possible. It is a little difficult to draft at the moment.

Mr. FLEMING: If you clarify that matter of substance it should not be difficult to work out a draft that is acceptable to both.

The WITNESS: You can work out a draft and say the Canadian patent shall not expire before the date of expiry in the country of origin of the application. It would have to be done in that way.

The CHAIRMAN: We will leave that for drafting.

Mr. LESAGE: Just before we go on, what would be the effect of subsection 3? Would third parties be allowed to go on with the manufacture of the subject matter of the invention?

Mr. ROBINSON: Yes, they would.

Mr. LESAGE: We do not say that.

Mr. ROBINSON: The purpose of the subsection is that anyone who has started to do anything with an invention before March 31 should after that date be in effect as free as if the patent did not exist. The reason that it does not say that he should have the right to continue to do something is this. If you say that someone who has manufactured, used or sold before March 31 should have the right to continue to do that afterwards it is at least arguable that his right is limited to what he had begun to do before. You might have under a section so phrased this ridiculous situation, that someone on March 15, 1947, had begun to manufacture something but he had not got enough made to sell any. All he had done was manufacture by March 31. He might then

find himself restricted after March 31 simply to manufacturing. He would not be able to sell anything. What we had in mind, and what the commissioner and the Patent Institute can agree on in principle, is that anyone who has started to do anything with an invention before March 31 should after that date be just as free as if there were no patent.

What the section provides is that no claim for the infringement of any patent of this specified kind shall be made against any person, or the successor in business of any person, who had done certain things. Therefore, anybody who can show that they had done any one of the things specified in this subsection would then be exempt from any claim for infringement brought under one of these patents granted by virtue of this section.

The CHAIRMAN: If that is the intention, is there any reason why we should not use the commissioner's section?

Mr. LESAGE: Do you not think it is a little broad?

Mr. ROBINSON: Mr. Mitchell, I think you were thinking of subsection (5), were you not? That is the one which was directed to this point. Subsection (5) of the former draft said,

> no patent granted or validated under the provisions of the last preceding subsection or of this subsection shall abridge or otherwise affect the right of any person or his agent or agents or his successor in business to continue in manufacture, use or sale commenced before the coming into force of this section by such person nor shall the continued manufacture, use or sale by such person or the use or sale of the devices resulting from such manufacture or use constitute infringement.

The difficulty with that draft appeared to be the difficulty I mentioned a moment ago. It simply gave the right to continue after March 31 what you had begun to do before March 31. It made it a negatory right. You might have started in to manufacture and not have sold anything. The right to go on manufacturing without the right to sell would be an empty right.

Mr. IRVINE: Was there any case of that sort under the old Act?

Mr. ROBINSON: There are no decided cases at all under the Act of 1921 of which I know.

The WITNESS: Section 28 (3) says,

> Provided that such extension shall in no way affect the right of any person, who, before the enactment of this section, was bona fide in possession of any rights in patents or applications for patents conflicting with rights in patents granted or validated....

It goes right along and then section 5 comes in and it clears it up.

Mr. LESAGE: It is clearer in your first draft than it is this time.

The CHAIRMAN: The point, Mr. Lesage, as it has been explained to me is this; in subparagraph (3) as drafted by the institute, once a person qualifies himself under that section, then he is at liberty to continue to do anything at all with respect to a patented article.

Mr. LESAGE: But the section does not say so.

The CHAIRMAN: Could you add a few words to the section whereby you would add to the section the legal effects which flow as a result?

The WITNESS: Just before you start, Mr. Chairman, supposing a third party had started to make an article for himself, for his own use, but had not any intention of selling it. He made it for his own use and probably some of his friends came and asked him if he would make one for them. Is that man to be allowed to enter the manufacturing business afterwards?

Mr. LESAGE: He will under the section as drafted by the institute.

The CHAIRMAN: Gentlemen, shall that stand for the commissioner and Mr. Robinson to redraft?

Mr. LESAGE: Mr. Chairman, there is another point there. I still think even if we were to take this drafting by the institute we should add what was proposed by the commissioner as subsection (6) to cover the coming peace treaties. I do not see how the institute could have any objection to that. You see, we are given until the 30th of September or the 31st of March. Here, I have a peace treaty with Italy which should be ratified by the Canadian parliament about June by the terms of which we give twelve months to Italian nationals to come in with their applications. This must be covered in advance if we are to avoid having this Patent Act come up every session for amendment. We must avoid a conflict of laws and we would do it by the amendment as proposed by the commissioner.

The CHAIRMAN: Is not the objection to that, though, just this; if we had what you suggest we might find ourselves in the position whereby we gave to the Italians or the Germans rights in excess of those we gave to our own people?

Mr. LESAGE: No, because they are reciprocal in the treaty, but they are different from the Act.

Mr. FLEMING: We do not want a conflict, at any rate, and I would suggest if Mr. Robinson has not already given consideration to the subsection (6) proposed by the minister, that might be considered along with the other changes being considered to-night.

The CHAIRMAN: Are there any other points, Mr. Lesage?

Mr. LESAGE: No.

The CHAIRMAN: Then, coming to section 10 of the bill which has to do with the oaths. Mr. Hackett brought this matter up yesterday, you will recall, but is unable to attend the meeting to-day. He wrote me a letter which I feel I should read to the committee so the committee will have Mr. Hackett's views before it.

> I cannot be at the meeting of the Banking and Commerce Committee this afternoon.
>
> I would be glad to see the affidavit presently exacted on application done away with.
>
> I think that people in their dealing with the government should tell the truth and, if they miss it intentionally, they should suffer.
>
> I have two objections to the oath being used indiscriminately. One, people are frequently called upon to swear to facts of which they can have no personal knowledge and, secondly, a too frequent resort to the oath tends to diminish ones respect for it.
>
> I feel that in some countries oaths are taken so frequently their full significance has ceased to be uppermost in the minds of many.
>
> I am not sure that the cancellation of the patent is a proper method of dealing with the false statement in the application. This might entail loss to an innocent party. A beneficiary of the patent who has financed it or possibly owns it might, under such an enactment, find himself unfairly penalized.

I believe the committee was fairly well in agreement yesterday that the provision for the oath should be eliminated and a proper penalty section incorporated in the Act to punish offenders.

Mr. MARQUIS: When there is an oath it is certified; there is evidence that someone has sworn to the statement. If you replace that by a declaration or signature, it should be before a witness and should be certified by someone else. I had a case a few weeks ago. Someone came to me with an invention and

I found out that this invention had been patented overseas. Whe I asked him to swear a declaration, he refused to do so. If his signature had been required to the statement, I am sure he would have signed it.

Mr. STEWART: Even if penalties were added?

Mr. MARQUIS: If you only have the signature of a man, it would be difficult to prove. Someone may say, "I never signed it." There should be the certificate of some person in authority who attests to the signature. However, I am in favour of getting rid of the oath.

The CHAIRMAN: I understand that the elimination of the oath provision would save the department a lot of work; is that true?

The WITNESS: Yes, it would. There is no doubt about that.

The CHAIRMAN: If that is the case, would not your objection, Mr. Marquis, be met by requiring that the signature should be witnessed?

Mr. MARQUIS: Yes, that is the point.

The CHAIRMAN: There is no objection to that.

Mr. JAENICKE: Supposing the oath to the signature is false. If you have an affidavit, you can go after the J.P.

Mr. MARQUIS: If you have that you could go after the J.P.

Mr. JAENICKE: It is the same thing.

The CHAIRMAN: What are the views of the committee in regard to the penalty which should flow from a false statement.

Mr. LESAGE: It should be the very same penalty as that contained in section 80.

Mr. MARQUIS: There is no provision for a fine in that section is there?

Mr. LESAGE: Yes,

> —is guilty of an indictable offence and shall be liable to a fine not exceeding five hundred dollars ($500) or to imprisonment for a term not exceeding six months—

The WITNESS: You would find that under the heading "Offences and Penalties".

Mr. MARQUIS: You should add a subsection to take care of it.

Mr. FLEMING: I think we agreed yesterday that section 80 would need revision, in any event, so it could probably be drafted to cover this case of false statement. I think we would have to see that, Mr. Chairman.

Mr. LESAGE: Could we have that to-morrow, your proposal for the amendment of section 80?

The WITNESS: If you have a draft of what you desire with regard to the section, it would be easy enough to add a small subsection covering penalties for false statements. As the section appears here, every person who makes any false documents—I do not know what it means.

The CHAIRMAN: Shall section 10 of the bill, then, be deleted?

Mr. FLEMING: It is more than section 10, Mr. Chairman. We have to go back to section 29 of the Act and eliminate some things in section 29 of the Act.

Mr. STEWART: Section 29 would have to be revised.

The WITNESS: Section 29 deals only with these affirmations under the Act. If you are going to do that, "oath or affirmation" you have to repeal the whole of section 29.

Mr. FLEMING: That is the point I am making.

The WITNESS: You will have to repeal it within the year. It would have to be effective not earlier than April 15, 1946. We cannot allow applicants to come back and request us to restore applications which have failed under section 31 because they had not completed their applications. We cannot do that. We would have to have that repealed effective as of April 15, 1946.

Mr. FLEMING: You mean repealed as to applications filed on or after April 15, 1946?

The CHAIRMAN: I think the committee has agreed on what it desires to accomplish and the drafting will be up to the commissioner.

Section 11, Mr. Lesage, you asked for that section to stand yesterday?

Mr. LESAGE: No, I was not the one who asked for that. I think it was Mr. Fleming.

Mr. FLEMING: No, it was not I.

Mr. ROBINSON: I think I was the one who suggested that change. I think I said that the institute and the commissioner propose to replace section 11 by a revised section 30. We all agreed on this revision. I think I have sufficient copies here to pass around to the members who are present. It reads as follows:

> 11. Section thirty of the said Act is repealed and the following substituted therefor:—
>
> 30. (1) Any applicant for patent who does not appear to reside or carry on business at a specified address in Canada shall, at the time of filing his application or within such period thereafter as the commissioner may allow, nominate as his representative a person or firm residing or carrying on business at a specified address in Canada.
>
> (2) Subject as hereinafter provided, such nominee shall be deemed to be the representative for all purposes of this Act, including the service of any proceedings taken thereunder, of any such applicant and of any patentee of a patent issued on his application who does not appear to reside or carry on business at a specified address in Canada, and shall be recorded as such by the commissioner.
>
> (3) An applicant for patent or a patentee may by written advice to the commissioner appoint another representative in place of the last recorded representative, or may advise the commissioner in writing of a change in the address of the last recorded representative, and shall so appoint a new representative or supply a new and correct address of the last recorded representative on the despatch by the commissioner to him of a notice in writing by registered mail that the last recorded representative has died or that a letter addressed to him at the last recorded address and sent by ordinary mail has been returned undelivered.
>
> (4) If, after the despatch of a notice as aforesaid by the commissioner, no new appointment is made or no new and correct address is supplied by the applicant or patentee within three months or such further period as the commissioner may allow, the Exchequer Court or the commissioner may dispose of any proceedings under this Act without requiring service on the applicant or patentee of any process therein.
>
> (5) No fee shall be payable on the appointment of a new representative or the supply of a new and correct address, unless

such appointment or supply follows the despatch of a notice in writing by the commissioner as aforesaid, in which case the fee payable shall be five dollars.

NOTE TO SECTION 11

This is proposed in place of the section in the bill in order to strengthen section 30 of The Patent Act. As it stands, the section requires the appointment of a Canadian representative for service, but does not ensure the appointment of a new one if the first dies or cannot be found. It is desirable that a representative for service should always be available so that a Canadian manufacturer who wants to manufacture something which may infringe a patent owned by a non-resident may, before undertaking manufacture, be able conveniently to obtain a judicial determination of his possible liability.

Under the proposed section, such a manufacturer could notify the commissioner that the patentee's representative for service was not available, and the patentee would then have to appoint a new one or suffer the consequences of not being represented in legal proceedings brought against him by the manufacturer.

Mr. LESAGE: As a matter of fact, Mr. Chairman, do you not think that we should adjourn and leave that alone for the present?

The CHAIRMAN: I was going to suggest this. There is a large volume of work done in the way of drafting. I do not think we should attempt to meet tomorrow morning. I am going to suggest that before we have a formal meeting again we try to have all the amendments in the hands of members of the committee not later than eleven o'clock tomorrow. That will give them plenty of time in which to study the amendments and then I would suggest that we meet at 4 o'clock in the afternoon. Is that satisfactory?

Agreed.

Mr. LESAGE: Mr. Chairman, I have an amendment to propose to section 14. I think it might be just as well to place it before the committee now.

The CHAIRMAN: Very well, we will deal with it now.

Mr. LESAGE: We may as well have it with the others. When I read section 14, I was wondering when and what additional fee should be imposed. I discussed it with the commissioner and I think he would accept the following amendment: that in line 56 we delete the words after the word "provided", and insert the following:

"Where the number of claims in an application exceeds twenty, a prescribed fee shall be imposed for each claim in excess of that number, provided that when the number of claims in an application for reissue exceeds the number of claims granted in the original patent an additional fee shall be imposed only for each claim over and above twenty in excess of the number of claims granted in the original patent."

Mr. STEWART: Mr. Chairman, I have an amendment here which I would like to suggest for the consideration of the committee. It applies to section 48 of the bill, the section dealing with the term of patent. I would suggest the insertion of these words in section (1), after the word "issued":

On and after the first day of June 1948 the duration of every patent issued by the Patent Office shall be seventeen years from the date on which the patent is granted and issued, or twenty years from the date of application, whichever is the lesser period.

I think that would help to clear up the backlog which has been accumulating in the office; and I would like to hear what the commissioner has to say about that, to see if it would be of any assistance to him.

The WITNESS: Mr. Robinson discussed that point with you earlier. He was of the opinion that seventeen years plus the average time to prosecute a case was sufficient. Now, the office is behind, as a matter of fact, thirty-two months or thereabouts in its actions, and probably if some date in the future were set—that is to say that any patent issuing after a certain named date shall expire within seventeen years from the grant of the patent or twenty years from the date of application, whichever is the shortest term of the monopoly—that might be quite alright. But there would have to be a year or a year and a half, whatever it is, allowed these applicants to clean up their stuff. Mr. Robinson was quite agreeable to their being given that time. I said he said he was agreeable. Of course, he would not agree to that anyway; but he did say that it would be helpful if you could say seventeen years plus the time it was under review.

Mr. ROBINSON: I would like to indicate that I was speaking then as a private individual.

The WITNESS: We do not know who is going to be influenced by it. This bill is for the private individual, it is for the people of Canada; it is not just for the institute. If you were speaking as a private individual I think we should also hear from our manufacturers.

The CHAIRMAN: I do not want to put Mr. Robinson on the spot. When I asked him the question I restricted it to his opinion as a private individual. The point arises that if any amendment of this kind is to be made the Canadian Manufacturer's Association have asked for a hearing and I would have to advise them to attend. I will probably to that.

Mr. Stewart, would you mind checking with the law officer of the Crown, Dr. Olivier, and have him assist you in the drafting of the amendment you have in mind in proper form.

Mr. STEWART: Yes.

Mr. IRVINE: There is one question I would like to bring to your attention now, and it is one which I mentioned to you before we started to examine this bill. Are we permitted to propose an amendment to any other section of the Act and include it in our bill?

The CHAIRMAN: We have been doing that, and I think the present bill before us makes a sufficient number of general amendments to the Act to justify the committee considering it as a general revision of the Patent Act.

Mr. IRVINE: That is what I understood you to say the last time we met.

Mr. JAENICKE: I think the same too, Mr. Chairman.

The committee adjourned at 5.50 p.m. to meet again Thursday, March 6th, at 4 p.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

BILL No. 16—AN ACT TO AMEND THE PATENT ACT, 1935

THURSDAY, MARCH 6, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.
Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.
Major J. H. Ready, Judge Advocate General's Office.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

THURSDAY, March 6, 1947.

The Standing Committee on Banking and Commerce met at 4.00 p.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Black *(Cumberland)*, Blackmore, Breithaupt, Cleaver, Dionne *(Beauce)*, Dorion, Fleming, Gour, Hazen, Irvine, Jackman, Jaenicke, Jutras, Lesage, Marquis, Michaud, Quelch, Sinclair *(Ontario)*, Stewart *(Winnipeg North)*, Strum (Mrs.).

In attendance: Mr. J. T. Mitchell, Commissioner of Patents; Mr. Christopher Robinson, Vice-President, Patent Institute of Canada; Major J. H. Ready, of the Judge Advocate General's Office, and Dr. Maurice Ollivier, Law Clerk of the House of Commons.

The Committee resumed consideration of Bill No. 16, An Act to amend The Patent Act, 1935, Mr. Mitchell, Mr. Robinson and Major Ready being examined thereon.

Mr. Stewart moved,

That Section 48 of the Act be amended by adding thereto the following proviso: provided, in case of such patent issued on and after the first day of June, 1948, the patent shall expire as above stated or twenty years from the date of application, whichever is the lesser period.

After discussion, Mr. Stewart was given leave to withdraw his motion.

The Committee having agreed to reconsider clause 3, the said clause was further amended by deleting the words *"and prescribed such forms"* in line 24.

Clause 3, as amended, carried.

The following new clause 4 was adopted, subject to be reconsidered at the next sitting, should a representative of The Canadian Manufacturers Association appear to make representations in relation thereto, viz:

4. The said Act is further amended by inserting immediately after section 19, the following headings and sections:

Government owned patents

19A. (1) The inventor of any improvement in munitions of war as defined in the Official Secrets Act shall if so required by the Minister of National Defence assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention; and the Minister of National Defence may be a party to the assignment.

(2) An inventor, other than an officer servant or employee of the Crown or a corporation which is an emanation of the Crown, acting within the scope of his duties, and employment as such, shall be entitled to compensation for an assignment to the Minister of National Defence under this Act. In the event that the consideration to be paid for such assignment is not agreed upon it shall be the duty of the Commissioner to determine the amount of such consideration provided his decision shall be subject to appeal to the Exchequer Court. Proceedings before the Exchequer Court under this subsection shall be held in camera upon request made to the court by any party to the proceedings.

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(3) The assignment shall effectually vest the Benefit of the invention and patent in the Minister of National Defence on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Minister of National Defence.

(4) Any person who, as aforesaid, has made an assignment under this section to the Minister of National Defence, shall, in respect of any covenants and agreements contained in such assignment for keeping the invention secret and otherwise in respect of all matters relating to the said invention, be for the purposes of The Official Secrets Act, deemed to be a person having in his possession or control information respecting the said matters which has been entrusted to him in confidence by any person holding office under His Majesty and the communication of any of the said information by such first mentioned person to any person other than one to whom he is authorized to communicate with by or on behalf of the Minister of National Defence shall be an offence under section four of The Official Secrets Act.

(5) Where any agreement for such assignment has been made the Minister of National Defence may submit an application for patent for the invention to the Commissioner, with the request that it be examined for patentability, and if such application is found allowable may, before the grant of any patent thereon, certify to the Commissioner that, in the public interest, the particulars of the invention and of the manner in which it is to be worked should be kept secret.

(6) If the Minister of National Defence so certifies, the application and specification, with the drawing, if any, and any amendment of the application, and copies of such documents and drawing and the patent granted thereon, shall be placed in a packet sealed by the Commissioner under authority of the Minister of National Defence.

(7) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened save under the authority of an order of the Minister of National Defence.

(8) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by the Minister of National Defence to receive it, and shall if returned to the Commissioner be kept sealed by him.

(9) On the expiration of the term of the patent, the sealed packet shall be delivered to the Minister of National Defence.

(10) No proceedings by petition or otherwise shall lie to have declared invalid or void a patent granted for an invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid, except by permission of the said minister.

(11) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(12) The Minister of National Defence may at any time waive the benefit of this section with respect to any particular invention, and the specification, documents and drawing shall be thenceforth kept and dealt with in the regular way.

(13) The communication of any invention for any improvement in munitions of war to the Minister of National Defence or any person or persons authorized by the Minister of National Defence to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

(14) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the spirit and intent thereof.

19B. If by any agreement between the Government of Canada and any other government it is provided that the government of Canada will apply the provisions of the last preceding section to inventions disclosed in any application for a patent assigned or agreed to be assigned by the inventor to such other government, an dthe Commissioner is notified by any minister of the Crown that such agreement extends to the invention in a specified application, such application and all the documents relating thereto shall be dealt with as provided in the next preceding section.

Patents relating to atomic energy

190. Any patent application for an invention which, in the opinion of the Commissioner, relates to the production, application or use of atomic energy shall, before it is dealt with by an examiner appointed pursuant to section six of this Act, be communicated by the Commissioner to the Atomic Energy Control Board.

The following new clause 9 was adopted, viz:

9. The said Act is amended by inserting immediately after section twenty-eight the following section:

28A. (1) Subject as hereinafter provided, the Commissioner shall extend to the thirtieth day of September, 1947, in favour of a patentee or applicant such of the time limits fixed by this Act for the filing or prosecution of applications for patents, for appeals from the Commissioner or for the payment of fees as expired after the second day of September 1939, provided

(*a*) a request for such extension is made by or on behalf of such patentee not later than the thirtieth day of September, 1947, or by or on behalf of such applicant for patent before the thirty-first day of March, 1948; and

(*b*) such request specifies the date of the first application in any country for a patent for the same invention by such applicant or patentee or anyone through whom he claims; and

(*c*) such patentee or applicant is a Canadian citizen or a national of a country which gives substantially reciprocal privileges to Canadian citizens.

(2) Every patent in respect of which, or in respect of the application for which, a time limit has been extended under the provisions of subsection one of this section shall expire at the date specified in the grant of such patent or at the end of twenty-two years from the date of the first application in any country for a patent for the same invention by the patentee or anyone through whom he claims, whichever date is the earlier.

(3) No claim for the infringement of any patent in respect of which, or in respect of the application for which, a time limit has been extended under the provisions of subsection one of this section, shall be made

against any person or the successor in business of any person who, before the thirty-first day of March, 1947, had made, constructed, used or vended to others to be used the invention protected by such patent or against any person deriving through such person or such successor his title to any article, machine, manufacture or composition of matter so protected.

Upon consideration of clause 10, the following was substituted therefor:

10. Section 29 of the said Act is repealed as of the fifteenth day of April, 1946.

The following new clause 11 was adopted viz:

11. Section thirty of the said Act is repealed and the following substituted therefor:—

30. (1) Any applicant for patent who does not appear to reside or carry on business at a specified address in Canada shall, at the time of filing his application or within such period thereafter as the Commissioner may allow, nominate as his representative a person or firm residing or carrying on business at a specified address in Canada.

(2) Subject as hereinafter provided, such nominee shall be deemed to be the representative for all purposes of this Act, including the service of any proceedings taken thereunder, or any such applicant and of any patentee of a patent issued on his application who does not appear to reside or carry on business at a specified address in Canada, and shall be recorded as such by the Commissioner.

(3) An applicant for patent or a patentee may by written advice to the Commissioner appoint another representative in place of the last recorded representative, or may advise the Commissioner in writing of a change in the address of the last recorded representative, and shall so appoint a new representative or supply a new and correct address of the last recorded representative on the despatch by the Commissioner to him of a notice in writing by registered mail that the last recorded representative has died or that a letter addressed to him at the last recorded address and sent by ordinary mail has been returned undelivered.

(4) If, after the despatch of a notice as aforesaid by the Commissioner, no new appointment is made or no new and correct address is supplied by the applicant or patentee within three months or such further period as the Commissioner may allow, the Exchequer Court or the Commissioner may dispose of any proceedings under this Act without requiring service on the applicant or patentee of any process therein.

(5) No fee shall be payable on the appointment of a new representative or the suply of a new and correct address, unless such appointment or supply follows the despatch of a notice in writing by the Commissioner as aforesaid, in which case a fee as prescribed shall be payable.

The following new clause 14 was adopted, viz:

14, Subsections three and four of section thirty-five of the said Act are repealed and the following substituted therefor:—

3. When the number of claims in an application exceeds twenty a prescribed fee shall be imposed for each claim in excess of that number, provided that when the number of claims in an application for reissue exceeds the number of claims granted in the original patent an additional fee shall be imposed only for each claim over and above twenty in excess of the number of claims granted in the original patent.

By unanimous consent the following new clause was inserted immediately following 16 of the bill, viz:

Subsection 1 of section 53 of the said Act is repealed, and the following substituted therefor:—

53. (1) A patent shall be void if any material allegation in the petition of the applicant in respect of such patent is untrue, or if the specification and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, and such omission or addition is wilfully made for the purpose of misleading.

By unanimous consent, the following new clause was inserted immediately following the new clause above quoted:

Section 1 of Section 61 of the said Act is repealed and the following substituted therefor:—

61. (1) No patent or claim in a patent shall be declared invalid or void on the ground that, before the invention therein defined was made by the inventor by whom the patent was applied for it had already been known or used by some other *person,* unless it is established either that,

(*a*) before the date of the application for the patent such other *person* had disclosed or used the invention in such manner that it had become available to the public; or that

(*b*) such other *person* had, before the issue of the patent, made an application for patent in Canada upon which conflict proceedings should have been directed; or that

(*c*) such other *person* had at any time made an application in Canada which by virtue of section twenty-seven of this Act had the same force and effect as if it had been filed in Canada before the issue of the patent and upon which conflict proceedings should properly have been directed had it been so filed.

Clause 17 of the Bill was amended as follows:

1. By substituting *"$25.00"* for "$20.00" in line 37 of section 73(1).

2. By deleting the ward "two" in line 8 of section 73(1) and substituting therefore the word *"three"*, and by deleting the figure (4) in line 10 and substituting therefor (3).

3. By deleting the words "On filing an application for the restoration and revival of a patent—for each patent mentioned therein, $35.00" being lines 15 and 16 of section 73(1).

4. In line 17 of section 73(1), between the words "a" and "copy" insert the words *"certified typewritten or photostat"*, and after the word "specification" insert the words *"not exceeding twenty pages"*.

Clause 17, as amended, adopted.

The following new clause was substituted for clause 18 of the Bill:

Section 77 of the said Act is repealed.

The following new clause was added immediately after clause 18 of the Bill, viz:

Section 80 of the said Act is repealed and the following substituted therefore:—

80. Every person who in relation to the purposes of this Act and knowing it to be false

(*a*) makes any false representation;

(*b*) makes or causes to be made any false entry in any register or book; or

(*c*) makes or causes to be made any false document or alters the form of a copy of any document; or

(*d*) procures or tenders any document containing false information

is guilty of an indictable offence and shall be liable upon conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

The following new clause was also inserted immediately following clause 15 of the Bill, viz:

Subsection (3) of section 38 is hereby repealed and the following substituted therefor:

The Commissioner may, in his discretion, dispense with the duplicate specification and drawing and the third copy of the claim or claims, and in lieu thereof cause copies of the specification and drawing, in print or otherwise, to be attached to the patent, of which they shall form an essential part.

Mr. Jaenicke submitted four amendments to sections 59, 64, 65 and 66 of the Act.

The Clerk was instructed to send mimeographed copies of the said proposed amendments to the members before the next sitting.

At 6.00 p.m., the Committee adjourned until Tuesday, March 11, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
March 6, 1947.

The Standing Committee on Banking and Commerce met this day at 4.00 p.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, you now have before you a mimeographed copy of all the sections to which substantial amendments have been made which would be difficult to read to you for your notes. I do not think it fair to ask you to approve all these at this meeting since you have had no opportunity of checking them properly. If it is your wish, we will simply stand them over to our next meeting.

Mr. FLEMING: Is there any discussion possible on this, Mr. Chairman, which might be helpful? There might be some odd points which occur to some of us now.

Mr. JAENICKE: I have made a few notes, Mr. Chairman.

The CHAIRMAN: I have a telegram from the legal department of the Canadian Manufacturers' Association which I will read.

> The Canadian Manufacturers' Association strongly supports the views advanced by the Patent Institute of Canada with respect to section 4 of bill No. 16 on secret patents and agrees with the institute there might be substituted for section 4 some such provision as that proposed by the interdepartmental committee on patents 1942. Copy of this telegram is going forward to the minister.

This is signed by H. W. MacDonald.

Mr. IRVINE: This raises a lot of suspicion.

The CHAIRMAN: I have not wired in reply before consulting the committee but, so far as I am concerned personally, I think they should have been here long ago if they wanted to make representations. However, I still think they are entitled to a hearing and I will advise them that they will be heard by the committee on Tuesday morning at eleven o'clock if that is satisfactory.

Mr. FLEMING: Are they asking for a hearing?

The CHAIRMAN: No, but they say they are opposing this section in regard to secret patents and they are supporting the institute. We have not accepted the representations of Mr. Robinson regarding that section and I think they should have an opportunity to be heard if they so desire.

Mr. FLEMING: I may be very stupid about this, but I did not understand Mr. Robinson, on behalf of the institute, was opposing something in the nature of section 4. Am I mistaken?

Mr. ROBINSON: That is perfectly right, sir, but I have been instructed on behalf of the institute to criticize the idea of granting a secret patent.

Mr. FLEMING: That is a theoretical position, I take it?

Mr. ROBINSON: I think it goes deeper than just the theoretical.

The CHAIRMAN: I would not want the association coming to us afterwards or going to the press and saying they had registered their objections and had not been given an opportunity to be heard.

At the close of the meeting yesterday, an amendment to section 48 was moved by Mr. Stewart. It was left in the position that he would consult with Dr. Ollivier as to the drafting of the amendment. Would you care to proceed now, Mr. Stewart?

Mr. STEWART: You have the proper draft.

The CHAIRMAN: I have a draft here, but it is very rough.

Mr. STEWART: I also have a rough draft. We have heard from the commissioner there is a very substantial backlog of work. I think, perhaps, an amendment such as this to section 48, subsection (1) might, to some extent, get rid of the backlog. It was for this reason I moved the amendment for the discussion of the committee. I shall read it again.

> Section 48 of the said Act is amended by adding thereto the following proviso: provided in case of such patent issued on and after the first day of June, 1948, the patent shall expire as above stated or twenty years from the date of application whichever is the lesser period.

I talked this over with the commissioner and he seemed, at the time, to have no objection. Perhaps, however, he would desire to comment upon my suggestion that the passage of such an amendment to the Act would, to some extent, remove the backlog.

J. T. Mitchell, Commissioner of Patents, recalled:

The WITNESS: Mr. Robinson did say, speaking as a private individual and not as a representative of the institute, he thought, when this subject was broached before that an amendment such as that might be considered if you could take into consideration the seventeen year period and the average time it takes for a patent to go through the patent Office. Mr. Stewart's point, I think, is that these cases having been in the Patent Office long over the average time, giving them fifteen months or thereabouts to clean up the cases might help to get rid of the backlog.

By Mr. Fleming:

Q. What is your opinion, Mr. Commissioner?—A. I think it is a very good idea, provided sufficient time is allowed to do that. Probably, Mr. Stewart in allowing fifteen months should have allowed eighteen months or some such period to give these people an opportunity to amend their cases and put them into the office in a proper condition. Of course, you understand, Mr. Robinson was speaking as a private individual at that time, not as a representative of the institute. He did say that.

Q. I think in this matter we had better let him speak for himself, but before the commissioner takes his seat may I say I think this idea may be all right as applied to cases where there is a delay in the Patent Office which is attributable to something deliberate on the part of the applicant or his attorney, but what about these other cases which are held up now because of the backlog in the department—the congestion which exists there? Is it going to be fair in those cases?—A. I think it would be quite fair in the long run. Do not forget, if an amendment of that nature is made that all that will happen in this: attorneys from the United States and Great Britain will not file their application in Canada until the last minute. They will just add to the life of the patent. If an applicatioin in the United States is filed, they may not file in Canada within the period of one year to come under the convention, they will wait until within the two years of publication or use when they have had two years of manu-

facture of their invention, it may be about three years after the application has been filed in the United States, then they file in Canada and the prosecution in Canada may take another three years, which consumes a six year period.

If what we have heard can be relied upon, action in the United States is given within a year. Well, the prior art would be cited in the first action and all applicants for patents should know at least what the art is in the first United States action, that is, the art which applies very closely to the invention. There is, of course, the trouble that a patent citation may not turn up until the third year. There may be a case of conflict in the United States which would hold up action, but those are rather rare cases. Probably if some sort of legislation could be brought about which would spur up the attorneys to do their work, I would not object at all.

Q. I have two further questions with regard to Mr. Stewart's amendment, and the first is this: is the period fixed in the amendment, that is to say from now until the first of June next year, an ample period under all the circumstances? The second question is: is the three year period ample to allow for the passage of the application through the Patent Office?—A. With the staff which I hope you are going to provide, it would be ample.

By Mr. Marquis:

Q. But with the staff you have right now?—A. No, it is not.

By Mr. Lesage:

Q. Is there such a proviso in the United States law?—A. No, there is not. However, periodically they do clean up their work. In the United States they get in about four or five hundred extra examiners to clean up those cases. I am going to give you an example of how the attorneys do comply with the law. In 1930, the United States charged a dollar on every claim over twenty and as a result of that, they issued in six weeks, in the United States, between 10,000 and 11,000 patents. Usually the United States issued between four and five hundred a week, so that instead of issuing approximately 3,000, they issued between 10,000 and 11,000. The attorneys simply acted on those cases. They got those cases put into shape because if they had not they would have had to pay an extra one dollar for each claim over twenty. It was a case of hitting their pocket.

By Mr. Fleming:

Q. What troubles me is the reasonableness of this three year period being contingent on your obtaining adequate staff. If that adequate staff and space were an accomplished fact there may be something to say for the amendment, but it seems to me rather suppositious?—A. If Mr. Stewart said two years, what would happen?

Q. I don't know—A. It would mean we would have to come back later to have the committee reduce this period.

Q. I would rather see the increased staff and the improved office accommodation an accomplised fact before we start in limiting the period, where the fairness of the limitation depends upon the speed of action in the Patent Office?—A. As I have already said, applications are not filled in Canada and the United States simultaneously—In those emanating from the United States, the attorney or inventor waits until he has tested the art in that country before he files in Canada. In that way, he is usually quite familiar with the prior art and, if he so wishes, he can present his case in a very much better condition than he does. I have already told you that 25 per cent of the cases filed in the Patent Office are incomplete. A large number of these cases come from the United States. It is only another way of holding the examination back for a year, impeding progress.

By the Chairman:

Q. There is nothing to prevent an inventor going right ahead and manufacturing or using his rights immediately? He does not have to wait until a patent is granted?—A. He can establish a market if he so desires.

By Mr. Fleming:

Q. In order to be sure injustice is not going to be done in some cases, it may be that the terms of the amendment would be quite ample to provide reasonable protection and fair treatment in a great majority of cases, but I wonder if, so long as this backlog is continuing in the Patent Office, it is fair to do it now?—A. Mr. Robinson has looked up a number of cases and finds our initial actions are back about two years and a half. The United States are back, I think, about a year and a half. In the United States their second action is about fifteen months later. We are back about two and a half years, but they have all the information and they still take six months to answer us. It means we are back in the Patent Office three years or at least two years they take the full six months; they never answer immediately.

By Mr. Lesage:

Q. What happens in the case of a conflict?—A. In the case of a conflict, they come in and get extensions and extensions galore.

Q. What if the conflict goes on for eight or nine years?—A. When a conflict comes up they come along and get an extension here. They go into the law courts and stall the cases there. Notices of motion are served and then delays occur and everything is held over. I have cases in the office which have been before the court in which the attorney or barrister in Ottawa has taken no action in the court. There has never been any pressure for a decision in the court and these cases have been that way for three or four years.

Q. But there may be cases where conflict lasts for two or three or even four years when no one is at fault—A. There might be. These cases last a long time in the United States because they take testimony throughout the different states of the United States. Such a case does last a long time.

Q. Would not the amendment suggested by Mr. Stewart create an injustice towards those people?—A. It is probably an unusual amendment. It has merit, a considerable amount of merit, and the fact it is new, of course, should not discredit it.

Q. I understand it is only in Canada and the United States that the delay is computed from the filing of the application to the awarding of the patent?—A. A United States inventor can file his application in the United States and file in Great Britain eleven months after that. He can get his patent through and sealed in Great Britain within twenty-one months.

Q. There is not the same system of computing delays?—A. No, but it is the same system of examination. In an examination, the examiners are quite familiar with the state of the art. The principal attorney of record in the United States is quite familiar with that art. He knows all the objections. He knows all the answers, but he does not care to give them.

The CHAIRMAN: The institute would like to be heard on this point.

Mr. FLEMING: Just one word before you call on Mr. Robinson; may I ask if the amendment has been checked as to form by Dr. Ollivier?

Dr. OLLIVIER: Yes, I think I drafted it.

Mr. FLEMING: You are satisfied there is no conflict between the amendment and subsection (2) of section 48?

Dr. OLLIVIER: No, I do not think there is.

By Mr. Fleming:

Q. Are there any cases at all to which subsection 2 can now apply, Mr. Commissioner?—A. There may be one or two. There cannot be very many, but there may be a few. Do not forget they would still have eighteen months, or whatever it is that Mr. Stewart wishes to state in his amendment, to clean up.

Q. Mr. Stewart's amendment would not apply to the cases under subsection 2. His amendment applies only to subsection 1 and does not repeal or amend subsection 2.—A. That is quite true. Of course, I suppose 99 decimal something or other are under subsection 1. I do not think there are very many under subsection 2.

Mr. ROBINSON: Mr. Chairman, I think the first point to make about the proposed amendment is that so far as I can see it would not help to clean up the backlog in the office. The backlog in the office is primarily caused by the situation in the office, and not, as one might gain the impression, by attorneys' delay. I feel quite confident in saying that.

Just the other day we made an analysis of all patents which issued a week ago on Tuesday. There were 121 of them. We went through those patents to see what proportion of the time which lapsed between the filing and the issue was occupied by the applicant in answering objections by the Patent Office, or between the allowance and the payment of his final fee, and what proportion was occupied by work in the office. The average time which elapsed between filing and the issue of the 121 patents which issued a week ago on Tuesday was 35·7 months. The average time that was taken by the attorneys was 7·6 months. The balance of 28·1 months was in the Patent Office.

It is quite possible in certain cases some of that time in the Patent Office might have been attributable to something defective in what was originally put forward. For example, of the 121 patents 33 had what were called stop orders on them. Stop orders are given by virtue of a rule which is in the rules and has been in the rules for a great many years. It enables an applicant to say to the Patent Office, "Please do not act on my case for at least a year." In my own office we never put on a stop order because there is no point in doing so. The Patent Office is infinitely over a year behind in its work, anyway. There are never going to get to the work for a year so there is no point in bothering with a stop order. Nevertheless there were 33 out of the 121 cases where there was a stop order. There may be some small fraction of those which conceivably have been acted on earlier than one year without a stop order.

As to the rest the variation in the time between filing and issue ran all the way from 12 months to 114 months in the case of the longest patent. Interestingly enough in that case of the 114 months two months were taken by the attorney and 112 months were taken by the Patent Office.

I am not suggesting that the Patent Office is to blame. We have been over this ground before. The Patent Office is faced with an impossible situation. They have not enough staff; there have not enough space, and they simply cannot get the work out, but if you put a limitation on the term of patents running from the filing date at least under present conditions substantial injustice is going to be done to a very large proportion of patentees because there is no way they can get their work out.

Mr. STEWART: That is under present conditions?

Mr. ROBINSON: Under present conditions. Let us assume for a moment that the proportion of attorney's delays was substantially higher. I do not like the word "delay" because that suggests it is confidential. It is not in at least 75 per cent of the cases, I should say. The examiner eventually gets around to examining an application in anywhere from a year to three and more years. I have had

final actions in my office within the last month in which the first action on the case is six years after it was filed. The Patent Office has not touched that.

The WITNESS: Which case was that?

Mr. ROBINSON: I cannot mention it now. I do not know.

The WITNESS: I want to get it. I should like to see it.

Mr. ROBINSON: I will give it to you later. There have been those cases. Nobody is to blame for it, but there is the situation. Some of the examiners in the office are simply overwhelmed by work. They have thousands of cases in front of them and they simply cannot get around to them.

The WITNESS: There is one examiner with thousands of cases, not the whole lot of them.

Mr. ROBINSON: Well, one. The examiner acts on an application. The applicant may be in England. He may be in Europe. He may be in the United States or in Canada. The action probably goes to the attorney who is representing him. If it is for a foreigner it is then sent on by the Canadian attorney to the foreign attorney who has instructed the Canadian man. He then must get in touch with his client. They must get copies of the prior patents that were cited against them. They must consider them. They must see what changes, if any, ought to be made in their application, what the answers to the official objections are. They must then prepare them. They must send that back to Canada to the Canadian attorney and the Canadian attorney must send them to the Patent Office.

The Patent Office has not a monopoly on being overworked. Attorneys are overworked, too. They have been extremely overworked, certainly in the last six or seven years. I must confess there are many cases in which I get instructions from principals abroad to do something and I do not get around to it for some time because I simply cannot. I have not the time to do it. There are other things that are ahead of it.

I mention that only because that is not a case of intentional delay. As I said the first day there are undoubtedly a few cases of intentional delay but I think they are much magnified, and by and large the time that elapses between action by the Patent Office and the reply by the applicant is not a case of intentional delay.

Mr. MARQUIS: May I ask Mr. Robinson if the time taken to issue a patent makes the applicant suffer? They do not suffer; they can manufacture after the application is filed.

Mr. ROBINSON: In fact, they can manufacture even if they never file a patent application. The manufacturing and the filing of a patent application have nothing to do with each other.

Mr. MARQUIS: Some third party who has filed an application may sue them.

Mr. ROBINSON: Possibly if he gets his patent. I quite agree that the applicant does not suffer under the present system, but if you put in a system where the life of his patent runs from the date of filing then the longer it takes to get his patent issued the shorter the life of the patent he gets. That is the difficulty. With the present situation in the Patent Office where your average time is three years and you may have cases that are as long as 114 months, and in many cases through absolutely no fault of the applicant, it would do a substantial injustice to applicants.

The CHAIRMAN: Do you say then that in a substantial number of instances no benefits accrue to the inventor until he has actually received his patent, that is, he does not proceed with the manufacture of his product?

Mr. ROBINSON: I should say in a substantial number of instances yes because of this. There are some cases in which manufacture is undertaken,

but I think it is well to remember a very large number of patents are taken out over a year and of that number a comparatively small portion actually go into production within any fairly short time of either filing or issue. There are a great many patents which may never go into production because the man may have thought they were going to be useful and they turned out not to be so or in many cases he was long before his time.

For example, it may interest members of the committee to know that the first patent on television in the United States was filed in 1880. That man got his patent in about 1900. His patent had expired in 1917 before anybody ever thought of using television practically. The basic patents had all gone. There are lots of cases of that kind.

The CHAIRMAN: Then deleting those—

Mr. JAENICKE: Whose fault was that?

Mr. ROBINSON: Nobody's fault.

The CHAIRMAN: —of the patented articles which actually go into production can you tell the committee what percentage of them go into production before the patent is issued?

Mr. ROBINSON: I simply could not hazard a guess, and I do not think anybody would be in a position to say.

The CHAIRMAN: As to the instance which you gave us a few minutes ago where there was such a great delay was that article in production during that time?

Mr. ROBINSON: I do not know.

Mr. JAENICKE: As to the matter as to where the fault lies as to the delay are there any rules in the Patent Office which require the applicant to file a reply to the requisition made by the commissioner within a certain time?

Mr. ROBINSON: I was coming to that. In the first place there is the general rule which is in the statute that any objection by the Patent Office must be answered in six months.

Mr. LESAGE: Where is it?

Mr. ROBINSON: Section 31. The sanction is that the application becomes abandoned if you do not. The Patent Office can take as long as it likes but the attorney must act in six months.

Mr. JAENICKE: Suppose he does not?

Mr. ROBINSON: Then his application becomes abandoned and he cannot get a patent.

Mr. JAENICKE: Can the commissioner extend the time?

Mr. ROBINSON: The commissioner may. If an application has become abandoned through failure to answer the objection the commissioner has the power to reinstate that application if he is satisfied the delay was not reasonably avoidable. You can all imagine cases where there is a slip-up somewhere and the letter does not get there or it is not attended to or the man is away or something like that. Where there is a real case the commissioner can and does reinstate the application.

Mr. JAENICKE: Would the fact the patent attorney is too busy be a reasonable excuse?

Mr. ROBINSON: No, generally not. I will say this, that if it can be shown that either the patent attorney or applicant would normally have done everything he could to have answered the action, but that something extraordinary happened so that there was a genuine error and the thing was overlooked, the application may be reinstated. I think you will find in the commissioner's report

each year the number of applications that have been reinstated under section 31. I think you will find the number is quite small. I am not sure whether it is in the commissioner's report. You may know.

The WITNESS: Yes, it is.

Mr. ROBINSON: I think you will find the number is fairly small.

Mr. STEWART: You said you took one day as a sample. Would that be a fair average?

Mr. ROBINSON: I have no way of knowing. It was taken completely at random. I took last week's issue, and so far as I know, and looking at the figures, I should say there is nothing unrepresentative about it. They vary all over the lot.

Mr. STEWART: So that the average time taken by patent attorneys would be 7 months out of roughly three years?

Mr. ROBINSON: That is all, yes.

The WITNESS: Did you include the six months for paying the final fee in that period?

Mr. ROBINSON: Yes, I did.

The WITNESS: One case took two months.

Mr. ROBINSON: That is right.

The WITNESS: Out of 114 months?

Mr. ROBINSON: Yes.

The WITNESS: And only two months delay?

Mr. ROBINSON: That is right.

The WITNESS: I want to see that case.

Mr. ROBINSON: What I was going on to say is you were asking about the rules that made the applicant answer the official objection. There is not only the general rule that he must answer in six months on pain of abandonment but there is also a special rule which allows the commissioner to shorten any time limit for answering. That is quite often resorted to, particularly in cases of possible conflict or existing conflict. The examiner will require an answer in two or three months instead of six months depending on where the applicant is. There is power under the existing statute and the existing rules for the Patent Office to prevent intentional delay on the part of the aplicant or attorney. There is one other point I should mention. Not only can the time limit be shortened by the commissioner but if the official objection is answered in a way which is incomplete and the commissioner has reason to think that is being done intentionally he has power to say, "That reply was incomplete. You did not file a complete reply within six months, and I therefore hold your application abandoned."

Coming back to my first point that I think this proposal would not help the backlog as you can see the backlog is essentially in the Patent Office by necessity. If this were passed let us assume you would find a very large number of applicants who would be pressing to get their patents out. They would simply put pressure more heavily on the examiners than now. What might happen is that certainly those applicants who were able to might amend their cases and would try to get the examiner to consider them, but the examiner cannot take up cases out of turn.

Some of the examiners are two, three, four and even five years behind on some of the applications. You would have everybody pushing to get their applications out. The result would be that the office would be no further ahead than it is now.

As the commissioner indicated there would be certain cases in which a Canadian applicant might know what the position is abroad. He has already

prosecuted the United States application and he knows roughly the extent of the claims he will be entitled to over the prior patents, but even in that case you cannot get action quickly from the Patent Office.

I have in mind two applications which I prosecuted for a Canadian inventor in the United States, and I got his patents for him. Just before his United States patents issued I filed in Canada, and I filed in Canada an application identical with what I had got allowed in the United States. Therefore it was one, that so far as I knew, was perfectly allowable application in Canada. I did that in November. In January the United States patents had issued. I secured copies of them. My client was very anxious to get his Canadian patent out as quickly as possible because there was a possibility of infringement. I secured those copies and I went over to speak to the examiner. I thought perhaps if I left with him copies of the United States patents and he saw the Canadian application was identical he might perhaps be able to take the thing up reasonably quickly. I find that the application filed in November not only is not with the examiner but will not be with the examiner for about five months. It is still in the clerical part of the Patent Office. The clerical part of the Patent Office is now working on cases filed last July. There you are. You have got seven months before the examiner can even see the case.

In my submission under present conditions in the Patent Office, and I should say for four of five years, at least, it would work a gross injustice on applicants to make the term of the patent depend on the date of filing. Let us assume that this committee's report has the result which we all hope it will have, namely of giving the commissioner what is absolutely necessary in order to put the Patent Office on a proper footing. It takes time to train examiners. As the commissioner indicated it takes time to get them. Last September the Civil Service Commission advertised for ten examiners. By February they had secured three. They had been over their whole list and they could only raise three out of it. Now, they will have to advertise again. It will be another six months before they get these, if they get them. They are going to advertise for another ten again shortly and it is going to take some time to build the Patent Office up from twenty odd examiners to fifty. And not only that, you have to train these men. You have such an increase in the Patent Office that it means there will have to be a considerable part of reorganization.

Now, I think that it would be a very bad mistake to suggest that it would be possible to clean up the backlog in anything like eighteen months. I find it very difficult to hazard a guess as to when this would be cleaned up. It might be I should think three or four years. Now, if at that time or at some time that backlog in the Patent Office had been cleared up and conditions were such that you could be sure of getting the applications out of the Patent Office in a certain specified time; if you could say for instance ninety per cent of the applications would get out of the Patent Office in three years, then there might be a case at that point for putting this suggested limitation on the duration of patents into effect. But until that time comes I think it would work a very great injustice on applicants; and not only a very great injustice on applicants but it might well discourage people from bothering to file patent applications at all in Canada.

Another thing which I think is relevant in this country and in the United States: the system there since there has been a patent system has been to issue a patent as of the date of issue and not as of the date of patent; and in a great many other countries that is not the situation, England being as good an example as any. There patents are issued as of the date of filing; that is, their term runs from the date of filing. One of the reasons I think for that, and I think the preponderant reason for that, is this, that in North America the whole concept of the right to a patent is different from the concept in Great Britain and most other European countries. In North America your

right to a patent depends on the date on which you made the invention. In European countries your right to a patent depends on the date on which you made application to the Patent Office. Now, I think and a great many people think that the North American system is the better one because if we think that the European system and the British system puts a premium on fraud, for this reason: if I were making an invention today and somebody happened to hear about it—I might keep it in my head or I might write it down or I might tell a friend or two about it or I might do some experimenting on it—and somebody else hears about that; under the European system he runs to the Patent Office and files an application. If I come along later I am just out of luck, I cannot get a patent or I may get a patent and find my patent is no good. When I get a patent in this country I know that it is perfectly good. We do not do it that way. We do it the way they do it in the United States where they say that the man who is entitled to a patent is the man who first made the invention. He is the first person who has contributed anything to the public. Because, after all, that is what an invention is. If you make an invention you have given to the public something which that public otherwise have not got. In that sense a patent is quite different from any other kind of monopoly.

I do not know whether members of the committee know the origin of it in England, I mean the present patent law. It is the statute of monopolies of 1621, under which up until that time the Crown could grant a monopoly let us say on the making of salt or on the doing of almost anything at all; and in 1621 parliament decided no more monopolies of that kind were going to be granted because of the fact that they were taking away from the public something which the public ordinarily had a right to have. They made an exception there with respect to inventions because of the fact that an invention is something the public would otherwise not have; and so finally in order to encourage inventions they provided for that sort of thing. Now, in North America the patentee gets the right to a patent from the date of the invention. One of the necessary results of that is that you get a certain number of cases where you have two or more applications for a patent, each applicant claiming the same invention. In that case you have what they call in this country a conflict, and in the United States they call it an interference. Now, the Patent Office officials and courts on patents have to determine which of the two applicants, inventors, made the invention first, and they will give the patent to the man who made the invention first and they will not give a patent to the other man. Now, that conflict or interference procedure quite often takes a long time. That is nobody's fault but it takes up considerable time. If somebody gets drawn into a conflict the result is the holding up of his application for some time. It would be unfair if the rights of the patentee should be threatened because something occurs which is no fault of his. He may be the fellow who in the end is adjuged to be entitled to the patent, but he has to go throught this procedure in order to establish his right. In the United Kingdom they do not pay any attention to that. If there are two applications for the same invention in the Patent Office the patent application which is first received is the one to whom the patent is granted. That necessarily shortens the amount of work they have to do and enables them to turn patents out more quickly. Now, it is quite true that in the United Kingdom they were before the war turning patents out fairly quickly. They had a good and proportionately large staff and it worked efficiently and they got their patents out. But I must say this, their examination was not nearly as thorough as the American examination. I think their system is about the most thorough of any in existence. When they examine a patent they make a complete examination of patents in all of the countries—Holland, Belgium, Great Britain,

Germany and so on. Their system of examination is the best of any country which I know. At their office in Washington you can go in and look at any patent and see the related picture in any country in the world. Naturally this involves a good deal more work than in the case in Great Britain where they have a comparatively restricted search. As I say, that is the reason why Great Britain gets her patents out much more quickly. During the war, of course, the position has been rather difficult and they are very very far behind even in the United Kingdom. They have been working under the same difficulties in the United Kingdom and in other countries as we have been doing here. But, as I say, at Washington they make a thorough search not only with respect to related rights in Canada and Great Britain, but in European and other countries as well.

There is one other point which I think it worth mentioning and it is this. Let us assume the Patent Office is able to handle the business, and that may have the result of an applicant being able to get his patent out as quickly as possible; let us assume also that it still takes some considerable time and he says this: I will take a chance, I know everything that is being brought against me and I think I can draw my patent so that I will be able to get over it and I just hope that nothing else will come up later. Now, he gets his patent and it may be an invalid one. Now, a patent which is not a valid one can be a very bad weapon in the hands of the patentee, because unless it is completely invalid on its face there—a conflict only happens where you have say a prior patent in another country which is identical with what this man has. Then there is always doubt, is it valid, or is it not. The holder, the patentee, may go to somebody and say; you take a licence from me or I will sue you. The man he goes to has to make up his mind; will I buy this or won't I. What I mean to say is there is always the possibility of his losing that sort of a patent. It could be a very dangerous weapon. It is the function of the Patent Office to see that that kind of a patent does not issue. Now, the Patent Office has got to have time in which to do that job. That is one of the reasons why, the principal reason why the United States Patent Office does take a long time to get patents out. I don't know what its average is but it takes probably not very much longer overall. I should be surprised if it took very much less time at least under present conditions to get a United States patent out than it does to get a Canadian patent out. But the result is that the patent you get is really something for your money. When you have your United States patent out you have every assurance that a most thorough examination has been made. In the case of United States patents you very seldom get it allowed without at least two official letters from the examiner; that is, he will examine the case first and he will note certain objections which he will draw to your attention. You will answer those. He will make further examination and write you further objections and you have then to answer those. There may be four or five or six of them in all. That is not at all unusual. In 121 cases in connection with Canadian procedure, as I recall it, there were only 87 cases on which the examiner took any action at all before allowance. As a matter of fact, 51 cases out of the 121 were allowed without any action at all by the examiner. However, that does not mean that he did not examine them, but rather that he did not find anything to question about them. In the United States you really are getting something for your money, and the public is thereby given much better protection because the public has as much assurance as it is possible to give that an invalid patent will not issue.

Now, I should say that the danger resulting from the issue of invalid patents can be greater than the danger resulting from the issue of a patent for longer terms than might be obtainable by legislation that allowed these applications to run from the date of filing.

By Mr. Stewart:

Q. In regard to that case of eight and a half years before the patent was issued would it not have been possible for the person who had that invention to proceed with the manufacture of his article? Would he not in that way get the benefit of eight and a half years in his production?

Mr. ROBINSON: Yes, he certainly could manufacture but he hasn't got a patent, and the patent is the right to be the only one who can manufacture it; that after all is what inventors file applications for.

Mr. STEWART: But he is in a pretty good position.

Mr. ROBINSON: He can manufacture if he did not file an application at all.

Mr. FLEMING: He would have to take a chance.

Mr. ROBINSON: The same as he does now. For instance, there are a certain number of cases in which companies, particularly royalty companies, have come to me and they have consulted me about a development that has been made. I have advised them that it probably is not patentable, that they might spend a good deal of money trying to get a patent, or that they would not get one, or if they did get one it probably would not be any good. They have said to me: how are we going to protect ourselves against somebody else doing approximately the same thing that we are and later making application and getting a patent. The answer to that is simple. I tell them to publish a description of what they are doing in a trade paper, that is any printed publication, and for two years it is complete protection.

Mr. JAENICKE: What is the provision of the Patent Act with respect to the life of a patent?

Mr. ROBINSON: It was eighteen years from 1906 to 1935.

Mr. JAENICKE: What was it prior to that?

Mr. ROBINSON: Before 1906, I am not sure.

Mr. JAENICKE: Could the commissioner tell us?

The WITNESS: I cannot tell you that.

Mr. ROBINSON: I think it was eighteen years.

Mr. JAENICKE: Was that just set arbitrarily?

Mr. ROBINSON: Arbitrarily if you like, yes. I really think it was set—I am sorry I have a short memory—I think it was eighteen years up to 1935 and in 1935 it was reduced to bring it into line with the term in the United States and other countries. The term in some of the countries is as high as twenty or twenty-five years.

Mr. JAENICKE: Why should we always be referring to the United States on every point that comes up? Do you not think in view of the advances we have made in manufacture, in the rapidity of manufacture, that a patentee would be able to get into production on his patent much more quickly to-day than ever before? Do you not think conditions have improved materially?

Mr. ROBINSON: I wonder whether we have, sir; I wonder whether we have made such advances in rapidity of manufacture. I wonder whether it really is possible to get a new product before the public more quickly than it could be done say twenty years ago. I do not know of any definite statistics on that, but I myself should be a little surprised if that were the case. In some ways things are much more complex now, in a lot of these developments in getting a patented article into production. It may take a considerable time before, as we say in our jargon, the art catches up with it: that is before practical industrial developments have reached the stage where this new idea can be used effectively.

Mr. IRVINE: Is not volume much larger when production starts as a rule?

Mr. ROBINSON: Oh, that depends so much on the individual case. I doubt. It would be true to this extent, yes: the population of Canada is larger than it was twenty years ago.

Mr. IRVINE: I am talking about after it comes out.

Mr. ROBINSON: Is not the important thing possibly to absorb?

Mr. IRVINE: That naturally follows.

Mr. ROBINSON: To the extent that Canada has grown in the last twenty years, yes, it is possible to produce a larger volume of goods.

Mr. MARQUIS: Is it not important that we have in mind the duration of patents in the United States?

Mr. ROBINSON: I think it is, that is what I had in mind.

Mr. MARQUIS: Because ninety per cent of patents issued in Canada are filed by United States nationals?

Mr. ROBINSON: About sixty-five or seventy per cent. There is one distinction to be made when we say that sixty-five to seventy per cent of the applications for patents in Canada are filed from the United States, are filed by inventors who reside in the United States. The percentage of patents granted which are owned by Americans is substantially lower because you have a great many companies have a Canadian company and an American company and until recently the greater part of the research was done under the control and direction of United States interest. But when it comes to obtaining a Canadian patent, the Canadian patent is owned by the Canadian company.

Mr. MARQUIS: And the duration of the patent in the United States is seventeen years?

Mr. ROBINSON: Seventeen years from the date of issue.

Mr. LESAGE: Is this not a general fact, that the duration of a patent would be a question of government policy?

The WITNESS: I think when you consider the life of a patent you have to remember that in European countries few patents ever run the full sixteen or twenty years for which they were granted because of the taxes. In Great Britain after the fourth year there are annual taxes each year until the sixteenth year and in the sixteenth year there is only between 2·5 and 4 per cent of patent interest remaining in force. I may say that I got those figures from the comptroller of patents in Great Britain when I was there. The same thing applies in Belgium and other countries. I think there is an annual tax also in Holland with the result that relatively few patents run their full time. In that country also out of 5,000 patents only about 500, or ten per cent were issued to Hollanders. I do not know the number that remain in force during the full tenure of the patent; but I do know this, that they are relatively small. In Canada and the United States when a patent issues it continues for seventeen years. There are no annual taxes on it and it remains in force.

By Mr. Marquis:

Q. In the United Kingdom I think patentees have the right to a renewal of their patents after the expiration of the patents?—A. They have in Great Britain.

Q. They have five years or ten years by which they can extend the operation of their patent?—A. Five years, and they can have another five years in all ten.

Q. Which we do not give here? A. No, but they could have an additional time by a private bill to parliament.

By Mr. Jaenicke:

Q. What would those reasons be?—A. I cannot tell you that.

Mr. STEWART: We seem to have something of a problem to resolve here. The commissioner believes certain patent attorneys are inclined to hold things up somewhat and Mr. Robinson denies that. I suppose the committee. . .

Mr. LESAGE: He did not deny it, he said the commissioner could take action against them by virtue of section 31.

Mr. STEWART: Mr. Robinson said the patent attorneys were not guilty of delay.

Mr. LESAGE: But he did not say in all cases.

Mr. STEWART: No, but there is a disparity of opinion. I, for one, am quite incompetent to pass judgement on it.

Mr. MARQUIS: I think the commissioner may be thinking of a staff sufficient to clear up the work.

The CHAIRMAN: Gentlemen, are you ready for the question?

Mr. IRVINE: Pass the amendment and keep them on their toes.

Mr. FLEMING: Mr. Chairman, Mr. Irvine made a very significant remark. He said, "Pass this amendment; it means keeping them on their toes." The difficulty is the people we are trying to keep on their toes are all parties concerned. If we ask the commissioner to speed things up, we have to give him the tools for the job.

Mr. JAENICKE: Is not this committee agreed that we will do so?

Mr. FLEMING: We might be unanimous on that point. I take it that everyone who has heard the evidence which this committee has heard in recent days does desire to see some rather far reaching action taken to clean up the situation in the Patent Office. However, we cannot expect them to do that unless we give them the tools to do the job. I think we had better see that the job is done before we start passing amendments on the footing that changes will be brought about.

Mr. IRVINE: Is it not so that a large number of young men who came back from overseas have taken courses in engineering? It is very likely that in a year or two there will be any number of them graduating and surely, if we are paying a decent salary, we can fill up this office.

Mr. JAENICKE: We have to get the space.

Mr. FLEMING: I think Mr. Irvine has given up the answer. In another two or three years the situation might be different. Most of these young men who are crowding our science faculty now will have graduated and will be available to fill some of these positions. However, the commissioner spoke about his ability to absorb these men. If you had fifty graduates from the science faculty ready to step in, the Patent Office still could not absorb them; they could not be trained. The ability to train these men is limited by the size of the commissioner's present staff. I am not prepared for one to say there is no merit in this amendment; I would not say that at all. However, I think it would not be fair to press this now in the light of the evidence we have heard as to the situation in the Patent Office. In another two years, the situation might be quite different. We hape it will be. I do not think it would be fair at the present time to press that amendment in the light of the evidence we have had as to the conditions in the Patent Office.

The CHAIRMAN: Mr. Lesage, will you take the chair, please?

At this point Mr. Lesage took the chair.

The ACTING CHAIRMAN: I should like to know what the commissioner thinks about Mr. Fleming's remark.

The WITNESS: I quite agree. When I spoke about Mr. Stewart's proposed amendment and, as Mr. Robinson pointed out the other day, if you could have seventeen years plus the average time to put a case through the office, it would be all right. Speaking as a private individual Mr. Robinson said he had no objection to that, but speaking for the institute, he would not express any opinion. He has now expressed an opinion for the institute, and they do not approve of that. However, that does not detract from the merit of the amendment; the fact he does not approve does not detract from the merit of any suggestion put forward by Mr. Stewart. I think, as Mr. Fleming said, probably within the next two or three years, when the staff has been augmented and the backlog has been reduced something might be done. Otherwise, there is a tendency to go into so many other things which arise to impede the use of patents, and that is something I do not want to happen if I can possibly avoid it because I think patents are very useful things.

Mr. STEWART: In order to facilitate the work of the committee, I will withdraw the amendment.

The ACTING CHAIRMAN: Mr. Jaenicke, I think we have your amendment here to section 59 of the Act.

Mr. JAENICKE: I have several of them.

Mr. FLEMING: Just to clarify the situation, I think the chairman, earlier in the meeting, indicated there would be an opportunity to make some general comments on some of these drafts before we got into the detailed discussion. We understand we are not going to the asked to pass on these today, but I, personally, had some comments I desired to make with regard to section 4 of the bill to create section 19A of the Act.

The Acting CHAIRMAN: Perhaps those comments would facilitate the study of the committee.

Mr. JAENICKE: Would you permit me to put these amendments in before we close our meeting to-day?

The Acting CHAIRMAN: Yes, I should like every member of the committee to have an opportunity of studying them.

Mr. FLEMING: I should like to make a comment, Mr. Chairman, on the first two subsections. I will try to be very brief.

Subsection (1) now applies the new secrecy provisions to munitions of war as defined in the Official Secrets Act. The bill as originally presented to us applied the secrecy provisions to instruments or munitions of war and the bill did not purport to define either of those terms, "instruments or munitions of war".

Dr. OLLIVIER: I think, in connection with the change there, you will find the definitions in the Official Secrets Act. Those terms are defined there.

Mr. FLEMING: That is the very point on which I am speaking now, Mr. Chairman. It seems to me, while there is a definition now which is desirable in principle, nevertheless, the definition is much too wide for the purpose of the secrecy provisions with which we are now dealing. The Official Secrets Act was passed in 1939. It is chapter 49 of the statutes of that year, and the expression "munitions of war" is defined in section 2(f) of the Act as follows:

> (*f*) the expression munitions of war means arms, ammunition, implements or munitions of war, military, naval or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof."

I just mention that, Mr. Chairman, to draw the attention of the committee to the extreme breadth of the definition. We would not quarrel, I am sure, with some of those words, "arms, ammunition, implements or munitions of war", but then,

getting down to the next line there is, "military, naval or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof." Let us take an example. Suppose it is a question of a button on a tunic or some device, some invention which is useful in the manufacture of buttons. This language is broad enough to apply to that, and inferentially, the Minister of National Defence would have the power to step in and expropriate an invention for a process in relation to buttons.

Mr. JAENICKE: If it is a machine or special device for the manufacturing of buttons and it is necessary it be kept secret why should it not be done?

Mr. FLEMING: That is not the situation. You are leaving it in the hands of the minister to go that far afield.

Mr. MARQUIS: Yes, Mr. Chairman, but we have to consider this; the minister has the power to decide what will be a munition of war, what he will need to prosecute the war. If he needs some kind of building especially for the war he has to decide it. He should have the right to declare such a design or such a thing is needed for the war. If you restrict the interpretation of "munitions" as defined in the Official Secrets Act, I think it would prevent the minister declaring something is necessary for the war and prevent his securing it.

Mr. FLEMING: I will just state my points; I shall not argue them at this stage. All I say is I think that is too broad. I think you could get a better definition for the secrecy provisions than that.

The ACTING CHAIRMAN: I did not want this to be discussed this afternoon because the officers of the Department of National Defence are not here.

Mr. FLEMING: The other point I was going to make applied to subsection (2) which now provides,

> "an inventor other than an officer, servant or employee of the Crown or a company which is an emanation of the Crown—"

The ACTING CHAIRMAN: It should read "corporation" instead of "company."

Mr. FLEMING: That is an improvement but it is not the point I was going to mention.

"—shall be entitled to compensation."

You are saying there, inferentially, an officer, servant or employees of the Crown or a corporation is not entitled to compensation. This would be all right if the employee or servant of the Crown had made the invention in the course of his employment, as an employee of the Crown. However, consider a civil servant who has an inventive streak in him who employs his spare time in developing something which is truly useful. Why should he not have compensation? His spare time does not belong to the government.

The ACTING CHAIRMAN: This morning the provision read; "acting within the scope of his duties."

Mr. FLEMING: You have a similar provision in section 46 of the Patent Act which now reads;

> Every patent granted in respect of an invention made by a person while employed in the public service of Canada and relating to the nature of his employment—

Could you not incorporate language of that kind in this section?

The ACTING CHAIRMAN: We had the words, "acting within the scope of his duties", in there. Those words should be inserted after the word "Crown" in the third line.

Mr. FLEMING: That takes care of it, we cannot confiscate an invention made by a civil servant in his spare time.

The ACTING CHAIRMAN: There is another technical error. The title, "government owned patents" should come in after the first three lines.

Mr. FLEMING: Whereabouts is that, Mr. Chairman?

The ACTING CHAIRMAN: The title at the top, the heading.

Mr. IRVINE: I suppose the idea is that these objections may be noted for the draftsmen and they can correct them, if they wish, before the next meeting. If they do not correct them, we will make them correct them.

The ACTING CHAIRMAN: Did you have a suggestion to make limiting the powers of the minister?

Mr. FLEMING: No, my objection to number one was not an objection to the definition of the powers of the minister, but I do object to the scope of the definition under the Official Secrets Act. I think it is much too broad. I think it ought to be reduced. What you propose, Mr. Chairman, in regard to subsection (2) takes care of my objection there.

The ACTING CHAIRMAN: I would ask Major Ready to look over the matter and discuss it with the technicians and Dr. Ollivier, if necessary.

Major READY: That is with regard to section 19A, subsection (1) and the definition in the Official Secrets Act.

Dr. OLLIVIER: I do not think it is a question of drafting, it is a matter of policy with the government. If the government wants to give the minister the discretion to say what is a munition of war and what he wants secret, it is up to the government.

The ACTING CHAIRMAN: Did you have anything to say concerning the other amendments which were distributed?

Mr. FLEMING: No, Mr. Chairman.

The ACTING CHAIRMAN: Have you anything more to say on section 19?

Mr. FLEMING: No.

Mr. HAZEN: I have not been in attendance at the last two meetings, so I do not like to say a great deal in consequence, but I have just read this amendment over which I presume is to take the place of section 19A. Reading the section and subsection 7 and 9, do I understand from them when the term expires the office or the commissioner has no right to open the patent at all? When the time expires it has to be delivered to the Minister of National Defence. In other words, at the end of the term, no one can apply to you for a copy of that patent; am I right in believing that?

The WITNESS: You are perfectly right in that. The government may wish to hold that device in secrecy.

By Mr. Hazen:

Q. That is the way it should be?—A. That is the intention; if it should be held in secrecy, it should be so held. Farther down the section states if the minister wishes to waive his rights to secrecy he will do so.

Q. Section 12, is it?—A. In section 12. There are just two alternatives, either he wishes to maintain it in secrecy or he wishes to open it up for public inspection.

At this point Mr. Cleaver resumed the chair.

By Mr. Hazen:

Q. If I might revert to subsection (7) for a moment; is it necessary to have in that section the words, "until the expiration of the term during which a patent for the invention may be in force"? Is it necessary to have those words in there at all?—A. Oh, I think so.

Q. Would it not be better without them?—A. Why would it?

Q. "The packet shall be kept sealed by the commissioner and shall not be opened save under the authority of an order of the Minister of National Defence;" if it read that way, it seems to me it might make it a little stronger. Then, you would read section 9 and then section 12. You cut out those words "until the expiration of the term" and so on?—A. It is held in the office for the duration of the term and the proper place for a patent to be is in the Patent Office for the duration of the term of the patent. It is held for that term definitely, and at the end of that term the minister may, if he so desires, open it to the public for inspection, or, during that term, he may waive his rights and open it to public inspection. At the end of that term, he may order it to be returned to him, although the patent has expired. The secret would still remain with the government in the Patent Office and also in the Department of National Defence.

By Mr. Marquis:

Q. Then, that would be a distinction between the term of the duration and the time after expiration?—A. Quite so, that is true.

The CHAIRMAN: Are there any other comments as to the other sections which have been mimeographed?

Mr. FLEMING: Mr. Chairman, they have cut out the second subsection of the present section 19B which becomes 19C; is there any reason for that? That is the one about secrecy. We have it at the top of page 4 of the bill.

The WITNESS: The fact that it is once communicated to the board would be quite sufficient. The office will then act in conjunction with the board, and to repeat "on concurrence of the Atomic Energy Control Board the commissioner shall order that the application shall be subject to the Atomic Energy Control Act and the regulations thereunder" is not necessary because having communicated it to the board the board will then instruct us. I do not think it is necessary to have that subsection unless you particularly want it there. Is there any reason why you want it there?

Mr. FLEMING: No. I always want a reason for legislation being in.

The WITNESS: That is the only reason. As a matter of fact, that was all in one subsection and Dr. Ollivier, for the reason that he thought it would be easier to read, divided it into two, and now we think probably two is not at all necessary. Having communicated the information we receive instructions from them.

The CHAIRMAN: Are you ready to clear section 4 of the bill? I should like to read to the committee the amendments which I have in the draft. Then if the committee is willing we will definitely clear it.

Mr. LESAGE: There was an objection as to the width of the definition of munitions of war as defined in the Official Secrets Act. We asked Major Ready to look into the matter with the officers of the department.

The CHAIRMAN: Stand.

Dr. OLLIVIER: The reason I referred to that Act was because you were talking about munitions of war before without any definition at all so I thought that it would be perhaps a good thing to refer to munitions of war as defined in the Official Secrets Act which is to a certain extent related with this.

Mr. FLEMING: In *pari materia.*

Dr. OLLIVIER: As to leaving it to the minister I do not imagine the minister would be anxious to get a secret patent on a button or things like that. I imagine it is a question of policy as to whether we should leave it to his discretion to say what should be kept secret and what should not be kept secret.

Mr. FLEMING: The section as drawn does not give the minister discretion in determining what is or what is not munitions of war.

Dr. OLLIVIER: No, munitions of war are defined. On the other hand we say, "If so required by the minister" although he does not define what are munitions of war. He may decide something which is munitions of war does not need to be patented.

Mr. FLEMING: That is all right. He does not need to take over everything that may come within that classification. It is enabling as far as he is concerned, but I am concerned with the converse, in other words, the minister reaching out to gather in something that relates to stores or processes involved in the manufacture of something that might go into stores which could not by any stretch of the imagination be said to be munitions of war as distinguished from an article for civilian use.

Mr. IRVINE: He would not do that.

Mr. FLEMING: He has the power though.

Mr. IRVINE: He should have the power provided here. There might be something that was required in the case of an emergency.

Mr. FLEMING: To give a concrete suggestion I think if you borrowed part of the definition of munitions of war from the Official Secrets Act probably that would meet the need, but I do not think we ought to take in the whole of the scope of the definition from the Official Secrets Act. Let me read those words again.

> "The expression 'munitions of war' means arms, ammunition, implements or munitions of war, military, naval or air stores, or any articles deemed capable of being converted thereinto, or made useful in the productions thereof."

It is terrifically wide.

Dr. OLLIVIER: Those articles would probably not be patentable.

Mr. MARQUIS: Do you not think we should delete the words "as defined in the Official Secrets Act" because "the inventor of any improvement in munitions of war shall if so required," and so on. He has to decide.

Dr. OLLIVIER: It comes to the same thing. You make it much wider then which does not answer Mr. Fleming's objection. You are making it much wider.

Mr. FLEMING: I think we want to legislate as clearly as we can. On the other hand, I do not think we want to leave it to the minister in such a way as to give him uncontrolled discretion to say what is or what is not munitions of war.

Mr. MARQUIS: Do we really know what will be munitions of war in two or three years?

Mr. IRVINE: Suppose somebody invented a microbe that would clean up the world.

Mr. FLEMING: That language is still too broad.

Dr. OLLIVIER: If it is too broad would it not be too broad in the Official Secrets Act also?

Mr. FLEMING: It may be, but we have no chance right now to go to work on the Official Secrets Act.

Dr. OLLIVIER: I thought if that definition was sufficient to put in the Official Secrets Act saying that it is something that should be kept secret for the same reason that should be kept as a patented secret also.

Mr. FLEMING: I can see this in the suggestion of Dr. Ollivier, that in statutes of this kind which to this extent are in *pari materia* you should try to get a common definition, but here it seems to me when you come to legislate in the Patents Act with regard to maintaining secrecy the language of the definition in section 2(*f*) of the Official Secrets Act is too broad for this purpose. We have not got the power in this committee to recommend an amendment of the Official Secrets Act.

Dr. OLLIVIER: If it is too broad there it is too broad in the other one.

The CHAIRMAN: Mr. Marquis' suggestion is we should strike out the words "as defined in the Official Secrets Act." Then the subsection would read:

"The inventor of any improvement in munitions of war shall if so required by the Minister of National Defence", and so on. Obviously someone has to have discretion. It may be by adding the words "as defined in the Official Secrets Act" we have widened the discretion of the minister much further than we should widen it.

Dr. OLLIVIER: I do not think so. I think it is contrary.

The CHAIRMAN: Just a minute. The Official Secrets Act definition certainly goes much further than the ordinary English meaning of improvements in munitions of war.

Mr. LESAGE: What about vaccines? If you do not refer to the definition as contained in the Official Secrets Act and also the same definition in the Act respecting the Department of Reconstruction and Supply then what about vaccines? It is exactly the same definition in the two Acts.

Mr. FLEMING: I would not think vaccines are munitions of war.

Mr. LESAGE: You can include them in the definition as it is here, in the Official Secrets Act. It is very important.

Mr. IRVINE: I should like to ask Mr. Fleming if it is possible to narrow the field of discretion without the possibility of hindering the minister in controlling something that might turn out to be necessary for munitions of war of which we do not now know.

Mr. FLEMING: I think it is possible to do that. I do not think it should be difficult to arrive at a definition that will meet the need here without hamstringing the powers of the minister. We want to make sure the defence of the realm gets first consideration. On the other hand we do not want, by the inclusion of an extremely broad definition, to give the minister powers he may never need. I think if we leave it with Major Ready and Dr. Ollivier something can be worked out. I do not think it is an insuperable problem I have raised at all.

The CHAIRMAN: No, but the pressure is becoming pretty strong upon me to get this bill cleared because we have other measures we also have to clear. We must reach finality some time. We have been worrying away with this section for three sittings of this committee. Can we not agree now? Would you be content with the deletion of the words, "as defined in the Official Secrets Act" and, Mr. Lesage, would you be content to have them come out?

Mr. LESAGE: I think Major Ready would object to that.

Mr. HAZEN: If you delete those words you will have to put the word "instrument" in.

Mr. LESAGE: I think Major Ready would object.

Major READY: I have not much idea of the technical side of the army and the research that is going on, but one very good example of a munition—what shall I call it—not a device—

The CHAIRMAN: Instrument of war.

Major READY: A vaccine which is really a preventive measure for bacterial warfare would not be included in munitions of war. I think it must be wide enough to take in any preventive measures which may be used.

The CHAIRMAN: If we add the words "in munitions or instruments of war" would that be satisfactory?

Major READY: It is hardly an instrument, is it?

Mr. HAZEN: The words are "any articles deemed capable of being converted or made useful."

Major READY: We felt that definition would include such an item as a vaccine or medicine which would prevent sickness and so on arising from a new type of war.

Mr. MARQUIS: After having heard Major Ready I think we should accept the wording "as defined in the Official Secrets Act." We have a definition there which covers everything which may be necessary in wartime whether or not the minister may need it. If we try to change the wording perhaps we will have to amend the legislation later on. There is no risk at all in keeping that definition. I understand the point of view of Mr. Fleming, but if you try to restrict those terms probably some difficulty will arise. We must give wide jurisdiction in this matter because secrecy is involved and it is for war purposes. "As defined in the Official Secrets Act" covers everything.

Dr. OLLIVIER: I think apart from that there is another argument. I think you should have uniformity in our statutes. When we talk in one Act of munitions of war it should mean the same thing in every Act.

The CHAIRMAN: You believe that is satisfactory.

Dr. OLLIVIER: I think it is sufficient. My main argument is that we have the expression "munitions of war" used in three or four different statutes. If it is going to have a different meaning in each statute I do not think it will be very helpful. I think even if it is only for the purpose of uniformity, we should keep it like that. I do not see much objection to that except that the minister will have to take his responsibility. That is all.

Mr. LESAGE: Do you think it is better to refer in this Act to the definition as it is in the Official Secrets Act?

Dr. OLLIVIER: Either that or repeat the definition. Sometimes it is better to have a new definition in the Act, but I think in this Act it will be well understood if you refer to the other one. Generally I like to repeat.

Mr. LESAGE: Suppose the Official Secrets Act is repealed; we would have to amend this Act.

Dr. OLLIVIER: No. According to the rules of interpretation you would go back to the time it was enacted.

Mr. LESAGE: It would not mean the revising of the statute.

Dr. OLLIVIER: If you did that when you revised the statute you would have to repeat the definition.

Mr. FLEMING: I thought if Major Ready, Dr. Ollivier and the commissioner got together they could work out a definition that would meet the problem. I do not want to be dogmatic about it. I have stated my view on it.

Dr. OLLIVIER: I do not mind very much but I should like to know what you have agreed on.

Mr. FLEMING: It is these concluding words of the definition in the Official Secrets Act that seem to me to extend this definition too widely. No one would question at all the earlier words of the definition, "arms, ammunition, implements or munitions of war, military, naval or air stores", but then it goes on, "any articles deemed capable of being converted thereinto or made useful in the production thereof." The production of stores may mean cloth, rubber sheets; it may mean buttons or anything.

Mr. MARQUIS: It may be—

Mr. FLEMING: Because you find in military, naval or other stores practically everything under the sun.

Mr. MARQUIS: If we had an invasion you might have some kind of suit developed for protection.

Mr. JAENICKE: If it is not too wide for the Official Secrets Act why should it be too wide for this section?

Mr. FLEMING: I have not any opportunity to comment on the Official Secrets Act except so far as the question arises under these amendments to the Patent Act. I do not want to repeat. All I say is I think it is too wide for the secrecy provisions of the Patent Act.

Mr. JAENICKE: We are dealing with secret patents. It is the same as the secrecy to be observed in the Official Secrets Act. I see no objection to letting it stand the way it has been drawn.

The CHAIRMAN: I think Mr. Fleming will withdraw his objection.

Mr. FLEMING: It is only an objection I have entered. There is no point in flogging this horse any longer. You have heard me.

The CHAIRMAN: I am going to indicate the amendments which have been made to mimeographed draft. Mr. Robinson has called my attention to the fact this is the section to which the Canadian Manufacturers Association object. My suggestion is that I should like to indicate to the committee now the corrections that have been made today and make sure we have our record straight. Since we are going to hear a representative from the Canadian Manufacturers Association we will not finally carry this until we have heard their representations. The words "government owned patents" are inserted at the head of the section. In subsection 2 the word "company" is struck out and "corporation" inserted in lieu therefor. In the third line following the word "Crown" these words are inserted, "acting within the scope of his duties". The word "commissioner" is capitalized throughout.

Mr. MARQUIS: Is it not "within the scope of their duties"?

Mr. FLEMING: No, it is "an inventor". It is "his duties as such", is it not, "acting within the scope of his duties as such?"

The CHAIRMAN: May I read back this interlineation, "coming within the scope of his duties and employment as such".

All those in favour of the section in its present form, subject to the representations we made here on Tuesday from the Canadian Manufacturers Association, please signify?

Carried.

Now, to come to 19 (*b*); is 19 (*b*) agreed to?

Carried.

Coming to 19 (*c*), I have deleted the words "of patents" after the word "commissioner" in the second line.

Carried.

Coming to section 11:—

Mr. LESAGE: We have no objection. The only thing we know is that the commissioner and Mr. Robinson agree. We did not have the opportunity of having an explanation.

The CHAIRMAN: Carried.

Section 14:

Mr. FLEMING: Mr. Chairman, you have not dealt with section 10 of the bill. That is the one about the oath.

Mr. MARQUIS: That is repealed.

The CHAIRMAN: I am simply going through the new sections which were mimeographed but we will turn to the bill. Section 10 is not included in the mimeographed copy.

Section 14:

Carried.

The CHAIRMAN: Now, coming back to the bill—

Mr. FLEMING: You have another one yet, section 21.

The CHAIRMAN: Section 21. Now, this relates to section 10 I believe.

Mr. FLEMING: That is related to the section I just mentioned?

The CHAIRMAN: Right. Now, the intention is to repeal section 29 of the Act as of April 15, 1946, and to amend—

Mr. FLEMING: You mean the date of April 15 to apply with respect to applications filed?

The WITNESS: After that date; anything in the office at that time.

Mr. FLEMING: You were speaking about the filling?

The WITNESSS Yes, filing.

The CHAIRMAN: And then related to that to add the new section to the bill, section 21; repeal section 80 and substitute the new section shown in the mimeographed copy.

Mr. FLEMING: It is a big improvement—

Mr. IRVINE: I do not think so.

Mr. FLEMING: —when you read the exact language of new section 10 of the bill.

Mr. MARQUIS: It is repealed.

Mr. FLEMING: I want to get this working, applying to the date of filing of applications.

Mr. MARQUIS: That is repealed, if I remember correctly.

The CHAIRMAN: Section 29 of the said Act is repealed as of the 15th day of April, 1946.

Mr. BELZILE: Is that two, or three or only one?

Mr. MARQUIS: There is only one in the old act.

The CHAIRMAN: Is that satisfactory to you, Mr. Fleming?

Mr. FLEMING: I am just wondering if it is clear. Doctor Ollivier can tell you.

The CHAIRMAN: I raised the same point this morning. How about that, Doctor Ollivier?

Doctor OLLIVIER: You can do it both ways. I think it is shorter to say, section 29 is repealed as from the 15th of April, 1946.

Mr. FLEMING: It is clear as to that, that the date of the bill is to be applied to the date of the filing of applications?

Doctor OLLIVIER: To the giving of any oath or similar declaration. It applies to that.

Mr. FLEMING: The date the bill is related to the date of filing of applications. That is what I want to be sure about. Is that quite clear?

Doctor OLLIVIER: I think it is clear.

The WITNESS: That is how we consider it. It applies to cases filed after that date.

Mr. FLEMING: It is going to be applied that way, but the rules will apply to cases after that date, or from that date. Those before that date are affected.

Mr. MARQUIS: Do the rules apply for applications signed by the applicant?

The WITNESS: Definitely.

Mr. LESAGE: Mr. Chairman, were there not some amendments this morning to sections 17, 18 and 19?

The CHAIRMAN: I want to go through the whole bill now to make sure there are no misunderstandings.

Mr. FLEMING: May I ask with respect to section 2 if there is any word from the minister yet?

The CHAIRMAN: He is out of the city to-day.

Are you ready, gentlemen, to go through the bill now one section at a time so as to make sure nothing is overlooked?

Section 1 carried.

Section 2 stands until the return of the minister.

Section 3 is carried as amended by adding the words "if available", after section 11 of the Act and after section 12 of the Act the words "and prescribe such form" are deleted from line 24; and subsection (*c*) is struck out. Otherwise the section is carried.

Coming now to section 4 of the bill we have already dealt with that.

Section 5 is carried.

No. 6 is deleted.

No. 7—you have already dealt with that. Shall I go over these amendments again?

Some Hon. MEMBERS: No.

The CHAIRMAN: Section 8 is deleted.

Section 9; you have agreed on that in the mimeographed copies.

Section 10 has just been dealt with.

Section 11—there is a new section 11. Have you got that there?

Mr. LESAGE: That is that one.

The CHAIRMAN: Oh, you have agreed to that.

No. 12 is carried without amendment.

Section 13 is carried without amendment.

Section 14 has to do with the fee section. That was mimeographed and

Section 15 is carried.

Section 16 is carried as amended; there is one slight amendment in line 13, the word "of" is changed to "to".

Section 17 is not 17 any more. We have replaced that with a new section 17. I have it here. This is simply a technical or clerical amendment. I will read section 53 of the Act. Section 17 of the bill will amend section 53 of the Act:

"53. (1) A patent shall be void if any material allegation in the petition or declaration of the applicant 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, and such omission or addition is wilfully made for the purpose of misleading."

Shall section 17 of the bill carry?

Carried.

Mr. FLEMING: Is that part of the bill?

The CHAIRMAN: Yes, it will be section 17 of the bill.

Mr. FLEMING: It is the section that we have put on the sheet now?

The CHAIRMAN: Yes, but it will be section 17 of our bill.

Then section 18 is an amendment made at the suggestion of Mr. Hackett, that the word "inventor" should be changed to "person", to make section 61 of the Act conform with the wording of the other sections of the Act.

Mr. FLEMING: That is just clerical.

The CHAIRMAN: Shall section 18 of the bill amending section 61 (1) carry?

Carried.

Section 19:

Mr. LESAGE: That will be section 17 of the bill.

The CHAIRMAN: What about the corrections proposed there on filing; the fee there on filing an application for patent is changed from $20 to $25. Is that agreed?

Carried.

On page 9 of the bill, line 8, subsection (2) is changed to subsection (3); and in section 10, subsection (4) is changed to subsection (3); lines 15 and 16 are deleted. Line 17 has two additions to it. I will read the complete line including the amendment: "on asking for a certified typewritten or photostat copy of patent with specifications not exceeding 20 pages". Is that carried?

Carried.

Mr. FLEMING: How much?

The CHAIRMAN: There is no change in the amount.

Mr. IRVINE: The prices are indicated on page nine.

The CHAIRMAN: That takes care of section 19.

Section 20 we have already dealt with. Section 20 was an amendment to the penalty section of the bill.

Mr. LESAGE: Now section 77. We repealed section 77.

The CHAIRMAN: That will be section 20 then.

Mr. LESAGE: Yes.

The CHAIRMAN: Section 77 of the said Act is hereby repealed—shall that carry?

Carried.

Section 21.

Mr. FLEMING: You are repealing the whole of section 77 now, not just (5)?

The CHAIRMAN: The entire section.

Section 21 of the bill is an amendment to section 80 of the Act and we have dealt with that.

Carried.

Mr. JAENICKE: Mr. Chairman, I have some amendments here which I would like to place before the committee.

The CHAIRMAN: Excuse me just a moment, Mr. Jaenicke, there is one more item we want to clear up, just another clerical correction; which please write in as section 15 (*a*) of the bill amending section 38 of the Act:—

> Subsection (3) of section 38 is hereby repealed and the following substituted therefor.
>
> The Commissioner may, in his discretion, dispense with the duplicate specification and drawing and the third copy of the claim or claims, and in lieu thereof cause copies of the specification and drawing, in print or otherwise to be attached to the patent, of which they shall form an essential part.

Mr. JAENICKE: Mr. Chairman, before you adjourn, would you allow me to introduce certain amendments on a few sections of the Act and just file them with the clerk; and then we can discuss them at our next meeting.

The CHAIRMAN: Yes.

Mr. LESAGE: I do not see why we should use these words, what do you think about that, Doctor Ollivier?

Doctor OLLIVIER: What is your question?

Mr. LESAGE: We have said the commissioner may dispense with the third copy when he already has the power to dispense with a duplicate. I do not see the use of putting this in. I do not want to start an argument about it, but it seems to me to be superfluous.

The WITNESS: There are duplicate copies of the specifications but three copies of the claim are required. Now, that third copy of the claim is only used to send to the printers to have the claims that are going to be inserted in the Patent Office Record.

Doctor OLLIVIER: Unless you want to do away with the third copy and use the second copy.

Mr. JAENICKE: May I place my amendments before the committee?

Mr. LESAGE: Mr. Chairman, I promised Mr. Jaenicke when I acted as chairman that he would have an opportunity of placing these amendments before the committee.

The CHAIRMAN: I suggest that you file them with the clerk and I will ask the clerk to have mimeographed copies made and circulated to every member of the committee before our next meeting.

Mr. FLEMING: To what sections do they apply?

Mr. JAENICKE: They apply to sections 59, 64, 65 and 66.

The CHAIRMAN: Mimeographed copies are to be sent to every member of the committee. We will adjourn now until Tuesday morning next at eleven o'clock.

The committee adjourned at 6.00 o'clock p.m. to meet again on Tuesday next, March 11, 1947, at 11.00 o'clock a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

TUESDAY, MARCH 11, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.
Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.
Dr. R. S. Jane, Director of Research, Shawinigan Chemicals, Limited.
Mr. J. D. Barrington, Vice-President and General Manager, Dominion Magnesium, Limited.
Mr. A. J. R. Lanoue, Northern Electric Company, Limited.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

TUESDAY, March 11, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Argue, Blackmore, Breithaupt, Cleaver, Fleming, Fraser, Gour, Irvine, Isnor, Jaenicke, Jutras, Lesage, MacNaught, Marquis, Mayhew, Quelch, Rinfret, Ross (*Souris*), Stewart (*Winnipeg North*), Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents, Mr. Christopher Robinson, Vice-President, Patent Institute of Canada; Major J. H. Ready, of the Judge Advocate General's office; Dr. R. S. Jane, Director of Research, Shawinigan Chemicals Limited, and representing the Canadian Manufacturers' Association; Mr. J. D. Barrington, Vice-President and General Manager, Dominion Magnesium Limited; Mr. A. J. R. Lanoue, Patent Attorney for the Northern Electric Company, Ltd., and Dr. Maurice Ollivier, Law Clerk of the House of Commons.

The Committee resumed consideration of Bill No. 16, An Act to amend The Patent Act, 1935.

On motion of Mr. Fraser,

Resolved,—That the Committee hear the representations of the Canadian Manufacturers' Association and of the Dominion Magnesium Company.

Dr. Jane was called. He made a statement and was examined.

Witness stood aside and Mr. Barrington was called and examined.

Witness retired, and Mr. Robinson was recalled and further examined.

At 1.00 p.m., witness retired and the Committee adjourned until 4.00 p.m., this day.

AFTERNOON SITTING

The Committee resumed at 4.00 p.m., Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Blackmore, Breithaupt, Cleaver, Fleming, Fraser, Gour, Hackett, Harkness, Irvine, Jaenicke, Jutras, Lesage, Marquis, Mayhew, Rinfret, Sinclair (*Ontario*), Stewart (*Winnipeg North*), Strum (Mrs.), Timmins.

In attendance: Hon. Brooke Claxton, Minister of National Defence and those whose names appear for the morning sitting.

Mr. A. J. R. Lanoue of the Northern Electric Company was called. He made a statement and was examined.

Witness retired and Dr. Jane was recalled and further examined.

Witness retired.

Hon. Mr. Claxton made a statement on the matter of secret patents involved in clause 4 of the bill and proposed amendments thereto.

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Further consideration of clause 4 was finally deferred until another sitting.

Clause 2 of the bill was adopted.

Mr. Mitchell was recalled. He submitted the following new clause to the bill:—

22. (1) On request made to him not later than the thirty-first day of March, 1947, the Commissioner may, subject to such conditions, if any, as he thinks fit to impose, extend to a date not later than the said date, the time limited by or under *The Patent Act, 1935*, for doing any act where he is satisfied

(*a*) that the doing of the act within the time so limited was prevented by a person's being on active service or by any other circumstances arising from the existence of a state of war which, in the opinion of the Commissioner, justify an extension of the time so limited, or

(*b*) that, by reason of circumstances arising from the existence of a state of war, the doing of the act within the time so limited would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest,

(2) An extension under this section of the time for doing an act—

(*a*) may be for any period expiring not later than the thirty-first day of March, 1947, that the Commissioner thinks fit, notwithstanding that by or under any enactment in the said Act power is conferred to extend the time for doing that act for a specified period only; and

(*b*) may be granted notwithstanding that time expired before any application or request for extension was made, or that, by reason of that act not having been done for the reasons set forth in subsection one of this section within that time, the relevant application has ceased or expired, or been treated as abandoned.

The Committee agreed to let the above clause stand in order that it may be referred to the proper legal officers for their approval.

On motion of Mr. Jaenicke, it was resolved that the following new clause be inserted immediately following clause 16 of the Bill:—

Paragraph (*d*) of section 66 of the said Act is amended by striking out the word "may" and substituting therefor the word *"shall"* in line three of the said paragraph (*d*).

At 5.30 p.m., the Committee adjourned until Thursday, March 13, at 11.00 a.m., with the understanding that the Committee would then proceed to the consideration of Bill No. 11, an Act respecting Export and Import permits.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS

March 11, 1947

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. Yesterday, I had a telegram from a firm in Toronto requesting this committee to hear a representative of the Dominion Magnesium Company and a patent attorney with respect to section 4 of the bill. These gentlemen, I understand, are now here. Is it your wish that we hear them now?

Mr. FRASER: I so move.

The CHAIRMAN: Any objections?

Mr. FLEMING: The representatives of the Canadian Manufacturers' Association are here?

The CHAIRMAN: Yes, they will follow. Mr. Fraser moves we hear these representatives now. Any objections?

Dr. R. S. Jane, Director of Research, Shawinigan Chemicals Limited, called:

By the Chairman:

Q. Dr. Jane, would you care to indicate to the committee first, the capacity in which you are addressing the committee and, secondly, your present commercial relations with any company?—A. Mr. Chairman and gentlemen, I am here representing the Canadian Manufacturers' Association and I am, at the moment, a director of research for the Shawinigan Company in Montreal.

By Mr. Stewart:

Q. What company?—A. Shawinigan Chemicals in Montreal.

The Canadian Manufacturers' Association is in general in favour of the principle underlying this section because it is realized from recent experience that the government requires extraordinary powers in times of national emergency. But, it is our belief that the proposed revision of Section 19A is drawn in such broad terms as to defeat its purpose. In particular, we have in mind its affect on research and development throughout this country at a time when industry is planning to spend increasing amounts of money on research. Anything likely to discourage research in Canada is inconsistent with the encouragement to research being given by branches of the government such as, for example, that given by the Department of Reconstruction. Accordingly, we submit, as to section 19A of the Patent Act as proposed in section 4 of bill No. 16, subsections (1) and (4) the following comments:—

> Subsections (1) and (4) of this section have the effect of empowering the minister to seize practically any invention at all and thereafter prohibit the inventor from making any disclosure about the invention. Subsection (1) gives the power of seizure in respect of munitions of war as defined in The Official Secrets Act, but the definition in that Act is so broad that it is almost impossible to conceive of anything which is not at least arguably within it.

Such drastic powers should, it is submitted, be given only if and to the extent that they are clearly shown to be absolutely essential for purposes of national defence. The Canadian Manufacturers' Association believes not only that they are unnecessary, but also that they will have the opposite result from that desired. That they are unnecessary is suggested by the fact that no such power either exists now or even, so far as is known, existed during hostilities in England, the United States or Canada. If these three countries got through the war satisfactorily without any such power, and England and the United States find it unnecessary in peacetime, extremely clear demonstration of its necessity in Canada should be required.

Inventions which are useful for war purposes may be made either by persons employed by the Crown or a Crown company for purposes of research along those lines, or by independent inventors perhaps fortuitously in the course of other research. No difficulty arises about inventions made by the first category of inventors; that is Crown or Crown company employees; appropriate arrangements can be made by their employers that they should assign any invention to the Crown, and appropriate undertakings can be obtained that they should make no disclosure, except as permitted, of any work that they are doing. With independent inventors, however, the position is different. The only way in which the department will ever hear of an invention made by such an inventor before knowledge of the invention has got out to the public is as a result of some voluntary act by that inventor—either the filing of an application for a Canadian patent or disclosure to the department. The only case in which it would ever be necessary to resort to compulsory assignment provisions of subsection (1) of proposed section 19A is when, after a disclosure as a result of such a voluntary act, the inventor and the department are not able to agree on terms of assignment. The subsection is likely to be taken by most independent inventors as a warning that once they have disclosed their inventions to the department they will have to accept as remuneration not what they and the department, bargaining on equal terms, can settle on, but what the department is prepared to pay them or the Commissioner will award them after seizure. The Canadian Manufacturers' Association submits that such a possibility may well accentuate the present tendency of technically skilled persons to emigrate to the United States (where there is no such legislation) and that in any event the inevitable result of the proposed legislation will be that most independent inventors will stay away from the Department of National Defence if they possibly can.

The Canadian Manufacturers' Association agrees with the Patent Institute of Canada that the granting of secret patents is an absurdity and believes that all the requirements of national defence could satisfactorily be met by legislation along the lines of that proposed by the institute.

Hon. Mr. GIBSON: I notice you have left out the appeal which is allowed to the Exchequer Court from a finding of the commissioner.

The CHAIRMAN: I am afraid, gentlemen, the Canadian Manufacturers' Association have not had the benefit of our final draft on this section. I think their comments deal with bill 16 as referred by the House to this committee.

The WITNESS: We are dealing principally with subsection (1).

The CHAIRMAN: Yes, but I say your brief makes it quite apparent you have not had the benefit of the proposed amendments suggested in committee. You are dealing with the bill as it was originally referred to the committee.

Mr. FLEMING: I do not think that is quite right because they, at least, have had the benefit of seeing the earlier amendments we have made. There is no reference to the definition in the Official Secrets Act in the original draft of the bill as it came to the committee. This first paragraph of the submission we have just heard does treat with that very subject. However, I do not know that the Canadian Manufacturers' Association has had the final draft of the amended section, but they certainly had a later draft than the bill itself.

The CHAIRMAN: I wonder if it might straighten the matter out if they had an opportunity of reading the draft which is tentatively proposed? Are all the spokesmen who are here this morning, so far as you are aware, presenting a brief similar to yours?

The WITNESS: I am the only one who is presenting a brief for the Canadian Manufacturers' Association.

The CHAIRMAN: Have you checked with the Magnesium company?

The WITNESS: No.

Mr. FLEMING: Could we ask Dr. Jane to scrutinize this reprinted bill or at least this section of the reprinted bill and then call him back later?

The CHAIRMAN: I think it better to do that than to ask him any questions now.

Will the committee now deal with the proposed amendment? If, after hearing the witnesses, any changes are proposed, the chair will accept them for the purpose of a vote. In section 19A (1), "the inventor of," then add the words "any invention or—"

The WITNESS: May I ask if there has been any change in section 1?

The CHAIRMAN: Just wait one moment and you will have it.

Mr. JAENICKE: "Any invention of or any improvements in—"

The CHAIRMAN: No, "any invention"; invention as defined by the Act. Strike out the word "any" before "improvements" then, read, "of improvements in", and after the word "Act", "instruments or".

Dr. OLLIVIER: I think, "any invention of or improvement in", would be better. I think that is correct.

Mr. FLEMING: Will you just read it now so we have all got it, that is, the first two lines of the proposed section 19.

The CHAIRMAN: "The inventor of any invention of or improvement in instruments of munitions of war shall—"

Mr. J. D. Barrington is the next witness.

Mr. J. D. Barrington, Vice-President and General Manager, Dominion Magnesium Limited, called:

The WITNESS: Mr. Chairman and gentlemen, I suppose you first want me to tell you who I am and whom I represent?

The CHAIRMAN: Yes.

The WITNESS: I am Vice-President and General Manager of Dominion Magnesium Limited. We object to the proposed section 4 of bill 16 for the following reasons:

I think Dr. Jane has pointed out very clearly that one of the primary purposes of granting patents is to ensure publication of inventions. This is a very important part of research in that one piece of research endeavour may well be held up due to lack of knowledge of another piece of research endeavour. For example, a new metallurgical process might well be held up due to a new heat resistant alloy being on the secret list as proposed.

Secondly, munitions of war include all sorts of things from buttons to new alloys for tanks, battleships or aircraft and processes involved in their production.

This section would have the effect of giving the Minister of National Defence control of new production in Canada. This section would authorize the Minister of National Defence to transfer an invention to the government of another country which, in turn, may turn it over to a world competitor of the original owner of the invention. This would mean Canada would lose a substantial asset in world markets merely because of this section in the statute.

The commissioner of patents, through his minister, is responsible to parliament for the administration of the Patent Act. Authority under the Act should not be delegated to a department which has no authority under the statute for administration, otherwise endless confusion will arise.

Mr. FLEMING: Would you mind enlarging upon that?

The WITNESS: I would prefer Mr. MacRae to enlarge on that point. It is one of his points and he is better able to do it than I am. I think I can enlarge upon it but I think he can do it more clearly than I can. In peace time, there is no justification for such strict control. If such control is imposed, it is clear the background of commercial experience and development will not be available in time of war. No one person or a department of government can possibly appraise all new inventions or classify them as munitions of war which should be kept secret. I think that is quite clear. With the fast development of various new forms of warfare, it would be utterly impossible to know what to keep secret and what not to keep secret. Something which should not be kept secret today may very well be of importance tomorrow.

By Mr. Lesage:

Q. Who is to decide?—A. That is it, who?

Q. The Minister of National Defence?

Mr. MARQUIS: So, nothing should be kept secret at all?

By Mr. Lesage:

Q. Then, you think England should not have kept radar a secret from 1937 and 1939?—A. If you give such authority it tends to hamper development which is so essential in time of war. If this Act were to come into force, then what would happen? First, the inventor would probably prefer not to patent his invention but to keep it a secret or patent it in some other country.

By Mr. Marquis:

Q. Do you think experts may decide a thing should be kept secret? Do you think experts could do it?—A. They may be able to do it. They may decide today it should not be kept secret and tomorrow they may decide it should be.

Q. Are there some experts who could decide that?—A. The development of an invention will not take place.

Q. So, you contend nothing should be kept secret?—A. No.

Q. If you do not contend that, you have to admit that some inventions should be kept secret during peace time?—A. For example?

By Mr. Lesage:

Q. Radar was kept secret?—A. Radar was developed by the British Government.

Q. Yes, of course, but suppose it was invented by an inventor who was not in the employ of the government, what would have happened? It would have been public. Every country would have had it during the war or the commencement of the war, at least, whereas only the allies had it. It was an advantage due to the fact it was kept secret during peace time. You cannot delete the secrecy section, not today, and we have not seen any proposal from either the Manufacturers' Association or the Patent Institute which could replace that section.

By Mr. Marquis:

Q. Mr. Chairman, I should like to go back to that point. I should like to know if the witness says, "no invention should be kept secret?"—A. No, I do not wish to say that.

Q. You do not go as far as that?—A. No.

Q. So, if something had to be kept secret, do you admit that the Minister of National Defence may have experts who could decide what inventions should be kept secret?

By Mr. Timmins:

Q. Better than anybody else, probably?

By Mr. Marquis:

Q. Yes. I know the Minister of National Defence is not an expert himself, but he may have experts available to decide which invention should be kept secret and which should be public?—A. That is true.

Q. Do you have any objection to experts whom the Minister of National Defence may choose deciding some invention may be useful in war and deciding that those inventions should be kept secret during peace time?—A. Yes, but with the Act as proposed, there will be great hesitancy on the part of any inventor, no matter what he invents, patenting it in Canada.

Q. But if the Minister of National Defence has the responsibility of requiring that some inventions be kept secret and if he has the experts to decide what should be kept secret, where will the harm come?

By Mr. Lesage:

Q. What was your preceding answer?—A. My answer was that there would be hesitancy on the part of inventors, knowing their patents would be taken over—

Q. Have you any proposal to make?

By the Chairman:

Q. You concede, of course, someone must exercise the discretion. Now you do not think the Minister of National Defence is the right man to exercise it?—A. No, I point out that I think it is going to stop development. You are going to tend to have greater development in other countries. Inventions are not articles of war until they are practical.

Hon. Mr. GIBSON: I should like to get Mr. Mitchell to explain one thing which bothers me. How is the Minister of National Defence going to know about all these inventions or applications for patents which come into your office unless he has a representative in there?

Mr. FLEMING: Before Mr. Mitchell answers that question, I should like to say I do not think Mr. Barrington has made this point clear. I must confess, for myself, I do not understand it.

The CHAIRMAN: Now, I wonder if you would mind if we cleared up the point raised by the minister first. We will hold Mr. Barrington in suspense for a moment.

Mr. MITCHELL: Mr. Chairman, I explained before that when this bill comes into force the Minister of National Defence will be asked to appoint three officers from the three main services who will attend at the office when they are requested to do so to scrutinize any applications for inventions which may be of a type which may apply to war.

Mr. JAENICKE: According to your opinion?

Mr. MITCHELL: According to our opinion; in the first place, we ask them to attend. Then, they, in turn, will make representations to their minister whether they think it should be kept secret. The minister will take the appro-

priate action. This procedure was followed during the war and this is only a continuation to a lesser degree of what we have done during the last seven years.

Hon. Mr. GIBSON: Does he keep you advised as to the type of things in which the Department of National Defence is specifically interested?

Mr. MITCHELL: Yes.

Mr. JAENICKE: May I ask one question of Mr. Barrington?

The CHAIRMAN: Let us clear up this point first.

Mr. FRASER: On this same point; are those officers in your department yet? Are they working there now?

Mr. MITCHELL: No, they do not work in our office. They are members of the Department of National Defence. They are technical officers appointed by the department to the office and when necessary they are called in as consultants.

Mr. FRASER: But the patents are going through your office?

Mr. MITCHELL: Yes.

Mr. FRASER: When are the officers called in?

Mr. MITCHELL: When the applications are first received they go to a division called the classification division. In the classification division during the war, each week I had a list of applications put before me which it was thought might help the war. These applications were divided into classes and the classes were referred to the appropriate officer of the Department of National Defence and also to munitions and supply at that time.

Mr. FRASER: You are still doing that?

The WITNESS: We are not doing it now because the war has ceased, but we could still do it if we so desired. Under this bill we necessarily have to do it.

Mr. FRASER: You would have to do it under this bill?

The WITNESS: Yes.

The CHAIRMAN: I think that point is fairly clear now.

By Mr. Fleming:

Q. It seems to me there is a very serious point which Mr. Barrington has raised, but it is not clear in my mind as to the relevancy of the draft which we have before us. I would like to get my mind very clear on this before I ask questions. I think it would be a very serious thing if there were legislation anywhere which would discourage people from bringing their inventions into Canada or which would have the result of Canadian inventions being seized by National Defence in this country. You do not go so far as to say that no such inventions should be withheld. You do not go so far as to say there should not be any secrecy?—A. No.

Q. Where do you draw the line; and who is to make the decision?—A. I think the inventor is probably the only one who can make it. For this reason, he is going to make it anyway. In a great many cases patents are applied for in the United States before they are applied for in Canada; in a great many cases; so there is no secrecy. Now, in his judgment, if he has a patent which is vital to this country then it should go to Canada; otherwise he might very well apply in the United States and have his patent issued there before he has it patented in Canada at all.

Q. In other words, if the Canadian legislation did not go any further than the American legislation a person who takes a Canadian patent is assured that if the Minister of National Defence takes over this patent, expropriates it, then he is going to get compensation for it. Do you see any insuperable difficulty there?—A. Yes.

Q. Do you think this will discourage people from getting patents in Canada?—A. The point is probably the inventor is the only one who knows, or who does not know, that his patent has been declared secret.

Q. He does at the moment he makes his application. When he goes into the Patent Office and before these examiners from the Department of National Defence.—A. Pardon me, sir; it may not go into this office until it is already public property.

The CHAIRMAN: You say that the inventor is the man who in your opinion should make that decision?

Mr. BARRINGTON: Whether this Act is in force or not; all right, the inventor is still the man.

The CHAIRMAN: May I lead on from there, then, following your viewpoint; you say the inventor is going to make the decision. Do you know of anything better that we could do to secure that invention for the defence of Canada than to pay a man adequate compensation for his invention?

Mr. BARRINGTON: Yes. Let him patent his invention, develop it and get it to the point of being practical before war begins in his own country.

Mr. LESAGE: And other countries will use it.

Mr. FLEMING: I think in order to get at this problem we will have to break it down into two cases. First of all the case where a Canadian, and the other the case where someone outside of Canada proceeds to seek a Canadian patent for an invention which may be useful for defence in Canada. Let us take the first case. I would like to ask Mr. Barrington if he thinks a Canadian who has an invention which would be useful to national defence would seek a patent in the United States rather than in Canada, or some other country, because he is afraid his patent will be always open to expropriation here?

Mr. BARRINGTON: Yes. The point is this, who is to judge as to what is adequate compensation.

Mr. LESAGE: The Exchequer Court.

Mr. BARRINGTON: Throughout the world there are very few articles produced that are not useful for war purposes.

By Mr. Fleming:

Q. I quite appreciate that. That is the difficulty we had about the earlier definition. Let us take the other case. Let us assume an American has a useful invention. It is hardly to be expected that he would apply for a Canadian patent before he applies for one in the United States. Supposing he applies there and then comes to the Canadian Patent Office. If it is clear that the American Patent Office is not treating his application in the United States as a secret patent application it is hardly likely that would be done in Canada. But supposing the American Patent Office is treating it as a secret, then at least the Canadian Patent Office knows there has been disclosure in the Patent Office in the United States even if there has not been publication in the United States. I think it would be reasonable to expect that there would be some hesitancy on the part of the Canadian government to take over such a patent because of its significance in relation to the defence of Canada; I mean in connection with some patent where a patent has been applied for in the patent office of another country.—A. Yes, that would be very true.

Q. So that from the standpoint of the inventor it seems to me that the danger you hold out is not so formidable in that case.—A. No. I am speaking of the good Canadian citizen.

Q. You are limiting your observations to— —A. The bad Canadian citizen, the one who applies for his patent in another country.

Hon. Mr. GIBSON: Do you think they have no provision for secrecy in the United States?

Mr. LESAGE: They have had that, sir, since 1917.

Hon. Mr. GIBSON: I thought you said there was no provision for secrecy in any other country.

Mr. BARRINGTON: No. I think it was Mr. Fleming mentioned that.

Mr. FLEMING: He didn't suggest going as far as the point raised.

The CHAIRMAN: Gentlemen, it is very difficult to report a meeting where there are two or three people speaking at once. If you will try to speak one at a time it would be better.

And now, Mr. Barrington, coming back to the question asked a moment ago; what have you to suggest that would be an improvement on our proposal that any inventor who makes an invention with respect to a munition of war is to be properly compensated for it?

Mr. BARRINGTON: I do not think that enters into it. I do not doubt that he will be compensated. The point is that if you want to develop research in Canada there has to be cooperation all the way through, where something is held secret—

By Mr. Lesage:

Q. Louder, please. Don't you think, Mr. Barrington, that if an invention is kept a secret and referred to the scientists of the national research department that they will go ahead with work on it with the assistance and collaboration of the inventor and such other scientists as may be usefully employed in its development?—A. Yes.

Q. So we can assume that it is going to be developed?—A. It may be developed.

Q. It may be, and you have all the chances in the world that it will be.—A. No, it is just it may be.

Mr. LESAGE: If it is a necessary invention.

By Mr. Jaenicke:

Q. I was just going to ask you a question or two; your work during the war was rather important in connection with munitions and instruments of war, was it not?—A. Yes.

Q. Did you work under any patents that were kept secret?—A. Yes.

Q. How did that work, was it satisfactory?—A. Yes.

Q. Tell us about it, then.—A. I am afraid I cannot.

Q. We will evaluate these methods.—A. I am afraid I cannot disclose some parts of that work, it is so secret.

Q. You don't need to tell us what it is, but the methods, as to how it is kept secret.—A. I prefer not to, if you don't mind.

Q. Now, Mr. Chairman, we are trying to legislate here. Maybe we ought to have this meeting in camera, I think we ought to know.—A. I do not think it applies to this.

Q. Are there any of the patents that your firm got from the National Research Council that are being kept secret?—A. No. Those are all known.

Mr. MAYHEW: Did they not develop equipment at the National Research Council patents that you are now using?

Mr. BARRINGTON: That is right. They were kept secret and later turned over.

By the Chairman:

Q. Mr. Barrington, as I understand it the purpose of this legislation is simply to perpetuate into peacetime procedure that which was followed under order in council during the wartime. Now, do you quarrel with it?—A. I quarrel with its use during peacetime.

Q. Now, we are getting down to the point of your quarrel, why do you quarrel with it during peacetime?—A. Because I think it will hinder ordinary commercial research.

By Mr. Fleming:

Q. Is that because of the difficulties of distinguishing between what is munitions of war on the one hand and what is not on the other?—A. That is right.

Q. It may be a matter of definition, or is definition impossible?—A. A new alloy may be very important to warfare and may also be applied with importance to peacetime use, and its development might depend upon its being used in peacetime.

Q. I can appreciate the problem there because we have had some difficulty already with the definition. But you are still concerned about discouraging the Canadian inventor from entering his patent in the Canadian Patent Office. We had provision for assignment during wartime through the Minister of National Defence. It was on a capacity basis. I understand that when this bill came in first there was no provision for any compulsory assignment of patent rights to the minister by an inventor. What we have now in this present version is the proposal that the right be given to the minister to expropriate a patent.—A. That is right.

Q. Have you any objection to voluntary assignment in these cases of secrecy of patent?—A. None whatever. No.

Q. But you are concerned about the right on the part of the Crown of involuntary assignment?—A. Yes.

By the Chairman:

Q. And you fear the minister may exercise his right to the prejudice of the civilian use of patents?—A. Yes.

Q. Who do you suggest would be in any better position to exercise that discretion than the Minister of National Defence?—A. I think that the inventor and the Department of National Defence would have to be both agreed to that.

Q. You say that the inventor should confer and agree, if possible?—A. That is it.

Q. If they failed to agree obviously someone must make the decision as to what is in the national interest. Who do you suggest to have the final decision?—A. I still think it is up to the country and the inventor.

Mr. QUELCH: Is there anything to prevent a Canadian inventor who, might be afraid that his patent having been declared a secret of the country from, first of all taking that invention to another country and getting a patent where he thinks he can get higher compensation; is there anything at the present time to prevent that? If there is nothing to prevent it, is there not a danger that that very thing may happen, in which case it would be absolutely useless to declare a patent secret in this country?

Mr. BARRINGTON: That is my point.

By Mr. Fraser:

Q. What about the patents your firm worked for during the war?—A. Those patents are no longer secret. They were secret during the war but they are no longer secret.

Q. They were secret during the war; did the inventor in those cases make any objection to their being kept secret, if they were Canadian inventions?—A. Yes, they did.

Q. But did they ask that they be kept secret; and, if so, whom did they ask?—A. The commissioner of patents.

The CHAIRMAN: Mr. Lesage has the floor, and then Mr. Timmins.

Mr. LESAGE: Referring to what Mr. Quelch has in mind, you are talking about Canadian citizens filing their applications for patents in other countries—which usually means in the States. In the United States they have a secrecy provision which they have had since 1917 and which they have in peace-time. It reads substantially as follows:—

> Whenever the publication or disclosure of an invention or the granting of a patent might in the opinion of the Commissioner of Patents be detrimental to public safety or defence he may order that such invention be kept secret.

So there is a measure of compulsion also in the United States. If he files it in the United States first it may be held there as it is held here, and I think the terms giving discretion to the commissioner of patents in the United States are probably within the proposed terms for discretion to the Minister of National Defence here. I think it will be kept a secret in the United States and later passed on to the Canadian government, or it will not be kept secret in the United States and then the Minister of National Defence can decide whether or not it is to be kept secret here.

By Mr. Timmins:

Q. Mr. Barrington, I take it that if a Canadian inventor had perfected an invention with respect to a munition of war that he would most likely be thinking about the remuneration he would receive from the patent if it was patented in the Patent Office at Washington, most likely?—A. Yes.

Q. But your point, I believe, is that in respect of something that the inventor might not conceive in the nature of a munition of war or an instrument of war that he might apply to the Canadian Patent Office and have it taken away from him. Is that the point that you are raising?—A. Yes.

Q. And that is the only point about which you are concerned?—A. That is one point.

Q. So that an invention which in the natural course of events had to do only with ordinary affairs might be seized upon by the Minister of National Defence and the applicant as a consequence might lose the benefit of proper remuneration?—A. Well, it is not so much a question of remuneration as it is that research may very well be stopped, come to a stop with respect to it.

Q. Why would it be stopped?—A. Because someone else who is working along similar lines not having any publication of that invention may be stopped.

Q. In other words, if the minister makes a secret no other inventor gets the use of it; therefore, that particular trend is stifled?—A. Yes. They are very few pieces of equipment either in wartime or in peacetime which involve only one invention. They usually involve a number of inventions and in order to design anything, it does not matter whether it is a farm tractor, an airplane or anything else, there are many inventions involved. Now, development of an invention may be stopped because of secrecy whereas otherwise it might be improved both for war or for peace. I am not dealing with one who invents a new kind of machine, a new atomic bomb or anything like that. I have in mind just the ordinary run of inventions. It might very well be that they would say that is the very thing we want and it might be some new type of superheat-treated steel.

The CHAIRMAN: Before we leave this point, the statement has been made that during wartime the inventors themselves asked that secrecy be maintained. I think we ought to hear from the commissioner and find out whether that is accurate in point of fact.

Mr. MITCHELL: It is not accurate in point of fact at all, Mr. Chairman. A great many requests for secrecy were made by the United States government and by the British government, but the inventors made no request whatever for secrecy.

Mr. FRASER: Was that in regard to Canadian inventions?

Mr. MITCHELL: The number of Canadian inventions that were declared secret were relatively small. You must bear in mind that there are only 1,200 inventors in Canada out of 12,000,000 people; in other words one out of 10,000. Also that not all of the inventors, hardly any of them, are engaged in war work, with the result that the number of inventors in Canada who were working on secret work was relatively small.

Mr. FRASER: Arising out of the point raised by Mr. Lesage is something about which I would like to ask Mr. Barrington. As I appreciate it the point involved here is, who should have power over the normal rights of the private owner of a patentable invention; first of all, with respect to the application of secrecy to it; and, second, the taking over of the patent rights from the inventor. Now, if I understand Mr. Barrington's objection to this legislation it is to the language of the section; he does not want power given to the Crown to expropriate and leave it on the basis of negotiation or sale. If the Crown wants the benefit of the patent then the Crown negotiates with the patentee as to the sale of his rights. I am not at all clear yet as to what limits are o be attached to the matter, but I take it from what he has said that in his opinion there should be no secrecy provisions at all in times of peace, no right to the Patent Office to impose a blanket of secrecy. At the same time Mr. Lesage has quoted the provision of the United States Patent Act which does authorize secrecy on patents in their office.

The WITNESS: Well, if you carry out my original proposal—may either offer, or on valuable consideration may—take the "must" out of it. You see, the unscrupulous person, we'll say, the individual who wants to get something out of it will sell to a foreign power and get his patent abroad. The good citizen, on the other hand gives it to his own government.

By Mr. Fleming:

Q. Then, in the drafting of this bill you would simply write in "may"?—A. That is right.

Q. Without change in the language; may either offer or for valuable consideration assign to the Minister of National Defence; you have no objection to that?—A. No.

Q. You would not then, I gather, have any objections to the secrecy provisions which were contained in the original draft of section 19(*a*)?—A. None at all.

Q. Your objections then are simply to the amendments that has been written in since the bill came to this committee?—A. Yes.

Q. Well, that clarifies that. In other words, you are prepared to have the situation continue as we had it here during the war, which I understand is the situation that existed during the war where the legislation in the original bill was adapted from the United Kingdom Act.—A. During wartime there was expropriation as and when it became necessary.

Q. Not in the order that applies to Patents?—A. No, but in the over-riding order.

The CHAIRMAN: You will recall that you made that suggestion, Mr. Fleming.

Mr. FLEMING: Yes, I recall the suggestion.

The CHAIRMAN: The suggestion was yours. Your suggestion was to repeal some of the clauses in the bill in the form in which it originally came before this committe. Under section 12, subsection (*c*), the minister has power now in direct fashion to accomplish that objective.

Mr. FLEMING: I think we all agree, Mr. Chairman, we do not want that power to be given indirectly. There was the objection taken to section 12(*c*); that if he were to be given that power it would be better for him to be given it directly.

The CHAIRMAN: Yes; and the bill did give the power to do indirectly exactly what the present amended section does.

By Mr. Fleming:

Q. I would like to ask Mr. Barrington several questions. Do you not think that the power of imposing secrecy means virtually the power of compelling an inventor to assign his invention to the government? It may be very hard for some of us to see your line of distinction between the power to expropriate a patent, or to force assignment, and the power to impose secrecy to which you are objecting?—A. Well, the power to expropriate stops research at a certain time in the proceedings.

By Mr. Lesage:

Q. That is the point. You say the power to expropriate stops research?—A. Stops further research by any other company or with that type of equipment.

Q. Don't you think that if you have any really important invention it is going to be worked in a sensible way and much better by the officials of the Department of National Defence or by the National Research Council, with the help of the inventor if necessary? Because, after all, I think it is reasonably safe to assume that the Minister of National Defence will see that that is done in the best interests of Canada and in the best interests of national defence.—A. In that, sir, again, in order for that to succeed, for the government, the Department of National Defence, to carry on, you must have the assistance of the inventor, he must co-operate.

Q. I did not mean, must; let us say he will be invited to co-operate.—A. Well—

Q. Do you know of any companies, your own for instance, who have carried on research work for war purposes?—A. No, not for war purposes; but research—not all research—I will leave it as mostly research, you might say. What we learned during the war is being utilized now. Where is your secrecy going to stop?

Q. Where are you going to stop; that is what Mr. Fleming's question to you really means.—A. Any new invention, a good many new inventions may be considered useful in the next year. Are you going to stop research in Canada because of that?

Q. Not if we admit it is for munitions or instruments of war.—A. It is for the use of the country. When it comes to patents, the inventor can do one of two things; he may decide to take out a patent or just to keep it secret.

Q. It is up to him. If he is a good Canadian and thinks and believes it is an instrument which is related to instruments and munitions of war; if he is a good Canadian citizen to do his best to work it out for the benefit of the Department of National Defence conscientiously.—A. But there is a point there which you must keep in mind, and it is this: where a thing is developed in a commercial firm it is not secret. It is known to a great many people who by reason of their association with the firm are connected with it. Everyone knows about it. It is discussed at staff meetings. It is discussed there and with others. Then you discover that it is something which should be kept secret. Well, it is already known to so many people that you can hardly keep it secret from them.

Q. No, of course not. But you must rely on their keeping it secret.—A. Right; again I say you must rely on your inventor.

Q. You have to rely on the inventor to keep it secret?—A. Yes. In other words, you have to rely on the inventor anyway.

Q. To keep it secret?—A. That is it.

Q. And you can rely on his working on it if he is a good Canadian citizen.

By Mr. Marquis:

Q. The point I want to stress is this. I think you said a few minutes ago that the inventor should decide whether an invention should be kept secret or not; but don't you think that preventing war is just as important as making war? —A. Quite.

Q. So that if you have to take the responsibility of deciding whether or not an invention may be useful in wartime is it not the duty of the government through the Minister of National Defence to decide which instruments or munitions of war are important and whether or not they should be used in war, and so on? If somebody could decide if something is to be used for war or not, you might go on during the next twenty-five or fifty years and make public many inventions with the result that all the countries in the world will have knowledge of these inventions. Then if and when a war starts you would have to spend a great deal of money and expend a great number of lives in order to repair what has been let out in the meantime. I think it is very important, Mr. Barrington, that the government should have the decision as to what and what is not to become secret. At the same time let me say that I do not think the government will hinder private inventors from developing their inventions. I think we can safely leave it at that.—A. But you are using the term inventor in the singular.

Q. Will you speak a little louder, please.—A. You are using the word inventor in the singular. As I said a few moments ago, there are very few pieces of war equipment or of commercial equipment which deal with one invention only.

Q. Yes; but along that line do you think that one may rely upon the Minister of National Defence to cooperate with the commissioner of patents to have due regard for the needs of industry and the safety of the state, to ensure that only so much as should be kept secret is kept secret? We could not rely on some foreign power doing that for us. If certain things were not kept secret anyone could come here and take away any important inventions which might prove to be of benefit to countries which at some later time might be our enemies. Upon whom can we rely better than the government as represented by the Minister of National Defence and experts appointed by him for the purpose to decide which patents or parts of patents or inventions should be kept secret? I think that is the only point we have to deal with here.

Mr. FRASER: Mr. Chairman, I would like to ask Mr. Mitchell from what source section 19 (*a*) came?

Mr. MITCHELL: It was originally taken from the British Act verbatim and then adapted to our Canadian use here.

By Mr. Fraser:

Q. Then I would like to ask Mr. Barrington if he does not think the Act as it exists here in section 19 (*a*) would only apply to inventions from the research council or Crown companies? The government could not really have control over anything else, because as you said before it is up to the inventor if he feels it should be secret to ask for secrecy, and if he does not ask for secrecy, he can have his lawyers apply for a patent in any other country in the world; and therefore it is really only the National Research Council and the Crown companies that the Act applies. Am I right?—A. That is right.

Q. That is the only source from which the government could ask that these inventions be kept secret?—A. Yes, because it is up to the inventor to make the decision.

Q. And there is no law that we have which can compel inventors to keep a secret?—A. Right.

By Mr. Lesage:

Q. By the way, you said that an inventor would be free to dispose of his inventions. Subsection (4) of section 19 (*a*) says—an inventor or a person making an assignment under this section—comes under the provisions of the Official Secrets Act?—A. What did you say I said?

Q. That even if the inventor assigns——A. Oh, yes; but you were speaking of an inventor. When it comes to the development of that invention there probably is a big chance that a whole department of a commercial firm may know about it.

Q. You mean, may have some interest in it?—A. Oh yes, or knowledge of it. In most cases probably the whole staff have talked the development over.

Q. And then we would have to amend section 4?—A. It would apply to patents anyway.

Q. I think if the intention was to require an assignment to the Minister of National Defence on behalf of His Majesty, and so, we should have sanctions to ensure such action being taken. May I draw the attention of the committee to that?

The CHAIRMAN: My answer to that would be this: what sanctions would you have in mind? I would suggest that what you have in mind is already provided under the powers of expropriation. Well now, how much better would the power of expropriation be than your present wording because under your present wording, by action in the court, the minister could compel the transfer. Expropriation proceeding is also an action in the courts, so what better sanction could you have than this compulsory legislation.

Mr. LESAGE: If the Minister of National Defence has to take action in the court, the secret will be divulged.

The CHAIRMAN: In your expropriation proceedings, the sanction you suggest would be subject to the same criticism.

Mr. LESAGE: We could hold it in camera.

By the Chairman:

Q. I have a suggestion to make. Were you content with the bill as originally referred to the committee?—A. I think we would have to study it a little closer because it was the last bill as revised at which we looked.

Q. You made no objection until the committee started amending this section. Now, I am asking you are you content with the section as originally drafted? —A. I did not see it. I think I saw the last one.

By Mr. Fleming:

Q. I understood Mr. Barrington indicated he was satisfied to have the provisions which were in effect during the war continued?—A. That first bill— as I say, I have not had an opportunity of restudying this one. I did see it and it sounded all right to me.

The CHAIRMAN: It occurred to me that Mr. Fraser has brought out a point in that the bill, as originally referred to the committee, is copied from the British legislation on the same subject. It may be that we would be well advised to pass the section as originally drafted and forget about all of our proposed amendments.

Mr. FRASER: May I ask another question on that point of Mr. Mitchell, Mr. Chairman? This section which was taken out of the British Act, was it put there during the war or was it before the war?

Mr. MITCHELL: Before the war.

Mr. FRASER: Do you know what year?

Mr. MITCHELL: I cannot tell you exactly the year, but I can find that out.

Mr. FRASER: Does it refer to a time when, perhaps, Britain was at war? Was there any mention of that?

Mr. MITCHELL: I think it was subsequent to the first war, but I am not sure.

Mr. FRASER: What I am trying to get at is whether this Act was put in just in order to cover inventions or patents during war years or whether it was for peace time?

Mr. MITCHELL: I think it was for peace time. I do not think it is restricted to any particular period.

Mr. FLEMING: It is permanent legislation, as I understand it.

Mr. MITCHELL: Yes, it is permanent legislation. It is in force.

Mr. FLEMING: There is a factor there, I think, of which we have to take account. I should like to put this before Mr. Barrington clearly. I think we all appreciate the fact that preparation for war from now on will be a different matter from what it has been. From now on the nation that is going to be strongly prepared for war will be the nation which has carried on research and invention faster and further than any other nation. Now, is there any change in our approach to legislation of this kind? I have indicated in a previous meeting, Mr. Chairman, my own view of this matter would be qualified to some extent by the attitude of our own Department of National Defence. If they are not going to have the means put at their disposal for carrying on research far more seriously than has been done in the past, I would be rather reluctant to see power put in the hands of the minister which might prevent that research being carried on by private individuals in the country. On the other hand, if the Department of National Defence is going to be given the means to measure up to this new responsibilty and will push research faster and further than ever before, then I think we will have to take account of the necessity of giving the Minister of National Defence the necessary powers for that purpose.

Would Mr. Barrington care to comment on that, because he was not present at the meeting when this was discussed with the witnesses from the Department of National Defence?

The WITNESS: I very much approve having the Department of National Defence carry on a very aggressive campaign of research. I think in that regard the department could well follow what has been done by the United States Army and Navy Industrial College, where they have taken industry right into camp and are watching developments in all lines of endeavour. They are keeping in very close touch with it, whether it is research in plastics, metals, motor vehicles, etc. The United States department is very aggressively following every line of commercial research.

By Mr. Fleming:

Q. Just what do you mean by, "taking industry into camp"? You do not mean compulsory power?—A. No, what I mean is not keeping apart from industry, but knowing what industry is doing.

Q. Is industry always willing to disclose to the United States army what they are doing? Some of these inventions would have civilian uses as well as military?—A. In regard to the one industry of which I know, which is the metal industry, I would say yes, that there has been a very open discloseure of developments.

Hon. Mr. GIBSON: Is the difference in the United States the fact that they do not expropriate the patent, but they do provide for its being kept secret for the purpose of national security?

The WITNESS: I do not know, sir.

Mr. IRVINE: I was wondering whether the witness was afraid we would hear him. We are sitting here straining every nerve trying to hear him and he is whispering into the ear of someone else in the corner.

The WITNESS: I am very sorry, sir.

Mr. IRVINE: So am I, I tried to get you to speak up.

By Mr. Fleming:

Q. There is one other point which is the one we touched upon earlier. I do not know whether we can come any closer to meeting the view of Mr. Barrington by applying ingenuity to this matter of a definition. The committee is faced with the very great difficulty of defining "munitions and instruments of war", in such a way that we will, at least try, to exclude civilian uses or development for civilian purposes. Now, can Mr. Barrington help us on that? I think we all appreciate the difficulty and the breadth the definition is going to have and the extent of the powers the minister would have under such legislation as this?—industry, I would say yes, that there has been a very open disclosure of "munitions of war" was such that it meant what that very word says, it might be possible to make a definition such as confined it actually to weapons. On the other hand, I feel that with the modern warfare of to-day, that includes some of the most important parts of warfare.

If it just referred to weapons, someone might devise a new landing barge which is not a weapon. It might be used on a canal or something of that sort. I think it would be very difficult to try and define where ordinary commercial products stop and weapons of war start or a piece of equipment useful in war starts.

Q. We had quite a discussion in the last meeting with regard to the suggestion we use the definition of munitions of war in the Official Secrets Act, which is very broad?—A. Oh, yes, it covers everything.

Q. It could include a multitude of things having a more potential civilian use than military?—A. From boots and shoes to buttons.

Q. Yes, it might be buttons or anything else; that was an example I used the last time, buttons. We have a rather restricted definition proposed this morning. Do you think this definition helps us at all in meeting your objections, "the inventor of any invention of or improvement in munitions of war——"; the bill does not have any definition of "munitions of war". If a dispute arose between the Minister of National Defence and the applicant for a patent as to whether his invention or improvement is a munition of war, it might get to the courts?—A. Yes, and you have a precedent for that in that there was a munitions and supply department which would separate munitions from supply.

Q. I am just wondering if this does not meet the substance of your objections, the fact that we do not propose to say, as yet, in the bill that it is what seems to the commissioner of patents or the Minister of National Defence to be an invention of or improvement in munitions of war or instruments of war; it is not given to him to make a definition. The bill does not define it and if a question or dispute arose between the parties as to whether an invention was really a munition of war it would have to go to the courts, I take it, before expropriation could take place. I think, in the meantime, the secrecy provisions would be in effect. I am exposing my mind to you so that if there is some answer, you will have an opportunity of giving it, Mr. Barrington. I find it a little difficult to follow your reasoning when you make your objections to the expropriation provision and, at the same time, you indicate that your objection to the secrecy provisions does not go very far. If you are prepared to admit the necessity for secrecy, I can see that the language of the original bill or even the American law as it stands to-day, suspicious use could be made through the Patent Office of that power to impose secrecy. You could put the iron curtain down on this

invention and, at the same time, refrain from expropriating. If the minister wanted to use that power improperly, could he not, in effect, nullify the value of that invention to the inventor?

Hon. Mr. GIBSON: Except that he could go on working at it.

The CHAIRMAN: Gentlemen, the British have an Act which was passed in peace time. We have no reason for assuming that it is not working satisfactorily and therefore we must presume it is. Had we not better go back to the bill in the original form as we received it from the House and pass the section as it is in the bill?

Mr. JAENICKE: Mr. Chairman, what bothers me about the brief of the Canadian Manufacturers' Association and of the Patent Institute is the suggestion that what we are trying to pass is an absurdity. I do not think it is, but do you not think we should get the opinion of the Rt. Hon. Mr. Howe, the Minister of Munitions and Supply? I think he handled most of these patents during the war and I should like to get his opinion on the matter.

The CHAIRMAN: The bill, in its present form, simply carries on into peace time the procedure which was followed during the war. As I understand the witness, industry is not seriously opposed to that.

Mr. IRVINE: I would like to have someone who would demonstrate the necessity for secrecy, in the first place. Secondly, I should like to have someone say what relationship a secret patent act in Canada might have or what effect it might have on the United Nations peace policies in the future. Then, I should like to know whether it is possible to keep anything secret at all and whether it is a wise policy for any government to follow in these days?

The CHAIRMAN: Mr. Robinson, you are the next witness.

Mr. Christopher Robinson, Vice-President, Patent Institute of Canada, recalled:

The WITNESS: Mr. Chairman, the comments by the Patent Institute of Canada do not relate to the subsection which so far has been under discussion. These comments relate to the later subsections of the proposed section 19A which deal with or centemplate the granting of secret patents. The patent institute has prepared a memorandum on the subject which I propose to read.

By the Chairman:

Q. Before you continue, if the bill is passed by this committee in the form in which it came to the committee, have you any objections?—A. Yes, sir, on the secret patent.

Q. You still have objections?—A. Yes, sir, and it is with those objections I wanted, if I might, to deal.

A patent on an invention is merely a right to prevent others from making, using or selling the invention without the patentee's permission. A secret right of this kind seems an absurdity. The very term "patent" is an abreviation of the term "Letters Patent", i.e. an open or public document in which the Sovereign specifies the exclusive right which is granted, so that everyone may know what they are prohibited from doing. "Secret Letters Patent" is accordingly a contradiction in terms. How, in fairness, can a man be made to incur a legal liability for doing something which he had no way of knowing he was not allowed to do? Yet a secret patent would impose just this liability. If some manufacturer made, independently, an invention which happened to be already covered by a secret patent, but had commercial as well as wartime utility, and proceeded to develop it commercially, he would find himself liable to pay damages for infringing a monopoly of the existence of which he had no means of knowing.

So far as concerns an invention which is to be kept secret in the interests of national security, the Crown's principal concern with the patent law is that no subsequent independent inventor of the same invention should be able to obtain a patent which would enable him to claim compensation from the Crown for its use. In the United Kingdom, from the law of which subsections 5-14 of proposed section 19A are largely taken, the grant of a patent to the Crown may be necessary for this purpose. In Canada, however, an application filed in the Patent Office by the Crown achieves the purpose just as effectively as a patent granted on that application. If an independent inventor were later to file an application for the same invention, a conflict would be declared between the two applications, and the later application would be refused if the independent inventor could not show that he made the invention before the inventor named in the Crown's application.

It is to be noted that in the United States, where patents are granted to the first inventor, as in Canada, rather than to the first applicant, as in the United Kingdom, there is no provision for secret patents. The United States law provides simply for withholding the grant and consequent publication of a patent on an invention which is to be kept secret in the interest of national security.

The whole subject of secret applications was thoroughly canvassed in 1942 by a strong interdepartmental committee under the chairmanship of the Under Secretary of State and including representatives from the National Research Council, the Patent Office, the Departments of Justice, Munitions and Supply, External Affairs and the Secretary of State, and also counsel familiar with patent matters. This committee at that time settled on a provision in the terms shown on the attached sheet. The Patent Institute of Canada is of opinion that such a provision would give the Crown all the necessary protection against spurious claims by later inventors, and suggests that its substitution for section 19A as now proposed in the bill should be seriously considered by the committee.

Now, the proposal on the attached sheet amounts, in effect, to this, that a minister of the Crown may tell the commissioner that the rights to an invention disclosed in a patent application have been assigned to the Crown and that that application should be kept secret. Then, that application should be so kept and inspected only at the direction of the minister. Furthermore, that the secrecy order might be, at some subsequent time, removed. When it is, the patent and the application should be dealt with, rather, the application for a patent should be dealt with in the normal way, but that the term for which the patent is granted should be the usual term of seventeen years less the time during which it has been kept secret. Otherwise, you might have a situation where an application has been kept secret in the Patent Office for ten or fifteen years, then the patent issued for another seventeen years, which would unduly extend the monopoly.

Finally, there is a provision for sanction for disclosure in breach of the undertaking given to the minister.

By Mr. Lesage:

Q. In your proposed draft, it must be a voluntary assignment?—A. Yes.

Q. It cannot be compulsory?—A. No, sir.

Q. In the United States it could be compulsory?—A. No, there is no compulsory assignment provision in the United States.

Q. The United States provision reads,

> Whenever the publication or disclosure of an invention by the granting of a patent might, in the opinion of the commissioner of patents, be detrimental to the public safety or defence he may order that the invention be kept secret and withhold the grant of a patent—

I think that is compulsion?—A. I am sorry, sir, I misunderstood you. I thought you were speaking of the assignment. There is no provision for compulsory assignment.

By the Chairman:

Q. There is provision for compulsory secrecy?—A. There is nothing compelling the United States man to disclose to the government at all. It is only if he does file an application that such a provision takes effect. The trouble with the American provision, it is the same sort of difficulty as Mr. Barrington was mentioning, there is no way of compelling the inventor to disclose to the government.

Hon. Mr. GIBSON: How could you compel him to disclose?

The WITNESS: That is the difficulty; therefore, even a provision such as they have in the United States ordering any application to be kept secret, does not really do what is necessary. Nothing can go the whole way and make an inventor disclose. All the United States provision provides for is that any application can be ordered to be kept secret. Then, if a patent is subsequently granted they say the inventor may set up a claim in the United States Court of Claims against the government for its use before the application was granted. However, there is nothing about a compulsory assignment to the United States government.

By Mr. Lesage:

Q. But it is compulsory for the inventor to keep it secret?—A. If he filed an application.

Q. Of course, yes?—A. The difficulty is there is still nothing to compel him to file an application.

Q. The commissioner of patents in the United States must know about it and it is the same here.—A. There is nothing to compel the inventor to file an application at all in the United States. Perhaps I have not made my point clear, sir. If a man makes an invention, the question of whether or not he files and application is one for his decision only. In the United States the legislation provides, if he has filed an application, then that application can be ordered to be kept secret. There is nothing compelling him to file an application at all. He could file an application anywhere, in Canada or anywhere else.

Q. He will be compelled to keep his secret where it is a matter of national defence or security, but you do not state that here?—A. But only if he has filed an application.

Q. Yes, but in your draft you do not state that. You give too much power to any minister of the Crown?—A. No, sir, because it is only when the invention has been disclosed and the pending application has been assigned to the Crown.

By the Chairman:

Q. In theory, you fear some unsatisfactory results would flow from what the government now proposes to do, but up to date it is only a theory. Have you any complaints from the United Kingdom that their legislation worked out unsatisfactorily or that any dire results flowed as a result of the legislation?—A. No, sir, I do not know anything about it except this, I can say, in the United Kingdom, because of the fundamental difference in their patent law from ours, it may well be necessary to actually grant a patent on some application. In this country, in our view, there is no necessity to grant a patent at all. All the protection the Crown needs can be obtained from a pending application.

Hon. Mr. GIBSON: Only if it is assigned to the Crown.

The WITNESS: The United Kingdom only gives the assignment to the Crown. In other words, the difference between the United Kingdom Act and what the institute proposes here is simply this, that in the United Kingdom they actually grant a patent on the secret application. Our suggestion is that having regard to the fundamental difference in the law of this country and the law of the United Kingdom there is no necessity to grant a patent on a secret application.

It is quite enough that there should be a secret application pending in the Patent Office.

By Mr. Lesage:

Q. As in the United States?—A. Yes.

Q. But in the United States, the commissioner of patents may compel the inventor to keep it a secret?—A. We think that is an unwise provision for the same sort of reason as Mr. Barrington advanced. It will discourage these people from filing applications.

By the Chairman:

Q. Are we too much interested in theory? We have the actual practice in Britain to turn to, so are we much interested in the theoretical objections if this bill is actually working there? The Englishmen are no different from Canadians.—A. They have a completely different patent law, sir.

Q. I understand that, but I do not see any force in your argument, that the difference in the Patent Act could have any results at all. What harmful results would follow?

Mr. IRVINE: We have not sufficient information as to how the British Patent Act is working to warrant us coming to any conclusion.

By the Chairman:

Q. If it is working very unsatisfactorily, certainly the patent institute would know about it?—A. Not necessarily.

By Mr. Lasage:

Q. These suggestions were made in 1942, were they?—A. Yes, sir.

Q. They were not accepted at that time?—A. No legislation was passed based on them at the time.

Q. Orders in council were?—A. No, there were no orders in council passed as a result of these recommendations. This was a consideration of possible amendments to the statute.

Q. Your suggestions were not accepted?—A. These were not suggestions made by the institute. No legislation was based on these suggestions. It probably was not necessary during the war because there was the power to keep the application secret. There was a question as to what should be done in peace time when the War Measures Act powers expired.

Perhaps, with your permission, I might try to make my point a little clearer as to the difference between the United Kingdom and the Canadian law.

By the Chairman:

Q. I know the difference between the Canadian and the United Kingdom law in regard to the right to a patent. I take it your argument is, on account of that difference, we are going to encounter difficulty here if we copy the British legislation in regard to instruments of war, but I do not see any force to the argument?—A. It is partly that and partly because of the difference in the Canadian law. In our submission, the granting of a patent on a secret application is quite unnecessary to protect the Crown. The Crown gets all the protection it needs by the secret application without granting any patent.

By Mr. Fleming:

Q. You do not want to see a patent ever kept secret?—A. The only kind of a patent should be Letters Patent, open, that is what a patent is. We quite agree that there must be cases in which inventions have been developed by the Crown which should be kept secret. We quite agree the Crown should have a record in a public office, namely, the Patent Office, so as to prevent spurious

claims by subsequent inventors which might enable the inventors to get a patent and set up a claim to compensation against the Crown. We feel that object can be completely achieved by having a secret application in the office and not granting the secret patent.

Q. Let us turn away, for the moment, from the rights of the inventor and the Department of National Defence, to the rights of a third party. Can you see any prejudice resulting to third parties from the issuance of a patent that is kept secret as distinguished from simply letting the application stand as a secret in the Patent Office?—A. That was the point, sir, which we tried to bring out at the end of the first paragraph of our submission. The only difference between the patent and the application is that the patent gives a monopoly and the application does not. Therefore, if you are going to grant a patent you must be granting it for the purpose of giving that monopoly. This monopoly can only be used against some innocent third party who happens to think of the same idea and starts to develop it commercially. He would then find himself liable in damages for infringement of a patent he never knew existed.

By Mr. Timmins:

Q. At the suit of whom would he be liable for damages?—A. At the suit of the patent owner, presumably the Crown.

Q. That is not likely to happen?—A. If it is not likely to happen, why grant the patent?

Q. Does it not bring some finality to the matter?—A. No, sir, that is our point. The Crown can get all the protection it needs against spurious claims by other inventors by keeping the application secret in the Patent Office.

The CHAIRMAN: No legislation is perfect. Are you content with the bill as originally referred to the committee?

Mr. FLEMING: I am not content with the last subsection.

Mr. LESAGE: I think we had better work on the reprint after all the work we have done.

Mr. FLEMING: I would not want to see anything resembling subsection (13) of 19A in our report to the House.

The WITNESS: If the members of the committee feel that the objections of secret patents, I wonder whether any possible difficulty the granting of of the patent institute are far fetched and there is no harm in the granting secret patents may cause could be overcome by the insertion of an additional subsection in the bill which would free from any claim for infringement of any secret patent a man who did not know the patent existed. I would suggest a clause something along these lines:

> No claim for infringement of any patent for invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid shall be maintained against any person unless it is established that, at the date of the commencement of the alleged infringement, such person knew of such invention or patent or that at such date the Minister of National Defence had waived the benefit of this section with respect to the said invention.

Hon. Mr. GIBSON: What is the case law on that? Is it not required that a person who has infringed a patent must do so knowingly before he is liable for substantial damages?

The WITNESS: No, sir, because all patents are public.

By Mr. Lesage:

Q. How could a tribunal condemn a man to pay damages if there was no *mens rea*?—A. They can. An innocent infringement is just as much an infringement as one with knowledge.

Hon. Mr. GIBSON: There have been no secret patents, but the common law is good enough to take care of that.

The WITNESS: My suggestion is an additional subsection such as this would overcome any difficulty we fear if the committee feels secret patents should be granted.

By Mr. Lesage:

Q. Would you just read that again?—A. "No claim for infringement of any patent for invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid shall be maintained against any person unless it is established that at the date of the commencement of the alleged infringement such person knew of such invention or patent or that at such date the Minister of National Defence had waived the benefit of this section." Perhaps the committee will remember there is a provision which allows the minister to waive the benefit of the section.

By Mr. Jaenicke:

Q. An action for infringement can only be started after the patent has been granted?—A. Yes.

By Mr. Lesage:

Q. "At the commencement of the alleged infringement—" Suppose he commences without any *mens rea*, then he knows about it and continues, what then?—A. That is a possible difficulty. There are difficulties in legislating for it because a man might start out innocently and for the purpose of starting he may have invested considerable capital. If, after he knew the patent existed, he insisted on continuing, it would be an indication of bad faith, but would you say as soon as he found out the patent existed he should scrap his $10,000 worth of equipment?

Hon. Mr. GIBSON: Yes, if it is a secret patent.

The WITNESS: —and render a man liable for infringing a patent he had no means of knowing existed; it does not seem right.

By the Chairman:

Q. You think he should be compensated for his investment?—A. No, simply permitted to go on as if there were not a patent.

Mr. FLEMING: It is now one o'clock and I presume we will be rising, but I was going to make a suggestion which I hope will help us. We have had some formidable objections here this morning, and I am wondering if it would help if Mr. Barrington conferred with Brigadier Morrison before our next meeting. Presumably we are going to do something about this secrecy provision, certainly in the new draft, so that having Brigadier Morrison representing the Department of National Defence meet with these gentlemen, would likely assist us. Major Ready is here now, and such a meeting might enable us to get a little closer to some common ground on this problem.

The CHAIRMAN: I would ask these men to confer. I would suggest that we meet at four o'clock. The pressure of time is becoming very serious insofar as this committee is concerned. We have referred to us a bill on export-import permits and we have been asked to clear this patent bill, if it is humanly possible, today. I am quite willing to meet this afternoon and this evening if the members of the committee are prepared to do so. Our problem is a difficult one, but, obviously, we must make a decision on it. I do not see there is much to be gained by postponing the decision much longer. We have heard the representatives of all the parties who are interested and we will just have to do what we feel is best. I would suggest in the interim, between now and our four o'clock meeting, these gentlemen should confer and do everything they can to reach an agreement. We will meet again at four

o'clock and I would ask the members of the committee to keep this evening clear in order that we can meet at eight-thirty this evening if we do not conclude the bill this afternoon.

At 1.00 o'clock p.m. the committee adjourned to meet again at 4.00 o'clock p.m.

AFTERNOON SESSION

The committee resumed at 4.00 p.m.

The CHAIRMAN: Gentlemen we have a quorum if you would care to start. We have one more witness, gentlemen, whom we did not have time to hear this morning. Shall we call him now?

Mr. A. J. R. Lanoue, Northern Electric Co., Limited, called:

The WITNESS: Mr. Chairman and gentlemen, I am a patent attorney for the Northern Electric Company and have been for a good many years. I have been in charge of the patent department for the last twenty years, approximately, doing all the company's patent work.

In hearing the comments before the committee, it occurred to me if we gave you some concrete examples of what we are trying to convey, it would help you. The chairman has given me an opportunity of trying it. I will take one example: Edison, after developing his lamp found a defect in it. I forget how he did it, but then the next man who came along was Fleming who added a plate in the lamp. He found the current would only flow one way and would not flow the other. He called this a valve.

Then the next man who came along was DeForest, who added the third element to the lamp and who gave us the key to radio and long distance telephones as we know them today. The other two gentlemen who really did some work in that connection were Arnold and Langmuir. They pumped the valve to a very high vacuum and that was the last step which opened the door to all the different types of tubes which we have to-day.

Up to the commencement of the second war we had a certain type of vacuum tube. These illustrations show the chain of inventions on which you base all the inventions which come afterwards. At the beginning of the second war we were faced with this radar problem. That is, the scientists were trying to find a means of detecting objects in the air. This was done to a minor degree, if I am correct, with the ordinary tubes as we know them, that is, the glass tubes. Then, the research was pressed and out of it developed what we consider the heart of the radar system, that is, these tubes here. These were developed during the war. We manufactured them in our plant and they were kept secret. Even I was not allowed to go in and look at them, even though I was the patent attorney and I was handling all the secret inventions; I kept them in my safe before they went to the Patent Office.

Now, the next thing which was developed during the war with these radar tubes or magnetrons, as we call them, was a microwave radio system, portable, for the army. By means of this, you could communicate on a line of sight as far as you could see. It has two antennae, side by side, which were focussed, and you keep your conversation going from there to there. You could put another one beside it with the same wavelength and it would do the same thing. That development, which came out of the war, is basic. This basic idea is going to be incorporated in the radio relay system which the Bell System is putting up between New York and Boston. The frequency range of this system is large enough to take television on this channel and the Bell System is trying it out to

see if it is better than the coaxial cable which we have today, or if it will work in with the coaxial cable or if it will work well enough to be put up in isolated areas where it is not possible to put up wire lines. Now, that was one of the secret inventions which we have just obtained permission, if I remember correctly, from the United States Patent Office, to file in Canada. This is one difficulty. A work, such as that, as I understand it, would fall within the definition of munitions and the director of the department could make this secret. If he does, we cannot use this development in the commercial art.

Personally, I would never undertake to sit on a committee to judge whether an invention was more important from the munition standpoint or from the standpoint of the country as a whole. I might add this; in my younger days, I thought I knew quite a bit and I thought the taking out of a patent on an invention for the carrier telephone system was nebulous, that we would never get a line from Montreal to Vancouver. I said, "Well, we will leave it," and within eight months the different telephone companies got together and put it through. I lost some of my inventions. That is the situation you are up against every day in the week when you are dealing with inventions.

Another little thing I might add was a development by the Western Electric. This company developed a very high speed camera which took pictures at the rate of three to four thousand per second. The war department did not find that fast enough, as I understand it, so the department developed one with a higher speed than that using 35 millimetre film. This camera was so fast it would take a picture of a rocket going out of an aeroplane at 800 miles an hour. The department used this for testing purposes in finding out how a rocket operates when it leaves the muzzle and what it does after it leaves the muzzle. In peace time scientists use such a camera to take pictures of propellers and what they do underwater. Scientists use those cameras to try and improve the propellers and to see how they are going to work.

This Fastex camera, as we call it, is being sold in the United States to be used for research purposes. Is it an article or munition of war? I do not know. As I see it your definition is so broad it takes in everything.

By Mr. Fleming:

Q. Which definition do you mean?—A. The one which is in the bill.

Q. Which version? We have had several.—A. All the versions I have seen so far. I will agree I have not studied them very thoroughly. My difficulty is to appreciate the rules. I want to live within the rules; that is why I am trying to emphasize the difficulties I find in trying to live within the rules. If we could define munitions in such a way that it would mean cannon or ships or aeroplanes of a military nature, it would help.

I might emphasize that point a little more. If that were done, I might say "all right, I understand what you want," but when you say, "munitions of war", it could apply to all this material which goes into the making of raincoats for the soldiers and everything else. To my mind, those are munitions of war and I cannot see any other way out of it.

By the Chairman:

Q. Would you be content with the actual wording of the bill as it was referred to the committee which reads as follows:

> The inventor of any improvement in instruments or munitions of war . . .?

A. I am still at a loss, sir.

Q. Could you word it any better than that?—A. No, sir, I cannot; that is my difficulty. If I could do so I would be only too glad to help you. It is something upon which we just do not see eye to eye. We want to live within

the rules. If we can understand each other, it will be all right, but my difficulty is if we place that in the hands of the minister he, being human like all of us, is likely to err. As I said before, I would not want to be in the minister's shoes in applying that section because he is going to have some terrible headaches.

Q. Can you think of any better wording than "instruments or munitions of war"?—A. Not without a great deal of thought, sir. I have been thinking this over for a week and a half, in fact, ever since the bill came out. I am not a very good draftsman at the best of times. I might say this—here, for instance is a device to shoot rockets out of a tank which holds this contraption which shoots out the rockets. It sends them out in salvos or one after the other or in twos or fours. All it is, when you look at it, is a telephone switch wired in a special way to do this job. If I was the munitions minister I would say, "All right, don't print that particular thing. I don't want to publish it." The rest of the stuff is standard and you can use that in your business or anywhere else. I can understand that.

Then, there is this other device that we have which, to my recollection, is called the M9 directive. It was used for directing the anti-aircraft guns during the war. Now, this thing has a marvellous brain in that it has a computor in there which takes all the angles you shoot at it and sights the gun so that the shell comes out of the gun and reaches the place at the designated time the aeroplane will reach it. With that device I would say, "Now, I do not want to publish anything on that." But, in that device there is this computor which was developed to my recollection before the war and which is being used for calculations in some of these mathematical calculators by means of which you put your question on a tape, put it through the printer and come back tomorrow morning and your answer is there. Now, I would say of this particular device, "I do not want you to give any of the details." How you would word this in your Act, I do not know.

By Mr. Marquis:

Q. May I ask the witness a question? Do you admit that the choice of inventions to be used in the war is a matter of public interest?—A. Yes, sure.

Q. If it is a matter of public interest, who is entitled to make the choice? Is it the government as represented by the minister or the inventor?—A. I am not in a position to answer that. I do not think anybody could.

By Mr. Hackett:

Q. We are trying to enact a law.—A. I appreciate that and I will do all I can for you. So far as I am concerned I would say, "Yes, you can have anything I have got." You can have my shirt if you want it. However, I want to play fair. I am not going to put everything in the pot and get nothing out of it. In other words, if, from a commercial standpoint, I can go out and put out this telephone system, put some work into it and get some money out of it, I do not want to give up that opportunity.

By Mr. Lesage:

Q. Could I ask the witness what he would think of the following suggestion which was given to me by Dr. Ollivier?

> The inventor of any invention of or of improvement in instruments or munitions of war which could be used only as instruments or munitions of war shall, if so required . . . "

A. Well, let us give that some study. My offhand impression is that is more along the lines I have been thinking.

Q. That is my suggestion?—A. Whether it might be adopted is another matter.

Mr. JAENICKE: It still leaves the matter to the discretion of the minister.

Mr. LESAGE: Yes.

By Mr. Jaenicke:

Q. Have you not any faith in our minister? He is not going to make something secret which is of some use commercially.—A. I would prefer to have one of our chemical men answer that question. I think that this gentleman here was talking about that particular thing before we met, about your bacteriological processes that you had in mind. That is one of the things that could be done, one of the ways in which it could be applied. Which is the best? That is the question in my mind. I would prefer some gentleman in the chemical field to answer that one. I am not qualified.

By the Chairman:

Q. You know how you have been treated by the departmental officers during the war. In the light of that treatment would you be willing as representing your company to give it a trial on the words that I read to you a few moments ago; and then if you found you were badly harmed you could go back to parliament?—A. I would not want to go through this again. I would like to make sure of the problem now. I am afraid if I came back you would say, it is too bad but here is what you have.

Q. You cannot make any suggestion for the improvement of the wording there?—A. How about something like this, gentlemen. We should at least try to limit it to something on which we may see eye to eye, in other words, I am not trying to be obstructive, I'm trying to find something for you to work on; but, as I say, I cannot do it. Maybe some of our other minds can get working on it.

Q. Now, the department already have many of these patents on which you are working. Have you had any unfair deals, deals which you would consider to be unfair to you?—A. Not as far as I am concerned, because we have had very few. We have had several which were American inventions which the United States government allowed to be barred in Canada as secret, and until they remove the secrecy the government here is also bound by it.

Mr. STEWART: Can the commissioner give us some idea as to how many patents of invention discovered by Canadians were filed by Canadians during the war which were declared to be secret?

Mr. MITCHELL: Relatively few. I could not give you the number, but they were relatively few.

Mr. STEWART: We might be wasting a lot of time here on inventions which might not come along for another ten years or so.

Mr. HACKETT: Could you not give a statement to Mr. Stewart showing the number of inventions registered by people other than Canadians?

Mr. STEWART: That has nothing to do with this, surely.

Mr. MITCHELL: I can say that 99 per cent plus emanated from the United States and Great Britain.

Mr. STEWART: Yes.

Mr. JAENICKE: You told us that this morning.

Mr. MITCHELL: Yes.

By Mr. Lesage:

Q. Would the chairman ask the witness what he thinks about, "the inventor of any invention or of any improvement or improvements in any instrument or munition of war shall when the Minister of National Defence believes that such invention or improvement is essential and should be used only for purposes of national defence—"

The WITNESS: That may be better from my standpoint, but not very.

Mr. HACKETT: Does that not change the entire sentence?

Mr. LESAGE: I do not think it does.

Mr. HACKETT: The one that I have here does not read that way.

Hon. Mr. GIBSON: You have the old one. You had better get a new copy.

Mr. LESAGE: I was reading from the new draft.

Mr. HACKETT: I am sorry. I have the old copy.

Mr. LESAGE: I think this amendment would cover a lot of the objections that we have heard from the witnesses that we have had here.

Mr. GIBSON: Would it not follow, only if required by the Minister of National Defence; he would not require it unless he considered it necessary?

Mr. LESAGE: Well, they say it is at the discretion of the Minister of National Defence. That is too broad. This amendment would limit it to cases of essential national defence.

Mr. MARQUIS: But he has to use his own discretion.

Mr. LESAGE: That is right, but we will limit his discretion to cases that he deems essential for use only for purposes of national defence; exactly as it is said in the United States statute written for the same purpose.

Mr. JAENICKE: You are talking about the Minister of National Defence. Since he is here we would like to hear from him.

Mr. FLEMING: Has the witness completed his presentation?

By Mr. Timmins:

Q. In so far as the American Patent Office is concerned, did they not during the war declare certain applications for inventions that came before them secret?—A. Oh, yes, plenty of them. I have one hundred alone of my own, that is of my own Western company.

Q. So there is nothing new in the declaring of applications for patents secret?—A. No.

Q. Then, following that, did they in the American Patent Office grant a patent in respect to secret applications?—A. No, sir.

Q. They did not?—A. No, sir.

Q. What happened to them?—A. They prosecuted the application to the time of allowance and then withheld it from publication.

Q. What happens to the applicant for a patent; does he receive compensation under the American Act?—A. That is my understanding.

Mr. LESAGE: That was all discussed this morning.

By Mr. Timmins:

Q. Coming back to the principles of the Canadian Act that we have had here, we are talking about the secret patent here in this Act?—A. Yes.

Q. What is your main objection to that?—A. The designation.

Q. The designation; in other words that something may be desirable for commercial purposes to-day and to-morrow it may be taken over for military use?—A. Or vice versa.

Q. Yes; and you say you cannot answer that question?—A. No, sir; unless they can find a definition. That is my difficulty.

Q. Just following that one step further; under this Act, compensation is provided where a patent is secret?—A. Yes.

Q. That follows the American Act?—A. But in a different way.

Q. But there is compensation?—A. There is compensation.

Q. And if you are not satisfied you can take an appeal?—A. Yes.

Q. And you as a patent attorney would be satisfied about that?—A. Oh, yes, if you give me an appeal.

Q. Then, coming to England—the commissioner has prepared this for me and I thought it might be helpful for him to get the various categories—in

England they could also during the war declare certain applications for patent secret?—A. Yes, sir.

Q. And according to the minister's advice there a patent could be granted?—A. Yes, sir.

Q. So that is the very thing we are talking about here for the Canadian Act?—A. But under a different law.

Q. But we figured this section— —A. The laws of England, the United States and Canada vary.

Q. I see; but at any rate they do grant a secret patent in England?—A. Yes, sir.

Q. And they go further and if it is something they are interested in the minister may grant compensation?—A. Yes.

Q. So we are really travelling along in exactly the same way?—A. That part is all right.

Q. So that we come back to the one thing?—A. Yes.

Q. Whether it is a munition of war or whether it is to be used in ordinary commercial use?—A. Yes.

Mr. LESAGE: That is the only point under discussion.

By Mr. Fleming:

Q. Predicating your position on this bill on the power of expropriation given in this latest draft; we discussed this morning eliminating that and going back to the original version?—A. That is all right with us.

Q. And I take it your probelm is in defining instruments and munitions of war?—A. If it is permissive I can go to the commissioner and discuss it with him. If he says the invention is one that he figures is a munition of war—

Q. Your objection is that we simply should put it on the basis of the original version of this section?—A. Yes, sir.

Q. Let me ask you one other question. It has been suggested Mr. Robinson's section, the original 19(*a*), is not complete in itself. We have added here a section which reads as follows:—

> (12*a*) No claim for the infringement of any patent for an invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid shall be maintained against any person unless it is established that, at the date of the commencement of the alleged infringement, such person knew that such invention was patented or that, at such date, the Minister of National Defence had waived the benefit of this section with respect to such invention.

What is your opinion of that?—A. Perfectly satisfactory to me.

Q. Do you think it is satisfactory?—A. Yes.

By Mr. Lesage:

Q. You think it is?—A. Yes, sir. Under our law we have only until the application becomes a patent. I can manufacture and sell it; I can make thousands of it. After the patent issues, I can still sell it. And now, you give a secret patent. There is that blank wall against me. I do not know what it is.

Q. What about the rights for royalty, and the rights of the original inventor?—A. Yes; apparently he has a patent and I will pay a royalty according to the courts, providing the courts say I have infringed his patent. I'd rather say: I'll pay you five per cent or I'll quit.

By the Chairman:

Q. Would you not be safer if you left it to the court to develop case law under the new conditions rather than to try legislation to attempt to meet these things before they develop?—A. What I think you have in mind there is to prevent going to the courts. If we have to go to court to decide questions

of law it is going to be mighty expensive. I know the lawyers would be pleased. I am not flattering myself, but I have to pay these bills. I know the lawyers will be glad. They will say, we will go before a judge and have him decide this question. It seems to me that if we can meet this point by legislation we will be all set.

Mr. FLEMING: I think this clarifies the position of this witness. I do not want to interrupt any procedure about suggesting calling the Minister of National Defence, but I think it would be helpful to us to have a statement by the commissioner at this stage as to his view on the proposed addition of 12(*a*) to the original section 19(*a*).

The CHAIRMAN: While the minister is studying that Mr. Jane has something further he wanted to put before the committee. Would it not be well to recall him now and clean up that tag-end?

Dr. R. S. Jane, recalled:

Mr. Chairman, my remarks this morning were confined almost entirely to subsection (1). I would like to say now that the Canadian Manufacturers Association withdraws its objection if the subsection is left in its original form. There is one remark which I would like to draw to your attention and it is this; the object of this section as I understand it is to bring inventions useful in war to the attention of the Department of National Defence. It is my opinion, and I think of the Canadian Manufacturers Association, that the best means of doing that is to create in the inventors of Canada, whether they be independent or working for a company, the maximum incentive to bring such inventions to the Department of National Defence. I maintain that the section as it now stands would have just the opposite effect and would keep inventors away from the Department of National Defence.

There is one other part I would like to bring to your attention, speaking for my own company as director of research; I am seriously concerned with the effect of this bill, and I think the results will be that money that is now being made available for research will gradually dry up.

As this research work that we are doing matures to inventions we will be afraid that they will be taken up and confiscated by the Department of National Defence. There are one or two other points, but I think they have been adequately dealt with by Mr. Barrington and Mr. Lanoue.

By Mr. Fleming:

Q. May I ask if you have any opinion to express on the proposed addition of 12A to the original 19A?—A. No, I have left that entirely to the patent people.

Mr. LESAGE: If I may say so, Mr. Fleming, on account of the objection which I took this morning to this addition because a manufacturer might learn about a secret patent after the commencement of his operations, would it be possible to strike out the following words, "At the date of the commencement of the alleged infringement?" Did Mr. Robinson draft this?

Mr. FLEMING: It is Mr. Robinson's draft.

Mr. LESAGE: What do you think of it?

Mr. FRASER: You would have to strike out "at such date" also, would you not?

Mr. LESAGE: Yes, "at such date".

Mr. FRASER: Naturally you would have to strike that out.

Mr. TIMMINS: Are we going to hear what the Commissioner has to say about this clause?

The CHAIRMAN: He is thinking it over.

Mr. MITCHELL: Mr. Chairman, my objection to 12A is that it is not in keeping with section 56 of the Act. Under section 56 if a person does not know there is a patent he goes on manufacturing, but as soon as he is notified there is a patent he stops manufacturing. The same thing should apply to 12A. As soon as he is notified there is a patent he should stop manufacturing. It is not enough to say there is no claim for infringement. It should also contain a clause to say the same as section 56 does, "Now that I have been notified there is a patent I will stop manufacturing and I will not manufacture any more."

Mr. LESAGE: It will be covered by section 56. You do not have to put it there. Section 56 will apply.

Mr. MITCHELL: Well—

The CHAIRMAN: I think you are much safer to leave it as it is and let the case law develop on it. It is almost impossible to provide in advance for these different points and contingencies that will crop up. If you provide for one and do not provide for another then you may interfere with the level handed justice that flows under case law.

Mr. MARQUIS: If it is covered by section 56 why do you need a new subsection?

The CHAIRMAN: Shall we hear from the Minister of National Defence?

Mr. IRVINE: On what? What is the subject of the minister's remarks?

The CHAIRMAN: I take it that the minister is rather interested in these secret provisions.

Mr. IRVINE: I should like him to say something about the secret feature of this bill, whether it is possible to keep anything secret, whether it is advantageous or advisable to try to keep anything secret, whether it would not be better to disclose everything that is discovered to every country in the world, particularly if they are willing to reciprocate with us, and whether trying to keep secrets even under our Patent Act will not interfere with efforts to make peace that are being carried on by international organizations.

Mr. LESAGE: We will have to sit in camera again if the minister is going to go into that question.

Hon. Mr. CLAXTON: Mr. Chairman and gentlemen: I think my presence here is really designed to enable me to follow the course of your discussion on this bill so that I can discuss it with the officers of the department rather than from any intention of mine to endeavour to inform you on our attitude or our position. I am primarily here as a learner rather than in any reverse capacity.

Mr. IRVINE: You came to the right place this time.

Hon. Mr. CLAXTON: I must say I have followed the discussion with great interest both from your proceedings and this afternoon. The section which concerns the Department of National Defence is the proposed section 19A. On that I would call to your attention as no doubt you must have been informed before—and it is quite evident—that in war many inventions for war purposes were not subject to any application for patent at all. Further, in war the government was given powers necessary to look after the safety of the state with regard to patents and pretty well everything else either under the Defence of Canada regulations or some other provisions.

So that this provision is, as I understand it, designed not only to meet the situation in the possible event of another war but also in order to ensure that, as far as possible, the state is protected in time of peace. We are all aware of the fact that very useful inventions are made in peacetime which may be of use in connection with instruments or munitions of war.

Section 19A, as it appears in the original draft, was prepared, I think, by the Commissioner of Patents.

Hon. Mr. GIBSON: Copied from the English.

Hon. Mr. CLAXTON: No doubt in consultation with others, and was based on the English Act. It was only after it appeared that my attention was drawn to it. I should like first to say a word on whether or not there is anything to be said for there being compulsory expropriation powers such as are suggested in the alternative draft that you have had before you. It has been suggested to me by officers of the department that the provision in the original draft, 19A (1), "The inventor of any improvement in instruments or munitions of war may assign to the Minister of National Defence", and so on, "all the benefit of the invention" really adds nothing either to the rights of the inventor or the powers of the minister. A voluntary assignment could be made without any such provision, but there is, that notwithstanding, an advantage in the draft with the provisions for secrecy which follow in subsections 3 and following. So while, as I understand it, 19 A, subsection (1), as proposed in the draft bill, does not add anything to the rights of the inventor or the capacity of the minister to accept an assignment, it does make some useful provisions with regard to secrecy.

With regard to the alternative draft that has been put before you it would obligate the inventor of any improvement in munitions of war to assign the patent if required by the minister. It gives the minister a right to exercise that power even against the wish of the inventor. I cannot conceive of the minister having to exercise such a power in peacetime except in very rare circumstances. First of all I cannot conceive of his having to do it in the case of the ordinary patriotic citizen who would be prepared to deal with the matter in a perfectly fair way in the interests of his country, but there might be a case where an important invention was made which the inventor was unwilling to assign, and which it might be very much in the national interest that he should not assign to any one else. It is on account of that possibility, and to provide for that contingency, that I understand this alternative draft has been put forward.

Speaking largely on the advice I have received,—because I think you appreciate that I have had no experience whatever with patents of inventions for war purposes,—it would seem to me that there would be a very considerable advantage in having the compulsory feature left in, provided some safeguards could be introduced to prevent its being abused in any way.

I really have nothing more to add on that, that is, that I am advised that it is quite conceivable that inventions may be made which it would be in the interests of Canada not to have made public, and that if that is so, and one is properly advised by competent officials, it would probably be the feeling of any Minister of National Defence that the assignment should be made, proper compensation should be paid, and the patent kept secret for as long as was considered desirable. However, I would add again that I am informed that the likelihood of there being many such cases or of such power being exercised, except in a rather unusual case where the matter is one of very definite and material advantage to the country, would be very small.

As I say, I have nothing further to add on that point. With regard to one other matter which has been raised, the definition of "munitions of war" as defined in the Official Secrets Act, I have looked at that and I must say I have a good deal of sympathy with the last witness from the Bell Telephone Company. The language does seem to go pretty far. If it were desired by the committee to keep in any compulsory feature I would hope that some language might be adopted following the lines of the suggestion made by Mr. Lesage and others which would be far more specific, and really limit the power to be exercised by the Minister to matters which were of definite and specific usefulness in connection with an instrument of war.

With regard to the question raised by the hon. member for Cariboo that is a pretty large order. That is the kind of thing they are discussing in another place in New York pretty actively. I do not think we are prepared here to have any final discussion of it. I think there was one qualifying phrase at the end of his remarks to which I would adhere for the time being at least. That is that if it could be ensured that there was full publicity for all scientific inventions on a completely reciprocal basis then I think there would be a good deal to be said for his case, but that is not possible at the present time. We may be working towards it but until we arrive closer towards it, then, whether we like it or not, I think it is necessary that nations which have some pride and self respect should be prepared to take such steps are are necessary to see to their national defence.

Mr. HACKETT: Has it not been the experience of the Department in the past that inventors have invariably gone to the Department with a view to getting the Department to adopt and, if possible, purchase their inventions?

Hon. Mr. CLAXTON: I think that is so in the great majority of cases.

Mr. HACKETT: I think that is the general rule, but I recall several cases which achieved some prominence after the last war where men had attempted time and again to dispose of a patent to our War Office and having failed sold it to Germany, and it came out through claims against the custodian at a later date. To give any value to the suggestion that this extraordinary power of expropriation will keep inventors from disclosing their invention to our departmental officials, that may be paying too high a price for this arbitrary power however carefully it may be exercised; and we must not forget that when war does come—

Hon. Mr. CLAXTON: If war does come.

Mr. HACKETT: If war does come as the minister puts it—we all pray that he may be right—the extraordinary powers which vest in government at that time would enable it to exercise powers of expropriation that it does not enjoy in peace time. Apparently, in Britain they have not as yet felt that they require these extraordinary powers, and if there is any chance of it having the effect of preventing the inventor from taking out a patent here and giving to Canada the benefit of his invention in time of war it would seem to me that the balance of convenience and the balance of prudence would indicate that the first draft which I understand is a copy of the British draft, will persist and prevail.

Mr. FRASER: I should like to ask the Minister if he does not think that this first clause here all depends upon the loyalty of the inventor, and by making it compulsory you may bring about a certain result: you know yourself, perhaps, that if you are told you have to do a thing, many times you will fight against doing it; and perhaps by making it compulsory you are making it so that the inventor will not go to the Minister of National Defence.

Hon. Mr. CLAXTON: I am not an expert in patents, but I would think that while that may be generally so, Mr. Mitchell, I imagine, could conceive of some situation where the man's patriotism or loyalty is not concerned where it is largely a question of bargaining to get the best possible consideration.

Mr. FRASER: Yes, but the same inventor could say: "They say I have to let the Minister of National Defence take this patent, but I will be darned if I will do that; I am going to have it patented in every country in the world." And he can do that. He does not have to go to the minister at all. It all depends on loyalty. He will object to being pushed into that position.

Mr. TIMMINS: Could I ask a question of the commissioner? Having regard to the fact that the Canadian Act seeks to certify an application for a patent as a secret patent, and having regard to the fact that the British Act provides that an application there may be held in secrecy, and having regard to the fact that the United States Act provides that an application there may be made secret—

Mr. LESAGE: In the United States it may be compulsory.

Mr. TIMMINS: That is it, yes. That is the mandatory section. It goes across the three Acts. That is the point where the inventor cannot go any further because it is declared a secret. We have not gone very much further than that when we put in subsection (1) that the inventor shall if required by the minister—we are not going very much further; we are following the trend, it seems to me.

Mr. FLEMING: May I ask if the minister or the commissioner can answer my question; it may be more directly within the knowledge of the commissioner? As regards the remark made by the Minister of National Defence, between the outbreak of war and say up to the present time, how many applications were made for patents of which the Minister of National Defence sought an assignment and was refused?

Mr. MITCHELL: I do not know of any.

Mr. FLEMING: And do you know of cases where a request was made for an assignment and the assignment was negotiated?

Mr. MITCHELL: No, I do not know of any either.

Mr. FLEMING: In other words, the Minister has not taken the assignment voluntarily or otherwise of any patent?

Mr. MITCHELL: I would have to go through each application singly and look at the assignments to find out what happened in each case, and, as there were some 4,000 or 5,000 secret applications, that is an impossibility. Now, these applications are passing into the office at the rate of 15 or so a week. I have never come across an assignment yet where the inventor was asked for it. There were some assignments made by air force officers to the Crown but they were made by these officers voluntarily and under certain particular conditions.

Mr. FLEMING: Well, you may not be sure about the numbers of voluntary assignments—

Mr. MITCHELL: I think I only know about Air Marshal Ferrier who assigned to the Crown probably one or two inventions, but that was a voluntary act on his part.

Mr. FLEMING: There have been no cases, though, where assignment was refused to the Minister of National Defence?

Mr. MITCHELL: Not that I know of.

Mr. FLEMING: Perhaps the problem does not look quite so serious then.

Mr. MITCHELL: There is a P.C. 9750 where servants and officers of the Crown did assign—assignments received from officers of the Crown and servants of the Crown—but that is an entirely different thing. You are taking in the matter of master and servant, where it may be that a contract of employment or some other regulation in the Department of National Defence may have controlled that. That is not the type of thing to which you refer.

The CHAIRMAN: Now, gentlemen, the Minister of National Defence has indicated to me that he would prefer to have an opportunity of discussing this matter fully with the officials in this department; and I would suggest that we clear the bill as to all the other clauses and reserve this section of the bill. We will call a special meeting later in the week to deal with that. I would hope that we could clear all the other provisions of the bill this afternoon which would mean that we could start on the Export and Import permits Bill on Thursday morning. Is that satisfactory?

Mr. JAENICKE: I do not know why we cannot carry section 19.

The CHAIRMAN: The minister has indicated he would like to confer with his officials.

Mr. MARQUIS: But there is no objection to accepting the bill as it is now.

Hon. Mr. CLAXTON: In draft?

Mr. MARQUIS: I think the members would be willing to adopt the bill.

Mr. FLEMING: Do you mean the original section?

Mr. MARQUIS: No, the new one; the one you have suggested.

Mr. FLEMING: Mr. Chairman, I have something to say about that.

The CHAIRMAN: Now, we have plenty of work to do without this. If the minister is not ready to express a final opinion now and he has asked for a slight delay in order to consult with the officials in his department, why not let that section stand? All those in favour of allowing section 4 to stand?

Carried.

Now, coming back to the bill, section 2, which in the absence of the minister was left over, the committee indicated it would approve of the section without any salary ceiling. The minister is content to accept that. Shall the section carry?

Mr. FLEMING: No. I come back to the point I made before in asking that this stand over. I would like some assurance from the minister as to the steps that would be taken under this amended power in this section if the amendment carries. We have not any assurance at all.

Hon. Mr. GIBSON: What is intended will be that the salary will be set at $8,000 in line with the recommendation of the Gordon report. Of course, it will have to be voted by parliament every year anyway.

Mr. LESAGE: That does not show in the estimates?

Hon. Mr. GIBSON: It would.

Mr. IRVINE: Will it be $8,000?

Hon. Mr. GIBSON: I have got to get the order in council passed, but all the other recommendations in the Gordon report, I think, have been accepted—recommendations in the way of salaries that were recommended; I think they have all been proceeded with, except those that are statutory.

Mr. HACKETT: Could the minister say how salaries of this kind are generally determined? Is it in this way?

Hon. Mr. GIBSON: No, it is not very often done in this way. I do not think they are in the Act. I think the Civil Service Commission salaries are included in the Civil Service Act.

Mr. TIMMINS: Carried.

Mr. LESAGE: May we have the assurance of the minister that the commissioner will receive $8,000?

Hon. Mr. GIBSON: I am recommending it to the council.

The CHAIRMAN: All the minister can do is assure you it has his blessing.

Mr. LESAGE: May we have the assurance of the minister he will do his utmost in his representations to the Civil Service Commission to raise the salary of the assistant commissioner?

Hon. Mr. GIBSON: Of what?

Mr. LESAGE: Of patents.

Hon. Mr. GIBSON: That has to be recommended to the Civil Service Commission.

Mr. LESAGE: Could we have the assurance of the minister he will make such representations, because I believe the salary of the assistant commissioner is not fair.

Hon. Mr. GIBSON: I do not even know what it is.

Mr. TIMMINS: We are out of order.

Mr. LESAGE: Even if I am out of order, it is an important question.

The CHAIRMAN: I am going to declare section 2 of the bill carried.

Now, gentlemen, we have two distinct matters still to clean up. The first is the question of unfinished business as of March 31. This has been discussed and agreed upon, I understand, by the commissioner, so I will ask him to indicate to the committee what he has in mind. While this will not be an added section to the Act, it will be an added section to the present bill in order to take care of unfinished business as of March 31.

Mr. MITCHELL: Mr. Chairman, after we obtained the opinion of the Department of Justice in connection with the emergency rules and regulations which will terminate on March 31, of this year, it cast grave doubts as to whether the office will be able to handle any applications which come in during the last week of March and to which attention could not be given before March 31. Now, if those applications cannot receive attention under the emergency rules and regulations, since they have passed out of the picture, there should be some provision made in the present bill to permit all those cases to be taken up at the earliest possible moment and be signed as of the 31st of March so that they will have proper legal effect. It is for this reason this amendment is submitted.

The CHAIRMAN: Would you please read the text of the section?

Mr. MITCHELL: The text is this:—

PROPOSED SECTION 22 OF BILL No. 16

22. (1) On request made to him not later than the thirty-first day of March, 1947, the commissioner may, subject to such conditions, if any, as he thinks fit to impose, extend to a date not later than the said date, the time limited by or under The Patent Act, 1935, for doing any act where he is satisfied

(*a*) that the doing of the act within the time so limited was prevented by a person's being on active service or by any other circumstances arising from the existence of a state of war which, in the opinion of the commissioner, justify an extension of the time so limited, or

(*b*) that, by reason of circumstances arising from the existence of a state of war, the doing of the act within the time so limited would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest.

(2) an extension under this section of the time for doing any act—

(*a*) may be for any period expiring not later than the thirty-first day of March, 1947, that the commissioner thinks fit, notwithstanding that by or under any enactment in the said Act power is conferred to extend the time for doing that act for a specified period only; and

(*b*) may be granted notwithstanding that that time expired before any application or request for extension was made, or that, by reason of that act not having been done for the reasons set forth in subsection one of this section within that time, the relevant application has ceased or expired, or been treated as abandoned.

The sections are taken from 1 and 2 and paragraphs (*a*) and (*b*) of the first subsection are taken exactly from the wording of the emergency rules and regulations, 1939.

The CHAIRMAN: Mr. Mitchell, who drafted these?

Mr. MITCHELL: Mr. Robinson did, in my presence. This only extends the right to me to act in any case up to the 31st of March, 1947.

The CHAIRMAN: Have you seen it?

Dr. OLLIVIER: No, I have not.

The CHAIRMAN: Has Mr. Varcoe seen it?

Mr. MITCHELL: No, Mr. Varcoe has not seen it. We were going to refer it to Mr. Draper of the Department of Justice to get a ruling on it.

The CHAIRMAN: Is it satisfactory to the committee if this section stands? You now have notice of it, so it might stand until it is referred to the proper legal officers for checking.

It is agreable then that sections 3 and 4 shall stand?

Mr. FLEMING: Three was adopted, Mr. Chairman.

Mr. JAENICKE: I have it noted as passed with amendments.

The CHAIRMAN: That is quite true, but we deleted from section three a subparagraph which must go back in if section 4 is to revert back to the original draft.

Mr. LESAGE: I do not think so, Mr. Chairman, because in the original draft the Governor in Council already had the power to make any rules by subsection (13). More than that, if we go back to the original draft we will have to delete some words in section 13. The Governor in Council may make rules under this section.

The CHAIRMAN: I think we are talking at cross purposes. Section 3 of the bill deals with both 11 and 12. We cannot carry section 3 of the bill until we have disposed of section 4, so both of those sections will require to stand.

Mr. LESAGE: It is there I do not agree with you because we deleted from section 12 the powers given to the Governor in Council to make some rules concerning secrecy. Even if we have not changed section 4 of the bill, we would have to delete it anyway, because it is already in the original draft and the reprint.

The CHAIRMAN: Show me where it is in the reprint?

Mr. LESAGE: Subsection (14) of 19A.

Mr. FLEMING: It is all there and the language is identical with section 14.

Mr. IRVINE: It cannot do any harm to let it stand and then it would stop all this discussion.

Mr. FLEMING: I would oppose the leaving of that subsection in the new section 12 for this reason: it was all passed before, but if you want to discuss it, the power to make regulations for ensuring secrecy of patents in the interests of the safety of the state under section 12 goes much further than the breadth of the language in section 19A. Section 19A deals only with those patents which are assigned to the minister and you have got all the power required to ensure secrecy of those applications, that is those assigned to the minister, already in the section. You do not need this at all, and it goes much further.

The CHAIRMAN: I find it difficult enough to keep up with the questions of one member at a time. Mr. Lesage stated subsection (14) of the bill took care of this problem. I cannot find any subsection (14) in the original draft.

Mr. LESAGE: In the original draft, it was subsection (13). It goes much farther and perhaps we will need to modify it, but it is there.

The CHAIRMAN: Well now, just wait a moment. Subsection (13) says,

> The Governor in Council may make rules under this section for the purpose of ensuring secrecy—

As I read the section, that only arises where subsection (3) comes into play.

> Where any such assignment has been made the Minister of National Defence may at any time before the publication of the patent granted, certify to the commissioner of patents that, in the interests of the public service—

and so on. Is that not correct?

Mr. LESAGE: Yes.

The CHAIRMAN: Then, subsection (3) is restricted to all cases where a voluntary assignment has been made. You will find it is so restricted.

Mr. LESAGE: All right, Mr. Chairman, but if we leave section 19A as it is, there is nothing which prevents the committee replacing—even if we go back to the original print, there is nothing which prevents us from replacing subsection (13) of the original draft by subsection (14) of the reprint. It will be complete.

The CHAIRMAN: I think I fully understand your question now. What is your point, Mr. Fleming?

Mr. FLEMING: My point is the same, Mr. Chairman. Insofar as it may be necessary to pass regulations or make rules for ensuring secrecy, under section 19A, the power is there, both in subsection (13) of the original version and subsection (14) of the reprint.

The CHAIRMAN: I cannot find the power in section 19A. I think the power as to secrecy is restricted to patents which are voluntarily assigned.

Mr. FLEMING: And it should be so restricted.

The CHAIRMAN: No, I do not think so.

Mr. FLEMING: That is the reason that subsection (12) (c) in the original bill is objectionable because it gives the power to make regulations with respect to secrecy going beyond the substantive terms of the bill.

The CHAIRMAN: Yes, but if the regulations as to secrecy are restricted to patents which are voluntarily assigned, is your bill worth anything at all?

Mr. LESAGE: I cannot see that they are restricted in that way.

The CHAIRMAN: If you will take the time to read subsection (3) in section 19A and the original draft, you will see what I mean. It is restricted purely to voluntary assignment.

Mr. LESAGE: But what is there to prevent us, when we come to section 19A, replacing subsection (13) by subsection (14) of the reprint.

The CHAIRMAN: Nothing at all, except this—

Mr. LESAGE: Let us assume it will be done.

The CHAIRMAN: Nothing at all, except this, that the witnesses who have appeared here today have indicated they have not any violent objections to the bill in its present form. If we go ahead and add subsection (14) to step up the powers of the minister with regard to secrecy, it would hardly be a matter of good faith to those men who have more or less given their blessing to this bill in its present form.

Mr. LESAGE: It is quite the contrary; we are restricting the powers of the Governor in Council to make rules if we adopt the phraseology of subsection (14) of the reprint.

The CHAIRMAN: I am quite willing that it should be left on a voluntary basis for the assignment so long as I know, in the back of my head, if any emergent condition arises, the minister has the power to regulate as to secrecy.

Mr. JAENICKE: Then, we should reinstate paragraph (c).

Mr. FLEMING: I am opposed to that as going beyond the substantive provisions of the Act as contemplated in the amendment. Mr. Chairman, subsection (13) of the original bill provides that the Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to patents to which this section applies. I am not going to read the balance of it, because the balance of it, I think, is entirely objectionable. Then, subsection (14) of the reprint provides,

The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the spirit and intent thereof.

The CHAIRMAN: That is quite true, but in the bill from which you are reading we have made provision for compulsory assignment.

Mr. FLEMING: It is just the same provision as you have in the original draft. It is on a purely voluntary basis, Mr. Chairman.

Hon. Mr. GIBSON: But with the voluntary assignment in the original draft we also had section 3 (*c*) and section 12 (*c*) which gave the right to keep a patent secret even though it had not been assigned to the Minister of National Defence.

Mr. FLEMING: I think if there is to be any power given it should be given in specific terms and not introduced in general language empowering the minister to make regulations. If such a power is desirable, I submit it must come under section 19A or some section to be passed under the general heading of secret patents which precedes 19A. It should not be left simply on the basis of empowering the Governor in Council to make regulations which are, in effect, legislation. It is that very thing we want to get away from now.

Hon. Mr. GIBSON: You are quite right.

Mr. FLEMING: If there is need for any such power, then let us have it in a substantive provision in the Act and not put on the basis of empowering the minister to make regulations.

Hon. Mr. GIBSON: We are empowered to do that under section 19B where we have foreign commitments to maintain secret patents which we have received from Britain and the United States.

The CHAIRMAN: Is there any reason why this whole discussion should not stand until we hear from the Minister of National Defence?

Hon. Mr. GIBSON: As a matter of fact, I would like Hon. Mr. Howe to give his opinion upon the thing, because I do not think he is particularly impressed with the necessity for having secret patents for individual applications that are not taken over by the government.

Mr. FLEMING: I think we had the full answer a few minutes ago from the commissioner when he said that nobody had ever refused to assign to the minister.

Mr. MITCHELL: I said I did not know of any.

The CHAIRMAN: We have a number of amendments with respect to which Mr. Jaenicke has given the committee notice. I think we should deal with those now.

Mr. LESAGE: Mr. Chairman, before Mr. Jaenicke begins, may I ask a question? I understood that when we redrafted the bill we had arranged to put in a section 21. In the reprint which I have before me I see we have only twenty sections. I wonder if one has been left out.

The CHAIRMAN: I can assure you that no section was left out but in the hurry and scramble of redrafting and this and that we apparently got one more number than we needed.

All right, Mr. Jaenicke.

Mr. JAENICKE: All the amendments I am proposing revolve around section 64.

The CHAIRMAN: That is, section 64 of the Patent Act?

Mr. JAENICKE: Yes, section 64 of the Patent Act. That section provides that the commissioner may give notice to any patentee to make certain

returns. My proposed amendment makes it compulsory; that is that the patentee should once a year make certain returns of certain facts. I have added a few other amendments. I may say that I have been prompted to propose these amendments because of the abuses of patents of which we have read and heard; and I think that almost everybody will agree that there are abuses of the Patent Act. Now, I realize that my amendments would entail a lot of work; and since I have drawn up these amendments I have visited the Patent Office and I realized it would be very difficult under present circumstances to put these amendments into effect because there is no space for any filing. These returns would require a large amount of filing space and would also entail further staff being engaged in order to file the returns. Although I think it is a good idea, at the present time it is not practicable. There is one section, however, section 16(*d*) of my proposed amendment which deals with paragraph (*d*) of section 66. I might say that in the copy which I have before me there appears to be a misprint. It reads "Paragraph (*e*)", it should be "Paragraph (*d*)" of section 66 of the said Act—"Paragraph (*d*) of section 66 of the said Act be amended by striking out all the words after the word 'powers' in the third line of the said paragraph and submitting therefor the following:—" The present Act says that the commissioner may order a patent to be revoked; and the principal part of my amendment is that he shall order the patent to be revoked. I would suggest, Mr. Chairman, that as the commissioner of patents is here and as he has read over this amendment, I should like to get at least his opinion with respect to the same and then decide as to what I propose to do.

Mr. MITCHELL: Mr. Jaenicke, do you refer to section 64?

Mr. JAENICKE: I refer to all the amendments, as to what you think about them.

Mr. MITCHELL: All right. In section 64, while I quite agree with the spirit of it, it certainly is unworkable at the present time. It would require about twenty-one more additional staff and a tremendous amount of floor space, and more staff to carry it out. It would mean dealing with 124,000 reports yearly. We only have personnel at the present time to handle about 60,000 pieces of mail and putting an additional 124,000 reports in would involve a tremendous amount of work. I do not think we could undertake it. The spirit of the thing is all right, but it is not practicable under present conditions. If we were right up to date with our work and had sufficient space and staff to handle it I would have no objection in agreeing with that, but at the present moment we are not up to date and we have more applications coming in now than we have ever had before in the history of the Patent Office, and after this bill goes through I anticipate there will be several thousand more coming in.

The CHAIRMAN: I take it from what you said, Mr. Jaenicke, that under the circumstances you are prepared to withdraw your amendments?

Mr. JAENICKE: Except the last one.

Mr. MITCHELL: With regard to (*d*) of 66—

The CHAIRMAN: I understand your amendment to be that the word "may" be struck out and that the word "shall" be inserted at the end of line 3 of subsection (*d*) of 66.

Mr. JAENICKE: No, it goes a little further than that.

Mr. MITCHELL: I think, Mr. Jaenicke, that the change from "may" to "shall" would effect everything you want there. It would then become a compulsory section, make it compulsory to void a patent if the patentee did not live up to the agreement or if the compulsory licence was not fully lived up to with respect either to the righting of a wrong or the abuse of a patent

which had taken place under section 65. I do not think it requires all the words that you have indicated there. I think if you change "may" to "shall" that will effect your purpose.

Mr. JAENICKE: I thought your powers were considerably restricted by those words and that was the reason for my amendment:—

> He shall order the patent to be revoked either forthwith or after such reasonable interval as may be certified in the order:

Those are the new words.

Mr. IRVINE: From where are you reading?

Mr. JAENICKE: From paragraph (*d*) of section 66 of the Act.

Mr. MITCHELL: You will have to give them a reasonable time before you can come along and revoke a patent.

Mr. JAENICKE: My amendment provides for that:—

> He shall order the patent to be revoked either forthwith or after such reasonable interval as may be certified in the order: provided that the commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement or engagement with any other country to which Canada is a party.

Mr. MITCHELL: I think putting in the word "shall" would effect the whole thing, Mr. Jaenicke; I think it would correct the abuse right off.

Mr. JAENICKE: Well, I will be satisfied with that.

Mr. LESAGE: I propose that we do not change it.

Mr. HACKETT: Are we going through the Act again?

The CHAIRMAN: Well, I do not think it changes the meaning at all by changing it from "may" to "shall". I do not see any difference in meaning between "may, if he is satisfied" and "shall, if he is satisfied"; because he does not have to do it unless he is satisfied.

Hon. Mr. GIBSON: No use cluttering up the Act with any more amendments.

Mr. FLEMING: What was the motion then?

The CHAIRMAN: So far as I know, gentlemen, that ends our work for this point.

Mr. FLEMING: Should that be "certified" or "specified"? The only change proposed in the Act is to strike out "may" and substitute "shall"?

The CHAIRMAN: Yes.

Mr. FLEMING: I think there is a misprint in the draft before us.

The CHAIRMAN: All in favour of striking out the word "may" and substituting the word "shall" at the end of the third line in subparagraph (*d*) of section 66, signify.

Carried.

We will meet at eleven o'clock on Thursday with the other bill referred to us. I will give every member notice of the special meeting we are to call to deal with the two sections which stand in the Patent Act.

The committee adjourned at 5.35 o'clock p.m. to meet again on Thursday next, March 13, 1947, at 11.00 o'clock a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 7

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

THURSDAY, MARCH 13, 1947

WITNESSES:

Mr. M. W. Mackenzie, Deputy Minister of Trade and Commerce.
Mr. W. F. Bull, Director of Export Division, Dept. of Trade and Commerce.
Mr. D. Harvey, Director of Import Division, Dept. of Trade and Commerce.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

ORDER OF REFERENCE

THURSDAY, 13th March, 1947.

Ordered,—That the name of Mr. Smith (York North) be substituted for that of Mr. McIlraith on the said Committee.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

84490—1½

MINUTES OF PROCEEDINGS

THURSDAY, March 13, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Black (*Cumberland*), Breithaupt, Cleaver, Fleming, Fraser, Fulton, Gour, Hackett, Hazen, Irvine, Isnor, Jackman, Jaenicke, Lesage, Macdonnell (*Muskoka-Ontario*), Marquis, Michaud, Pinard, Quelch, Rinfret, Sinclair (*Ontario*), Stewart (*Winnipeg-North*), Timmins.

In attendance: Messrs. M. W. Mackenzie, Deputy Minister; W. F. Bull, Director of Export Division; D. Harvey, Director of Import Division, and T. G. Hills, Chief of Export Permit Branch, all of the Department of Trade and Commerce.

The Committee proceeded to the consideration of Bill No. 11, An Act respecting Export and Import Permits.

Mr. Mackenzie was called. He made a statement on the general provisions of the Bill and was questioned.

In the course of Mr. Mackenzie's examination, Mr. Bull and Mr. Harvey answered questions.

A copy of "Dominion of Canada Export Permit Regulations, 1946, with list of commodities for which an export permit is required as of October 1, 1946, and Rules and Information" was distributed to each member of the Committee present.

At 12.55 p.m. witness retired and the Committee adjourned to meet again on Friday, March 14, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
MARCH 13, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. As you are aware the committee is taking up consideration of Bill No. 11 this morning. Mr. Mackenzie, Deputy Minister of the Department of Trade and Commerce, will make a general statement in regard to the need for the bill; and then he will be followed by officials from the department. Mr. Mackenzie:

Mr. M. W. Mackenzie, Deputy Minister, Department of Trade and Commerce, called:

The WITNESS: Mr. Chairman, this bill which deals with both exports and imports is proposed for a period of one year.

Mr. MACDONNELL: Might I interrupt the witness to make a suggestion? Would it help us if the deputy minister would give us, before plunging into the details of this bill, a broad picture of the export-import situation?

The WITNESS: I really intended to try to do that, Mr. Macdonnell.

Mr. MACDONNELL: Yes.

The WITNESS: It is proposed for a period of one year to continue certain controls which were introduced during the war and which were desirable as a necessary part of the whole control mechanism. I think it will be convenient, with the permission of the committee, to deal with it under two classifications, exports and imports. They are both dealt with in this bill, but they are two separate problems really.

Taking first the case of exports, I think you can go back and say that at the beginning, or early in the development, of controls which were brought in during war time; and basically as a result of the stabilization policy it became necessary to impose export controls to ensure that there would not be too great a drain of goods from Canada, thereby denuding the Canadian supply. We had at that time, as you know, a great many different control authorities. There were the controls in the Department of Munitions and Supply; there were the administrators in the Wartime Prices and Trade Board; then the question of subsidies entered the picture involving the Commodity Prices Stabilization Corporation. A great many people were concerned (*a*) to maintain (and develop) adequate supplies in Canada; and, (*b*) to see that when goods were exported domestic subsidies which had been paid to maintain Canadian prices were not paid solely for the benefit of people outside of Canada. An attempt was made wherever practicable to recover subsidies which it was not always possible to do mathematically, because a subsidy might well have been paid at an early stage in production of the raw material, say cotton. The article which was being exported might be in part composed of the product on which the subsidy had been paid. An attempt was made to approximate the amount of the subsidy in exports of that nature; and the export permit system was used in order to recover subsidies where practicable.

By Mr. Macdonnell:

Q. When did that begin?—A. You mean the subsidies?

Q. The controls?—A. I could not give you the exact date; it must have been very early in the war. I think it would be right at the beginning of the war. I might ask Mr. Bull, director of our export division, who is here, if he could answer that for me.

Mr. W. F. BULL (Director, Export Division): They were started in 1939 when controls for arms, munitions and implements of war were going to Spain. Then, on May 5, 1941, the export permit branch was started, and in it were consolidated all the controls, such as those which had existed in the Department of Agriculture and in the other departments of government, such as the Wartime Prices and Trade Board. So that the beginning of the control unit of the Department of Trade and Commerce would be as of the date May 5, 1941.

Mr. BLACK: That would include only specified articles and commodities?

Mr. BULL: That is right.

Mr. BLACK: Have you a list of those commodities?

Mr. BREITHAUPT: Mr. Chairman, do you not think it would be preferable to have Mr. Mackenzie make his statement first and have questions later?

The CHAIRMAN: I think any questions interrupting the presentation of the opening remarks should be confined to very, very general questions.

The WITNESS: Because so many different branches of government and so many different administrators of controls were concerned, it was decided to centralize in one place the issuance of export permits. The effect of that was that the exporter had but one place to go in Ottawa to get an export permit. If that had not been done the exporter would have had to approach an innumerable number of people to get permission. Take for example the case of insulated wire and cable. A big export order for insulated cable would involve say copper; and textiles. On the question of supply of copper in this country it would involve the metals controller; it would also involve the textile or cotton administrator in the case of insulation. It would involve the C.P.S.C. because of the subsidy angle. By centralizing the whole thing in the Department of Trade and Commerce it was possible to establish one office in one place, to which an exporter would apply; and it then became the duty of the export permit branch, which was established for the purpose, to do the necessary clearing with all the administrators involved. As a result of that system the export permit branch of the Department of Trade and Commerce became the centralized office through which export permits were issued, although many decisions either to withhold exports or permit them were essentially the decisions of some other department —the department more particularly concerned. The Department of Trade and Commerce played its part in that regard and did its best to see that such exports as were permitted—were directed to maintaining trade, with a continuing value and to see that historic markets were served.

To give you some indication of the size of the operation, last year, at the end of the fiscal year, March 31, 1946, export permits were required on more than 900 items. Twelve months period before that practically all items were under export control.

By Mr. Macdonnell

Q. How many would that be; I mean roughly?

Mr. BULL: About 1,200, according to this book.

The WITNESS: During that year there were 154,000-odd applications for export permits.

Mr. MICHAUD: That is for the fiscal year ending March 31, 1946?

Mr. BULL: That is right, up to March 31, 1946—154,000.

Mr. FLEMING: That is export only?

The WITNESS: Yes. There were 144,000 in the previous year. I might say that there are still more now. I think they have reached the rate of about 18,000 a month now.

Mr. BULL: That is right.

By Mr. Breithaupt:

Q. How many of those requests were granted, Mr. Mackenzie?—A. Ninety percent. I might say in connection with the granting of these permits that as the trade became aware that certain permits were freely granted and others were almost impossible to grant the percentage of approved applications naturally went up. During the same year subsidies were collected,—that is during that fiscal year,—amounting to about $2,410,000.

Now, the machinery under which this was done was that the Governor in Council could, as a situation developed, place an item under export control.

By Mr. Macdonnell:

Q. Sorry, I do not understand about the $2,000,000-odd subsidies recovered. —A. the export permit branch recovered $2,410,000-odd during that fiscal year.

By Mr. Hazen:

Q. From whom?—A. From exporters; being the return of subsidies that they had received in respect of the goods that they were exporting.

By Mr. Jackman:

Q. May I ask to whom the $2,410,000 is credited on return.—A. It would be returned. I cannot say specifically in connection with government accounting. It goes back to the Crown, and to the account from which it was taken, I expect.

Mr. JACKMAN: I expect so, too. I would like to know.

By Mr. Hazen:

Q. Would you be good enough to take an example of a particular item, I am not familiar with it; but let us say here is an exporter exporting an article in respect of which he would have received a government subsidy when it was brought in?—A. We might very well take cotton which would be involved in insulation for wire and cables. The cable manufacturer would have got his cotton from a Canadian manufacturer who in turn would have obtained his cotton in the form of raw cotton on which a very substantial subsidy had been paid. The amount of subsidy recoverable would be assessed having in mind the cotton content and the subsidy paid in respect of the domestic market. It was not possible exactly to equate all these things for obvious reasons, but that is the type of case that would be involved.

By Mr. Lesage:

Q. As an example, let us take the case of the subsidy on butter. We know that butter is rationed and for some time received a subsidy—still receives it, I believe. Take the case of the manufacturer of butter. It is collected for export. Can you tell us whether or not the Crown paid a subsidy on butter? I understand that whether or not it was for export a subsidy had to be paid; that it was paid even when that butter was used for feeding Canadians?

The WITNESS: I wonder if we could come back to that type of question later,

Mr. LESAGE: Oh yes, that is all right.

Mr. STEWART: It has been suggested that the witness be allowed to go ahead and give us a complete picture; then we will be able to question him intelligently, I think.

The CHAIRMAN: Is this committee willing that questions should be withheld until the statement is completed?

Mr. BREITHAUPT: Except with respect to the exception one.

Mr. JAENICKE: Let members make a note of questions they want to ask later on.

The WITNESS: I think that outlines generally the way in which the export permit branch has operated. It did operate as a central place to which exporters could apply. The officials of the export branch in turn consulted with the controllers and administrators and the permits were issued by the export permit branch. Now, the next point I wish to deal with has to do with the question that has been raised by several people, as to why it was not possible to enumerate in the law the items that we had under export control. There was one very good example of that last year, steel. Steel appeared to be coming into fairly good supply and export control was withdrawn. Then, as you will remember, there were a number of upsets in the American situation which in turn created an extraordinary demand on Canadian supplies, and without export control tremendous quantities of steel would have moved to the United States. Now, that is a situation that arose entirely outside of Canada, but it is illustrative of the sort of thing that happens and can happen so long as Canadian prices are below world prices and so long as there are overall world shortages. When a particular demand is created in other quarters it can very readily result in an instantaneous demand on Canadian supplies. It so developed that export control on steel items had to be reinstated in order to protect the domestic supply. That is one example of the sort of thing that makes it almost impossible to forecast with accuracy just what items have to be included and what we do not need to have included. Accordingly, this bill proposes that there should be a continuation of the same system; that the Governor in Council would have the authority to place under control any export item. I think that, generally speaking, is the picture of exports.

As far as imports are concerned, it became necessary during the war to impose import control for a variety of reasons. One of the reasons was that the united nations got together and agreed on an allocation of foodstuffs that were in short supply. Oils and fats is a very good example of that. Canada is far from being self-sufficient in edible oils and fats. We have to import substantial quantities. These articles were in world-wide short supply and the united nations during the war agreed amongst themselves through their combined boards to make an international allocation and see that there was some equity in distribution amongst the various claimants for the available supply of oils and fats. In order to participate in that division an arrangement had to be agreed upon. First of all, after common discussion, an agreement was reached as to what constituted a fair distribution, and then each country had to agree that it would not take more than the agreed quota. The same thing happened in canned fish. Sugar is another example. This applied particularly to the food situation—where the item was in world-wide short supply and an agreement was reached, it became necessary for each country participating in that agreement to give an undertaking that the country itself would not import more than its fair share. That was one of the conditions under which it was agreed that a country could have an allocation. Different variations of that same problem developed, but they all arose from the fact that a commodity was in world-wide short supply. It might be by formal international allocation of a combined board. It might be, and it was in some cases, where another government which happened to be in control of the supply made an arrangement and said: "We

are only going to deal with other governments in this matter and we will make allocations." Consequently there are cases where an essential import from Canada's point of view is under the control of a foreign government, and we have to maintain import control in order to be sure we will get our supply, and that it will be fairly distributed when it gets here. An example of that is the case where Canada is given a comparatively small allocation, something far less than the demand for that product in this country. If there was no import control it would very likely happen that one or two users of that commodity, who happended to be perhaps the biggest or the most aggressive, would go out and get the total amount available to Canada. Then the next man who came along would find that Canada's total allocation had been used up. Unless there was an attempt to control imports and see to some equitable distribution in Canada we would be apt to have too large a proportion of the import going to one particular man.

In this bill it is proposed that authority be granted for the imposition of import controls under conditions of the type I have described, namely, where there is a scarcity in world markets, where there are governmental controls in the country of origin, or where there are formal international allocations.

I might say that in the handling of all these import controls, up until now they have not been centralized in the Department of Trade and Commerce. They have been handled by the various administrators concerned. There was not the same urgency for consolidating them in one place. To start with take sugar as an example. There was and still is a sugar administrator. He was carrying on his negotiations with the international sugar authorities, and he was in the best position to issue import permits for sugar.

While this bill is, as I understand it, the single authority for operating import controls of this type, and vests the power in the Minister of Trade and Commerce, it is not the intention that the Minister of Trade and Commerce should immediately set up an import permit branch of the same nature as our export permit branch. As long as the sugar administration, for example, is continuing to function it presumably will carry on as it has done over the past few years, by some delegation of this authority, but it does mean there is simply one authority.

Another important part of the bill, of course, is that it is for a limited life of one year.

In the administration of these permits the customs department and customs officials are the people who actually carry on the work. There is no duplication between our officials and the actual customs officers at the border. The customs officers at the border are the people who actually, and in the last analysis approve the movement of goods either in or out of the country. This Act picks up the various provisions in the Customs Act as a means of enforcement. It does not set out any particular rules or procedures for the handling of the physical export and import of goods. It simply says that goods tendered for export contrary to these regulations shall be deemed contrary to the customs regulations. That brings the whole thing into the operation of customs and avoids setting up any sort of duplicate organization. I think that is all I have to say.

Mr. FLEMING: Is it the intention to present further introductory data to the committee through some of the other officials?

The CHAIRMAN: What I had in mind was this.

Mr. FLEMING: Or are we to submit our questions to Mr. Mackenzie now?

The CHAIRMAN: What I had in mind was that after the presentation of the deputy minister giving the broad over-all picture if one representative from each of the parties would like to make a short presentation in general terms to the committee as to the view of his party with respect to the bill perhaps it would be wise to hear that now. If not, I think that it would be well to call witnesses from the department who will be familiar with all of the details. As to the

examination of the witnesses. I have been wondering how to be fair about it. What I would suggest is that I alternate it in this manner. With the first witness I will give the members on my left the first chance to question, and with the next witness I will reverse that. The reporters would very much prefer if only one member would question a witness at a time. It is extremely confusing when cross-questioning enters into the discussion. Mr. Jackman, you have the floor first. Mr. Bull is ready to answer questions. Are you on export?

Mr. BULL: Yes.

The CHAIRMAN: Mr. Bull is now available for questioning.

Mr. JACKMAN: I judge that the witness would prefer also that only one question be asked at a time. I have no statement to make either on behalf of myself or anyone else. We are approaching this bill with an open mind and are seeking information before we come to any definite conclusion. Naturally no one in business likes regulations if they are not necessary. I trust that at some time the departmental officials will give us a list of the commodities which now require to have export licences.

Mr. BULL: We have them with us now. Would you like us to circulate some of these books?

Mr. JACKMAN: I think it might be well if we had those so we can see what the picture is. That applies to imports as well as exports.

Mr. LESAGE: May I ask Mr. Jackman to speak a little louder.

Mr. JACKMAN: I have asked for the tabling of the list of all commodities requiring export and import licences.

By Mr. Jackman:

Q. Mr. Mackenzie, in regard to the instance of steel which you put forth as an illustration of why you did not want to list in the bill itself certain items and not have the power to eliminate and to put back or even to add to the list a new item, I wonder if I could question you on the example you gave to see if we can get a general principle out of it. Let us suppose that an American steel strike did take place, and there was an extra demand on steel which was not in surplus supply. How is it that the Canadian steel manufacturers would not look after their regular sources of outlet, their Canadian buyers who would service the Canadian trade, rather than take a temporary advantage and perhaps get a slightly higher price for a short while and in that way make it difficult for the Canadian people to get the steel they required. It seems to me surely those steel manufacturers could not be looking after their long range interest. Do you really need control? From what I can see of the larger companies particularly, where you have got a small group of three or four basic steel producers in the country, I cannot understand how they would let the domestic market go short, their permanent customers, in order to send steel across the border. Is it merely something that exists in theory, in the minds of what we sometimes term bureaucrats, or have you found from experience you have to put on these controls? Can we go back to the example of steel which you gave?—A. Unfortunately it is not the case that one is talking only of three or four major producers. What you describe might well be the situation if, in fact, the control of steel items could be handled by three or four people. It might or might not be the case, but the facts are that there are a great many people capable of exporting steel items. It does not necessarily mean that the steel will go in the form of the primary output of the basic steel mills. It may go in the form of corrugated roofing which is very badly needed. It might be in the hands of warehouses, jobbers, all sorts of people. The situation is aggravated where there is an important price differential. The trouble with trying to do it any way other than a regulation which applies to everybody can be illustrated in this manner.

Attempts were made earlier in the war to try to control things of that nature by that technique, but what happens is this. Let us say 90 per cent of the people are playing ball and doing what has been suggested. Nevertheless one or two people fall for the temptation of excessive prices, and then there is a good deal of hard feeling about it, but I repeat it is not the case that we are only doing with three or four people. There are literally hundreds of people involved in the possibilities of exporting steel and steel products.

Q. No doubt the larger the number the more difficult the problem of control is if controls are necessary. It would seem though that even these secondary steel handlers, fabricators, wholesale dealers, and others who had any quantity of steel at all, would have their regular trade. I am wondering if your experience has borne out what I will call the theoretical case. Is it-a practical case or is it just a theory that you see? What has experience shown as to this example?—A. I would say it is almost impossible to try to have it equitable by putting it up to a substantial group of individuals because there is always somebody who will yield to the temptation of the excessive price he can get by exporting.

By Mr. Macdonnell:

Q. I would think that is true, but how substantial does that become? Is that not the real question? How serious nationally does it become?—A. Well, it would be very difficult to give a specific answer to that. Certainly it has been our experience that it is a very unsatisfactory arrangement to try to control something that is in short supply in Canada and in strong demand outside of Canada, where the outside price is considerably more than our price, by exhortation that people ought to look after their own customers.

Q. I can see that, but the whole question, of course, that causes the difference among us is the point at which you have got to let nature take its course. In other words, let us take sugar or let us take some commodity like wheat where we have made a contract to export. I think we must admit controls are necessary there, but surely it does verge from that to places where at any rate those of us who are looking for the restoration of freedom as soon as it can come will say, "Yes, you will not get complete equity there. That is quite true, but nevertheless the question involved is not so great but that we can rely on the majority of people not, I am afraid, to be terribly high minded but to have common sense to look after their customers". Mr. Jackman has suggested to me that the cure may be worse than the disease.—A. I think I can say that that is given very real consideration. That is just the sort of problem that is under consideration all the time as to what items must be kept under control and what can be freed. Items are being continually taken off control. Periodically lists are issued and new items are taken off control. That is done just as fast as it is possible to do it. I might say as far as the officials are concerned, the Department of Trade and Commerce approach all these questions with a bias in favour of stimulating exports, and with a bias in favour of taking off control. It is probably natural that the official who is primarily concerned with keeping domestic supplies adequate approaches with a bias in favour of the domestic market, but when those two get together and discuss the problem you do get a balance between them, and it is as a result of that type of conversation that items are recommended to be kept under control or taken off control.

By the Chairman:

Q. Might we have a list of the articles as to which control was taken off and in the light of subsequent events you found it necessary to reimpose it. Might that not help?—A. That could be produced.

Mr. BREITHAUPT: I suppose you mean exports?

The CHAIRMAN: We are dealing purely with exports at this time.

The WITNESS: That can be done. It will probably take a little while to produce it but it can be done very readily.

By Mr. Jackman:

Q. In regard to imports you said where there was a short supply, and where there were international agreements in regard to allocations, such as on sugar and some other matters of that description, it was necessary to have these import controls. If it is not too large a question may I ask you what commodities are expected to be in continued short supply? We have our sugar. What else have you got that is really in short supply?—A. Oils and fats is another outstanding example.

Mr. JAENICKE: Building materials?

The WITNESS: The whole cereal field because of the world wide shortage of cereals.

By Mr. Jackman:

Q. As far as Canada's imports are concerned—A. Rice, for example, which is brought into the cereals field by reason of the world shortage of cereals. They are not nearly as numerous in the import field, but sugar, oils and fats and cereals are three outstanding ones.

By Mr. Hackett:

Q. Would you not make a distinction between sugar and the other commodities which you have mentioned because sugar is the object of a specific agreement covering world production whereas I am not certain that any such agreement exists with regard to the other commodities. It may exist with regard to rice.—A. I do not think it would be possible to say that any of these agreements are exactly the same. They all vary. The International Emergency Food Council does have an oils and fats allocation. It does have a cereals committee, and there are varying degrees of cooperation and agreement in those fields.

By Mr. Michaud:

Q. What about wool and cotton? Are those in short supply, too?—A. Cotton is.

By Mr. Jackman:

Q. Not wool?—A. Cotton yarns as distinct from raw cotton.

By Mr. Hackett:

Q. Do you not import greys?

The WITNESS: Pardon?

Mr. JACKMAN: Mr. Hackett says that we import greys, grey cotton goods.

By Mr. Hackett:

Q. Which is the raw material for our prints.—A. If you want a statement on the exact status of the cotton import situation I should like to ask Mr. Harvey to answer it.

Q. No, not now.

By Mr. Jackman:

Q. Those are the items which at the present time are in short supply as far as Canadian imports are concerned. Do you expect that any other commodities will necessarily be placed under this power if it were given to the

minister?—A. First of all that is not necessarily a complete list. There are other items, but those are the three major items. As an example of one that might have to come under some type of import control there is jute and jute products. It is not now, but it may well have to come.

Mr. FRASER: We have been short of jute bags right along.

The WITNESS: The general world situation is generally short. That is the sort of case where it might be necessary to do something.

By Mr. Jackman:

Q. Perhaps you might elaborate that. I might preface my question with this statement. Some of us still believe in a law which is called supply and demand. The regulator of that law is price. If we are to face a prospective shortage of jute bags we feel if the price was to go up, more jute, or whatever fibre it is made from, would be produced in the tropical country, and more bags would be produced, the same as has happened for many generations with a very satisfactory world economy on the whole. This is not a price control question, but if you are controlling jute I presume price has something to do with it, and it would seem to me if you did not have the right to place a commodity in the future under this limitation in the bill natural economic forces would make the supply of that commodity adequate. May I ask you in the case of jute, which you mentioned, why you see a prospective need for putting it under import control?—A. Well, it is very difficult to foresee all the actions the governments of other countries are going to take. These matters of import control are essentially dictated by the actions of other countries.

Q. Even if we do put on import controls, we are still subject to the sovereign powers of the other countries. If these countries want to play nastily with us, they can still do so, no matter what regulations we put into effect here. I do not see the value of the point you are marking.—A. Take for example, where a commodity is under the control of the foreign government.

Q. Take jute?—A. It is not controlled at the moment, but let us say it is going to be. We seek an allocation. The other country might well say, as has happened in the past, "we are only going to deal with these government allocations;" that is not a position which we can effect, it is a decision of that country. In that case, the Canadian government through some agency will have to deal with the Indian government to seek and obtain an allocation. Then, there will be some arrangement so that that allocation is made available to the Canadian users.

Q. In the place of private trading we have to allow for state trading because some states have that philosophy?—A. That is right.

Mr. BREITHAUPT: I think the argument is all the stronger where the foreign country controls the situation. I think in such a case the necessity for import control and distribution is all the more important. If there is a limited amount of stuff coming out of this foreign country, surely it is more important that the limited amount imported into Canada be distributed equitably.

By Mr. Fraser:

Q. I should like to have from the deputy minister a list of the countries which have export-import regulations at the present time. Have you a list of them?—A. I think that would be nearly every country in the world.

Q. I know Britain and the United States have, to some extent, such regulation. Do they control it in the same manner as we control it?—A. Well, controls are exercised in a variety of ways.

Q. That is what I am getting at; they have nothing similar to what we have?—A. A great many of them have.

Q. Are they all allied countries; they would all be in together? We are not getting anything from the other countries now?

By Mr. Isnor:

Q. They are countries with which you are doing business are they not?—A. In pretty nearly ever country in the world today there are some regulations of some sort or another governing exports and imports.

By Mr. Fraser:

Q. Do these countries designate where the exports should go?—A. It is very hard to answer a question as general as that, but that certainly does happen in a great many cases.

Mr. HACKETT: Would it help Mr. Fraser if he were to limit his question, for the moment, to the United States.

By Mr. Fraser:

Q. The United States and Great Britain?—A. May I have again what you would like to see from the United States?

Q. What do they control on their exports?—A. Yes, we have that.

Q. There is another question I should like to ask; sugar was mentioned as being one of the commodities in short supply. During the war, controls were on sugar and we were just getting a quota into Canada, yet, under your export permit you were allowing the manufactured sugar product such as candy to be sent to other countries in great quantities. I am sure of that because in Newfoundland I went into a store and asked if I could have any candy. The reply was, "Yes, would you like a case of it." It was all Canadian candy.—A. I think the answer to that — — you say, "In great quantities".

Q. Yes, in great quantities.—A. I think we could give you the figures of our exports of that type of commodity which would show that the quantities which we exported were certainly not great. Furthermore, the destinations to which they went were the markets which traditionally have been dependent on this country. That has been the basic principle all the way through.

Q. The reason I mentioned that one article was because, in Canada, the candy stores have been open from one o'clock to five o'clock. I think that is still the case with some of them. I do not eat candy myself, so it does not bother me. We were in short supply here, yet we were supplying Newfoundland and the British possessions with candy of all kinds in quantity?—A. I think the only way that question can be answered is to have a look at the actual volume of the exports and the destinations. If you care to see that, we can produce it.

Q. I should like to see it. It is not only of interest to myself, but I have had a number of people speak to me about it; people who have been travelling about in different places.

By Mr. Macdonnell:

Q. I should like to ask Mr. Mackenzie a question arising out of the statement he made a few minutes ago as to the difficulty which arises when we are dealing with a country which wishes to practice state trading. I understood him to say, under those circumstances, we pretty well had to fall in with that. I should like to press that point because it seems to me to be a very important matter from our point of view. The government says, and I accept the statement, it wishes to have as much freedom as possible. Take the case of Britain which, at the present time is rather addicted to state trading. Let us take the case of textiles; am I correct in my understanding that the Board of Trade in Britain wants to deal with textiles on a bulk trading basis, is that correct, and is that the reason we have our controls in the case of textiles?

Mr. HARVEY: In textiles, at the present moment, we have no import controls. The only import controls in textiles exist on woollen yarns and fabrics, not fibre, and the importer may cite a general permit number, write it across the face of his importing invoice and make a customs entry without further ado.

Mr. MACDONNELL: I am not competent to form an opinion as to just how large a percentage of the textile imports what you have just said covers, if it covers anything. May I ask if it does fall in with the point I have just made that that is done because the Board of Trade in Britain wishes to deal with it in that way; that is what I am informed?

Mr. HARVEY: I would put it the other way. We have to support the requirements of the trade in Canada and negotiate on their behalf with the Board of Trade in order to get a supply for Canada. British exporting is on an allocation basis at the present time.

Mr. MACDONNELL: Therefore you are saying, as I understand it, in order to get what we want we must deal with the government.

The WITNESS: We do, but it is not in the sense—

Mr. MACDONNELL: I should just like to ask one question and then I am through for the moment. I find it quite difficult to believe that is so, in this sense; I would have thought England was anxious, when material was available, to obtain hard money for it. I find it difficult to believe that Canadian individuals, if the material is available, would be refused an opportunity to purchase in Britain. Therefore, I desire to raise this question, as to whether we are tied in by the ideologies of other countries. I find it difficult to believe. I think it is a basic point because if it is true we might just as well face the fact that state trading is prevalent in a large part of the world. If we are going to have to follow state trading we will have to realize our pursuit of freedom is the pursuit of a shadow.

The WITNESS: In connection with this question, you have used the words, "state trading". I think that is not quite correct. It has a connotation that the government actually does the buying and selling. A great deal of this results from the exercise of government controls but it is distinct from state trading in the sense in which it is practised in certain countries where you can only make an actual purchase from a trading corporation owned by the government.

By Mr. Macdonnell:

Q. Would I be correct in saying that, substantially, the result is virtually the same?—A. Not quite, but it does mean this, that in the United Kingdom there has been a large measure of control. It is that control which has brought the companion piece of control on this side. There is one point I do want to make and it is this; in the whole textile field, speaking particularly of what has happened in the last few years, controls have been administered not by the Department of Trade and Commerce, and a full description of what has happened in the textile field during the past few years could be better obtained from the cotton administrator of the Wartime Prices and Trade Board.

Q. I realize that and we will come to it later. I am very anxious to get your view on this, because to my mind it goes to the root of the whole matter? —A. My view is this, that many of those countries will, in fact, have adopted measures which make some form of regulation necessary at this end.

Q. In order to get goods or in order to try and create a fair situation as among our own importers, which?—A. It may be either; it may be in order to get goods or it may be in order to get an equitable distribution within Canada of the limited amount which is available.

Q. Let us leave the second point for the moment, because I hope I am in favour of equity.

Mr. QUELCH: Could the member speak louder?

Mr. MACDONNELL: I want to repeat this one question: the witness answered the question as to how far, in order to get goods in this country, we have to proceed in what I have called the state trading manner. Now, he has corrected me on that and he says it is not exactly state trading but he admits it has essentially the same result.

The WITNESS: It is a large measure of state control.

Mr. FRASER: It was for that reason I asked him the question.

The WITNESS: May I say this, these situations of which we are speaking are essentially affected by world wide shortages existing at the moment.

By Mr. Macdonnell:

Q. I suggest that is not exactly the point I am making. I am talking about getting textiles from Britain which are there. I am only talking about those which are available. We are asking whether those textiles can be bought by individuals or whether they have to be bought through government intervention; that is the point I want to get at.—A. Let me go back and just say this on a point I wanted to make in connection with what you have just said. The sort of circumstances I have been describing have to do with a situation which is essentially a question of world wide short supply. It is not so much a question of the philosophy of the other government, to my way of thinking, after all that country is developing exports.

Coming to the case of textiles from the United Kingdom, the actual purchase and sale is made between the merchant in the United Kingdom and the merchant here. My understanding, and I should like to put this in with reservation and subject to correction by the Wartime Prices and Trade Board, is that at least in the last year or so the situation was operating this way; we were having great difficulty in getting cotton textiles from the United Kingdom. We asked for assistance, for priority assistance on certain lines and through the operations of the United Kingdom control we were able to secure priority assistance. When one of our importers made application for a bill of goods from the United Kingdom, if that was sponsored by the Canadian authorities it did receive a measure of priority there.

Q. Why should it?—A. It did as the result of the arrangement we were able to make.

Q. Priority over other nationals, or over other Canadians?—A. Over other countries.

By Mr. Irvine:

Q. The Canadian government is not buying textiles from Britain directly as a government, in other words?—A. No, I was not sure whether the Commodity Prices Stabilization Corporation was doing any buying or not but I am told it is not.

Q. May I ask, just in passing, to bring out the point which has been emphasized, just how much lumber would we have in Canada for domestic consumption if we did not have export permits in connection with it?

Mr. FULTON: Put it the other way and bring in the question of the domestic price ceiling before you answer that.

Mr. STEWART: In pursuit of freedom which I also hold very dear, I would suggest there should be some control of the discussion so it can be properly allocated. I should like to ask Mr. Mackenzie one or two questions. The first one is this, does the department impose controls on theory alone or are they imposed because it is necessary for the social benefit of the nation as a whole?

The WITNESS: I would certainly say, to my knowledge, no control has been imposed which was not considered very necessary or desirable.

By Mr. Stewart:

Q. Have those items which have been taken off control been removed because of substantial quantities in the country and therefore control does not enter into it? There is enough for all practical purposes, is that the reason for taking off control?—A. Basically that is the reason, yes.

Q. Mr. Macdonnell mentioned earlier the question of the restoration of freedom. I think he and I would see eye to eye on many phases of this question, but, perhaps on many other questions, we may be as far apart as the poles. My idea of freedom, so far as controls are concerned, would be this; you would have your greatest freedom when the greatest number of people have an opportunity of buying that which they wanted.. The witness has told us that it was possible, in connection with certain importations which were rationed, that the most powerful group financially may be able to buy up the available supply of the imported commodity and the other merchants would suffer. I would suggest, because this control was the means by which the majority benefited, it was really an extension rather than a diminution of freedom; would you agree with that?—A. I believe that is the way the thing has worked.

Q. Another question, it was brought out by Mr. Jackman that there is a law of supply and demand. I think that law is something like the Ten Commandments, we would all like to live up to it. I suggest that the law of supply and demand lands you in exactly the same situation as we had before. We run into difficulties in the application of the law of supply and demand in that some get the available supply to the detriment of all the others. Therefore, the obvious injustices in the application of the natural law of supply and demand had to be interfered with for the social benefit of small nations. That is another suggestion which I make. Now, as regards this situation in the United Kingdom with respect to textiles do you know, Mr. Mackenzie, if the United Kingdom has enough textiles for all its customers or is there a shortage in the United Kingdom?—A. There is a world-wide shortage as well as a very great shortage in the United Kingdom itself. That is shown by the fact that clothing is still rationed over there. They cannot produce anything like enough to meet the demand for export.

Q. Therefore all the more reason why there should be a strict allocation with regard to Canada.—A. I am not prepared to say exactly what the situation is now because I do not know. It is my understanding that more and more they are endeavouring to leave it up to individual exporters. There is undoubtedly a control in the United Kingdom which regulates the overall amount that can be exported and the overall amount that must be kept in the country. But it is my understanding that they are definitely working in the direction of giving the individual exporters more and more freedom in relation to their markets.

Q. Therefore, the control of the Department of Trade and Commerce over marketing does not essentially mean that it is a marketing agency?—A. There is a measure of control but it is not state trading.

By Mr. Michaud:

Q. Mr. Mackenzie, according to the experience of the last year, if I appreciate it adequately, there seems to be no simple way of having import commodities distributed equitably, even although there is international agreement as to allocation to particular countries; is that right?—A. That is essentially correct.

By Mr. Quelch:

Q. Would it be possible to try to cover all that by regulation? Is it the intention to use this bill for the purpose of trying to balance our exports and

imports, and to control prices with respect to them?—A. I think the bill speaks for itself on that account, Mr. Quelch. It refers in section 3, to goods which may be subject to export control, and it provides the reason why such items will be included. Similarly, in connection with import control, it refers to the criteria that I have mentioned. There is no reference in it to the balance of payments question at all.

Q. In my submission section 3 might be interpreted as being implemental of some arrangement which would bring about that end; that might be one of your commitments, to maintain a balance of payment?—A. I think perhaps you should direct that question to a member of the government. It is my understanding that this has nothing to do with the balance of payment question at all.

Q. Then I would like to ask you this question: what is the basis of the allocation of the subsidies as between one exporter and another, and as between one importer and another?—A. Once again that varies from commodity to commodity, depending on a particular situation.

Q. How are you to ensure equitable distribution to these firms as between one importer and another and as between one exporter and another?—A. There are some things which are put on a straight first-come first-served basis. Then there are those which are distributed by quota and each person who is known to be in the trade is given an opportunity of getting an export quota. There are a number of such cases where quotas have been worked out by agreement and after consultation with the trade, and in that way the quota available for export to each firm is arrived at. Ordinarily, speaking generally, it is based on historic trade; because that was the general principle that was being followed in granting export permits. The first consideration was to maintain essential markets. But it is very difficult to generalize. There have been a number of different arrangements because there have been so many different situations.

Q. But has there not been some criticism as between one exporter and another and as between one importer and another, in view of the large number of permits that are involved?—A. I think that anybody who said that we could issue 18,000 permits a month without criticism would be rather overstating it. At the same time I would say that I think the amount of well-founded criticism has been surprisingly small.

Q. What do you mean by "first-come first-served"; do you mean by that the first application which arrives in the mail?—A. Yes, that may be perfectly practical.

Q. If you had an application one day for an export permit or for an import permit and the next day you had another application, to what extent are you going to release the first one and deny the second?—A. What we do is this. We agree as to the overall quantity; we have to agree with the people responsible for maintaining the domestic supply as to the overall quantity which can be exported. It may be that the whole quantity available has not been taken up. Now there it is; in effect a wide-open amount. In such cases we simply announce to the trade that applications may be made and that permits will be granted. That is why I say you cannot generalize on this thing because it depends entirely on the type of trade. There may be only one or two people in the trade. There may be a hundred, or there may be more than that. The commodity may be in extremely short supply; it may be in very good supply but still short; and it may be in abundant supply. There are a great many variations.

By Mr. Michaud:

Q. Coming back to this question of textiles in Great Britain, does the witness know if there is any ceiling on such goods in Great Britain?—A. A ceiling price, do you mean?

Q. How does the law of supply and demand apply?—A. Do you mean does the United Kingdom maintain regulations on the price that can be charged for export?

Q. Yes.—A. It is my understanding that they do not.

Q. What about the law of supply and demand; is there an international allocation?—A. Not in cotton textiles, no.

Mr. IRVINE: It is just the law of demand; there is no supply.

By Mr. Irvine:

Q. If the law of supply and demand still applies, what is there to prevent people who are in a position to pay from paying more, let us say, like Canada, to get the bulk of the exports available?

Mr. HARVEY: The United Kingdom maintains export control.

By Mr. Michaud:

Q. There is a great demand from all countries in the world for it?—A. Yes.

Q. If there is no ceiling in Great Britain and if there is no allocation what is there to prevent Canada, say, or any wealthy importer from buying all it can buy and taking up the whole supply available?—A. There are a great many factors which affect that. If you carry that to the extreme, you suggest one country which is prepared to pay any price whatever to get it, would get it all.

Q. Yes.—A. Well, immediately one factor which comes into play there is the desire of the people in the United Kingdom to maintain some of their other markets.

Q. But if they were prepared to pay a higher price could not, say, someone from Canada go over there and buy it up?—A. Well, seemingly, yes. But there is a business principle which is accepted by a good many people, which is that they would not necessarily sell the whole of their output to one person this year at the expense of others with whom they have been doing business for a number of years.

Q. Would there not be a tendency, however, to make a greater supply available to people who were willing to pay more for it?—A. There is that tendency.

By Mr. Hackett:

Q. I want to ask you a few questions which will not tax your imagination. They have to do with our trade relations with the United States. The bulk of our imports, I understand, come from the United States?—A. That is true.

Q. I ask you, is there any governmental agency in the United States which regulates exports generally?—A. Yes. Export control is in force in the United States but it does not apply to Canada.

Q. So that in so far as Canada is concerned there is nothing which prevents the purchase in the United States of anything that Canadians want?—A. Well, that is rather a sweeping statement, a rather broad way of putting it, Mr. Hackett.

Q. I am asking you to answer it in a general way. There may be a few exceptions to which you can point.—A. May I say this, that early in the war it was agreed that the United States would not put export controls into force as affecting Canada. That was done to assure that there would be a ready exchange of goods in a common effort and so on.

Q. Let me ask you there if there was not a counterpart to that agreement, that Canada would scrutinize very carefully its imports from the United States by exercising control over the medium for paying for them?—A. That is a question which I am not prepared to answer directly because it is completely outside of my field. Dealing with the actual controls themselves I say when it

was agreed that the United States was not going to impose export control against Canada there was a general undertaking that we would see to it that our people did not, in connection with specific commodities, take more than our fair share. We had a choice of agreeing that we would not import undue quantities of, let us say sugar, or of having export control which would in effect have upset the whole plan.

Q. That was only before 1942. We went into the sugar pool in 1943. The sugar pool came into existence after Pearl Harbor, and we went in in 1943. However, I will leave that aside because it is a special case; it is a case of world shortage; a case of international control through the sugar conference; and I would ask you instead to deal with commodities which constitute the bulk of trade between Canada and the United States.—A. Let us take the case of textiles. First of all, the domestic price of textiles in the United States was controlled.

Q. Well, it is no longer under control?—A. No. They had an export ceiling on textiles which was higher than the domestic price.

Q. Yes?—A. Let me put it this way: there was no export control vis-à-vis Canada, although there was an export control in the United States applicable to the rest of the world; and having in mind that export to Canada was substantially the same thing as a domestic shipment in the light of the cost of packaging, shipping and so on, it was suggested that unless we took some measures to control the quantities that were coming in they would be forced to put on export control against Canada. As a result of that certain arrangements were made whereby the quantity coming in from the United States would be under control.

Q. And what was the principle used to determine what would be a reasonable quantity?—A. Agreement as to what would be a reasonable quantity having regard to our needs and so on.

Q. You see, it might have a bearing on something else. If we were allotted a certain percentage that was one matter, but if it was related to exchange, our capacity to pay, that would be another matter.—A. I am speaking now of what took place some time ago; and once again I profess that while the Department of Trade and Commerce is, very important, it does not cover everything in the country. I cannot give you an answer for all of these questions. My understanding however is this, that there was an arrangement when the United States was closely controlling their output of cotton whereby once again we got some government assistance in getting supplies, and there was a system by which with the sponsorship of the Canadian cotton administrator orders could be placed with the result that deliveries would be relatively assured as distinct from a straight hunting expedition which might or might not be successful. The details of that you would have to get from someone else.

Q. But any sanction or permit which came from your department had to have the approval of—I do not know whether it is the Department of Finance but the department which controlled our financial operations. Is that correct?—A. We have never issued any permits in the textile field at all. They were issued by the cotton administrator of the Wartime Prices and Trade Board.

Q. Can we say roughly then that our imports from the United States are, where restricted, restricted by Canada and not by the United States?

Mr. IRVINE: It would not be so from his own statement.

Mr. HACKETT: If it is not so would you please give me the explanation.

Mr. LESAGE: It is still on page 31 of the Wartime Prices and Trade Board report.

Mr. HACKETT: No.

Mr. LESAGE: Oh yes, it is there.

Mr. HACKETT: I beg to differ.

The WITNESS: In a great many of these items there is no control whatsoever. To the extent that any control is exercised it is in a few special cases. I have mentioned textiles as one.

By Mr. Hackett:

Q. I am not permitted to go to the United States and make a purchase there and pay for my purchase without a permit from the Foreign Exchange Control Board. I understand you say that you cannot speak for them. I understand that perfectly, but that is a fact nevertheless.—A. My understanding is this, that the Foreign Exchange Control Board has a permit system which is necessary to see that the right type of currency is used, but that they will automatically provide exchange for anything that can legally be imported into this country.

Mr. FLEMING: I have some questions of a general nature that I should like to put to Mr. Mackenzie.

The CHAIRMAN: Would you excuse me? There is one point, if I may, on which I think the record should be made clear in regard to your questions, Mr. Hackett. I think we should have on the record the reasons why Canada continued to enjoy the right to exports from the United States unfettered by anything in the nature of United States control.

Mr. HACKETT: It was because of an agreement between the United States and Canada.

Mr. FRASER: You mean imports.

The CHAIRMAN: I mean exactly what I said. I mean that the United States imposed no restrictions in regard to export of their commodities to Canada, but the reason why we enjoyed that unfettered right was because of the fact that Canada in turn agreed to restrict or to control our imports from the United States.

The WITNESS: In a few particular lines where they were fearful without some arrangement...

By the Chairman:

Q. And if we had fallen down in that, if we had failed to properly restrict our imports from the United States then very quickly the United States would have imposed export controls?—A. Exactly.

By Mr. Quelch:

Q. Was it not also because we had agreed to make certain lines available for export? I have in mind machinery. That reason was given last year in the House. We were able to get imports of machinery on condition that we made available certain exports of machinery to European countries?—A. That is right.

By Mr. Fleming:

I am first concerned about the scope of the powers to be assigned by the bill. I am speaking now of the range of commodities, and Mr. Mackenzie has indicated at the maximum there were about 1,200 commodities under export control. Then he indicated that a year ago the number had dropped to 900, I think it was?—A. Approximately.

Q. What is the approximate total today?

Mr. BULL: Around 700.

By Mr. Fleming:

Q. So you have taken about 200 items off in the past year? What changes do you anticipate during the coming year?—A. I am afraid that would involve some forecasting I could not make.

Q. I only want a general statement.—A. It is anybody's guess. It will depend entirely on supply conditions, but if supply conditions improve, and as they improve, we are continually bringing up this question. I am speaking now of discussions amongst officials. The Department of Trade and Commerce officials are continually going to the various people responsible for domestic supply and saying, "Let us have another look at this. Is it really necessary?" That sort of discussion is going on all the time. As and when it appears that a commodity is in reasonably good supply then the control comes off.

Q. Then it is fair to say in general you look for a reduction in the number of commodities under control?—A. I should be very disappointed if that is not the case.

Q. Do you anticipate at this stage a necessity for increasing or extending the commodities in any specific direction, or just to give the whole picture, is it practicable to catalogue commodities in terms of the present list of controlled exports and put a ceiling on it there?—A. Our experience has been it is almost impossible to forecast the type of situation that may arise. I cited one, which was the case of steel, where by reason of a situation entirely outside of Canada's control, an extraordinary demand arose. We have found that that type of thing can happen. If it does happen and there is not some machinery for handling it then, I suggest that the consequences might be very unsatisfactory.

Q. If I may paraphrase your view then you would not be willing to be confined for the future to the list of present controlled exports?—A. I would say this, our advice to the government was simply this, that it would be impossible for anybody to forecast with accuracy and with certainty and say, "These are the only items where this sort of situation might arise."

Q. How many commodities have been added to the list of controlled exports within the last six months which were not there previously?—A. I could not give you that information, but one question was asked earlier for a list of the commodities that had come off the list and a list of commodities that had been put back. We will get that for the committee.

Q. We will leave that then. You have indicated that the function of your department in administering these controls hitherto has been to work in co-operation with certain other government departments and branches. Do you anticipate any change for the future, or are you going to continue to operate as an agent, as you have put it? I do not know whether that was your exact expression, but the purport of it was as an agent for other departments and government bureaus?—A. The expectation is as long as these things can be administered by other bureaus it will be handled in that way. I am speaking now of import control. As to export control, we have handled the actual issuance of permits. We have referred to the supply authority as long as he was in existence, for instance, the coal controller, the rubber controller, the steel controller, whoever it might be. As these controllers disappear there is a presumption that the situation is easier, and it is reasonable to expect that the export control will disappear shortly thereafter, but to the exent it is necessary to carry it on for any limited period for whatever reason we would be carrying it on.

In the import end of it there has not been the same degree of concentration in the Department of Trade and Commerce. It has been handled more by the individual administrators and controllers. As long as those people and their organizations are in existence they would carry on, but if it became necessary, by reason of international agreement or any other cause, to extend import

control beyond the life of the special organization, controller or administrator, then the Department of Trade and Commerce would presumably be the department to carry on that function.

Q. As to my next question if you think it is rather a matter of government policy or your answer is it is a matter of government policy please say so. Suppose this bill is adopted. Is it the intention that in the administration of the bill the same situation shall prevail? In other words, the administration of these export and import controls under your department would be a matter of consultation with other government departments and bureaus. I am thinking particularly of the Wartime Prices and Trade Board.—A. It is my clear understanding that this bill is simply going to continue the same situation we have today which involves extensive consultation with other people involved in the field of supply, namely, the Wartime Prices and Trade Board, the Steel Controller in Reconstruction and Supply, the Lumber Controller and so on.

Q. Applying that specifically to the matter of price control would you indicate to the committee just how export control is going to be related to domestic price ceiling policy? I am thinking of a question which has vexed the House quite frequently, the matter of lumber exports.—A. I think you are getting somewhat outside my particular sphere.

Q. I will not pursue it if you are not prepared to answer the question.—A. I do not know that I quite get the full significance of your question.

The CHAIRMAN: I think the Timber Controller should be called on that.

Mr. FLEMING: Very well.

The WITNESS: I think probably as far as that goes you had better speak to the people more directly concerned with the price stabilization policy than we are.

By Mr. Fleming:

Q. That leads me to ask a question or two about the machinery within the department. Would you outline the machinery that exists within the department at the present time, first for applying export controls and secondly import controls? What is your setup within the department?—A. Do you mean in connection with the decision to place an item under control or how an actual permit is handled?

Q. I will make the question perfectly general, both as to your policy decisions and otherwise. I take it that the matter of policy decision is handled at the highest level, but I am thinking about the machinery within the department for the administration of both import and export controls.—A. I think perhaps Mr. Bull had better answer that question.

Mr. BREITHAUPT: Was that not covered in the presentation of Mr. Mackenzie? He said he had no machinery for import control, and it has been delegated to the departments that are still functioning.

The CHAIRMAN: I think Mr. Fleming is entitled to more details if he wishes details.

Mr. BULL: We have an export permit branch which was set up in 1941. We have about 80 employees there at the present time.

Mr. JACKMAN: 18 or 80?

Mr. BULL: 80. We have a definite chain. Permits come in the door and go first through our numbering system. We keep very careful track of the numbering. There are seven copies of the form and there is a purpose for every one of those seven copies. They come back to what used to be the cash section when we collected $2 a permit. We stopped that over a year ago and we are not making any charge now.

Then, they pass through the indexing to the allocations desk. Where the commodity is under allocation or quota, the officer in charge indicates on the

application whether the quantity is within the allocation. He indicates on the permit whether it is within the allocation. Then, he makes his ledger entry in his quota book. It passes from there to the processing officer who is a specialist in a group of commodities and is familiar with the exporters and the supply position of those commodities. If it is a commodity over which he has jurisdiction he will approve or refuse the permit based on whether the quota covers that particular shipment.

On the other hand, if it is a commodity to be cleared with a controller he will send, say, to the steel controller, two copies of the permit. The steel controller will either approve or refuse the permit based on the current supply position and return one copy to the export permit branch. If the copy is approved, it passes to the issuing desk and a copy is forwarded out to the applicant and another copy to the collector of customs. If it is a commodity subject to subsidy recovery it goes to the subsidy recovery section, where the officer in charge sees that the cheque is in order before approving the permit for issue.

If the steel controller, say, refuses the permit he sends back one copy marked, "refused". If we believe the refusal is reasonable as, for example, a man desiring to ship pig iron to the United States because of the high price, that is all right. However, if we think it is unfair, we negotiate directly with the controller concerned, either through Mr. Hills or myself. Sometimes the exporter, through unfamiliarity with the matter does not put up a very good case, so we act as his advocate and put up a case for him. This might happen where the commodity is under control, not under allocation.

One copy of this form goes to the exporter and the other copy to the collector of customs. When an exporter makes a shipment he attaches his copy of the permit to the shipping documents and the collector of customs matches up the exporter's copy of the B13 B form with the copy of the permit which was sent directly to him by the export permit branch. This is done to see there is no alteration made in the quantities.

The CHAIRMAN: It is now after a quarter to one and I think we should agree as to our future meetings. Are you willing to meet this afternoon at four o'clock to continue or would you prefer to meet on Friday or Monday?

Mr. FULTON: Could I suggest we do not meet this afternoon at four o'clock because there is an agricultural bill coming up in the House in which I think many of the members who are interested in this matter would be interested.

The CHAIRMAN: I am entirely in the hands of the committee. I think we had better have a show of hands on it. All those in favour? Opposed?

We do not meet this afternoon. What about to-morrow?

Mr. MACDONNELL: What great urgency is there? If it is urgent, I am in favour of it, but if it is not urgent, I do not see the necessity for it.

The CHAIRMAN: I have been asked to proceed as quickly as possible to get this bill back to the House. We will have a show of hands on it and the majority will rule. The question is whether we shall sit Friday or Monday. All those in favour of Friday please indicate?

We will meet tomorrow morning and at that time we will decide whether we will meet in the afternoon.

Before we adjourn, Mr. Macdonnell, would you like to pursue your textile enquiry any further? Would you like the administrator here? I feel you were more or less choked off and I was wondering whether you would like to have the administrator here.

Mr. ISNOR: I should like to ask one question following a point brought out by Mr. Hackett in regard to imports from the United States insofar as textiles are concerned.

The CHAIRMAN: I was asking Mr. Macdonnell whether he wanted the administrator here.

Mr. ISNOR: Yes, you have been keeping all the questioning up there.

The CHAIRMAN: Go ahead, Mr. Isnor.

By Mr. Isnor:

Q. I desire to ask whether you have any control on textiles imported into Canada or can an individual firm go out and purchase from the United States in unlimited quantities?—A. It is my understanding he can. I should like that question to be put to the cotton administrator if you have him, because it is not a matter which, at the moment, comes within our department. My understanding is that you can.

Q. You have an import branch the same as you have an export branch and you have an import branch manager or director here today. Perhaps he could tell me, as an importer, as to whether I have an unlimited scope in regard to importing from the United States?

Mr. HARVEY: That is correct. There is no import permit control on textiles from the United States except in form only and that would apply purely to woollen yarns and fabrics. You can cite a general customs permit on the face of your documents and the customs officer permits entry.

Q. When you say fabrics, do you mean woven goods such as would go into shirts?—A. No, it would be woollens only, not cotton fabrics.

The CHAIRMAN: Does that answer your question?

Mr. ISNOR: For the time being.

Mr. FLEMING: I had not completed the questions I was asking Mr. Bull. There are two questions arising out of his last answer and the first is, what is the average length of time to process an application for an export permit from the time it is received until it goes out?

Mr. BULL: We attempt to put them through in forty-eight hours, and we were very successful. A permit may of course be held up for some weeks by the administrator. A question comes up say, in regard to timber. A man may say he has a credit and the timber controller says he has not got a credit. This may involve correspondence back and forth.

The CHAIRMAN: Mr. Macdonnell, I should perhaps tell you before you leave that Mr. Donald Gordon will be attending our committee meeting on Tuesday morning at eleven o'clock. I am sorry to interrupt, will you continue?

Mr. BULL: Some litigation of that nature has to go on, back and forth, to clear up the point. It may take as long as a month.

Mr. RINFRET: They would be exceptional cases?

Mr. BULL: Those would be exceptional cases. If we have a clear cut case, we can do it in a matter of forty-eight hours. Sometimes it is necessary to catch a ship such as when a repair part is needed urgently and we do that by telephone or telegram in a matter of minutes.

Mr. FLEMING: Sometimes you do it by wire?

Mr. BULL: A great deal by wire.

Mr. FLEMING: Have there been any fluctuations in your staff? What is the general tendency?

Mr. BULL: It is downward now. If people resign now we are not replacing them. That has been our policy, we have lost about five people.

Mr. FLEMING: Your maximum then would be about eighty-five?

Mr. BULL: We had 105 at one time, but that was when we had both the cash section and the subsidy section. We have done away with the cash section now and amalgamated the sections.

Mr. FLEMING: So far as import control administration is concerned, that is outside of your department entirely?

The WITNESS: There has been only one item handled under the import controls which have been issued by the Department of Trade and Commerce, and that is the import of canned fish. All the others have been handled by the various administrators, sugar and so on.

The CHAIRMAN: We will meet in room 429 to-morrow.

The committee adjourned at 1.00 p.m. to meet again Friday, March 14, 1947, at 11.00 a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 8

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

FRIDAY, MARCH 14, 1947

WITNESSES:

Mr. M. W. Mackenzie, Deputy Minister; Mr. W. F. Bull, Director, Export Division; Mr. D. Harvey, Director, Import Division, Department of Trade and Commerce.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

FRIDAY, March 14, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Cleaver, Fleming, Fraser, Fulton, Hackett, Hazen, Ilsley, Isnor, Jaenicke, Jutras, Lesage, Macdonnell (*Muskoka-Ontario*), Michaud, Quelch, Rinfret, Ross (*Souris*), Smith (*York North*), Stewart (*Winnipeg North*), Timmins.

In attendance: Mr. M. W. Mackenzie, Deputy Minister; Messrs. W. F. Bull, Director of Export Division; D. Harvey, Director of Import Division, and T. G. Hills, Chief of Export Permit Branch, all of the Department of Trade and Commerce.

On motion of Mr. Fleming,

Ordered,—That 750 copies in English and 250 copies in French of the Committee's minutes of proceedings and evidence relating to Bill No. 11, An Act respecting Export and Import Permits, be printed.

The Committee resumed consideration of Bill No. 11.

Mr. Mackenzie was recalled and further examined.

Witness stood aside, and the Right Hon. J. L. Ilsley made a statement on certain aspects of the Bill under consideration, and answered questions.

Mr. Mackenzie was recalled and further examined, Messrs. Bull and Harvey also answering questions.

In the course of the proceedings, statements on Canadian controlled imports and items under export control were distributed to members of the Committee.

At 12.55 p.m., witness retired and the Committee adjourned until Tuesday, March 18, at 11.00 o'clock a.m.

R. ARSENAULT,
Clerk of the Committee.

84654—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

March 14, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, the Minister of Finance is to be with us this morning. He has been unavoidably delayed but will be here at 11.30. The Deputy Minister of Trade and Commerce has some of the material which he promised at our last sittings he would supply to members of the committee. If it is your wish we will carry on.

Mr. FRASER: Before the deputy minister takes the floor, Mr. Chairman, at a meeting we had here it was decided to ask the importers and exporters association to send representatives here. Was that done? Have they been asked?

The CHAIRMAN: As I recall it it was suggested that the Canadian Manufacturers Association—

Mr. FRASER: And the Chamber of Commerce.

The CHAIRMAN: —which had import and export organizations under their general supervision, would be asked. I immediately contacted the Canadian Manufacturers Association. They thanked me for the communication and said I would be advised later. I received word yesterday from the secretary that they were not going to make any presentation.

Mr. FRASER: How about the importers and exporters? They have an association. I believe they had a meeting here last night.

The CHAIRMAN: I may have erred. I understood the Canadian Manufacturers Association was more or less the parent association, and that they would be directly in touch with both importers and exporters. If there is any other association not allied with the Canadian Manufacturers Association I will gladly contact them.

Mr. FRASER: I think Mr. Breithaupt is a member of that association. He is not here at the present time but will likely be here later on.

The CHAIRMAN: At the close of today's meeting if you will give me the name and address of any other association I will gladly contact them.

Mr. FRASER: I think Mr. Breithaupt might be able to give you more information than I can, but if they are in town I think they should be invited to give us any information they may have.

Mr. MACDONNELL: Before we leave that point, may I ask this question? I have here the name of a man who is stated to represent approximately 25 Canadian companies who are selling abroad, a man called Marshall of Toronto. Would it be possible for me to ask to have him called?

The CHAIRMAN: Yes, quite.

Mr. MACDONNELL: Will you write a letter if I give you his name?

The CHAIRMAN: Gladly. We should decide as to how many copies of our minutes and proceedings should be printed on this given bill. You will recall we took general power on the understanding that as each bill came forward to

the committee the committee would indicate the amount of printing to be done. May I now have a motion in regard to the printing of our minutes of proceedings and evidence in regard to bill No. 11?

Mr. FLEMING: What was the number we decided to have of the proceedings on the Patent Act amendments?

The CHAIRMAN: 750 and 250.

Mr. FLEMING: Has that been adequate?

The CLERK: There are quite a few left.

Mr. FLEMING: Would the same approximate number be satisfactory?

The CHAIRMAN: I think so.

Mr. FLEMING: Then I will so move.

The CHAIRMAN: Mr. Fleming moves that we print 750 copies in English and 250 copies in French of the minutes of proceedings and evidence in regard to bill 11. All those in favour? Contrary?

Carried.

M. W. Mackenzie, Deputy Minister of Trade and Commerce, recalled.

The WITNESS: There were several items asked for yesterday. One had to do with the number of items under control, the number that had been taken out from under control and subsequently put back again. We are producing a list of the actual items for distribution to the committee but unfortunately between yesterday and today we have not been able to get stencils cut and an appropriate number of copies prepared. We have here the totals. These figures show that the highest number of items under control was 1,109.

By Mr. Fleming:

Q. That was at any one time?—A. That is right. That is the highest.

Q. That is not the aggregate of those that were under control at all times, is it?

Mr. BULL: It is the maximum number under control at any one time, just about at the end of the war.

The WITNESS: That is at the 31st of October, 1944. There were on that day 1,109 items under export control. Since that time there have been 576 items removed from control, and there have been 134 items placed back under control with the result that there are 667 items under control. As I say, we are having lists of these prepared so you can see the actual items but unfortunately they are not available today. We hope to have them for you on Monday.

By Mr. Hazen:

Q. In the list you are having prepared will it show the ones that have been released under different groups? There are apparently ten groups in this statement on export permit regulations. Will they be shown by groups?—A. Yes, they will be grouped.

Mr. BULL: By groups, yes.

By Mr. Fleming:

Q. Were you going on to make some further comment or may I ask a question about this now? Were you going on to deal further with these figures?—A. I was just going to report on the status of the questions that were asked yesterday.

Q. I have one question about these figures before you leave this sheet.

The CHAIRMAN: Very well.

By Mr. Fleming:

Q. You used the expression "reimposed." I take it then that since October 31, 1944, no new item has been brought under control which was not under control at that date?

Mr. BULL: There are some new items.

The WITNESS: I am told that the use of the word "reimposed" is not completely accurate, that there were some few items that were introduced for the first time since the 31st of October, 1944.

By Mr. Fleming:

Q. Are they included in the 134 figure?—A. They are included in the 134. The detailed lists will bring that out.

The CHAIRMAN: Gentlemen, if you are willing I suggest that we now leave off the examination of the deputy minister and have the statement from the Minister of Justice.

Mr. FLEMING: May I ask one question to clear this up before that is done?

By Mr. Fleming:

Q. Your list will enable us to pick out the items that were brought under control for the first time since October 31st, 1944?—A. We will see that is done.
Q. It will show what those items are?—A. Right.

The CHAIRMAN: All right, Mr. Ilsley.

Right Hon. Mr. ILSLEY: Mr. Chairman, I did not come with any prepared statement, and I do not know what discussion has taken place on this bill up to date. The Department of Justice was asked to draft the bill. It is a bill which the Department of Justice is not directly interested in except from the standpoint of draftsmanship. However, I know something about the necessity for import and export controls and their background. I might go into that to some extent.

The bill, as is obvious from its face, authorizes the imposition of export controls and import controls not on a specified list of products but on a list to be prepared by the Governor in Council in accordance with certain principles that are set out in the bill.

So far as export controls are concerned it is pretty obvious that export control is necessary if we are to be able to carry out our intergovernmental commitments, and if we are to ensure adequate supply and distribution in Canada of certain articles. Those are the grounds for placing certain articles on this list that are to be subject to export control. The Governor in Council must be satisfied that in order to ensure adequate supply and distribution in Canada of such article or any component or material used in the production thereof or in order to implement an intergovernmental arrangement or commitment it is necessary to regulate or control the export of such article. The proviso makes reference to arms, munitions, war materials or supplies. Those articles are not subject to the condition that the Governor in Council must be satisfied it is necessary to impose those in order to secure adequate supply and distribution in Canada or to carry out intergovernmental commitments. The control of the export of arms, munitions, war materials and supplies . . .

Mr. HAZEN: What section is that?

Right Hon. Mr. ILSLEY: That is section 3—is already provided for by the Customs Act. In fact, there is a section in the Customs Act which enables the Governor in Council to go further than to control the export of arms, munitions, war materials or supplies. It even includes food, but the whole intention of

that section of the Customs Act is to enable the necessities of defence or military situations to be met. I think that is the object of the section in the Customs Act.

Mr. HACKETT: When was that enacted?

Right Hon. Mr. ILSLEY: Oh, many years ago. I think it has always been there. It is a very old section.

Mr. HACKETT: Does it ante-date the first great war?

The WITNESS: It was in 1927 Revised Statutes. I know that.

Right Hon. Mr. ILSLEY: It was under that section of the Customs Act that we imposed the embargo on the export of munitions to Spain, for example. That was used in the late 30s, so we thought we would just leave that situation unchanged. We can prevent the export of arms, munitions, war materials and supplies anyway under the Customs Act. However, we felt it was desirable they should go on this list. Otherwise there would be confusion. There is quite a long list of war materials that are subject to export control at the present time. If exporters saw they had disappeared from the list we thought there would be a brief period of confusion, and that therefore they ought to be on this list and not not be dealt with separately under the Customs Act, although they may be dealt with under the Customs Act.

I do not know how much has been said about the necessity of export controls. I did not think there was very much dispute about the necessity of export controls for the goods that are covered by our intergovernmental commitments or that will be covered by them. Certainly as long as we have a much lower price level in Canada than in the United States we have to have export controls if we are to fill the British contracts. Otherwise the stuff would all go to the United States.

Apart from that it is necessary to have export controls in order to ensure adequate supply and distribution for our own people.

Mr. FLEMING: May I ask Mr. Ilsley if he would enlarge on the expression "our intergovernmental commitments"?

Right Hon. Mr. ILSLEY: I mean the contracts with Great Britain.

Mr. MACDONNELL: Is that all?

Right Hon. Mr. ILSLEY: I cannot think of any more. Are there any others?

The WITNESS: There are arrangements through the International Emergency Food Council, the I.E.F.C., whereby a group of countries agree together on the distribution of a commodity in short supply.

Right Hon. Mr. ILSLEY: Is there anything more than salt fish, which has disappeared?

Mr. HACKETT: Sugar.

The WITNESS: The oils and fats field is still covered by certain agreements. They are not all the same character.

Right Hon. Mr. ILSLEY: Do we export any of those? Do we have to have export permits?

The WITNESS: We have to stop exporting.

Right Hon. Mr. ILSLEY: I do not know how much difference of opinion there will be about the method being adopted here, but on the principle of export control I did not think there would be very much difference of opinion in the House. Perhaps I was going somewhat on a sentence or two that Mr. Bracken used in his speech on the address in which he seemed to say that the necessity of some export control was recognized. I thought that perhaps there would be more difference of opinion on the question of import controls.

Mr. MACDONNELL: Do you mind us interrupting?

Right Hon. Mr. ILSLEY: No.

Mr. MACDONNELL: I should like to ask a question arising out of this second part. Where there are government obligations like the British wheat contracts as far as I am concerned I see the necessity of export control. However, you said secondly to secure adequate distribution in Canada of certain articles. I think I can understand what you mean there, but what I want to ask is this. Where goods do go to foreign countries to what extent is it the case that it is in pursuance of a government contract? I take it in the case of the United States that is not so. We allow individual sales there, but it interests me as to what extent we are getting ourselves involved in state trading two ways.

Right Hon. Mr. ILSLEY: Two ways?

Mr. MACDONNELL: It comes up in connection with imports, too, but to what extent does it arise in the case of exports? Would you say a word on that as distinguished from sheer government obligations such as our wheat agreement? Then you go to the other field where you say for the purpose of keeping enough goods in Canada.

Right Hon. Mr. ILSLEY: We did not have in mind facilitating any additional state trading.

Mr. MACDONNELL: I might refer, for example, to the case of lumber exports.

Right Hon. Mr. ILSLEY: Yes. That is an extreme and perfect example of the neccessity of export controls. As long as you have the price level lower in Canada than abroad you must have export controls. Otherwise you lose all your lumber.

Mr. HACKETT: Or you pay the world price.

Right Hon. Mr. ILSLEY: Yes, but that is the reason I said as long as you have a lower price level.

Mr. FLEMING: I wonder if it would be practicable to put on the record the list of the commodities which come within the scope of that expression which Mr. Ilsley used, "our intergovernmental commitments".

The CHAIRMAN: We will be glad to do that.

Right Hon. Mr. ILSLEY: Unless you want to take this up section by section I want to deal with the next section, section 4, having to do with import controls. Do you want to pass on to that now?

Mr. HAZEN: As to section 3 I have something in my mind. I do not know quite how to express it, but is it considered a good policy to force producers in this country to sell goods at less than it costs them to produce those goods, and to make up the difference or make up their profit by selling the rest of their goods to another country? What I have in mind is lumber. The producer or mill man has to sell two carloads of lumber in Canada before he can send one to the United States. The experts say that as to the carloads he sells Canada he sells them at a loss unless he sells them on the black market or in some underhand way, which is largely done, but if he makes a bona fide sale he is selling at a loss. The experts figure he is selling at a loss of $8 per thousand feet of board. It is pretty hard to get at the exact amount of his loss, but he is selling at a loss in this country if he sells above board. Is it considered good practice that he should sell at a loss and make up his profit by selling the balance in the United States or some other country?

Mr. HACKETT: At a higher price.

Right Hon. Mr. Ilsley: I should like to have Mr. Howe answer that. He has given a lot more thought to it than I have, but the fact is we just do not feel we can face such a large increase in the cost of lumber. We want to keep that down.

Mr. HAZEN: The difficulty is when you force people to sell at a loss they are not going to sell at a loss. They are going to find ways and means to evade the law. You are making law-breakers of so many people. You have

deplored black markets but this thing goes on not only in the lumber business but in a number of businesses in Canada. I was talking to a man the other day who was being prosecuted for an offence by the Wartime Prices and Trade Board. He said: "Business to-day is the worst racket that it ever was." That is what it apparently is becoming. Then he went on to explain in his own business just how it worked out. He was in the retail clothing business. I need not go into that now.

Right Hon. Mr. ILSLEY: You are on the question of lumber now, whether the lumber policy is justifiable.

Mr. HAZEN: It is perhaps broader than that.

Mr. HACKETT: That is an example.

The CHAIRMAN: A very good one.

Mr. HAZEN: Yes. Is it a good policy, if it is the policy, to force people to sell their goods at less than cost, at a price where they cannot make a profit?

Mr. LESAGE: It has to be proven first that they sell at a loss.

Mr. MICHAUD: That is what they claim. Is it a fact? Representations have been made to me along that line.

The CHAIRMAN: If their over-all operation, figuring in both their export sales as well as domestic sales, is profitable it might be in the public interest to have such a policy.

Mr. HACKETT: That is an argument. We were asking for the policy.

The CHAIRMAN: I understood the question was as to whether it was a wise policy, not whether it was the policy, but whether it was a wise policy, and that leads to an argument.

Mr. FLEMING: May I ask a question? Taking the words you used in your last remark, Mr. Chairman, perhaps Mr. Ilsley would comment on it. You talked about a profit on the over-all operation. I understand the Wartime Prices and Trade Board in fixing prices takes into account the over-all operation of a producer. He may be producing a dozen staple products, but when they come in they do not assess separately the profit or loss resulting from his manufactured production of one particular commodity. They take his over-all operation with the result that many producers, from my information, are discontinuing the production of the lines that they cannot produce at a profit under the price ceilings and are producing the things they can produce at a profit. That is the result of this over-all assessment of profit and loss on any particular producer instead of a particular commodity.

The CHAIRMAN: Of course, they could not do that in the lumber business because they cannot enter the export field unless they supply the required amount to the domestic market.

Mr. FLEMING: Yes, but remember this export quota is set on a footage basis, not on a dollar basis or on a grade basis. It is set on a footage basis. The result is the best of the lumber is going out of the country. I am told that is the reason in many cases where the producer is producing a dozen commodities or products for general consumption. When a complaint is made to the Wartime Prices and Trade Board that he cannot continue to produce under the ceilings, the Wartime Prices and Trade Board looks at his over-all operation instead of his costs on each particular commodity, and that is the reason we get shortages in many of these products.

Right Hon. Mr. ILSLEY: I should like to have someone from the Wartime Prices and Trade Board answer that. My impression is they now try to see that there is no loss in any one particular line.

Mr. MACDONNELL: I have been one of the offenders, but I am going to make the suggestion that we allow the minister to make his complete statement and then carry on with our questioning.

The CHAIRMAN: I agree with one exception. My friend from British Columbia at the end of the table has been trying to get in a question for a long time.

Mr. FULTON: I wanted to ask a question on the matter of export control before we go on to import control. It was brought to my mind when Mr. Ilsley said that export controls are necessary if we are to fulfill our intergovernmental commitments. I should like him to go beyond that and tell us what consideration was given, or whether the matter was ever discussed of adopting the course of letting these governments with which we have contracts, or perhaps even compelling them, to go into the open market in Canada to make their purchases rather than agreeing with them as an agent for the Canadian producer to sell at a certain price. In other words, if they want 100,000,000 bushels of wheat let them go into the open market and purchase in Canada. Then they have purchased their wheat and it will go to them. Why was that policy not followed, and why was the policy followed of making all those sales as governmental contracts?

Mr. ISNOR: You must favour the same policy with regard to lumber as you do with regard to wheat.

Mr. FULTON: No, I am asking why—

Mr. ISNOR: I am asking a supplementary question so as to have it clear.

Mr. FULTON: I do not understand what you mean.

Mr. ISNOR: The government purchases wheat. Now you want them to purchase lumber.

Mr. FULTON: I do not think the government purchases wheat. The government agreed that wheat would be sold to Great Britain at a certain price. The government set the price. My question is was consideration given to allowing the price to be set by what these various governments were willing to pay in the open market?

Right Hon. Mr. ILSLEY: I think you know just as much as I do about the history of the wheat negotiations. The wheat negotiations are a big example of closing the ordinary channels and making an intergovernmental contract at a set price for a fairly long period of time. That was done as matter of government policy rather than letting the British come in and buy through the Grain Exchange and get what wheat they could at the market price. I would not undertake to enumerate the reasons for that now. It has been threshed out so much for years in the House of Commons. I suppose opinions would differ as to which was the better way.

Mr. FULTON: That is taking one agreement as the answer to the whole question. This again may be a matter of opinion, but personally I do not think it gives a full answer to the whole question. I do not think there is any point in threshing out the wheat agreements again, but we have wheat, we have meat, we have fish, we have lumber to some extent. As to all these commodities the government has set the price at which the other government would be able to buy. The point I am trying to make is that the result of that has been in most cases, with the exception of lumber, that exports under government agreement are at a very much lower price than the prevailing price. What I am trying to get at is why was it decided to do that instead of letting these other governments, which are anxious for our commodities in short supply, come in and pay the world price for them?

Right Hon. Mr. ILSLEY: It ensured a market for quite a long period. That was one reason. A market for the Canadian producer was assured for quite a long period at a price which he knew he would get and for quantities which he knew he could sell. That is from the standpoint of the seller.

Mr. FULTON: I take it your answer would be in order to ensure stable long term markets?

Right Hon. Mr. ILSLEY: Yes.

Mr. FULTON: That is practically the whole answer.

Right Hon. Mr. ILSLEY: I think from our point of view, from the standpoint of the interests of Canada, that would be the answer, yes.

The CHAIRMAN: Is it the wish of the committee that we have no further interruptions?

Mr. QUELCH: I should like to ask one question. I have not been able to get the floor so far. Personally I believe as long as conditions are as they are export control permits will be essential, but I was wondering if the government thinks that these high export prices for lumber, for example, will continue and if so, does the government then feel it will be necessary to maintain these export controls as a permanent policy or, on the other hand, will it be the intention to allow prices to rise internally to the export level?

Right Hon. Mr. ILSLEY: I do not know what the future is of lumber prices abroad, but I think eventually the domestic price will have to be the same as the export price.

Mr. QUELCH: That is what I want to know.

Mr. HACKETT: Mr. Chairman, might there not be some convenient point in Mr. Ilsley's statement, to be determined by himself, where he would be glad to stop and have questions put to him before he proceeds with another point?

Right Hon. Mr. ILSLEY: The trouble is I have not any statement. I did not understand I was to come here and make a statement. I understood I was just here to answer questions anyway. On the question of imports we thought that was a section where we should spell out particularly the grounds, and the only grounds, on which import controls can be imposed. Therefore, we put in this section three criteria, and unless a commodity comes under one of these headings it cannot go on this list. I am going to suggest a fourth heading, and I am going to mention a fifth heading which I am not proposing but which certain members and others would like to have proposed. The first of the headings is by reason of the scarcity in world markets. That appears paradoxical. The question would be asked at once, "Why do you seek the power to impose import controls on an article that is scarce abroad?" You would think the fewer controls the better. There are articles that are scarce abroad but which are not subject to government controls in the country of origin or to any governmental allocation and upon which import controls are desirable. I will give an example that is given to me, tea. Tea has been and is scarce. It is a scarcity product in the world. I think governmental control in the country of origin has been abandoned. Any governmental allocation on tea has been abandoned, but nevertheless there is not much tea. We did not think that it was fair to permit one buyer, for example, to get all the tea that would be consumed in Canada to the exclusion of every other importer and all the jobber agencies which are dependent upon them. That can very well be done if you do not have a system of import permits with regard to a scarce article. That is a fair example. It is a matter of opinion, I suppose, for the committee, as to whether it would be all right for the particularly powerful and wealthy—I think we should say—importer to be able to scoop up what little tea can be got before anybody else can get any and be the only distributor in Canada. That is a matter of argument, I suppose, but I do not think it would be a fair thing to do.

Now, that is heading No. 1. Heading No. 2 is governmental controls in the countries of origin. Now, many articles are controlled by governments abroad now, and they will only deal with other governments abroad, and they insist or expect, at least, that there will be some control of imports in the countries with which they deal.

Mr. MACDONNELL: Will you give us an example.

Right Hon. Mr. ILSLEY: We have a lot of examples here.

Mr. HARVEY: Jute.

Right Hon. Mr. ILSLEY: That is an allocation.

Mr. HARVEY: No. There is no allocation.

The WITNESS: It is not an international allocation.

Mr. HARVEY: It is an export allocation made by the India government.

Right Hon. Mr. ILSLEY: That is a government-controlled article but it is not subject to an intergovernmental arrangement.

Mr. HARVEY: Yes.

Right Hon. Mr. ILSLEY: There is jute as an example.

The third heading is allocation by intergovernmental arrangement. Sugar is a typical example of this. We must have a system of import permits on sugar.

Now, I want to add a fourth heading by amendment, and the amendment I would propose is at the end of this section. I propose that these words be added: "Or unless the price of such article is supported under the Agricultural Prices Support Act, 1944, the Fisheries Prices Support Act, 1944, the Agricultural Products Cooperative Marketing Act, 1939, or is in effect supported under the Agricultural Products Act."

Now, that is, I need hardly point out, an important amendment.

Let us take an example of a price which is supported or may be supported under the Agricultural Prices Support Act, 1944. Potatoes are as good an example as any. We might very well have a situation where you have a floor price under potatoes in Canada and a glut of potatoes in the United States, and if you have that situation you have to have the power to impose import controls.

Mr. MACDONNELL: That is a case where you get into difficulties because our prices are too high.

Right Hon. Mr. ILSLEY: Right. I do not know whether I agree with the adjective "too", but we get into difficulties which are brought about by prices abroad being lower than the floor price in Canada.

Mr. MACDONNELL: We get it going and coming.

Right Hon. Mr. ILSLEY: Yes, but I would rather have the Americans dumping hundreds of thousands of tons of potatoes than have the Canadians doing it, and I would not like to see a situation where the government bought all the Canadian potatoes at the floor price and the public bought all their potatoes from the United States at the glut price. I do not want a situation where if anything spoils the government owns it.

The same considerations apply to the Fisheries Prices Support Act, 1944, and the Agricultural Products Cooperative Marketing Act, 1939. That is a floor price Act which most people may have forgotten about, but there have been some operations under it and there may continue to be. The Agricultural Products Act gives in effect price support. That is a case that ought to be discussed by the committee; I know the Department of Agriculture feel that you should not have a situation like this arise where we are taking products off the Canadian markets in order to meet British contracts at a certain price which is, in effect, the floor price, and which in effect supports the price in Canada, and at the

same time importing from the United States, for example, the same articles below that price. Then our British contracts support the American price instead of— or as well as—the Canadian price. We have got to have this amendment somewhere, and we have to do this or we cannot operate this thing—I do not think we can without possible huge losses to the treasury. The result would stop the operation of it.

Mr. HACKETT: Control has to be complete or it is not effective.

Right Hon. Mr. ILSLEY: It has some ramifications, once it is started, I will admit. A person has to have a clear head and considerable industry—

Mr. HACKETT: And endurance.

Mr. MICHAUD: What is the last Act—the Agricultural Products Act; is that bill 25 which is before parliament now?

Right Hon. Mr. ILSLEY: Yes, it is not through. I do not know whether there is very much more to say about import controls. I am not going to propose another amendment which has been suggested.

Mr. MACDONNELL: Had we better propose it?

Right Hon. Mr. ILSLEY: I was wondering whether someone would propose it.

Mr. MICHAUD: I will be pleased to move it.

Mr. HACKETT: We do not know what it is yet.

Mr. MICHAUD: I thought you were referring to the one you have just read.

Right Hon. Mr. ILSLEY: Yes, I am proposing this one, but I might as well tell you about a fifth heading that has been suggested as we are all friends together.

During the last twenty years or thereabouts we have had a system in Canada of imposing special valuations for duty purposes on fruits and vegetables, and we are familiar with the system. The system is that these values are imposed for certain periods in the year, and these periods vary regionally—they may not be the same in British Columbia as in the maritime provinces for example. We set a value for duty purposes higher than the fair market value in the country of origin, higher than the export price quoted. Under section 43 of the Customs Act the difference between the export price and the values so fixed is collectable as dumping duty, so that vegetable and fruit growers from various parts of Canada have each year applied for and secured the special valuations for duty purposes with the object of debarring the importation of these fruits and vegetables from the United States during certain seasons of the year.

Mr. HACKETT: Early beans and potatoes and such things?

Right Hon. Mr. ILSLEY: Yes, the list is all set out in the trade agreement with the United States together with the length of the period during which they may be imposed, and the advance in prices is set out; it is all covered by agreement.

Now, then, there is some pressure to have that system changed and have these importations subjected to the prohibitions which would come about as the result of import controls. I am not proposing that although undoubtedly the fruit and vegetable growers would like it, and some members would like it. It is the system that has been operating during the last two or three years under the War Measures Act or the National Emergency Transitional Powers Act, with the consent of the United States. It cannot be done without consultation with the United States government.

Mr. HACKETT: Where is that agreement?

Right Hon. Mr. ILSLEY: That particular agreement? The last one was made in 1937 or 1939—the trade agreement with the United States, the reciprocity agreement. I mention that because after consideration we think we will go

back to the somewhat awkward and clumsy method of handling these importations that we had before. We think we prefer to do that rather than cut in on these importations with these complete embargoes over a few weeks each year.

Mr. FRASER: I have here a memorandum from the Department of National Revenue dated the 24th of February, 1947, which says: "Applications for specific permits, together with all correspondence relating thereto, to import fresh fruits and vegetables not included in general permit No.G-2400, are in future to be sent direct to the administrator of fresh fruits and vegetables, Wartime Prices and Trade Board 490 Sussex street, Ottawa." Would that be referring to something that was not covered by the agreement in the two years?

The CHAIRMAN: What are you reading from?

Mr. FRASER: This memorandum from the Department of National Revenue dated the 24th of February, 1947, which says that if you want a special permit you have to go to the administrator of fresh fruits and vegetables, Wartime Prices and Trade Board.

Mr. HARVEY: That is the transfer from the wartime food control to the Prices Board administrator.

Mr. FRASER: That would be something that was not covered under this Canadian-United States agreement, was it not?

Mr. HARVEY: No, that is the same article.

Mr. HACKETT: That would go off at the end of the month.

Mr. ISNOR: That agreement you are speaking of respecting fruit after the first year was generally accepted as fairly workable, was it not?

Right Hon. Mr. ILSLEY: That arrangement in the fruit agreements with the United States?

Mr. ISNOR: Yes.

Right Hon. Mr. ILSLEY: It is workable. I worked it myself when I was Minister of National Revenue and while it nearly set me crazy it worked. They would come and want the dumping duty on cucumbers put on on the 26th of April and the officials would want it put on on the 29th of April and we would have to decide between the conflicting claims, and we always had trouble with British Columbia with regard to strawberries and articles of that kind. They sent in aggressive telegrams: The east gets this so why should not British Columbia get something else and so on. Nothing in here is purely protective. There is a reason, apart from pure price protection, for everything in here, but the other is getting away completely from the idea that foreign exporters should know what contracts they can make in exporting into the country and importers what contracts they can make in importing.

The CHAIRMAN: Would not there be an additional reason in favour of the way you propose dealing with the problem: the present bill before us will be a temporary measure while the problem of dumping fruits and vegetables is a permanent problem?

Right Hon. Mr. ILSLEY: Yes, decidedly.

Mr. FULTON: I should like to refer to the fourth reason which the minister suggested as justifying clause 4 on which he proposes to move an amendment. Is not the proposed amendment cutting across the field of what is presently done by tariff regulation?

Right Hon. Mr. ILSLEY: Only to the extent it is necessary to enable us to work our price support legislation.

Mr. FULTON: I wonder if what the minister had in mind in speaking of the fifth possibility which might be included in this section could be better accomplished by tariffs? Would not that apply also to the fourth case: would it not

be better to allow it to continue under the tariff regulations instead of putting this additional burden on the Department of Trade and Commerce?

Right Hon. Mr. ILSLEY: Oh, well, you mean institute a new system of values for duty purposes It could be done, I think; you could advance the values up to your floor price. You could do that if you wanted to. This support legislation was intended to be merely for the transitional period.

Mr. FULTON: Floor prices are not for the transitional period.

Right Hon. Mr. ILSLEY: I think so. I do not know whether it is in the Act or not, but that was the understanding; that was the announced policy from time to time.

Mr. Ross: Yes, it was.

Right Hon. Mr. ILSLEY: When I speak of the transitional period I do not mean a period fixed in any legislation; but it was expected that there would be a transitional period and that nobody could tell in advance what would happen to agricultural prices and fisheries prices during that period, and that there should be provision for floor prices during that period. It is not to be found in any legislation, but during that period this floor price policy would be applied. The amount that may be used under the floor price policy is limited by the Act. It is a pretty high limit, $200,000,000, but nevertheless there is a limit there, and the speeches by the minister and the announcement of government policy all said it was for the transitional period after the war.

Mr. QUELCH: Having in mind this amendment it is true, is it not, that tariffs have operated as a form of price control and therefore if we are going to be absolutely consistent and demand that controls be abolished we should also demand that all tariffs be abolished because they are in themselves a control of prices to some extent.

Right Hon. Mr. ILSLEY: The dumping duties on fruits and vegetables have operated as a control on the imports of fruits and vegetables. They have operated in many cases as a prohibition on the import of fruits and vegetables. That is an import control. That is really what it is.

Mr. FLEMING: In commenting on the three criteria that are set forth in section 4 the minister gave as a reason for the first one the necessity for what seemed to me to be rather a distribution control than an import control. One does not want to take up time here with theoretical differences. Is this bill the proper place for setting up what is in effect a distribution control rather than an import control? The reason the minister gave for the first criterion was definitely the necessity for distribution control rather than import control. It did not relate to import.

Mr. FRASER: You are referring to tea?

Mr. FLEMING: Yes.

The CHAIRMAN: Is it not a lot easier to make your proper allocation at the source instead of allowing one man to bring it all in and then set about to take it away from him?

Mr. FLEMING: I should like to have the minister's comment on that because it seems to me as his statement stands it is a statement in favour of a distribution control rather than an import control.

Right Hon. Mr. ILSLEY: If there is an undesirable situation to be corrected I think the duty of parliament is to take the most sensible method of correction. Assuming that there has to be some control of distribution I do not think there would be any advantage in trying to take stocks away from people in the country after they have bought them rather than regulating their imports. Besides that we would not have the power to do it after the emergency passes, at any rate.

Mr. FLEMING: Not under this bill; I agree.

Right Hon. Mr. ILSLEY: Not under any bill. This has no relation to the national emergency. We have the constitutional power to regulate imports. We have not the constitutional power to order distribution in Canada at least within a particular province. I think that is probably right.

Mr. FLEMING: I can understand the point the minister has raised that the reason for putting that kind of control in an import control bill is on constitutional grounds.

Mr. JAENICKE: Of course, the section mentions distribution.

Mr. FULTON: I should like to come back to this question with regard to the fourth reason which the minister gave and on which he introduced an amendment. I understand at the moment floor prices are purely transitional, but certainly a great many members, and a large body of the public as well, hope that eventually a floor price policy can be introduced which would be made permanent. Then the question is going to come up as to how that will be administered. The question which is covered by your proposed amendment will also arise as to how we are to protect our floor prices against dumping. In the hope that a policy might be worked out I wonder whether it would not be more advisable to provide for the permanent administration of that question. That is why I wonder if it would not be more advisable to give this duty to the tariff people who presumably would be the ones to carry on if the policy should become permanent. I come back to the question whether it would not be better to do that now than to have this job done by import control.

Right Hon. Mr. ILSLEY: I speak with a good deal of ignorance in this field, but so far as international dealing is concerned with other countries I think the other countries concerned would recognize the necessity and agree to a system of import controls where you have price support legislation designed to operate for a limited period but if you begin to set up a system of tariffs I think you would have a lot more difficulty because the United States has never liked our system of values for duty purposes at all.

Mr. FULTON: Do they prefer to do it this way rather than under a trade agreement?

Right Hon. Mr. ILSLEY: I do not know what their preference would be, but I would think that the job of a Canadian negotiator would be much easier in suggesting an import control system because you have price support legislation which is in all probability likely to be temporary. It is not as likely that they would be in favour of agreeing to the imposition of a whole new set of dumping duties.

The CHAIRMAN: You see there is one difference as to the treatment you accord to perishable products. Raw fruits and vegetables have to be marketed when they are fit to be marketed or they are a total loss. In that way there is a sharp difference between fruits and vegetables and grain, fish, and so on, which are not perishable products at all.

Mr. MACDONNELL: Without wanting to press it too far I want to raise one question for the minister's consideration. I think I understand his explanation of the paradox that we are going to have import control from foreign countries in cases where there is not an abundance but a scarcity. He gave an illustration of it. He said what I fully agree with, that it would be a thing we would all greatly deplore if we allowed a situation to continue whereby one man went out and got all the tea and practically had a corner on it in Canada. I could not gree with that, but I want to ask the minister this question. Is this the only way to deal with it? In effect it seems to me we are now using import control to deal with a monopoly situation. I should like to ask him is there no other way by taxation or some other means to deal with that? I am not

forgetting that under this bill it is only going to last for a year but it seems to me that by implication we are putting on a government department a task which I think is impossible of achievement. I do not see how any government department can undertake to create ideal justice among people in every line of business. We had a statement from the deputy minister yesterday in which he indicated something like that was almost laid on the shoulders of the department. Can the minister say whether it has been considered if there is not some other way to eal with it, or do we have to fetter business at the source in order to prevent some man from doing what we all deplore, namely, getting a corner on the market? How far does that take us?

Right Hon. Mr. ILSLEY: I must say I have not given consideration to any alternative method. It may be that other ministers have. Maybe the officials have. I doubt whether they have. I think perhaps the reason they have not is because in the case of articles such as tea there has been an apparently satisfactory distribution of import permits in the past. Is that not right?

The WITNESS: There have always been difficulties, great difficulties, the sort of difficulty Mr. Macdonnell suggests, but by and large it has been possible to arrive at a workable arrangement.

Mr. MACDONNELL: How far back does that go, just during the war?

The WITNESS: Yes, during the war. I am speaking of the allocation of a limited import quota among the users in Canada. There have been some rough corners. There always are, but it has been workable and generally satisfactory.

Mr. MACDONNELL: May I ask this question? I do not want to be fractious in raising difficulties. Do you think it is reasonable to look forward to a time in the near future when the amount of tea offered will be enough so that we can abandon this in a year or two years, let us say.

The WITNESS: These controls are based on scarcity. As and when supplies increase the extent of government control in the countries of origin will of necessity disappear when they start to go and look for markets and are selling in a buyers' market as distinct from a sellers' market, but at the moment a good many of these import controls are, in fact, operating to assist people to get supplies.

Mr. MACDONNELL: On what basis do you give your import permits at the moment?

The WITNESS: On what basis are they allocated to people in Canada?

Mr. MACDONNELL: Yes.

The WITNESS: Each one is worked out depending on the commodity, the type of person that is handling the commodity.

Mr. MACDONNELL: I am just talking about tea.

Mr. FRASER: Would it be on a quota based on what they were buying before?

Mr. HARVEY: It would be on the previous history of trade. Perhaps I might point out—

Mr. MACDONNELL: Let me point out that the big people like that, while the little people do not like it. In my opinion, that is one of the defects of these controls. You are always favouring the big people and making it difficult for new people to go into business.

Mr. HARVEY: There is always an endeavour to keep a margin of protection for the new man endeavouring to establish himself in business. There is one great difficulty in that respect. The commercial size of quantity has a tremendous bearing on the facility of its handling and its landed cost here. We very frequently find even when we extend a quota to somebody endeavouring

to enter business he is unable to compete commercially because he has not the distributive size while the world is still a sellers' market. He cannot handle the volume to reduce his cost.

Mr. MACDONNELL: Now that it is being sold on the open market what is the technique of the buying? Is it bought by a government agent or is it bought by one big person?

Mr. HARVEY: Until recently tea has been purchased in bulk by the Commodity Prices Stabilization Corporation. They are now in the process of returning it to the hands of private trade.

Mr. MACDONNELL: I only want one further short explanation. You say it is being returned to private trade. That comes back to my other question. Will one individual or one corporation or a certain group be allowed to go and buy, because after all we must be skillful in our buying.

Mr. HARVEY: Yes. Under this arrangement as it is returned to the hands of private trade firms who have been in business before will apply for import permits and obtain import permits to make their own purchases.

Mr. HACKETT: On a rationed basis.

Mr. HARVEY: On the quota basis. As the quantity improves the necessity for the control disappears. It is a question of the pre-war producing areas coming back into production in very large part.

Mr. FRASER: There is a question I want to ask. The deputy minister mentioned there had been some rough corners. Were those rough corners caused by your tea firms that had been in business for a number of years being allotted different tea to what they had been used to buying? These tea firms have certain agents and certain places where they buy their tea. That gives them their special blend. Were there difficulties in regard to one firm getting an inferior quality of tea to what another firm got? How did you work out the matter of the quality of the tea?

The WITNESS: Quite frankly I was not thinking specifically of tea or of any particular commodity. I was speaking in general of the problem of allocating a limited quota. In each trade one meets with different problems depending upon how the thing was handled. Innumerable questions come up. There are questions such as the amalgamation of two firms when you are trying to relate it to past history. Maybe somebody has gone out of business. There are a great variety of problems that come up. If you want specific information on how the tea allocation was handled I think it should be got from the Commodity Prices Stabilization Corporation.

Mr. FRASER: The reason I asked the question is because I was talking to a man who is in the tea business. He said, "Well, our tea has not been nearly up to the quality we like to keep it owing to the fact that we have to take what is allotted to us."

The WITNESS: I do know that tea is a particularly difficult one because of the grading problem and ageing, and so on.

Mr. FRASER: That is exactly what he said. He said, "We are getting a grade that is not up to our regular standard." He said, "We hope the sam hill the government will allow us to go in and buy for ourselves." I think those were his exact words.

The WITNESS: I think the comparison with the past would have been that while he might not be getting exactly what he wanted he got something better than he would have got if there had not been any allocation.

Mr. FRASER: There might be something in that. He was objecting to it, and I imagine other people were, too.

The CHAIRMAN: The minister may not be able to be with us this afternoon. If you have any more questions you want to ask him it would be an opportune time to do it.

Mr. ISNOR: Are there any other clauses to which the minister is going to refer?

The CHAIRMAN: No, no other amendments, I understand.

Mr. HAZEN: I should like to ask the minister this question. Have there been many prosecutions under the regulations created by order in council that exist at the present time? There is power here to make regulations in section 10.

Mr. BULL: There were only two prosecutions, I understand, under the regulations. One had to do with fish in Montreal where a fish dealer was sending out one type of fish and claiming it was another. He was caught at the border by the Royal Canadian Mounted Police. He was prosecuted and fined, and his trucks taken away from him. We have another case in British Columbia at the present time under the same circumstances where a man was selling spring salmon and calling it another type of salmon. He was moving it from Vancouver down to Seattle, a type of salmon which should have been going into cans. He was sending it out as fresh salmon at a higher price. There have only been the two prosecutions.

Mr. ISNOR: I wonder if the minister would enlarge on section 9 in regard to transferring permits. What is the purpose of that?

Right Hon. Mr. ILSLEY: Would it be all right for Mr. Mackenzie to answer that?

Mr. ISNOR: Yes.

The WITNESS: The important point is to stop trafficking in permits. That is the reason for the provision that the permit is not transferable. Again when you are working with export quotas, and having in mind that the export price is higher than the domestic price, an export permit as such becomes an instrument of value. If one made them transferable there could be unlimited trafficking in them.

Mr. MACDONNELL: A new industry.

The WITNESS: Apart from that the rest of that section is merely to make it abundantly clear that this permit which is issued does not over-ride other legislation which might be operative, such as pure food laws, drug laws or any other laws that control the movement or type of the merchandise involved.

The CHAIRMAN: Were we not told at some time somewhere that in some instances the department sets up a clearing house for permits? Take, for instance, lumber. A man will have lumber cut none of which is of a size suitable for export. Yet he earns an export quota. Is there not some provision whereby that permit which he earns can be transferred for value to someone else?

The WITNESS: Yes, that can be done as long as it is under control, but if a permit was readily transferable then there would be no means of seeing that they were properly handled.

Mr. LESAGE: As to lumber there must be special permission on the invoice and it must be approved by the lumber controller?

The WITNESS: That is right.

Mr. LESAGE: I saw that this morning.

Mr. FULTON: I should like to ask a question on section 7 which perhaps the Minister of Justice might be able to answer.

Mr. ISNOR: May I ask one more question before we leave that? In case of a tea merchant, one who would be blending teas, and jobbing it to the trade, if he had a permit and for some reason or other went out of business would he be permitted to transfer that to his partner or someone else to carry on?

The WITNESS: I think it would depend on the commodity, the special arrangements and the basis on which quotas had been issued. There certainly are cases, as in the case of lumber, where quotas may be transferred under control. There are other cases where it is not suitable that they should be transferred. One would have to be specific as to the particular transaction.

Mr. FULTON: I was wondering whether there was an provision for compensation to a merchant whose export permit it was necessary to cancel. For instance, suppose there was some change in the over-all world situation and some new agreement was made that directed the commodity to some other country than the one to which he had permission to export it, and it was necessary to cancel his permit and he suffered a loss. Would there be any provision for compensation?

The WITNESS: No, there is nothing in this Act. There is no vote from which such compensation could be taken.

Right Hon. Mr. ILSLEY: The purpose is merely to cancel the permit if he is proved to have committed some violation?

Mr. FULTON: It is really a punitive clause.

Right Hon. Mr. ILSLEY: Is it? I was just asking that.

The WITNESS: It depends on the change in supply conditions. A man might be laying his plans to export a certain commodity before obtaining a permit or even after obtaining a permit. If some situation developed there might be a change in the regulations. What has happened up until now when that situation has developed is that we try to arrive at some sort of arrangement that will avoid his being placed under too heavy a loss, perhaps by way of permitting him some export because of commitments that had been undertaken, but there is no provision for compensation as such.

Mr. LESAGE: During the war it happened to my knowledge in the charcoal business. A certain charcoal producer had some export permits to the United States where the price was much higher. There was a scarcity on the Montreal market. The domestic market could not be supplied so they cancelled his permits and he had to direct his carloads to Montreal. The remedy for it was that his export permits were postponed. A little later when the situation on the Montreal market was corrected he exported to the United States and they gave him a little more in the way of permits to help to balance it up.

Mr. FULTON: I was thinking of a case where a man made firm contracts with a shipping agent for the delivery of these goods. He might be held liable under those contracts. He might get involved in losses in price on his goods. I was wondering what could be done there to safeguard him? I think if power is given to cancel a permit in that manner there should be some provision made for recompense to a merchant who suffers consequential damage, unless it is cancelled for fraud.

Mr. FRASER: You would have to put on the bottom of his contract besides "an act of God", "at the direction of the government". It would have to be, "Act of God and direction of the government."

Mr. JUTRAS: In the allocation of export permits what provision do you make for new businesses coming into the field?

The WITNESS: That would depend entirely on the commodity. There are many commodities where there could not be any new producers come in within the foreseeable future by reason of the process of manufacture. It has varied all the way through.

Mr. ISNOR: Except in the case of veterans; you make a special allowance there?

The WITNESS: There are many industries where a veteran could not possibly set up in business in the foreseeable future.

Mr. MICHAUD: For instance, in the soft drink business you have refused to grant permission to go into the soft drink business on account of the sugar situation?

The WITNESS: That is a thing altogether apart from this bill. That is rationing of sugar and the licensing of a business under the Wartime Prices and Trade Board. It has nothing to do with this bill at all.

The CHAIRMAN: Mr. Macdonnell, at our previous meeting you asked some questions directed to the point as to whether the present bill could include a list of all articles that would be subject to control. While the minister is here would you like to pursue that point?

Mr. MACDONNELL: Yes. I think the question has not been fully answered but nevertheless a good many things have been said which have helped to clear it up somewhat. I do not want to be monopolizing the asking of questions, but I should like to ask this question. We had some discussion at the previous meeting as to the very important question of whether exporters can be trusted, without being controlled, to take care of the domestic market. Of course, exporters are inclined to think they can. I am informed by a friend of mine who is an exporter—and I have no means other than his word of knowing whether his statement is fair—that things like canned foods, machine tools, plumbing supplies, do not need to be controlled at all. He tells me they are controlled. I mention those as samples. I mention them to introduce the general principle which I think goes to the very root of the matter. I think it is fair to say that one of the reasons given the other day for export controls was that situations would arise where our manufacturers would not take care of the domestic situation. I want to ask in particular what the bearing of the newsprint industry is on that. My understanding is that is a case which stands out as an illustration to the contrary. If I am wrong I should like to be corrected. I should like very much to hear the minister's views from his experience during the war as to whether we have got to assume that a manufacturer is going to be so foolish that for the sake of an immediate advantage he will disregard his home customers, jeopardizing his whole future for many years to come for the sake, as I say, of immediate advantage. There are some 700 cases where you say you need to have controls. I understand the illustration that the minister gave this morning, but when you have 700 items it does make you wonder how far we have gone in the business of paternalism. I think Mr. Mackenzie would be a very nice paternalistic institution. I am sure he would try to do his best, but I am wondering how far you have got to go in that direction?

Right Hon. Mr. ILSLEY: I really have not had enough experience with the operation of the export permits system to know how far you could depend on manufacturers, producers, to see that the domestic market was adequately supplied before they exported, but I would think you could not safely depend on very many. That is my belief. This is the way it arises. Let us take the manufacturers of agricultural implements who are very respectable people. When they can get more for their implements abroad than they can in Canada their opinions are influenced as to what is an adequate supply for the Canadian people. They may be quite sincere about it.

Mr. MACDONNELL: That puts it very gently.

The CHAIRMAN: Might even be warped a little.

The WITNESS: May I add a word? There is one other point I think might be made in answer to Mr. Macdonnell's question. That is that there is practically no product which is under the control of the manufacturer all the time. Once it passes out of his hands he loses control of it. There are any number of people in the country who can find ways and means of getting possession of that product, and find a way to export it. If you try to ensure that a certain

quantity is distributed in Canada it assumes that a reasonably adequate quantity is available. It does not take much ingenuity to pick up some of these articles, perhaps not from the original manufacturer but from other people in the various trades. Then some individual who has been able to do that, without export permits, proceeds to make an export of the items that he has been able to get under his control and makes a handsome profit. The minute that happens the manufacturer comes back and says, "Well, I do not mind doing the right thing and distributing enough in Canada, but I am not going to do it simply to enable somebody else over here to make a profit that I am denied."

Mr. MACDONNELL: Will you mention the newsprint industry?

The WITNESS: Newsprint is a very special case because newsprint as such is dealt in almost directly between the big mills and the publishers. It does not get into general commerce to anything like the extent that other items on this list do.

Rt. Hon. Mr. ILSLEY: There are at least two publishers in Canada who are not satisfied they are getting enough newsprint.

Mr. MACDONNELL: I know one of them.

Mr. ISNOR: I should like to pursue that thought a little beyond the point suggested by you. A manufacturer of clothing about two years ago found himself suddenly faced with this situation. Buyers from New York came over to Montreal and were buying almost every suit and suit length of serge and woollen material that was available. They were not on the list. There was no export permit required at that time. If I recall correctly you immediately put woollen goods on your export list. That made it impossible for the individual to export suits or woollen goods. Because of that action by you it made it possible for us to have more clothing in Canada than otherwise would have been the case. That is one case.

I also recall an outstanding firm, whose name I know very well, which operates in Chicago. When they found they were unable to procure cotton goods in the United States sufficient for their requirements they sent buyers to Canada and bought at retail prices in Toronto and Montreal sheets, pillow slips, and so on. That is a case where it does not affect the manufacturer, but the same principle was carried out of exporting goods from this country and demonstrates the need for an export permit such as is mentioned in this bill.

Mr. MACDONNELL: At the risk of being tiresome I want to come back to that for a minute. Would you say whether you did have any such cases, Mr. Mackenzie?

The WITNESS: That is exactly the type of situation I had in mind where somebody other than the manufacturer is able to pick up a supply that has been distributed in Canada and intended for domestic consumption. He picks that up and proceeds to export it.

Mr. FULTON: Perhaps Mr. Mackenzie can say where all our shirts have gone?

The CHAIRMAN: Mr. Macdonnell has the floor.

Mr. MACDONNELL: I am afraid I have been holding the floor too long. I am going to get off it. I want to say this. First of all I am not sure whether what Mr. Ilsley said about the two publishers who wanted newsprint got on the record. If it did I want to say I think I know one of them and I think by scrounging around he has got the paper he needed. I want to come back to that general question. It may not be fair to ask you to answer it at the moment but I want to have it answered later. I want to get an idea of the quantities involved. My colleague, Mr. Hackett, to my right has said some things which evidently have interested the public a good deal as to the number of people who have gone into the government service and who are busy

controlling the rest of us. No sensible man thinks we can get along without controls altogether at the moment. It is a question of how much. Perhaps Mr. Mackenzie can give me an illustration. I should like to know the quantities involved in some of these indirect operations that he talks about. I should like to know how significant they are. I want to point out incidentally that to the extent to which people have managed to export probably the Minister of Finance does not wholly complain because it helps with our exchange situation. That is probably one of the things we have in mind. I do want to get an idea of the quantities involved because it seems to me if we are going to get rid of them we have got to have a rather strong digestion in these matters and admit there are going to be certain things we will not like, but we have got to go through that period when we are getting readjusted and, as I say, not deal with little things.

The WITNESS: It is very difficult to give you precise figures on it.

Mr. MACDONNELL: Would you care to let that stand and perhaps give me an illustration later? We will be back again but do as you prefer, now or later.

The WITNESS: There may be a typical case we can give you. I would be glad to look and see if there are some. I think one can say this, that there has been, as you can see from the little statement that was tabled this morning, a very substantial reduction in the number of items under control. One of the principal criteria that is used is that fact of the number of permits involved and the relationship of that to the seriousness of the problem. They are coming off all the time.

Mr. MACDONNELL: Take canned goods, one of the things my friend mentioned and tell me about that, or perhaps one of your colleagues could. Are they controlled in the export of canned goods?

Mr. BULL: We have met that situation in several ways. One of the main things is to give general permits to the responsible exporters, that is, to the actual producer of the goods. On the understanding he is supplying a proportion of his production to the domestic market he gets an export permit for the balance. He ships it in any form to any country. It is almost equivalent to taking it off control. As to the brokers over 500 new firms have set up in the last few years in the export business. They are constantly looking for goods. If they come in at the wholesale and retail level and pick up these goods we may and probably would deny them an export permit.

Mr. MACDONNELL: You would deny them?

Mr. BULL: Because we had already taken care of the quantity we could let go, and the manufacturer in supplying those goods to the domestic market is given the opportunity to sell some goods at a higher price in the export market. Take the case of cocoa. A while ago the entire body of manufacturers was supplying the wholesale market with cocoa at 6 cents a pound. There constantly was a shortage in cocoa. We discovered a man in Montreal was skimming it off the wholesale market and selling it in New York at 26 cents a pound and creating a constant shortage in Canada. We were not getting applications from the manufacturers for export permits because they knew the wholesale trade was constantly calling for cocoa and the cocoa administrator was pushing them to supply more cocoa for the domestic market at a time when one small broker in Montreal was shipping it to New York. He got out about ten carloads and he made a very substantial profit on it. We caught up with that, and we have got a very tight control on cocoa. We give no permits to brokers on cocoa. The permits only go to the manufacturer until he has all the permits he wants; then we give them to the broker. The manufacturer has the responsibility of supplying the domestic market, and therefore he is entitled to any exports, having supplied the domestic market.

The CHAIRMAN: The manufacturer is practically uncontrolled. He does just as Mr. Macdonnell suggests.

Mr. BULL: We have given very substantial open permits to manufacturers and within those figures they have a responsibility to the Canadian distributors and the Canadian market. Over and above that they are allowed to export. If we find the domestic market crying out for goods we will tighten up on these general permits under which they are operating. There is a top quantity within those figures but the quantity set was generous, and was arranged in cooperation with the canners so that there is a minimum amount of complaint from the canners as to how they have been treated, but there is a complaint from food brokers and people along the way who would siphon off goods which were delivered to the domestic market.

The CHAIRMAN: Is it fair for me to ask as to whether your complaint came from a broker or a canners?

Mr. MACDONNELL: No, it came from a man who really represents a group of exporters. He knew the export situation.

The CHAIRMAN: Then it comes from a broker, you see.

Mr. MACDONNELL: No, he is not a broker, but at the same time he is not a manufacturer. My only comment on that—and it is really in the nature of a question—is that you are really finding it necessary to discourage individuals, to make it impossible for individuals because of the case you have mentioned. You really find it necessary to discourage to the point of extinction the private food broker in that line?

Mr. BULL: In many lines we are making it very difficult for them.

Mr. MACDONNELL: Do you think there is any danger in that for the future of our export business?

Mr. BULL: These fellows were not in this business before the war for the most part. They have been attracted to it by the big profits. When we come back to a buyers' market many of these commodities will not stand brokerage in between the producer and the consumer abroad. The tendency is for the producer in this country to make direct connections abroad and move the goods without that second commission or profit. Where a broker has been established in the trade he has a right to continue but he operates on the quota given to the manufacturer. He cannot buy wholesale under normal conditions and export.

Mr. MACDONNELL: He is attached to a certain manufacturer?

Mr. BULL: If he is buying from the manufacturer it is quite in order for him to continue in the export business operating under the manufacturer's licence. In other words, if a manufacturer such as Heinz says that it is quite all right for a firm in Toronto to sell their ketchup in Jamaica we will give the firm in Toronto a permit and charge it against the quota we have for Heinz. It is all done with the approval of the manufacturer. They would give that approval if a man is buying from the manufacturer, but if he is buying from the wholesaler then the manufacturer would not be inclined to give his approval.

Mr. MACDONNELL: It all makes a rigid and unelastic economy. We cannot refuse to face that fact.

Mr. BULL: That is true.

The CHAIRMAN: Looking at it from the other viewpoint it assures to the man who is entitled to the profit a profit and it prevents some opportunist from stepping in and making a killing.

Mr. QUELCH: I should like to ask the minister a question.

Mr. MACDONNELL: May I make one comment? I want to say that it is a hard thing to answer, but it is the death knell of competition and free enterprise if we fix our minds on that.

Mr. QUELCH: I should like to ask the minister this question. I take it during the war in exercising these controls the government was influenced by the question of balance of payments.

Right Hon. Mr. ILSLEY: Export-import permits were not based on exchange considerations at all. The War Exchange Conservation Act was based solely on exchange considerations. That was a very rigid basis of control of imports.

Mr. QUELCH: That was exercised entirely by the Foreign Exchange Control Board?

Right Hon. Mr. ILSLEY: No, it was the law. It is over now, but the imports were controlled by the Department of National Revenue. It became a part of the law. Certain things could not be imported at all from certain countries.

Mr. FULTON: Before we adjourn may I make another plea with regard to the time of meeting? I know there are at least two members who are extremely interested in the Natural Products Marketing Act. I think it is largely related to this sort of legislation. It is coming up in the House this afternoon.

The CHAIRMAN: If I may interrupt I might state that it was only as a safeguard that I asked for the room for the morning and afternoon in the event we would be unable to finish with the minister and the committee would want to continue with his presentation. I take it you are through with the minister?

Mr. FLEMING: Is he through with us?

The CHAIRMAN: I hope his explanations have been very convincing. Of course, they have been to me. We will not meet this afternoon. We will meet at 11 a.m. on Tuesday morning.

The committee adjourned at 12.55 p.m. to meet again on Tuesday, March 18, 1947, at 11 a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

TUESDAY, MARCH 18, 1947

WITNESS:

Mr. Donald Gordon, Chairman, Wartime Prices and Trade Board.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

TUESDAY, March 18, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Argue, Belzile, Black (*Cumberland*), Blackmore, Breithaupt, Cleaver, Fleming, Fraser, Fulton, Gour, Hazen, Ilsley, Irvine, Isnor, Jackman, Jaenicke, Jutras, Lesage, Macdonnell (*Muskoka-Ontario*), MacNaught, Marquis, Mayhew, Michaud, Rinfret, Stewart (*Winnipeg North*).

In attendance: Hon. James A. MacKinnon, Minister, and Mr. M. W. Mackenzie, Deputy Minister, Department of Trade and Commerce; Mr. Donald Gordon, Chairman, Wartime Prices and Trade Board.

The Committee gave further consideration to Bill No. 11, An Act respecting Export and Import Permits.

Mr. Gordon was called and examined.

At 1.00 o'clock p.m., witness retired and the Committee adjourned until Thursday, March 20, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

84795—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

March 18, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. Gordon is with us this morning. As he is an extremely busy man we will carry on at once. He is here to answer questions which any member of the committee would like to ask. He is not going to make a statement.

Mr. Donald Gordon, Chairman, Wartime Prices and Trade Board, called:

The CHAIRMAN: Mr. Fleming, you have the floor.

By Mr. Fleming:

Q. I think it is very helpful to this committee that we should have Mr. Gordon present, because it has been made clear I think that while this bill relates to particular classes of controls nevertheless there are features here that relate to the whole broad question of controls. Having prefaced my remarks in that way I would like to ask Mr. Gordon in the first place if he thinks it is possible and desirable not necessarily now but certainly as an objective to get back to an economy that is free of these wartime or emergency controls?—A. Yes. I am afraid that can only be expressed as a personal opinion because there is involved in that question the whole matter of government policy, export trade, tariffs, etc. I think I would like to say in answer to that question that so long as we are trying to carry on an effective system of price control and so long as the Prices Board is charged with the responsibility for seeing that an adequate domestic supply and an appropriate distribution of that supply is maintained as a matter of government policy in this transitional period of shortage, then it is absolutely essential that we have export controls and to some extent import controls; that so long as government policy dictates that our country be served in that way, then I do not see how you could get an effective administrative system without export control.

Q. I am thinking, Mr. Chairman, rather in terms of objectives, and I am not asking Mr. Gordon to go into that field if he does wish to, the matter of government policy. I am very anxious to get his view as to whether it is a practicable objective to aim at, an economy that is freed of wartime and emergency control; not necessarily to-day, but as an objective to which we should be bending our efforts?—A. Almost certainly I would say without qualification the objective is possible, and the only reason why the objective could not be reached in the short term is because of world conditions arising out of conditions of war affecting supplies.

Q. Yes. I think we all agree, we have got to take account of world conditions.—A. You may be reaching for your objective but there are obstacles in reaching it because of conditions arising out of war, and then you must decide

whether these obstacles are of such character and will so adversely affect your economy that there is a case for continuing a measure of government supervision.

Mr. IRVINE: May I just interrupt there and ask would the questioner or the witness enlarge a little bit on what they mean by an economy free for all? I do not understand it. I do not know whether the rest of the members of the committee do or not.

Mr. FLEMING: Mr. Chairman, if it would be helpful I would be glad to do so but I think if I just follow my immediate line of questioning through, then if there are any other questions which follow. The expression I used was, an economy freed of these wartime and emergency controls.

The WITNESS: If I may say so, the short answer to that is that all of these wartime controls are of an emergency character, and it is quite clear that government policy has been expressed that these emergency controls will be lifted just as soon as conditions which gave rise to them disappear.

By Mr. Fleming:

Q. And that I take it is the objective toward which those who are administering controls are working within the scope of government policy?—A. Absolutely. We are trying every day to review the situation and to see where these special conditions of emergency have now been rectified to the point that the emergency controls which had to be put on to deal with them can now be lifted.

Q. My next question is this: In relation to the time within which these controls are found to be necessary; that is to say, the period of continuance of these emergencies; we had evidence at this committee from the Deputy Minister of Trade and Commerce that each of the controls of the kind contemplated in this bill for export-import control is a particular type of commodity, and that the need for the continuance of the control is based on consideration of the supply of each individual commodity?—A. That is correct.

Q. Does that apply over the whole control area in Canada at the present time as well as to import-export control?—A. That is my understanding, yes.

Q. Then that leads to the next question, which is the relationship of these various controls to one another; that is to say all import-export controls, price controls and all other forms of war emergency controls. I would like Mr. Gordon if he will, Mr. Chairman, to enlarge on the relationship of the various pieces of this control system to one another, both as to principle and policy on the one hand and as to administration on the other; in other words, co-operation between the departments and bureaux or boards that have to do with the administration of the policy.—A. Yes. Well, on that; that is a very broad field.

Q. Yes. I am opening up a pretty big field for you.—A. I think I can cover it for you. If I do not I hope you will tell me wherein I fail. Essentially the Prices Board job is one of trying to maintain price ceilings or to get on with the job of an orderly adjustment of our prices when it seems that permanent supplies have reached a point where controls may be lifted, where regulation is no longer necessary. That is what you have been witnessing for the last six or eight months.

Mr. ISNOR: I wonder if Mr. Gordon would be good enough to speak louder so we can hear him.

The WITNESS: Do you want me to stand up?

Some Hon. MEMBERS: No, no.

The WITNESS: I am saying that the essential job of the Prices Board is to see that the price control system is maintained so that we do not have a runaway race in the cost of living, and during the last six or eight months what we have

been doing is gradually adapting our price level in the form of individual prices where it would seem that permanent costs have been sort of crystallized; wherever we feel that the increased costs both here and abroad have reached a permanent level then we try to adjust our prices so that we can free them of control. We have made the necessary first moves. The second thing we are interested in is to maintain an adequate supply in Canada of the essential necessities of life. Now with that in mind we of course have also to consider other trade considerations of Canada; namely, our export trade; and we look at the supply of any particular commodity; if there is an export interest in that commodity then we sit down with trade and commerce officials and we agree upon what may be a reasonable amount to go to the export trade and keep our feet in our foreign markets. We try to reach an agreement on a reasonable division so to speak in connection with any of our commodities that have to be divided. And we talk to the Department of Agriculture on the same lines. On the reverse side, on the import side, the board takes its part in discussing with foreign government officials the kind of allocations which Canada is entitled to in cases of short supply. But you will find that in almost every field; take textile supplies in England as an example, they are short, desperately short in relation to world demand. The oils and fats situation in the world is desperately short in relation to the overall world demand. The same is true with regard to almost all the other items that have been mentioned in the course of previous discussions in this committee I assume. The Prices Board takes its part in dealing through allocation committees to present the Canadian case for an allocation which is adequate to Canadian needs. Other departments of the government also take their part in these discussions, mainly the Departments of Agriculture and Trade and Commerce. Agreement is reached between all departments concerned, and these agreements have of course to be ratified by council. The officials make a recommendation in that respect, as to who is to represent Canada; and then when the deals are made they are brought to the attention of the government and either approved or disapproved as the case may be. And when these international allocations are decided upon then the operation of controls, mostly import controls, in regard to international allocations begin to function. We have to see to it and be able to demonstrate to control authorities of other countries that we do not over-buy our allocation in any particular instance. The second reason that we need import control is for our own interest; that is to ensure that we do not over-buy types of a particular commodity in which we have an allocation. Again using textiles as an example, we might get an overall yardage of fabric, or an overall poundage of yarns as the case may be, in either wool or cotton. We then in our own interest break that down into the particular types or grades that we need to get in order to maintain an appropriate balance. Now, in arriving at this breakdown of the particular amount of yardage that we need in each group we have advisory committees from the trade.

By Mr. Macdonnell:

Q. At that point am I correct in thinking that you are concerned with the total amount that comes in rather than in its allocation after it arrives?—A. No. The first point we want to determine is that we get a fixed amount of yardage let us say of a particular fabric, or let us say a certain poundage in yarns. And now, in giving import permits to pick up that allocation we need to be sure that by and large we do not get too much of any one particular type; otherwise you might find the men's clothing industry short while other types of users of the same kind of fabrics would have too much of a particular type. So we have to decide ourselves on a breakdown of the overall allocations that we may get in that field.

By Mr. Fleming:

Q. Mr. Gordon, in a word I take it that it is your view that these controls, again speaking of the wartime emergency controls, are related to one another and there must be close co-ordination in terms of administration?—A. That is correct, yes; not only with our own departments here but with the opposite numbers of those departments in foreign countries.

Q. So your board, the Wartime Prices and Trade Board has definite interest in this particular type of control of exports and imports?—A. Oh, very definitely. I mean not only in the export side, if I may return to that; the obvious reason is, of course, that so long as our price level is lower than the price level of foreign markets, particularly the United States, then if we did not have export controls our goods would be drained off to that foreign market at higher prices and we would be severely short here or alternatively our prices would have to rise substantially and we would have competitive bidding between two markets.

Q. Let me ask you if, having regard to that co-relation of policy as it is now in effect, you are satisfied with the present machinery, and if you feel that the present machinery is adequate for the purposes of bringing about a co-relation; and, is it working satisfactorily to that end? When I speak of machinery I am thinking of the whole group of control bodies, the Wartime Prices and Trade Board as well as the controls that are operating directly through government departments.—A. I would say that the system of co-relation in Canada excels almost that of any country of which I have knowledge, and all during the terrific strain of war it stood up and worked. Now, mind you, I am not going to attempt to say it is perfect. No matter what you may have there will be occasional slips. But by and large, I think the machinery worked extraordinarily well, and has done a job which will stand comparison with any country with which I am familiar.

Q. Are you prepared to make any comment to this committee on places where you think that machinery could be improved now?—A. No. I might say in all honesty that I think the machinery as it now stands is quite adequate for the purpose to be served.

Q. Now, are you satisfied with the way for instance export controls are working out in relation to the public supply?—A. Quite.

Q. Let me give you an example that has been cited in this committee more than once, and elsewhere; it is the matter of lumber.—A. Yes.

Q. It is that so much of our lumber is going to the export market where the price is very attractive where at home there appears to be a definite shortage of supply?—A. Well, that question could be better answered by the timber controller who is under the Department of Reconstruction. But by and large I can say this, that the Prices Board definitely is interested in the supply of lumber in Canada and its allocation?

Q. And the price?—A. And the price. The allocation of lumber to Canada is, to the best of my knowledge, adequate.

Q. Would you say that again?—A. I say that the allocation of lumber—

Q. The allocation?—A. The overall allocation of lumber in Canada is to the best of my knowledge adequate, and it is considerably greater than we ever used prewar. Where difficulty does arise however, and it is very difficult to control and operate, is in this respect; you get occasional shortages of grades of lumber or dimensions of lumber; and that is a matter which is constantly under review by the timber controller. But I think Canada has been well served in the continuous quantity of lumber that has been made available in relation to what is going export.

Q. Well now, you used the expression that the allocation of lumber is adequate; and then you used the expression, occasional shortages—I think you said of special grades?—A. Of types, yes.

Q. Of types, as it were; but you said definitely that the supply of lumber broadly speaking is adequate in Canada?—A. Yes.

Q. Would you enlarge on that?—A. I do not think I can. I say that there are specific shortages of types and dimensions from time to time. But the point is this, that the allocation of lumber for the domestic market is based on a percentage of production, and each person who exports lumber from Canada can only do so after he has earned a credit for the amount that he has put into the domestic market; so that the control situation is pretty good. But I say that lumber is probably one of the most difficult of controls to operate in the sense of getting everything that you want for your domestic market. And my point is that the amount of lumber, the footage of lumber which was made available to the Canadian market is in relation to the allocation system in my judgment adequate; but we are constantly struggling with shortages of one type and surpluses in other types and there are constant adjustments going on. That is the type of shortage to which I presume you refer.

Q. To be perfectly fair to Mr. Gordon, Mr. Chairman, I should tell him that my information is rather different from his about the adequacy of the supply, the overall supply of lumber; and that is why I asked him for some further enlargement on the expression that the allocation of lumber in Canada was adequate; because so far as I am concerned the information which has been supplied to me and the information which he has apparently are not at one.—A. Perhaps I should just make this clear. I am talking about what has happened in the past. As the program develops it is quite possible you will get developing shortages and those shortages would be adjusted from time to time as allocations are adjusted. But, as I say, I have been drawn into talking about a field which is not essentially my responsibility, and necessarily I have been speaking in a rather general way. The specific description of how these jams take place should rather come from the timber controller.

Q. I will not pursue it any further. The only reason I raised it was because I understood from your previous answer that the Wartime Prices and Trade Board have a definite interest in a matter of these controls and I took it from that that you have your finger in the pie in relation to lumber exports.—A. That is quite true because we are controlling lumber prices, or trying to; and naturally the supply of lumber has an important bearing on the whole structure of prices. It is in our experience that pricing adjustments have had to be made from time to time in order to encourage one grade of lumber rather than another or one type of supply rather than another and in doing that we run into an assessment of what we need. That is why I stated that the overall supply is sufficient, and out of our experience I would say that generally speaking the absolute footage of lumber that has been allocated to Canada should be enough if it were possible to get all of it in the particular types and dimensions that we need.

By Mr. Jaenicke:

Q. When you speak of allocation to Canada does that mean that we are subject to international control?—A. No, that is entirely our own allocation. I mean this, the total production of Canada is taken over by the timber controller and a decision reached as to the percentage amount of that production which should be reserved for the Canadian market before export permits are granted.

Q. But no international body has anything to say about that?—A. That is entirely our own affair.

By Mr. Irvine:

Q. Have we need for the controls we have, for instance such as we now have in Canada?—A. If it were entirely free then it would depend entirely—I mean, it depends on which control you mean; do you mean export controls, price controls?

Q. That is what I mean.—A. If you were to take off both price and export control then the Canadian prices would depend entirely upon how much the Canadian consumer was prepared to bid against the export market.

Q. And the consumer here would have to pay a whole lot more?—A. Substantially more.

By Mr. Fraser:

Q. Wartime housing and housing enterprises; are they restricted as to the prices they pay for lumber; does price come into the picture with them; if they want to buy lumber from a firm do they have to stick to the price?—A. Oh, yes, the price ceiling is applicable throughout.

Q. Then it does affect them?—A. Yes, it does.

Q. Yes. I asked you that question because I know that wartime housing wanted to buy 2 x 4 and they could not get the cheaper grades like hemlock or spruce and they said "We have to have 2 x 4 and we have to have them at once." The firm with whom they were dealing said "We haven't got 2 x 4 but we can give you 2 x 4 by cutting 2 x 12 white pine—and that priced $126 a thousand." Obviously, doing that takes white pine off the market. I think it is to that that much of our shortage is due, to it being held by wartime housing and housing enterprises.—A. Well, I would have to have specific complaints of the kind before I would be able to give evidence on a matter of that sort.

The CHAIRMAN: Gentlemen, we agreed at the opening of the committee to-day that as Mr. Fleming needs to leave early he would have the floor first. Some of the members were not in when the committee opened. Will you proceed, Mr. Fleming?

By Mr. Fleming:

Q. I can assure my friends that I am nearly through. I do not want to impose on the good nature of the committee.

The CHAIRMAN: I understand, Mr. Fleming, coming back to this question of adequacy, that Mr. Gordon's reply was adequacy in the light of all the circumstances.

By Mr. Fleming:

Q. I do not intend to pursue the matter further, Mr. Chairman. I think I understand his answer. His information I think is not at one with the information I have; but then he has indicated it is matter rather of timber control than coming under his particular purview. I do not want to pursue the matter further.

The CHAIRMAN: Yes, quite.

By Mr. Fleming:

Q. I would like to ask you now though as to the relationship between controls of the type we are dealing with in this bill and the problem of ensuring for Canada an adequacy of international exchange, the experience of other countries particularly I take it the United States with whom we were going to buy and pay in cash?—A. Well, with all deference, I do not know of anything in this bill which is directed in any way towards the question of exchange. I am in the hands of the committee.

Q. There were some questions to the Deputy Minister of Trade and Commerce on this point the other day and if I correctly state the gist of his remarks it was this; that this bill was specifically directed or aimed to cope with our exchange problems.—A. Yes?

Q. But I think it is clear that it may have a very direct effect on exchange problems, it would be quite possible.—A. No, it is not the intent nor would it be used—

Q. I did not say intent; but it could have a relationship and affect our exchange problem, because we have an exchange problem in this country.—A. There is nothing in the administrative controls which will be operated under this bill that would originate by reason of our exchange position. Here I am safe in saying that the administration would not be motivated in any way by reason of our exchange position.

Q. I quite accept that. That was the gist of the answer the Deputy Minister of Trade and Commerce gave, that these controls provided for by this bill could have a very direct relationship to that problem.

Right Hon. Mr. ILSLEY: What Mr. Gordon says is perfectly right, in the operation of this bill the administration will not be motivated by exchange problems. Of course, it is obvious, if you had no export controls whatever you would have a greatly increased export to the United States and a greatly lessened export to Great Britain. Therefore, your exchange position would be improved as against the reverse situation, but it is not the purpose of the bill to reduce our exchange in that way.

Mr. FLEMING: I appreciate that. It has been the consistent answer we have had all along. It is not the purpose of the bill but I think the answer just given is clear, it has a relationship to the problem; it could have an influence on our exchange problem.

The CHAIRMAN: How could it have an influence on our exchange problem if the issuance of export permits is not motivated at all by the exchange situation.

The WITNESS: Perhaps I could clarify that in your mind in this way, the various export and import controls under this bill will be directed only to securing an adequate supply for Canada—

Mr. FLEMING: Supply of goods?

The WITNESS: A supply of goods; on the export side we will retain in Canada what is needed for our own consumption.

On the import side controls will be used to secure for Canada from foreign countries a sufficient supply of essential goods. Now, having aimed at what is necessary for Canada, that is the only possible effect it could have on our exchange position, the amount of dollars or other currency we need to buy our imports or the amount of dollars or other currency we did not get by reason of restricting our exports. However, I repeat, that exchange considerations are not within the purpose of the bill because it is dealing entirely with the necessary supply of goods in Canada.

By Mr. Fleming:

Q. Then, this is my final question. I take it that, broadly speaking, costs are rising in Canada, the cost of producing goods, is not that a problem with which the Wartime Prices and Trade Board is faced at the present time in relation to scarcity?—A. Yes, I would say costs have been rising in Canada during the war years. I would hesitate to say they are continuing because I do not know.

Q. Have you not experienced a rise in the cost of production since the wages controls were lifted in December, 1946?—A. It is difficult to be precise about that. We have had to make price adjustments in various fields by reason of a demonstrated rise in costs, but those adjustments go back over a period of time; it is hard to define just when they start.

Q. We have had people saying to us in the House, on the one hand, there should be a freezing of prices with no ceiling on salaries and wages, and we have had people, on the other hand, saying you could not maintain long a system of price control if there were no ceilings on costs of that kind. Would you care to make a general comment on that, particularly in the light of the situation we are going to face with reference to the objective we discussed at the commence-

ment of your statement?—A. I would put it this way, the system of price control now being operated in Canada is a system which has, as an early objective, complete decontrol. We are trying to adjust ourselves to the situation where we will be able to get out of price control. If we were starting price control or had in mind the continuing of long term price control, then I would agree it would be necessary to have control of wages and salaries. But, since we are not, since we have not that as our objective, then it seems to me we might as well get ourselves adjusted to our new costs as soon as possible.

Q. That adjustment of new costs does mean, probably, an increase, does it, in the overall cost of living or cost of production?—A. That will depend; it is not only a domestic matter, you see. We are influenced in our cost of living in Canada very materially by the cost of material supplied from foreign markets. If we find in the United States, which is one of our most important markets, that, in due course, there is a downward turn in their prices, as many people expect, then that will have a very definite influence on our costs in Canada.

Q. I take it your board is keeping a close watch over prices in the United States?—A. We are trying our best, yes.

Q. What have you found in recent months as to the trend in the cost of living after that flurry which followed the removal of certain controls on consumable commodities?—A. I think I have a statement here from which I could just read a paragraph.

> In June, 1946, the last month of effective price control in the United States, wholesale prices in that country were 40 per cent over the pre-war averages, (1935 to 1939). In January, 1947, the latest month for which complete figures are available, the United States wholesale price index was 76 per cent over the pre-war level, and judging by the weekly figures there has been no decline to date. In Canada, on the other hand, wholesale prices which were 42 per cent above the pre-war average in June, 1946, were only 48 per cent over that average in January, 1947. The present differences between the two countries have widened considerably since decontrol in the United States. This is equally apparent if one compares the cost of living indexes. In June, 1946, the Canadian cost of living index was 124, that is 24 up per cent over pre-war and the United States index was 133. The latest figures show that the Canadian index is at 128 and the American at no less than 153.

So that gives you, I think, a fairly good indication of the disparity which still exists in the price levels of the two countries and the rapidity with which that disparity widened after the United States decontrolled last year.

Q. That, I take it, is subject to this qualification, that there has been a contribution through taxes in this country, at least from the public treasury, through subsidies towards holding down the cost of living to an extent which has not obtained in the United States?—A. Well, to an extent that does not obtain right now.

Q. All right, put it that way, then.—A. I think in the United States price control system, their subsidy bill was as high as ours.

Q. That is not the situation to-day; our cost of living is favoured by a subsidy?—A. Yes, but our subsidy has been very rapidly reduced in the last six or seven months. We have made quite a lot of adjustments in subsidies and that is part of the reason for our price rise in the last few months.

By Mr. Isnor:

Q. Have I these figures correct, when I say there is a difference between June, 1946, and January, 1947, in the United States of 40 to 76?—A. You are talking about the wholesale figures?

Q. Yes?—A. In June, 1946, the wholesale figure in the United States was 40 per cent over the pre-war average. In January, 1947, the figure was 76 per cent.

Q. Yes, a difference of 36 points?—A. Yes. In Canada it was 42 per cent in June, 1946, and in January, 1947, it was only 48 per cent, a difference of 6 points.

Q. There was a difference in favour of Canada of 30 points?—A. Yes.

Q. The other figures, so far as control is concerned, are 124— —A. 124 in June 1946.

Q. And 128?—A. 133 in the United States.

Q. Let us deal with Canada first.—A. All right. In Canada, it went from 124 to 128. In the United States it went from 133 to 153.

Q. That is 20 points and, therefore, a difference because of control of 16 points in our cost of living in Canada?—A. Yes, I think that is so.

Mr. HAZEN: But taxes go into the cost of living.

Mr. ISNOR: Yes, but I was dealing only with the figures Mr. Gordon gave.

By Mr. Jaenicke:

Q. These comparable figures between Canada and the United States are they based on the same commodities?—A. Well, the method of arriving at them is the same although I could not say that every commodity going into it is exactly the same. By and large, the comparison is a proper one.

By Mr. Macdonnell:

Q. Have you ever figured out how much our figure would be altered if the relevant subsidies were carried into all figures as part of the cost of living?—A. We have tried to do that. I would not care to hazard a figure because it is subject to so many qualifications it is misleading.

Q. It would be substantial?—A. I would not say it was substantial. If I might hazard a figure, it being clearly understood it is a debatable question between economists or other estimators, I do not think it would be more than of the order of 5 to 7 points. I am talking about the cost of living index figure. This figure would be substantially dependent upon the time at which these subsidies were removed.

Q. Another question in this connection, I read a report of the cost of living figure put out by a labour organization the other day. I grant you I only gave it a cursory reading, but as I read the figures they varied substantially from the figures given by the Wartime Prices and Trade Board, being substantially higher.—A. Of the cost of living index?

Q. Yes.—A. I am not familiar with the figures to which you refer but, of course, the manner in which the cost of living index is computed has always been a subject for debate. All I can say is I believe, myself, the Dominion Bureau and their estimate of the cost of living is about as good a job as you would find anywhere.

Q. In the American cost figures, are the subsidies carried in?—A. In the cost of living figures, they would be, yes, just as they are with us.

By Mr. Fulton:

Q. I thought you said our subsidy figures were left out of the cost of living index?—A. I do not know what you mean by "left out". The figure the statistician takes is the figure the goods cost the consumer. Now, that means, of course, that the subsidy has held that price down.

Q. And it is the same in the United States?—A. Wherever subsidies are applicable it would be the same. It is the consumer price which goes into the cost of living index.

By Mr. Fleming:

Q. Could you have subsidies of the present nature without control?—A. I do not think so. It is quite impossible to have a subsidy system without export control because your subsidy system reduces the price of your goods. If we did not have export control, the goods would go into the foreign markets. You would have the effect of spending the Canadian taxpayer's money to provide goods for foreign countries and I do not think that would be accepted.

Q. Apart from the international exchange of goods, are controls necessary to the functioning of any of our existing subsidies, that is, subsidies to the cost of living?—A. It is the other way, is it not? Is it not really that the existence of price control is the reason for the subsidy?

Q. It works both ways, I think, if I may say so?—A. If you remove price control, then there is no apparent reason for the government to pay a subsidy to reduce the price.

Q. There might or might not be a reason?—A. It might arise as a matter of government policy, but here, in relation to the price control system the subsidy has been used as a weapon to keep prices under control during the war, and, in certain cases, up to now.

By Mr. Fulton:

Q. You said it would not be a reason for the subsidies in Canada, not for export control. Have you not used the system of reclaiming the subsidy when the product was exported?—A. Now that is exactly the point. You need export control in order to recapture the subsidy when you allow any goods which have been manufactured under a subsidy provision to be exported. We have cases where goods have been subsidized and we allow a certain percentage to be exported in the interests of our own trade. Whenever that is done, we have a means whereby the subsidy content of those goods is recovered so the importer in the foreign country pays the full price.

Q. I understood you to say, in effect, that was one of the reasons why you needed this export control permit system, but that is not, perhaps, what you meant?—A. Yes, we need the export permit system in order to work out the machinery to recover the subsidy.

Q. Surely there are other ways it could be attempted? It is an accounting method?—A. If we did not have an export permit system, there would be no definite way established of recovering the subsidy on the goods. Moreover, I should say, the export permit in these cases is granted as a condition of getting the subsidy back.

By Mr. Breithaupt:

Q. Is not this true, too, where a subsidy is collected and an industry has a profit beyond the standard profit, the subsidy is returnable?—A. Of course the trouble is that this whole picture is so complicated I find myself in danger of over-simplifying it. Where a subsidy is paid, generally speaking, the plan is to recover any excess profit which a particular industry may earn because we do not permit the industry, or we try not to permit it, to get government funds if it is able to earn in excess of standard profits. There are other types of subsidies where that does not apply, particularly in the import field.

By Mr. Stewart:

Q. I wonder if Mr. Gordon would answer this question; was the cost of subsidies to the Canadian taxpayers as great as the increase in the cost of living would have been had there been no subsidy.—A. I would say the cost of subsidies would be substantially less than what it would have cost the Canadian

taxpayer in dollars in buying his goods without price control. However, again this is one of those questions which I must qualify, because without price control —in other words, if we had a substantial degree of inflation—I cannot measure for you the extent to which wages and salaries would have caught up with the race against prices. All I can say is that experience has always shown that wages and salaries lag considerably behind the inflationary race with price. I cannot balance the thing for you, nor can anyone. I can only repeat we are completely satisfied the cost of subsidies has been very, very substantially less than what it would have cost the Canadian consumer, and I include in that term, "Canadian consumer", the Canadian government because of its large purchases of war supplies.

Q. In other words, the subsidies paid for themselves in savings to the Canadian consumer?—A. Oh, yes, ten times over. May I just take that back. I do not want that, "ten times over" to be taken too literally. It has been a very substantial sum.

By Mr. Isnor:

Q. Earlier in the meeting you stated, when referring to the import of textiles and other articles, you consulted advisory or local boards, I think, of the trade. Was that in regard to distribution or price?—A. That was mostly in regard to distribution.

Q. I am going to pursue the question of distribution a little farther. In the case of textiles, you keep track of certain types of woollen and cotton goods with a view to having an equal distribution of certain qualities of goods. What control have you in regard to export, if any, over goods which are first imported into Canada then manufactured for the export trade?—A. That takes place in consultation with the Department of Trade and Commerce. Wherever the export permit system applies, then the granting of the export permit is an administrative judgment of the officer charged with it. He works out the policy which may be necessary in that field. In other words, if you are still thinking of the textile field, there would be certain types of exports which would be prohibited in the sense a permit would not be granted if our own supply situation were inadequate. For other types, export would be permitted if our position seemed to justify it.

Q. Have you any control in regard to the manufacture of certain types of goods after the yardage is imported into Canada?—A. Yes, we have had a substantial number of production directives, as we called them, during the war. Generally speaking, almost all of those production directives were abolished in December, 1946, apart from a few which it will be necessary to carry on for a few months more. I am reminded that certain goods, consisting largely of cotton yarns going into underwear and certain types of yarn going into hosiery are still controlled. During the war, we had an elaborate system of what we called "production directives" by means of which we told the manufacturers in the textile field the minimum amount of production which they must supply out of the raw materials which we were procuring for them in foreign markets.

By Mr. Stewart:

Q. Are you still procuring the raw materials for them?

The CHAIRMAN: Mr. Isnor has the floor.

By Mr. Isnor:

Q. I am asking this question because statements have been made that importers are bringing into the country higher grades of underwear, hosiery and so on and using their entire manufacturing production for higher priced goods so as to increase their profits instead of dealing with the medium priced goods?

—A. That situation has developed now, yes, because most of these controls have been abolished to the extent importers can buy higher priced goods, if you will, in the United States. There is nothing to stop them. They can get a price fixed on them by the prices board which is appropriate in relation to their cost. During the war, however, we were getting specific allocations of goods in desperately short supply. Our control extended through to the production of those items, but that has pretty much gone by the board, now.

Q. The increased price of materials brought into Canada from the United States for manufacture here would naturally be reflected in the cost of living? —A. That is so, yes.

By Mr. Stewart:

Q. I have a question which I believe is of some urgency to the male population of Canada. It deals with the question of shirts. I should like to know if Mr. Gordon can tell us if the same yardage of shirting is being produced in Canada as was produced during the peak years of the war?—A. Shirt production is about the only textile production of which I know where we are not fully up to the pre-war standard yet, although we are not far short of it.

Q. Is there a reason for it?—A. The reason has been the inability to obtain the raw material, namely, the shirting which comes mainly from the United Kingdom. The textile situation in the United Kingdom has been very tight. We have, in the course of our discussions with the United Kingdom, pressed our needs upon them, but the difficulty of sharing shortages is rather acute. We cannot get all we want because it is not there.

Q. Would it be the case that cotton manufacturers might have found it more profitable to manufacture things other than shirting?—A. They could have done. Let me put it this way, shirt manufacturing in this country is taking place to the full extent we are able to obtain raw material. The shortage is due entirely to our inability to obtain the raw material.

By Mr. Michaud:

Q. What percentage is exported?—A. Very little, 1, 2, or 3 per cent. Even then, it is only with the idea of maintaining our traditional markets.

Right Hon. Mr. ILSLEY: I should like to ask a question concerning subsidies. You indicated subsidies were paid in the sense that had subsidies not been paid the price rise would have been considerably greater than the subsidies. Now, my question will be rather lengthy. Of course, I went through all that matter in connection with the formulation of the policy for paying subsidies. Subsidies were paid at a time when, if subsidies had not been paid, the probability and perhaps even the certainty was that a spiral would develop, and they were put in at a time to stop the development of that spiral. Had that spiral of rising prices followed by rising wages, followed by rising prices and so on, developed, prices might have gone to very high levels. The payment of subsidies was at that time, I think, advisable. The increase in prices would have been very much greater than the subsidies, but is that necessarily the case today? It is this question I should like to ask you; would the continuation of a subsidy paying policy today necessarily mean, or would it likely mean, the price rise saved by the payment of a subsidy would be greater than the payment of a subsidy?

The WITNESS: Please do not blame me for being cautious when Mr. Ilsley asks me a question. I think you will agree, Mr. Ilsley, in answering that question you have to consider two conditions. The first condition was a condition of war, when the demands of war were so extreme they seemed to be insatiable. Our shortages in our domestic market were developing so rapidly, unless we had taken

control of the situation, as you say, prices might have gone to fantastic heights. The payment of subsidies at that point permitted me to break off that spiral, to break it off clean.

Then, following through the other procedure in connection with supply conditions, we were able to maintain a sufficient civilian supply despite the needs of the war effort. Now, the question of the payment of subsidies today is really a matter of timing. If there are certain conditions where the payment of a subsidy would result in holding your price down for the period of highly fluctuating prices in foreign markets the payment of a subsidy under such conditions might be justified if the condition is only temporary. But I cannot tell you whether the cost saved the consumer would offset the taxation cost in that respect or not. It would all depend upon the period of time within which you tried to do it. Your domestic price for a given article could be held over the period of say the next six months regardless of foreign market prices if you wanted to spend enough subsidy. But as I understand it the question is, would it be to the benefit of the consumer.

Right Hon. Mr. ILSLEY: Would the taxpayers lose as much as the consumer gains under present conditions by payment of subsidies? I think they would, myself. That is my opinion. I think you reach a point in this process where payment of subsidies is no longer justifiable in this sense, that the payment gradually balances. I think you reach a place where the payment of subsidies merely keeps prices down to the extent that subsidies are paid, whereas at an earlier period, a period of widespread shortages, as a result of the payment the shortages stop and there is no spiral, with the result that the saving to the consumer of goods is vastly greater by the payment of subsidies than is the cost for the taxpayers.

By Mr. Macdonnell:

Q. But you say that up to a certain point the payment of subsidies prevents a spiral?

Right Hon. Mr. ILSLEY: Yes.

Mr. MACDONNELL: And that would be before price control?

Right Hon. Mr. ILSLEY: No.

Mr. MACDONNELL: How can you be sure that it was the payment of subsidies and not price control that prevented the spiral?

The WITNESS: I would say the price control could not have been made effective in this particular instance without subsidies.

By Mr. Macdonnell:

Q. I am not trying to confuse the two things, subsidy and control, but I think you said that it was the subsidy alone that prevented the spiral; may it not have been as much due to controls?

The WITNESS: That is quite true, but by the same token, price control would not have been effective, it could never have been managed if we had not had subsidies to support it.

Mr. JACKMAN: There would have been no production.

The WITNESS: We could not have got some types of production. On your point, Mr. Ilsley, I think it is clear what you have in mind; that is, in point of time you come to a place where your prices continue to rise and costs keep rising; in a continually rising spiral. What happens today is that you pay a subsidy to reduce the cost to the consumer but that only means that you are giving him his goods at a price which is less than he would otherwise have to pay, but you are not cutting off the spiral, in this sense, that you could not make the goods

cheaper. In the end the taxpayer would be in about the same position, it would just about work out to the same sort of thing as the actual dollars saved in the buying of goods.

Mr. MARQUIS: In order to maintain production you have to subsidize price, you are almost obliged to pay a subsidy in most of these fields.

The WITNESS: That is right. And the situation which I am trying to describe here applies only while prices or the cost of goods seems to have become stabilized. The need for subsidy applies particularly to foreign markets where prices are disorderly and fluctuating, and it seems the part of wisdom to continue the subsidy period temporarily rather than adjusting ourselves at what might be completely false levels. We have had cases of goods in the United States where the price comparison would be almost silly. There have been cases where they have been ten times higher than ours and then come back. Now, it seems to me wise in those circumstances to maintain enough of the subsidy system to enable you to hold your final adjustment until these costs in your foreign markets become stabilized.

By Mr. Stewart:

Q. Would Mr. Gordon relate his remarks let us say most particularly to the matter of subsidy on milk?—A. Yes. I think that is a fair question and a very good example. It also demonstrates the different types of technique in the use of the subsidy. Now, the reason for the milk subsidy in the first instance was that the cost of living generally was rising at a very rapid rate and shortly after the Prices Board came into existence I went to the minister and said something like this: "Now, the development of the mechanics of price control I do not need to remind is a very difficult and a very intricate operation; we need some breathing spell here; we need some way of stopping the cost of living from rising", because at that time the cost of living was tied in directly with adjustment in wages—with each point of rise in the cost of living index wages automatically went up. You had such an automatic inflationary device that I could do nothing about; things were happening too fast. So I said, now we have got to take certain basic commodities in the general cost of living of the average householder and either stabilize them or roll the prices back to a level which will ensure that I can have a few months at least to stabilize the cost of living. Hence our milk price was reduced two cents a quart, below the then existing level for the purpose of lowering the cost of living to the average householder. As I say, that gave us an opportunity to get our mechanical organization built up so we could handle the inflationary situation. As time went on there came a day when we said to ourselves, this device has served our purposes, we have reached a reasonable stability in our cost of living in relation to other products; adjustments which are necessary from now on are adjustments which we will have to recognize as inevitable. So we decided that the sensible thing to do was to start with more or less artificial consumer price on milk which had been produced by these subsidies. The subsidy really gave the consumer, deliberately, his milk cheaper than he was entitled to get it in relation to the farmer's price. That is what I mean by adapting ourselves to the concrete effects of cost, the situation as we got into the period of decontrol. If the government were to say to me today, we want you to take this cost of living in hand and stabilize it and reduce it, one of the first things I would do, I would say all right then, I have got to have some time in which to get this thing worked out; we would have to take certain things and reduce the prices on them arbitrarily in order to get some time. As to whether or not that made an ultimate saving to the Canadian consumer is a matter of argument depending almost entirely on the point raised by Mr. Ilsley. You may reach a point where you have to pay larger subsidy in specific instances than might perhaps appear

to be justified. It will not just more or less balance out with the taxpayer's cost. I put it this way, when you have a situation where your price structure is disorderly, where it threatens to rise and threatens a continuing rise there may be justification, and there may be a substantial saving to the consumer through the payment of a subsidy in connection with that particular item; but each item would have to be looked into on its own merits in relation to the possible trend of prices in the future.

By Mr. Fulton:

Q. Is it too great a simplification to say that so long as you maintain a rigid price ceiling you have to have subsidies in order to keep production going? I mean, supposing you were to adopt a policy now that no prices would be allowed to rise, I do not think you would say that we should make sure that the cost of living does not rise, and I think even you would admit it does rise; all right, how are you going to impose rigid price ceilings; is that not because you have to have a price ceiling and you have to pay subsidies in order to maintain production of the goods you need?—A. If you are going to have an absolutely rigid price ceiling I would think you would need to have a form of subsidy to deal with specific difficulties in regard to production.

Mr. MARQUIS: And a great deal depends on continuity of production.

The WITNESS: That is right. It depends on the particular field with which you are dealing and the cost in those fields.

Mr. FULTON: Yes. The other thought I had in mind is that a subsidy is a necessary concomitant of a rigid prices ceiling; or, if you like to take the other view of it, if you want to maintain a price ceiling then the necessity for subsidies comes in.

The WITNESS: Of course, that is what has been demonstrated, where we take the subsidy out of the picture is where we leave the rigid price ceiling and get into flexible price ceilings, adjusting ourselves to the realities of post-war conditions. That has been exactly the picture that has been displayed while we were trying to maintain a more or less rigid price ceiling, as was demonstrated by the fact that for the major part of the war years we had only a three or four point rise. When we were trying to hold it with that degree of rigidity we made use of subsidies in an endeavour to deal with specific cases. I want to make it clear that it was used for specific cases, it was not the use of subsidies to subsidize everything. It was used to deal with production problems in particular cases. When the end of the war came and the signal was that in due course we would have to start in to adjust ourselves in such a way that we could get rid of controls then we began a flexible type of adjustment, and as we did that we began to remove the subsidies that were in the picture.

Mr. STEWART: I wonder if Mr. Gordon could indicate to us the cost of living trend for the balance of this year?

The WITNESS: Hum-um. I am not a prophet.

Mr. JACKMAN: What about the stock market?

The WITNESS: I am not a prophet in that respect.

By Mr. Macdonnell:

Q. There is a question I would like to ask Mr. Gordon. I need not say that I welcomed what he said as to the possibility of getting back a measure of freedom as rapidly as possible. It seems to me when he was talking about the import picture, more particularly about regulating Canadian imports, he referred to the matter of allocations. If I understood what he was saying it was that we were restricted to our proper relative amount. I think he was

dealing particularly with textiles, but it referred to other things which come into this country. What I want to ask him is this: First of all, is it true that as time has gone on the department has dealt not only quantitatively but qualitatively with these imports; and have we now got to the stage when really the department is supervising the conduct of business; and is that not a tendency which tends to perpetuate itself? How far can we go with that? If I thought we could do that wisely in the future then I think I would be a socialist. The reason I am not a socialist is that I do not think there is that overall wisdom; and I think that instead of having one planning organization we have to have a lot of them. I am not trying to make a speech, I wanted to ask Mr. Gordon that question.—A. I am glad you raised that question. I should make it perfectly clear that every import supervision which the Prices Board or any other authority exercises stems completely from the conditions in the foreign market. In other words, the only reason why we would supervise or attempt to exercise judgment in the matter of imports of wool yarns or cotton textiles, keeping in mind the subject under discussion, is because in the first instance this country could not get any wool yarns or any wool fabrics unless we accepted the allocation set up by the United Kingdom authorities.

Q. But, Mr. Gordon, are you absolutely satisfied about that; because as you possibly know there is a very direct contrary view. I am told that that is not so, and that while the administration has taken that position there is no reason to believe that the individual Canadian could not buy in England if he were allowed to do so. I must confess that it is a situation which I find it hard to understand. You said that the individual importer could buy in England, but when you say that you must understand that he can only buy within the terms of our allocation.

Q. Well?—A. And if we allowed individuals to exercise their judgment as to the amount they would buy we might heavily over-buy in one type of article and go short in another.

Q. Well, but that surely is hardly consistent with what you said a moment ago. That is entirely the condition in the foreign country, the country from which we import, and not conditions at home. Are you not interfering with the orderly conduct of business at home? I am trying to find out whether you are right or wrong in doing that.—A. Well, let us trace this thing from the beginning.

Q. I am merely trying to get at the facts.—A. Let us look at this thing from the beginning. Certainly it is only facts with which I am dealing. Now, the essential fact is the Board of Trade in England decides, on the specific allocation let us say of woollen yarns, wool fabrics for Canada. That is arrived at after consultation with all the countries affected by England's export trade. And the Board of Trade after the discussions to which I have referred decides that Canada is entitled to so much yardage, do you see.

By Mr. Jackman:

Q. Is there not a flood of raw wool on the market today?—A. Raw wool, yes. There is plenty of raw wool, but that type of wool at times is very dirty and needs a lot of working over before it can be used. When you are talking about the overall supply you are getting into a big field. There is a lot of raw wool in the world, yes; but that includes a lot of dirty wool which needs a great deal of processing, working over before it can be used, and that creates a bottle-neck in your overall supply picture.

Q. There is a physical shortage, not a governmental shortage?—A. Oh, definitely. And I am dealing with the facts, that we start from the point that the United Kingdom has decided that Canada can get only so much? That is the decision of the United Kingdom, you cannot get it.

Q. The decision of the United Kingdom may have an affect on our relations with them if we do not agree that they are dealing fairly with world supply.—A. That has all been taken up with them. I mean I am starting at the point where all the debate along the line to which you refer has taken place. Canada has made its representations to the United Kingdom and agreement has been reached that we are getting a fair amount having in mind the overall shortage. We are not getting all we want but we are getting as much as we can reasonably expect to get in terms of this overall shortage.

Q. But I was speaking about this.

The CHAIRMAN: Mr. Macdonnell had begun to develop one rather narrow point and I think he should have the opportunity of completing it.

The WITNESS: I am dealing with what has taken place. We have this allocation. For example let us take wool fabrics, wool tops. Within that allocation there are two types or varieties or grades; fibres or tops as the case may be depending on quality, then there are the coarse yarns and so forth. Now then, in order for us to get the balance of our supply into this country it is necessary that we tell the British that it takes so much of this kind of fabric, so much of this, so much of that and so much of that; and then the export permit system of the United Kingdom is worked out in collaboration with our import permit system. Our importers are then told that there is so much available in tops, coarse yarns, certain types of fabric, as the case may be; that they may go out and buy it, and they can make their own deals with the British exporters and if they stay within the allocation it is automatically approved by the Board of Trade in the United Kingdom and it will be automatically approved if on reference to the Canadian import control it is found that we are not overdrawn on that particular allocation. You see, if we did not do that it would be a case of first-come first-served, and you might find a situation where some buyer in Canada would have bought a tremendous quantity of a particular stock and that would have exhausted our over-all allocation and there would be nothing left for us in other fields; so, with the assistance of trading committees, we sit down with the trade in Canada itself, we tell them what the facts are; and we agree with them with their advice, having in mind what shortages exist that such and such firms may get such and such types, and such other firms may get such and such other types, and so forth. That has worked out very well. There really has been no complaint in that respect.

By Mr. Irvine:

Q. As I understand Mr. Gordon, while no country would be permitted to buy the entire stock of a commodity such as textiles, there is nothing to prevent a Canadian importer from buying all that has been allocated to Canada; he could get the whole thing for himself?—A. He could not go very far because we have established with the textile trade, the different users of it, subsidiary allocations within, the total allocation which went to Canada as her fair share. At the same time I should say that this is not a continuing thing. It would only be continued in those fields where the shortage situation is still acute. The allocation which applies to certain types of wool now, for instances, is in effect only for a period of four months. Whether or not that will be renewed, I do not know. It may very well come to an end within the next four months. We may then be through with "country allocations" so-called. What might happen at the end of the next four months, I do not know.

By Mr. Macdonnell:

Q. Are you in a position to get their disposition in that respect? Do you think they have a continuing desire to deal with the matter in a governmental fashion or are they looking forward to a greater freedom of trade?—A. My impression definitely is that the British are as anxious as we are to get out of these country allocations and dissolve them as rapidly as possible.

Q. I understand that at the present time there is nothing to prevent the importation of cotton fabric, is that correct?—A. That is by and large correct. Which country have you in mind?

Q. I am thinking of Britain particularly.—A. That is correct in the U.K.

Q. What is the difference between cotton and wool; is it a matter of quantity, or is there some difference in the trade?—A. The real trouble with the cotton situation so far as the U.K. is concerned, is that our cotton imports are now relatively limited. They have no country allocations. The situation there is merely a matter of supply. There is only so much cotton available for export, and every country in the world, like ourselves, can take as much as it can get. We have no obligations with regard to any allocations. As a matter of fact during the war we turned in large measure to the United States for our cotton needs, and we had very definite allocations then. They are all cancelled now and it is a free for all.

By Mr. Jackman:

Q. Do we import practically all wool tops from Great Britain?—A. Yes. although we have been trying to get supplies from other countries in view of the shortages; but the large majority, in fact I suppose practically all of it came from U.K., apart from what we produce domestically.

Q. I remember seeing the figures recently of the total consumption of wool in the United States, it was only a very small percentage being used, or being taken from their domestic clip. I suppose they were getting it elsewhere in the world. I was wondering what would happen to the rest of their clip.

The CHAIRMAN: A little louder, please, Mr. Jackman, so the committee can hear you.

Q. I was wondering what happened to the rest of their clip, whether it is being used by their manufacturers, and if their manufacturers are not using all of it whether any of it would be available to us at a price, or whether there was an allocation which applied.—A. It would be available to us at a price; if there is anything available; I am not sure that there is. I have not heard of anything in the way of imports of wool from the United States. I would suspect, although I do not know, I would suspect their prices might be higher than those in the U.K.

Q. I suppose probably it would be higher but would there be anything to stop people from getting the material over there?—A. There is nothing to stop them that I know of if they could get their hands on it.

Q. So that an importer may make his own contact with any other country excepting Great Britain and make the import himself? I suppose he cannot do that in the United Kingdom?—A. That is the situation so long as allocations continue.

The CHAIRMAN: Mr. Michaud has the floor.

By Mr. Michaud:

Q. I wanted to ask a question a moment ago when you were dealing with lumber, but the discussion drifted to something else. One of the criticisms we have heard is this, that if those were removed production would be greater. I wonder if Mr. Gordon could tell us how the present production of lumber compares with the pre-war days in Canada?—A. I haven't got the figures available but I imagine it is substantially greater.

Q. And how does export compare with pre-war days?—A. That also is substantially greater now, I believe.

The CHAIRMAN: I would suggest before Mr. Gordon answers with respect to lumber and lumber products that if you want detailed information we should ask the timber controller to come here and give it to us.

All right, Mr. Fraser.

By Mr. Fraser:

Q. I want to ask Mr. Gordon this; was the allotment of textiles to the United States from Britain the same as it was to Canada, or were they allotted more than we were here? The reason I ask that question is because in the States there seems to be no difficulty in buying a man's suit. They seem to be able to get more British yardage in regard to men's suitings than we do here in Canada, and I just wondered if they were allotted more than we are?—A. I cannot answer with regard to the United States as to what the allocation from Britain is; but I would say this in a general way, that I am perfectly satisfied that on a per capita basis I would imagine that Canada is getting considerably more.

Q. Does that apply to all lines of British goods?—A. Yes. I think I am quite safe in saying that.

By Mr. Isnor:

Q. I want to ask you a question concerning the importation of manufactured cotton goods; with the increased price charged in the United States it would be necessary for a manufacturer say in Halifax to have assistance from the Wartime Prices and Trade Board, would it not?—A. We have a general order which covers that. In other words, generally speaking, there is an order which says they can sell in Canada at the laid down cost plus the stipulated markup, the profit margin markup which is mentioned in the order. It is automatic.

Q. It would be reasonable to suppose that a Canadian manufacturer could go to the United States as an individual and import cotton and sell at a price which would be effective in Canada by your order?—A. Are you referring to a Canadian manufacturer or are you referring to a Canadian importer who imports for resale in Canada?

Q. To both.

The CHAIRMAN: Order, gentlemen. It is difficult for the witness to hear Mr. Isnor while there is conversation going on amongst members of the committee.

By Mr. Isnor:

Thank you, Mr. Chairman. It is difficult for us to hear down here too.

Q. My question to you was, does it apply both to the importer and the manufacturer who imports yardage goods? He applies to Wartime Prices and Trade Board and gets a selling price. Would not the price at which he would have to sell be considerably higher than the prices regularly paid for such an article?—A. There are two different situations. The manufacturer who imports yardage goods and manufactures them into finished articles. He will be selling under the Canadian price ceiling and he may receive a subsidy on it.

Q. I was not talking about his being paid a subsidy.—A. He will receive a subsidy on the yardage if it is priced to sell under the price ceiling in Canada. The other case is the case of the importer who buys in the United States for resale in Canada. In his case he has to sell them in Canada at the laid-down cost plus the mark-up.

Q. I am not talking about the importer of the finished article, I am talking about the manufacturer who brings the yardage in and makes it up in Canada—A. Quite.

Q. In that case he receives a subsidy and his price is as a matter of fact much higher.—A. In that case he receives a subsidy. And, again, if the finished garment which he manufactures is sold under the price ceiling then he can collect the subsidy if his material cost has risen to a point where he could not produce those goods under the price ceiling.

Q. Then I wanted to ask one more question; in the case of an article manufactured in the United States—and again I am speaking of a definite case—The manufacturers in Canada formerly brought in a yardage of certain materials, say gabardine for coats. Their laid down cost was $12.50. Selling to the retail trade that coat would sell at $18.50. Now, the manufacturers are unable to buy the yardage. They bring in the manufactured coat. They applied to the Wartime Prices and Trade Board for a selling price and you gave them a selling price of $14.50 which means, to the consumer, with a similar percentage of mark up, something like $20.50. Is there any control over a situation such as that?—A. No, the finished article can arrive in Canada on the basis of its laid down cost, as I said, and a profit margin added to that. If the article is going to be manufactured in Canada and if there is a price ceiling on it, then we will subsidize that to keep it under the price ceiling.

Q. The difficulty is getting the yardage of goods, so they bring in the manufactured articles?—A. Yes.

Q. Therefore it costs the consumer $2 or $3 more?—A. Yes, that has developed in recent times. It did not happen when we had a rigid price ceiling, but it is one of the transitional developments.

Q. It is actually happening?—A. Yes, not only in the textile field, but in other fields as well.

The CHAIRMAN: I am trying to see that everyone has an opportunity to ask questions. Is there anyone else who wishes to ask a question on this side?

By Mr. Hazen:

Q. I should like to ask if there are any producers or manufacturers in this country today who are obliged to sell below cost in Canada by reason of the controls which are imposed?—A. No, I do not think I can answer that. There may be a specific instance where he alleges part of his production to be below cost, but every time we have had claims of that kind we found the overall profit situation was quite adequate to enable him to carry on that line. I also found this, an analysis of cost practices is one of the most frustrating things I have ever attempted.

Q. Are producers and manufacturers allowed to make a fair margin of profit under the controls which exist to-day?—A. If you are talking in terms of their overall profit, yes.

Q. On what they sell in Canada?—A. We do not split it, we take their overall profit situation, whether it is domestic or export.

By Mr. Jackman:

Q. If the export price of an article is 25 per cent higher than the domestic price and the manufacturer is just breaking even, it must be obvious that the profit on the domestic business is nil?—A. That may be so, but we found the prices—

Q. It must be so; if the profit is merely normal on the total volume of business, the selling price of the exported commodity is 25 per cent higher than the domestic price and the export market, we will say, is taking 15 or 20 per

cent or even more of the total supply, it must be a fact that many manufacturers are gaining a profit from the export market which is, in effect, subsidizing the domestic market?—A. That could be the case. I do not know in how many instances it is the case.

The CHAIRMAN: I am sorry to have to interrupt you, but Mr. Hazen has the floor.

By Mr. Hazen:

Q. I was going to ask Mr. Gordon how his board determines what a fair margin of profit is?—A. We deal in terms of the overall financial position of a particular industry or manufacturer. We have not attempted, except in very isolated cases, to try to price individual articles in order to ensure a given margin of profit. We have dealt with the overall profit position of the company.

Q. Take the case of the producers of turkeys in my own province. You fixed the price of turkeys for Christmas last year and it resulted in a black market. The producer would not sell his turkeys at the price you fixed. The people had to have turkeys, they wanted them. The people who bought turkeys had to pay a higher price and then this black market developed. The same thing occurred last summer. Do not the black markets occur all over the country as the result of the prices you fix?—A. Well, I think we are getting into a discussion of price control rather than of export and import control. However, I do not mind doing so if you want to discuss price control. I will agree at once in any system of price control there is tendency to develop black markets. That is obvious. The word comes from there. Nobody ever heard of black markets before price control. The only thing I can say about it is, in the enforcement of price control the administrative agency must use its best efforts to stamp out black markets. It is perfectly obvious, if you have a fixed price, and there develops a shortage of supply, there will always be some people who will be willing to pay higher prices in which case the producer thinks he ought to have a higher price, and so it goes on merrily.

Q. I met a chap who said they put this control on turkeys to help the ordinary man get a turkey, but it did not work out that way?—A. I think that is a matter of opinion. In each one of these cases—we get them every day, of course, with the most exaggerated stories as to what happened. I think, in fairness, the only way in which we could deal with a matter of that kind is to have the specific instance and then I will analyse it for you and tell you what actually did happen.

The CHAIRMAN: Gentlemen, are there any further questions on export-import control?

Mr. HAZEN: May I ask one more question? I do not know whether Mr. Gordon can answer this, but perhaps Mr. Mackenzie might some time later. In the statement of the regulations, this book you gave us the other day, it is required that one obtain a permit to export clams, but apparently a permit is not necessary to export oysters. Why is it necessary to obtain a permit for exporting clams and not oysters? Why does one have to obtain a permit to export Atlantic salmon? I should like answers to these questions some time.

The CHAIRMAN: Who is next?

By Mr. Stewart:

Q. I should like to ask a question which has nothing to do with export or import controls—

The CHAIRMAN: Do you think you could reserve it?

By Mr. Stewart:

Q. But it is a very important question because there have been statements made which impugn the honesty of Canadian citizens. How extensive is the black market in Canada?—A. I do not mind answering that. I think in comparison with black markets of other countries it is very limited. As a matter of fact, the black markets have not been a major headache.

By Mr. Jackman:

Q. But you do not know about all the black markets?—A. I am not a superman, but I will put it this way; with very few exceptions we have not found what might be called organized black markets in Canada. There are individual situations, mostly, and they have not been chronic viewed in the light of the tremendous job that has to be done. I would agree at once that Canadian people are basically honest.

The CHAIRMAN: Shall we go around the table once for final questions?

By Mr. Jackman:

Q. I should like to return to this matter on which we spent some time, the subsidies and their effect on the cost of living and whether it is cheaper to subsidize an article at a certain point in its production, or to let the price rise to take care of the increased cost. It is fairly easy for me to understand why the use of subsidies was a money-saving device during the war when the cost of living index was hitched to the wage scale, but when that was finished I do not see as readily as I did before why subsidies result in a saving to the Canadian people. If I were convinced of that I think it might help me to become persuaded that subsidies would be a good thing for all time. I wonder if Mr. Gordon would elaborate on that slightly. All I can see at the moment is if you give a subsidy lower down, it might be that the profits on the turnover from one industry to another, the mark ups, are saved?—A. With price increases at basic levels there is a pyramiding effect as it goes through the hands of your distributing trade. I do not want to leave the impression on the committee I am in any way advocating subsidies as a continuing policy. The subsidies to which I have referred have to do only with the general idea of trying to prevent the cost of living from rising under conditions where prices would rise very rapidly. That was the case during the war. I do not, for a moment, advocate subsidies except as a very special emergency measure.

Q. Dealing with specific prices in this period, can you mention a particular subsidy at the present time which is still being paid by the government where there is any benefit, in your opinion, to the Canadian citizens?—A. Yes, I will give you a very good example in the field of cotton. Briefly, the history of that was, when we established price control we fixed all the prices right back from the retail level on cotton garments. In order to ensure that these prices could be maintained, we told the cotton producers, the primary cotton producers who manufacture from the raw cotton, that we would provide them with cotton at 11⅝ cents or 11½ cents. We said to them, "Now, we will undertake to provide you with raw cotton at 11½ cents regardless of what the world price may be." In due course, the world price rose substantially, particularly after the war ended. It went up during the war from the subsidy level but not much higher than, I think, 20 cents a pound.

We took a look at the world cotton situation after the end of the war to see whether the price had permanently reached a high level. Perhaps the word "permanently" is hardly the right word to use, but to see whether it had reached a level at which it was likely to remain for a considerable time. At that time,

cotton prices were 22 cents a pound and we changed our subsidy from 11½ to about 15⅞, believing we were getting near the world level we could expect in due course. We believed the price would fall and we could take price control off and remove the subsidy. At that time, price control was still in effect in the United States, but we were wrong there. When price control in the United States blew up, cotton prices went very high and reached a top figure, I think, in the neighbourhood of 40 cents a pound. Since then it may have been higher than 40, but I am taking 40 as a fair estimate. Since that time cotton prices have fluctuated all over; the price has been down to 30, back to 40 and so forth, all over the place.

In the interests of orderly decontrol we intend to hold that cotton subsidy at a level where, in a reasonable period, we can expect the world price to settle. So we advanced our subsidy to about 24 cents a pound which is just about parity level for the cotton price under the United States agricultural floor price policy. We are resting at that point for the moment. As a result of doing that we have been able to adjust our cotton prices gradually instead of finding a demoralizing situation where you would pay anywhere from 40 to 11 cents for raw cotton and have a most disorderly situation. You would have the prices all over the map. It would cost the cotton people, in my judgment, a considerable amount of money and thus cost the Canadian consumer more.

Q. It may only be costing the American speculator who sold the cotton short, or some other person in the United States, why should it cost the Canadian public more?—A. I am talking about the price to the Canadian consumer of cotton products produced from the raw cotton bought at very much higher prices.

Q. Then, you are paying a subsidy to equalize the 24 cents to the cotton manufacturer in Canada. If he happened to buy some on the day the price was 40 cents, the government is paying that money and the people of Canada are paying it out, so how is there any saving to the Canadian public?—A. Of course, the primary cotton manufacturer will always quote his end product on the basis of replacement cost. He will do that, or he will go bankrupt on a rising market.

Q. But he only changes his price once a year?—A. No, not under the conditions which obtain now. Perhaps when prices are stable it is the custom to change prices as infrequently as possible, but certainly you would never see a cotton producer, with prices fluctuating between 11 and 40, as they are, who would not change his price list very quickly.

Q. If the Canadian manufacturer can import cotton because he needs it at 40 cents a pound, which happens to be the peak American market, say he needs cotton for a forward market, then he merely, at the end of his year, presents his bill at 40 cents, less the 24 cents he is allowed. The Canadian public and the government puts up the other sixteen cents. I cannot see where the difference is, whether he is allowed to turn in his raw cotton to the public at 40 cents or whether the government subsidizes him for the difference between 40 and 24 cents; that is the individual cost of manufacture. You have been bringing in a point about all cotton manufacturers who would adjust their prices immediately, is that the point you are making? It is not one manufacturer, but the whole trade which would make, in this way, substantial profits?—A. They would have to raise their prices on the basis of replacement costs. This would make for rapid adjustment. Faced with a speculative risk in a market of that kind, they would put their prices higher than the immediate replacement cost in order to take care of that risk. When we give them a stabilized price for cotton, they can quote firm prices which are good for a period. If they did not know what their raw cotton price was, they would have to adjust their selling price so as to take care of the speculative risks they would have to assume on raw cotton.

By Mr. Macdonnell:

Q. I should like to ask a question concerning export control. There is a feeling, naturally, because you cannot please everybody, amongst some of the exporters that the control does not give sufficient weight to the fact that after all an ordinary manufacturer does not want to disgruntle his Canadian customers. The manufacturers will look after their customers and the newsprint industry is a good example of that. I am told, in the case of the manufacture of machine tools, there is no shortage in this country and there is export control. It is represented to me that the canning industry does not need export control and that they would be able to look after their own customers. Without labouring the point, would you say something on this particular question, perhaps on those two points?—A. I do not quite know how to answer you. I can assure you that every possible consideration is given to the desirability of maintaining our export trade. When export permit control is established, you can rest assured that the Deputy Minister of Trade and Commerce, here, will be in there fighting with both fists if any agency of government tries to oversupply the Canadian market at the expense of cutting down on exports. There has to be reasonable judgment on these things. There is no precise yardstick anyone can supply. You get a counterbalance there by reason of the fact another person's job is to see that our export trade is maintained.

Q. Could I, later perhaps, if there is anything more to say on that subject, come back to it?—A. I am not aware of any discontent in that field, but perhaps you are Mr. Mackenzie?

Mr. MACKENZIE: I can certainly find out what the situation is. I would rather do that than speak to it now.

By Mr. Macdonnell:

Q. It is represented to me that sometimes the views and desires of the Canadian manufacturers are not entirely in line with the views and desires of the Canadian importer. This is somewhat true in the textile industry. It is believed some of our import controls are not unrelated to the views of some manufacturers in this country, is that a fair question?—A. I think it is a fair question. I think the answer is that the decisions which are made in all these control measures are made on the basis of what is considered to be the national interest. We are always very wary of private influence, so to speak, in the operation of controls.

Q. Then, is it a fair comment to make you are really, through this control business, exercising a judgment and regulating business to an extent which is almost equivalent to a tariff or import quota, and that has a very direct impact on business in Canada. From the nature of your import control it must do that?—A. Yes. I would remind you, you are coming back to the beginning of the reason for control.

Q. May I remind you that seems to me to have a bearing on what you said originally in regard to import control. If I remember correctly it had to do with a situation in the exporting country?—A. Perhaps I could put it more clearly this way; no import control is being operated except for the reason of attempting to get for Canada supplies which we could not otherwise get under existing world conditions. Now, that is a statement of fact.

By Mr. Breithaupt:

Q. Is not this true, too, that there is no limitation on what the United States will ship to Canada, whereas there is a limitation on shipments from the United States to foreign countries. That situation exists in connection with some com-

modities I know.—A. That brings up the general question of export control between the United States and Canada. I understand some comment was made the other day as to the fact the United States has not applied export control to Canada whereas we are turning around and applying import control to the United States. I can say quite definitely that the only reason we have applied import control from the United States has been to enable us to avoid export control from the United States. In other words, it is a mutual arrangement between the two countries. There have been many instances where the United States has applied export controls to other countries but has exempted Canada from the operation of such controls by reason of the fact we undertook to police the flow of commodities in question through our import control system.

I should add further, just as a postscript, in connection with these import controls, and this may be of interest to you, Mr. Macdonnell, it has been through the operation of the import controls that we have been able to justify the allocation from the country of origin. In other words, I have known cases where the United States has been refused all of the allocation originally agreed upon because they were not able to demonstrate that they had a sufficiently precise import control to ensure that as the importing country it did not receive more than its share of the goods concerned.

By Mr. Fulton:

Q. How could that be if the allocation is effective?—A. It is not always effective in that respect. It may be effective in regard to the country of origin, but there may be other countries throughout the world from which we could have obtained goods and we would have obtained more than our fair share under the international allocation.

By Mr. Fraser:

Q. I should like to ask Mr. Gordon a question following up what Mr. Isnor had to say in regard to manufactured goods coming into Canada. You are allowing a cost plus mark up. In allowing a cost plus mark up, do you take into consideration the manufacturer's welfare in Canada? The reason I am saying that is this, I know of a situation in connection with alarm clocks. The Canadian manufacturer had an alarm clock selling at $3.50; that was the highest price you would allow. A Swiss company had an alarm clock selling at $3.50 and they changed the face slightly, made it a different colour and you allowed them to sell it at $3.95. What I am getting at is, do you try to protect the manufacturer here in Canada when you allow these imports in and allow a higher price for the goods?—A. What we do is, in the unwinding of controls, imports come in—the policy was changed last year to allow these imported goods to come in on the basis of their laid down cost plus a mark up. It was quite well recognized at the time you would have the kind of condition you mentioned, but that does not necessarily mean it is unfair to the Canadian manufacturer, because the Canadian manufacturer is still able to sell in a good market and is still making a reasonable margin of profit. We cannot accept the general idea that the Canadian manufacturer, under price control, is entitled to sell at the highest cost of his import competitor.

Q. The clock I am mentioning is exactly the same in many ways as the one manufactured in Canada, but you allow it to be sold for 45 cents more? —A. That could be the case, yes.

Q. And the firm which manufactures them in Canada is selling them at $3.50 and is selling them at a 10 cent loss?—A. What is the profit position of the Canadian manufacturer?

Q. The only reason the firm can carry on business is because of the export trade they obtain.—A. What is the overall profit position of the Canadian manufacturer?

Q. Very poor.—A. He had better come in and talk to us because if his profit position is very poor he can obtain a price adjustment.

Q. This firm has been after you.—A. If they have been after us, it must be that they have not been able to convince us that their profit position is so poor or they would have obtained an adjustment.

Q. Perhaps you are very hard to convince?—A. I hope so, because that is my job.

May I just make a statement here. I am reminded that I may have left the wrong impression with the committee in that you may have believed these import permits are still required in a great number of fields. As a matter of fact, very few import restrictions are now in existence. Most of the ones I have been mentioning have been eliminated. I think there are only eight items left in which these controls are still required by reason of the conditions I have described.

Also, if I may take the opportunity of saying so, I may tell Mr. Hazen that both clams and Atlantic salmon were taken off export control as of January 1, 1947.

By Mr. Rinfret:

Q. Inversely to the question put by Mr. Fraser, what action would a Canadian manufacturer have when things imported from England of the same quality, mind you, are selling for less in the Canadian market?—A. I do not see what action the Canadian manufacturer has. He is at a competitive advantage in selling his product in Canada when his price is lower.

Q. But when the reverse happens, for instance, in woollen underwear, when the imported underwear sells for $4.50 and the Canadian manufactured article at $7.50 or $8.00?—A. I do not know about your figures, but if any importing company can lay down goods here under our price ceiling, then all power to it, because we are back in the happy days of competition.

By Mr. Fulton:

Q. Supposing that country subsidized its exports?—A. Then you are into the question of international trade which is a different story. I deal only with the laid down costs in Canada. If some country chooses to subsidize its exports into Canada, then that is beyond my sphere of activity.

By Mr. Fraser:

Q. You just mentioned the fact, in the case of a lower price the manufacturer is in a better position, but if in selling at the lower price he is selling at a loss of 10 cents on each article, he is going into a hole?—A. I insist that if the company to which you have reference can show a valid case that their profit position is poor, then we will grant them a price increase as we have been doing all along.

Q. There are a great number of firms in that same position?—A. We are hearing from them, I assure you.

Mr. BREITHAUPT: I was going to ask a question of Mr. Mackenzie the other day when he gave evidence before the committee. He mentioned the fact that the export control under this bill will be functioning under his department

for a long time and import control will be functioning under other departments. How many departments would be involved in the import end of it, and how soon would the whole thing swing over to come under the provisions of the bill and be under your department, Mr. Mackenzie?

Mr. MACKENZIE: I think the expectation is, so long as there are in office administrators dealing with particular products which necessitate import control, those administrators would continue to operate the import control, as, for example, in the case of sugar and also in the case of oils and fats. The textile field is coming to an end very quickly, but so long as there is an administrator to operate these controls he will continue to do so; as and when the administrator disappears then as necessary for any short period, or whatever period, to carry on this control. For example, we would take over at that point; but it is not the intention of import control that we would set up a centralized imported division as we have in the case of exports.

The WITNESS: Just for the benefit of Mr. Fraser, Mr. Chairman, I wish you could have conveyed to him that clocks and watches came off price ceiling last January!

By Mr. Stewart:

Q. I would like to ask Mr. Gordon in the first place, do you consider this bill to be necessary?—A. Very definitely, so long as the conditions to which I have referred exist and so long as we have price control and so long as there is an element of subsidy in that price control, and so long as shortage conditions which give rise to the need for export control exist.

Q. My second question is this, are there any clauses in the bill to which you take exception?—A. None.

By Mr. Jaenicke:

Q. Is it necessary to have subsidies on agricultural products?—A. I am sorry, I do not get your question.

The CHAIRMAN: Order, the witness cannot hear the question.

By Mr. Jaenicke:

Q. Do you think the Agricultural Prices Support Act would be necessary for that purpose also?—A. I would not care to comment on that. That is not my field. I think that question should be answered by the Department of Agriculture.

The CHAIRMAN: Are there any further questions gentlemen? If not we will thank Mr. Gordon for his coming and excuse him.

The WITNESS: Thank you, sir.

The CHAIRMAN: We will meet again Thursday morning next at 11.00 o'clock.

The committee adjourned at 1.05 o'clock p.m. to meet again Thursday next, March 20, 1947, at 11.00 o'clock a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 10

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

THURSDAY, MARCH 20, 1947

WITNESSES:

Mr. G. R. Marshall, Vice-President, Canadian Exporters Association, Toronto, Ont.
Mr. M. W. Mackenzie, Deputy Minister of Trade and Commerce.
Mr. W. F. Bull, Director of Export Division, Dept. of Trade and Commerce.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

THURSDAY, March 20, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Argue, Belzile, Breithaupt, Cleaver, Dechene, Fleming, Fraser, Hazen, Irvine, Isnor, Jackman, Jaenicke, Jutras, Lesage, Macdonnell (*Muskoka-Ontario*), MacNaught, Marquis, Michaud, Quelch, Rinfret, Sinclair (*Ontario*), Smith (*York North*), Stewart (*Winnipeg North*), Strum (Mrs.), Timmins.

In attendance: Messrs. H. W. Mackenzie, Deputy Minister; W. F. Bull, Director of Export Division; D. Harvey, Director of Import Division, and T. G. Hills, Chief of Export Permit Branch, all of the Department of Trade and Commerce; Mr. G. R. Marshall, Vice-President, Canadian Exporters Association, Toronto, Ontario.

The Committee gave further consideration to Bill No. 11, An Act respecting Export and Import permits.

Mr. Marshall was called. He made a statement and was examined.

Messrs. Mackenzie and Bull were also questioned in the course of Mr. Marshall's examination.

At 1.10 p.m., witness retired and the Committee adjourned until Tuesday, March 25, at 11.00 a.m.

The Chairman informed the Committee that at the next sitting the Committee would revert to the consideration of Bill No. 16, An Act to amend The Patent Act, 1935.

R. ARSENAULT,
Clerk of the Committee.

85003—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS, March 20, 1947

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. We have with us this morning, Mr. Marshall, Vice-President of the Canadian Exporters' Association, who would like to give evidence on Bill 11. I would suggest Mr. Macdonnell should have the right to ask questions in chief before the other committee members start asking general questions so that our record may be in reasonably proper order. I should like to ask Mr. Marshall to first introduce himself, then he could carry on giving the committee his association and industrial background.

G. R. Marshall, vice-president, Canadian Exporters' Association, called:

The WITNESS: Mr. Chairman and gentlemen, my name is Marshall, G. R. Marshall. I have a company called G. R. Marshall and Company, specializing in exports.

By Mr. Isnor:

Q. Where is your place of business?—A. Toronto. I started my career in 1910 in the exporting business. I am specializing chiefly in engineering, heavy hardware and general manufactured articles. I am also Vice-President of the Canadian Exporters' Association in Toronto.

By the Chairman:

Q. What is the Canadian Exporters' Association?—A. The Canadian Exporters' Association specializes in improving Canadian exports. The association acts in introducing buyers to Canadian manufacturers and helps as much as possible, the manufacturer to sell his goods abroad.

Q. What is your membership?—A. We have a membership to-day of approximately 700.

Q. Is it confined to Toronto or is it Canada wide?—A. No, it covers Canada generally.

By Mr. Jaenicke:

Q. Do many manufacturers belong to the association?—A. Yes, sir, I would say about 60 per cent.

The CHAIRMAN: You may carry on now from here and ask the witness questions, Mr. Macdonnell.

Mr. MACDONNELL: My suggestion would be the witness be allowed to make a general statement and then if there is anything I can usefully ask to elucidate what he has said, I would be glad to do it. I think Mr. Marshall might make a statement himself.

The WITNESS: The chief reason for my being here to-day, gentlemen, is in connection with export permits. This is a very, very serious part of our business. We are receiving many, many orders and enquiries which are now running up into the millions of dollars. Due to export permit control we are only able to ship about 1, 2 or 3 per cent of what we can get.

By Mr. Fraser:

Q. What you can get or what your orders are?—A. Yes.

Q. What your orders are?—A. I have four suggestions here as to why I think such control should be discontinued. The first suggestion is that the Dominion government should yield the remaining export control and Canadian exporters should be free to produce and sell their products abroad in an environment unchanged by the threat of suddenly revised controls through order in council. Now, I am not including such items as wheat, lumber or paper. I am receiving many enquiries for those lines, but that is not my business.

By Mr. Lesage:

Q. Your remarks pertain to your business?—A. If I may answer that question, sir, the engineering business, machine tools and hardware, such manufactured articles, is a very large proportion of Canadian trade generally.

Q. You might make a general statement as vice-president of the export association and not mention your personal interest?—A. I may answer that statement, sir, I believe if control was taken off wheat, lumber and paper, it would be extremely helpful in those particular cases.

Mr. MACDONNELL: May I suggest this; I do not know that the witness necessarily purports to cover the whole ground. I think all we need ask of him is to give his evidence as to the things he knows. The members of the committee can then attach whatever weight to the evidence he gives which they wish to do. I would think, if I might suggest to him, it would be better for him to give the committee evidence as to the things that are within his own knowledge and not cover a wider range.

The CHAIRMAN: I think, too, as I mentioned at the opening of our meeting that perhaps it would be only fair to the witness and I think would make for a better record if we allowed the witness to make his statement without interruptions. The committee members could make notes of questions they wish to ask and then ask them after the statement is made.

Mr. LESAGE: I agree with that, but I asked the question because I thought it was a very important distinction. The witness stated he was vice-president of the Canadian Exporters' Association, and I did feel he was talking about his own business. I felt the distinction should be made before his statement was completed so the record would be clear.

The WITNESS: In the first part, I was talking more or less about my own type of business. I think this second part would cover generally the exporters of such items as wheat, lumber and paper.

Mr. MACNAUGHT: I wonder if the witness could go to the head of the table? I think it would help us in hearing him.

The WITNESS: My second point is, I believe the allocation authority should not be perpetuated in to the second year of peace. The acute shortages of materials lie behind us and Canadian industry is conscious of its obligations to take care of our domestic economy. Therefore, these extraordinary powers which were necessary to the winning of the war should be forthrightly abandoned.

There is a tremendous amount of wasted time in this export business. In my own particular type of business, we are in 53 countries and we have 262 agents all under signed agreement; we have agency arrangements all over the world.

We reach the point of securing orders which come back to Toronto. Then, it is a matter of applying for an export permit. The objection which we have is important. Right now, I feel that Canada is tossing away markets and opportunities which may never come her way again. If by chance they should it will be in a highly competitive field and in competition with the skill, production and scientific methods of the United States, Great Britain and any oldtimers now crushed who will make every effort to take advantage of their former skill and long experience in international trade.

I do not doubt for one moment but what the export permit branch is doing everything it possibly can. In fact, I know it is, but at the same time it is under some control which is not giving it a free hand.

I have an illustration right in front of me. An order came to Canada for $3,215 worth of bench vises. These vises are used in the engineering business. We applied for a permit on two occasions. We finally got another letter from the export permits branch stating,

> ....Your case has been reviewed by the authorities concerned with supply for the second time, who advise that it is still not possible to grant approval of your request at the present time. However, your request will be reviewed again in the early part of June if you desire. We will hold your application until that time.

By Mr. Fraser:

Q. Was that this year?—A. Yes, that was dated March 15, 1947. It is very awkward, gentlemen, trying to build up an export business for Canada, generally. As I say, we are up against that all the time, as are all members of the exporters' association. They are really in fear and trembling as to whether they will get an export permit. A lot of money has been spent in trying to get that business and it is a shame, when you come down to the final point, to find you cannot get an export permit.

By Mr. Isnor:

Q. Have you many of those cases?—A. Well, I have if I go into them.

Q. You are just quoting the one case?—A. I just quoted the one because it is an example of the many we are getting which more or less cancel the whole deal, so far as we are concerned.

Q. How many cases would you have, do you estimate?

The CHAIRMAN: Gentlemen, would you please make notes and reserve your questions?

The WITNESS: There is another point I should like to bring out and that is in connection with the shortage of materials. We have heard about the shortage of materials for a long time. During World War 2, it was stated Canada could not secure sufficient raw materials. Yet, she was the second largest exporting nation in the world. It is also stated she is still short of raw materials, but this should not have prevented her from retaining her enviable wartime position. Unfortunately, Canada has now dropped to third place which may be attributable to the many recent strikes and labour disputes as well as the shortsightedness of some Canadian manufacturers in not foreseeing the importance to Canada of her export trade.

My submission, gentlemen, is this, that I think all export controls should be discontinued.

The CHAIRMAN: Mr. Macdonnell, do you wish to ask questions now?

Mr. MACDONNELL: I think it would be wise if the witness would give one or two more instances, as Mr. Isnor has suggested, such as the example he quoted. I think giving only one is not driving the point home; I think he should give two or three others to illustrate the difficulties which have arisen.

Mr. MARQUIS: With the dates, please.

The WITNESS: Do you want the date of the first one I mentioned?

Mr. MARQUIS: You gave the date as the 15th of March. For the other examples which you give I should like the date each time you refer to one.

The WITNESS: Here is a very simple one. This one started on February 3.

By Mr. Macdonnell:

Q. Of 1947?—A. Of 1947. We applied for an export permit for two tons of structural steel. This is a very small item, but the export permit was not granted as there was a shortage of steel in Canada.

By Mr. Marquis:

Q: That was the reason, a shortage of steel?—A. That was what was said. We applied again and we told the export permit branch that we knew where some steel was in stock which we could obtain for immediate shipment. After a lot of trouble and correspondence, which is all here, finally on March 17, we received a permit to export these two tons of steel. At the same time, while we exported the two tons of steel there was approximately 50 tons of that particular type of steel in Toronto which had been in Toronto for two or three years. If that situation had been left entirely with us, we would not have hesitated to ship it. Having to apply for an export permit held up the transaction. I am sorry I have not any more actual illustrations here, but I have many such cases.

By Mr. MacNaught:

Q. Could you give us any idea of how many cases you have?

Mr. MARQUIS: I think if the witness is going to refer to some cases he should give us the dates and particulars. Otherwise, it will be a general statement which we cannot check.

Mr. HAZEN: I think Mr. MacNaught's question is a fair one and he should answer it.

Mr. MARQUIS: I think if the witness is giving a general statement he should come back and give the particulars, with the dates and the particulars of the cases. I think that would be the only fair way.

The WITNESS: I agree with that, but, unfortunately, I have not the information here.

Mr. MACDONNELL: I think, Mr. Marshall, the suggestion is a very fair one. I think, in order to make clear the point you are trying to establish, you had better go back to the bench vises. You could try to give the committee your feeling as to whether or not there is a shortage in that case, because the suggestion of the department is they are only being strict in the matter of permits where there is a danger of a shortage at home. If you could satisfy the committee there is no shortage in the case of bench vises, I think that example would have some weight with the members, but I think it is up to you to do that.

Mr. HAZEN: Mr. MacNaught asked the witness a question. I think it was a fair question and the witness should answer it.

Mrs. STRUM: May I put a question to the witness?

The CHAIRMAN: After Mr. MacNaught's question is answered, Mrs. Strum.

By Mr. MacNaught:

Q. I thought it was a fair question. You said there were more cases, and I asked you how many more?—A. That is a very difficult question to answer. I would say that we cannot receive permits for, perhaps, up to 90 per cent of the enquiries and orders we receive.

Q. That does not answer my question.

Mr. MACDONNELL: May I say—

The CHAIRMAN: Mr. MacNaught has the floor. Please let him finish his question.

By Mr. MacNaught:

Q. You made the statement you had many cases. I asked you to estimate how many. That is a fair question. Is it a dozen, a hundred, a thousand or five hundred?—A. Actual cases? You mean similar cases to those—

Q. Similar cases to those.

Mr. JACKMAN: Mr. Marshall, perhaps you could tell the questioner how many applications you have a month or a week and get a percentage.

The WITNESS: We will be sending in thirty applications a week.

Mr. MACNAUGHT: Thirty a week.

The CHAIRMAN: And to complete that question how many of the thirty would be declined or postponed?

Mr. JACKMAN: On the average.

Mr. ISNOR: He said 90 per cent.

The WITNESS: No, no; that is another question. I will come back to that matter in a moment. I will come back to that 90 per cent in a moment. You are talking about what percentage of the thirty applications—

The CHAIRMAN: Of the current applications that are declined or postponed?

The WITNESS: We were getting back about 50 per cent.

Mr. BELZILE: Granted.

By Mrs. Strum:

Q. I should like to know who was holding the 50 tons of steel in Canada, who owned it, and who was holding it?—A. I am sorry; I did not hear you.

Q. You mentioned there were 50 tons of steel that had been—

The CHAIRMAN: Lying idle for two or three years.

The WITNESS: It is a firm in Toronto.

Mrs. STRUM: Surely we could not blame that on the Export Board.

By Mr. Jaenicke:

Q. Did you tell the Export Board that the steel was available?—A. It is not my steel. It is in stock in some other company, and I could have purchsed it to export.

Q. Did you tell the Export Board this steel was available?

Mr. MACDONNELL: The question is whether the Export Board realized it was there or should have realized it, and therefore whether they were unreasonable in declining your request.

Mrs. STRUM: The point I am trying to make is this. We know there are tremendous shortages in Canada. I know I tried to get a washing machine for about three years. You cannot get refrigerators. There is a great unsatisfied demand in Canada. I do not see how you can blame the Export Board if there are 50 tons of steel lying some place in the possession of a private company. I think export permits are absolutely necessary if we are going to protect the people who live here.

The WITNESS: Well, it took us all our time to get from the Export Permit branch that permit for the 2 tons. In answering your question I might say that I believe we informed the Export Permit Branch that the steel was available and where it was in Toronto.

By Mr. Fraser:

Q. That was manufactured steel?—A. Yes, it was manufactured steel in stock.

By Mr. Marquis:

Q. Who were the owners of that 50 tons of steel? Do you know their names?—A. Yes.

Q. I should like to have the name of the firm put on the record.—A. Is it right to give that name, Mr. Chairman?

The CHAIRMAN: I very much doubt if it would be fair that the names of individual companies should go on the record in this general discussion. If this committee has sufficient evidence of hoarding to justify a recommendation to the House in regard to an inquiry on hoarding then, of course, the House would decide as to the setting up of such a committee, and would decide what powers that committee would have, but I very much doubt if the Banking and Commerce commmittee under its present reference should ask for the names of individual companies to go on the record. However, I am in the hands of the committee.

Mr. MARQUIS: If you will allow me to say a few words on this point, I do not want to question your ruling on the subject, if it is a ruling, but the witness referred to a quantity of steel being in the hands of some firm. He said that this steel could have been exported. If it could have been exported it could have been useful for the people of the country, too. Inasmuch as he has referred to a specific quantity of steel I think we are entitled to know where that steel was, the name of the firm, and if that steel was available for the people of the country because, as Mrs. Strum has said there is a rather large shortage of steel in the country.

Mr. JACKMAN: I think that might be a very interesting matter to continue but at the moment we are endeavouring to find out whether or not the issuance of export permits is being unreasonably held up. I for one do not want to digress along this other channel at the present time no matter how interesting or how important it may be when we have other matters in front of us.

Mr. MARQUIS: I quite agree with Mr. Jackman, but how can we say that permits were held up by the control administration if we cannot find out if there really was a large quantity of steel and that some steel could be exported? If the witness has referred to a particular matter I think that in law we are entitled to have the details on that point. That is the point that I tried to submit to the chairman of the committee.

The CHAIRMAN: I intend to allow a rather wide discussion on this point. I have already expressed my feelings. I do not want to have to rule, but if I have to I will. I should like to hear from other members of the committee on this point as to whether the names of individual firms should be placed on our records with respect to the hoarding of steel. I believe that is the point.

Mr. FRASER: I want to say one word. I think perhaps the reason why this steel might have been in the company's yards in Toronto, or wherever it was, was owing to the fact we had a steel controller and the steel controller has only been out of a job for a short time. The steel controller would say to that firm, "You cannot sell that steel unless I give a priority for it." Therefore that steel would be held there. It was manufactured steel. I think that is the explanation of it. It would not be the fault of the manufacturer. I am not sticking up for the manufacturer, but it would not be his fault.

Mr. FLEMING: With great respect, I think we are getting away from the real point that we are after. After all—and I think this is the answer to Mr. Marquis' objection—the Export Permit Branch did eventually issue a permit, so evidently

they must have been satisfied there was steel available without denuding the domestic market of its supply. I think the question that the committee has to ask itself now is should the Export Permit Branch have had the necessary information earlier on which it eventually agreed to issue a permit, or did it have it and withhold it even in the face of the information? It seems to me that is the only question before us. The fact is that at some stage, apparently after there had been some correspondence back and forth, the permit was issued because the Export Permit Branch at that stage was satisfied there was a quantity there.

Mr. ISNOR: Or the supply had increased.

Mr. FLEMING: Is not the problem before us to ask Mr. Marshall to indicate to us how long this correspondence went on, what information the Export Permit Branch had, or what information it got in the course of the correspondence? If we are going to start in to discuss the question of supplies of individual commodities in Canada and where they are to-day we are going to be here a long time.

Mrs. STRUM: I think it is relevant to the discussion in that as members of parliament we are supposed to be considering the needs of all the Canadian people, not just the wishes of exporters. It is well known that there is a great deal more margin in the export field in many articles than there is in the domestic market where some degree of price control has been maintained, lumber being one example of that. I think we must be friends not only of the exporter but of the Canadian consumer, the people who have forgone the benefit of higher wages, higher wheat prices, and higher returns in the interest of price control. We must see they are not now going to be betrayed by opening the door wide to allow all of Canada's goods to flood the export market.

The CHAIRMAN: Are there any other members who would like to say something?

Mr. LESAGE: I have one suggestion to make. I think before reaching a decision on the point it might be a good thing to hear Mr. Bull. I asked him a few moments ago and he says he remembers the case. I should like to hear Mr. Bull first before we make a decision on the point.

The CHAIRMAN: I will hear from the members of the committee first.

Mr. LESAGE: It would be very much easier to reach a decision after we hear Mr. Bull.

Mr. QUELCH: I think we are entitled to a full explanation of this deal because I understood the witness to say that he was only able to fill 2 to 3 per cent of his orders owing to the fact that export permits were not granted. The obvious reason for that would appear to be that those goods were needed in Canada. That is the logical reason. In this case we are told that a certain amount of steel was available, it was not being used in Canada, and they were not allowed to export. I think there must be some reason for it. I think we are entitled to know who held it, the name of the firm, and the reason it was held. Was it due to the fact there was a steel strike on and they wanted to keep a reserve on hand, or what was the reason?

Mr. MARQUIS: I wish to add—

The CHAIRMAN: Mr. Irvine has the floor.

Mr. IRVINE: I will not take more than a second or two. I think Mr. Fleming put his finger on the vital point of our inquiry. On the other hand, the witness apparently thought that his citation of this case strengthened his argument. Therefore its truth or otherwise is a matter of importance. I think at this point it might be better for us to hear what Mr. Bull has to say on the matter.

Mr. BREITHAUPT: I think the point involved at the moment is whether or not we approve of your suggestion that the names of firms should not be mentioned in the broad discussion of the whole problem of imports and exports. As far as your suggestion is concerned I can see the reasonableness of your contention that the names of firms should not be mentioned at the present time. It serves no useful purpose and will only lead to further embarrassment. Perhaps political talk will come into the whole problem which would be entirely irrelevant. I would back you up in your ruling.

Mr. BELZILE: I want to bring up this point. Mr. Marshall made a general statement and as conclusive evidence of his statement he cited that particular case. I think we are entitled to the specific details of this case which has been introduced as conclusive evidence of a general statement.

Mr. MARQUIS: I want to add only this. It is because Mr. Marshall referred to a record he had in his own hands that I am asking for these details. I understand that record reveals the name, the place, the date and the circumstances under which that application was made. You know that in a court of law if you refer to a record we have the right to any particulars contained in that record.

Mr. MACDONNELL: May I add a word? It seems to me that the suggestion already made was a sound one. When we have heard from Mr. Bull it may be that the need for this particular thing will disappear. It does seem to me that this is not exactly a court of law. This is a place where we want to have more freedom. It seems to me that if we can avoid the determination of this point, which might be a rather far reaching precedent, it might be wise to do it. Therefore I would suggest, as has already been suggested, that we hear Mr. Bull first. Maybe when we have heard him we will feel differently about it.

The CHAIRMAN: As I view it there are two points involved. One is that this committee should have all the facts with respect to a particular complaint that has been made by a responsible officer of the Exporters Association. As to that point I think we should give the department an opportunity to express their views fully and their reasons why in the first instance this export permit was declined, and why subsequently it was granted. That is one point. That is entirely aside from the question raised by Mr. Marquis as to which I feel it would be better that a ruling should be made now, and that the committee should have an understanding now. I do not consider it fair that the name of any Canadian business man should be placed on the records of this committee under circumstances which might question the loyalty or otherwise of the concern with respect to the handling of a commodity which is in short supply. I feel bound to rule that is not within the scope of our reference. We are dealing with responsible people. The witness before us is a member of a reputable Canadian association.

Mr. MARQUIS: Let the question stand.

The CHAIRMAN: I think he has a right to develop his argument without giving names, and so forth, of these individual firms. As chairman of the committee I feel I must so rule. As I understood the facts of this case, Mr. Bull—and this is what the committee is interested in—on February 3 of this year an application came to your department for a permit to export 2 tons of structural steel. In the first instance your department declined the application on the grounds that there was a shortage of steel in Canada. Then we were told that in the following month the application was renewed. Your department was advised of the fact that a quantity of this steel was in a yard in Toronto, had been there for two or three years and was available, and was not being used in any fashion, and your permit was promptly granted. To me that pretty well answers the problem, but I would be glad to have now any explanation from the department.

Mr. LESAGE: Do I understand that your ruling is a general ruling applying to all such cases?

The CHAIRMAN: It is.

Mr. LESAGE: With all due respect, Mr. Chairman, it is a very dangerous ruling.

The CHAIRMAN: I agree it is a dangerous ruling, but I feel this way. This committee is not a committee charged by the House with the task of investigating the question of hoarding or anything of that nature. Our reference is a bill from the House in regard to permits for exports and imports. Individual firms are not represented here. There is no opportunity for them to answer or anything of that sort. I think it would be a most unfair thing if we allowed their names to go out in the press with any innuendo attaching to them.

Mr. FLEMING: May I make this observation on the point. I think you will admit this reservation, that if there were some difficulty on the part of the department in identifying the case in question to permit it to make its reply then there would be ample ground for saying that sufficient particulars should be given to the department to enable them to identify the case, but where the department is well aware of the case and there is no problem of identification then it seems to me we are going to lead ourselves into bypaths and away from the main point if we are going into these matters of particulars.

The CHAIRMAN: Shall we hear from Mr. Bull?

Mr. LESAGE: I agree perfectly with what Mr. Fleming has said. That is why I asked first that we should hear from Mr. Bull if he can answer the question without mentioning names. That is why I wanted to avoid a general ruling. It is always dangerous.

The CHAIRMAN: I think it is only fair to the members of the committee to know the facts of this case. Mr. Bull knows this case.

Mr. LESAGE: It is all right in this case.

Mr. BULL: Am I to speak on that specific case?

The CHAIRMAN: Yes.

Mr. BULL: This is the question of the application from Mr. Marshall for the 2 tons of structural steel. That application came into the Export Permit Branch. We saw the words "structural steel", which is one of the most critical items in Canada. You have only to look at the Ford hotel in Montreal and see the difficulty they have had putting up their building there. We referred it to the Steel Controller following our usual procedure. He saw the word "structural" and refused it. We passed it back to Mr. Marshall and explained that it was refused because of the shortage in steel. He took it up with the supplier. I know the firm. They are a reliable firm of warehousemen in Toronto. They did nothing wrong in having that steel in their warehouse. It is a perfectly normal and natural thing for them to have very large stocks of steel in warehouses all over Canada. Steel runs into hundreds of specifications. Some are in constant demand. Some move very slowly. Mr. Marshall made the contention that it was surplus steel that was not moving. We referred it back to the Steel Controller. He had his investigators check on that point whether the steel was surplus to Canadian demand. He found it was of a specification, size and type which could not readily be used in this country. He approved of the permit and we granted it. We do that every day. We handle literally hundreds of permits a month covering material which we export. In maintaining this service, in every case we ask the controller if Canadian consumers have been offered that commodity. If we find that they have been offered that commodity and it is of a type which they cannot use and that it is surplus to Canadian requirements, then we issue a permit. We cannot do that on first receiving a request for a permit, but only after we have made an actual check with the controller and the people who use steel of that kind.

The CHAIRMAN: Can you tell the committee in this instance as to what delay occurred between the date when you were advised as to the special circumstances of this case and the date when the actual permit was granted?

Mr. BULL: I could not give you those actual dates without checking through the file in the branch. The delay was not unusual. The request in the first instance would have to come to us, then we would have to get in touch with the steel controller. He or we in turn would have to get in touch with the warehousing firm in Toronto, then the matter referred back to the controller again, back to us, and so forth. In other words, we would have to be satisfied that it was not required for Canadian consumption before we could issue an export permit.

The CHAIRMAN: I would like to have those dates because to me they are very significant. My notes tell me that the second application was made on the 17th of March; the initial application on the 3rd of February, and that the actual permit was granted on the 17th of March. I cannot see any undue delay there at all.

Mr. IRVINE: I can't either.

Mr. LESAGE: They were granted a permit to export the two tons?

Mr. BULL: That is right.

Mr. LESAGE: When did you hear about these fifty tons in Toronto?

Mr. BULL: There are stocks like that all over the country.

Mr. LESAGE: Did you have any specific information about this stock?

Mr. BULL: Not until the request for export came up.

Mr. LESAGE: Do you know what kind of steel it was?

Mr. BULL: It is structural steel of shapes not generally in demand in this country.

Mr. LESAGE: Does that apply to the whole fifty tons?

Mr. BULL: I would not be sure about that without checking back on it.

Mr. FLEMING: Mr. Chairman, I think the evidence Mr. Bull has given raises a question which may get to the crux of the general problem. I am getting away now from the particular question because I for one am more interested in knowing what steps are being taken either through your department or through other departments in cooperation with permit and control authorities to be sure that they are at all times being kept fully informed of the particular situation in Canada with respect to these commodities for which you are receiving applications for export, particularly in cases where there is a scarcity in Canada of these particular commodities. On whom do you rely for that information?

Mr. BULL: We rely on the controller or administrator concerned, they and the Wartime Prices and Trade Board, or, in the case of steel, on the steel controller. He in turn has his own people out. He has information coming to him from all over the country as to what the supply position is. He must know what Canadian production is and also what Canadian consumption is. He has a very capable statistician working under his direction who keeps him informed as to Canadian demand and the supply position. We have very many ways of checking this information. We have cases where people come into our department—I will give you an actual instance: we have people coming in to us for permission to export a material because they are in a surplus position. There is one case of a structural steel manufacturer who came to us and said that he faced an arbitrary closing down of his plant because of a lack of pig iron and he was making application to us for an allocation of pig iron to avoid the shutting down of his plant. Our position and attitude with respect to the exporter is that we want to help him as much as we can. When we receive an application for

an export permit we take it up immediately with the control administrators who are in the best position to know what the supply situation is. When somebody comes back to us as in this case Mr. Marshall did, and supplements his original application with information of the kind Mr. Marshall gave us, we are then in a position to take it up directly with the controller who, in turn, on checking up, finds the facts to be as stated and then we are able to issue a permit.

Mr. FLEMING: I can see how that would work out all right if there is cooperation, but what about the case where there are definite shortages?

Mr. ISNOR: Mr. Chairman, Mr. Bull was called to answer a specific question. We have a witness before us. I submit that we should have a complete statement from the witness now that Mr. Bull has answered the point raised. If you want Mr. Bull as a witness why not call him later?

The CHAIRMAN: I think Mr. Fleming's question was right to the point.

Mr. ISNOR: I think he was pretty wide of the point.

Mr. JAENICKE: We had Mr. Mackenzie with us for several meetings and he went over that procedure in detail.

Mr. MACDONNELL: I am afraid Mr. Chairman, that I want to ask Mr. Bull a question also, if you rule that we may do so.

Mr. JAENICKE: A moment ago Mr. Marshall was to complete his statement.

Mr. TIMMINS: I thought we were getting at the very crux of the matter.

The CHAIRMAN: I think perhaps it might save time if we would clear up this one point on the application for structural steel before we go on with anything else. Is it the wish of the committee that we do that?

Mr. FRASER: Let the witness get on with his statement.

The CHAIRMAN: All right, Mr. Fleming.

Mr. FLEMING: Would you let me put that last question again?

The CHAIRMAN: Yes.

Mr. FLEMING: I will restate my question. I said, I can see how you can keep in close touch or how you are keeping in close touch, provided there is co-operation, with the supply situation as to these commodities where there are commodity controls; but in the other case, where you have not a commodity control what is the specific means you use there to keep fully informed on the supply situation to protect the domestic requirement.

The CHAIRMAN: I think Mr. Bull could answer that question quite readily.

Mr. BULL: We have very excellent supply information on most Canadian commodities. There is a large number of commodities under control which appear to be in short supply and they are kept under control for the purpose of regulating movement and ensuring adequacy of supply in Canada, and things like that. Where we are assured, after long, detailed negotiations with the producers and with the Wartime Prices Board administrators and the controllers as to the supply situation, we arrive at the quantity of a certain article which can be let out of the country and the quantity which must be kept in it. We deal with the facts; as I say, we find out what the immediate demand situation is domestically and then possibly we figure that thirty per cent of the product, of a certain commodity, may be diverted to the export field. In the case of a commodity where that has been done we not only determine the percentage which may be permitted to go to export but we arrive at a quota of that production to apply to the manufacturers. Then we make out what we call our S.P.L. permit, a special permit form, which covers the movement of a number of units to any country and to any consignee in any country. Right at the present time we have over 400 of these S.P.L. permits in operation and they cover a great volume of exports. There are a great many other com-

modities which we will not program because there is no regular continuing supply about. We deal with them in individual cases and review the immediate supply situation with respect to such a commodity. In our export branch we have a set of ledgers which gives us the picture of the overall quantity of commodities in Canada. The information contained in that record is kept up to date and we refer to it to determine the action to be taken in individual cases. Now, when it comes to countries like the West Indies and Newfoundland, we have actual programs drawn up with them where they have indicated what they wanted and we have cleared to them in advance the amount that, it is apparent we can let them have from Canadian supplies. There are other industries, other commodities with respect to which the supply position varies every few months. When such an article is in short supply it is not available for export, and then when there is a large supply, export can be permitted within reasonable limits. But we do keep up the records with respect to that.

Mr. MACDONNELL: Was there information in the original application which might have indicated that to the steel controller, or was this the only way in which this small quantity could have been discovered? That is my question.

Mr. BULL: The original application just read "T-bars; quantity and value;" and it was only after the thing being turned down that these particulars as to dimensions and specifications came out. Things of that kind happen many, many times.

Mr. MACDONNELL: Yes. Then you seem to give two reasons; (*a*) the type of steel involved; and (*b*) you said that it was necessary for you to make inquiries from the controller, I believe; that they were pressing you for materials?

Mr. BULL: That is right. The steel controller is under constant pressure from people all over Canada about these steel items and where they can be obtained. The housing administration are pressing for steel all the time. They have to check these demands against the request for export permits. What would happen in a case like this is that they have a specialist in structural steel and all different types of steel. They would have a competent man investigate this report and find out if such steel was in warehouse; whether it was suited for the demands for structural steel coming from Canadian builders, and find out just what the type of steel involved was. By that I do not mean that they would recommend that it be sent back for smelting down at say $15 or $20 a ton; they would probably rather recommend that an export permit be issued and keep the steel available for the purpose for which it was made. They would consider it better economics to make that steel available to some other country than to have it kept here and smelted down and made over again.

Mr. JACKMAN: May I just make a remark, because you see you referred to the undue delay between the 3rd of February and March 17.

The WITNESS: Well—

Mr. JACKMAN: As I understood the chairman he said that it appears to him there had been no undue delay between the original application for export permit, between February 3 and March 17 when the permit was finally issued. We had some discussion the other day as to the various stages which were gone through before the final issue of the permit, and I think it showed that business might very well have to wait a month or a month and a half on an item such as steel to get an export permit. It seems to me that if business is going to be able to carry on at all in Canada we will have to have more expedition in a matter of this kind than that.

Mr. IRVINE: That is an exceptional case.

Mr. JACKMAN: No, the witness said he had many cases of that kind. I am suggesting that it cannot possibly be considered expeditious where one has to wait for a month or a month and a half. That is a very long time, and I feel that we are going to lose business if this sort of thing is going to be permitted to happen frequently. At the same time that may be the most expeditious way of handling it under the circumstances. I do not know. I think we should examine that further at some time.

By the Chairman:

Q. If the committee has no further questions for Mr. Bull on this point, I have one or two questions which I would like to ask the witness. You have cited these cases I take it as the reason why you think all export controls should be removed?—A. Yes.

Q. You are fully aware of the fact that there is a very serious shortage of structural steel in Canada?—A. Yes.

Q. And you know that there are many buildings now in the course of erection that are delayed as a result of that shortage in structural steel?—A. Yes.

Q. Then, having that in mind, do you not think that any exporter asking for a permit for the export of structural steel and hoping to get one should have indicated in his application the dimensions of steel that he wanted to export in order to show to the steel controller that this was an exceptional application and was in regard to steel not needed for Canada; and the exporter in this instance failed to give that information in his application, so the delay if any was entirely the blame of the exporter?—A. Yes.

Mr. LESAGE: Of course, the witness does not have to answer that; everyone knows the answer to that.

By the Chairman:

Q. In the light of these facts do you consider that this complaint is one that any reasonable man should seriously entertain?—A. Only, Mr. Chairman, that this particular subject applies so much to export permits generally. I just picked the one of the two tons; as a matter of fact, it was about the smallest we have.

Q. Now, you came here, did you not, to try and convince this committee that export control should be done away with?—A. Yes.

Q. And this is the best complaint you can supply the committee that export control should be done away with?—A. Yes.

Q. And this is the best complaint you can supply the committee in support of your argument?—A. No, sir.

Mr. JAENICKE: Just in connection with this point, Mr. Chairman, may I ask the witness one question?

The CHAIRMAN: Yes.

By Mr. Jaenicke:

Q. When did you finally inform the export permit branch that the steel was available, on what date?—A. On February 12.

Mr. JACKMAN: Might I just ask the witness what the original application had in it in the way of description of the steel you wanted?

The CHAIRMAN: That is already in the record.

Mr. JAENICKE: He said two tons of structural steel.

The WITNESS: T-bars, which is structural steel; no dimensions.

By Mr. Jackman:

Q. Is there any other information there to distinguish it from other T-bar structural steel?—A. No.

Q. What was the true differentiation of the type that you wanted to get from the ordinary T-bar structural steel? What was the distinction? This is a surplus item.—A. This was actually in stock and had been in stock for, I repeat, about two or three years; it had not been sold on the domestic market. And whatever you call it, it was called T-bars. But we automatically sent up our request for an export permit. We only gave them the details of it in the letter we sent under date of February 12, and following that we all found out exactly what the position was.

The CHAIRMAN: If there are no further questions on this structural steel complaint—

By Mr. Irvine:

Q. I would like to ask one question, Mr. Chairman. In view of the fact that there were serious shortages, and particularly in structural steel—I mention that because it was the illustration given by the witness—would the witness answer this, when there is a great shortage of a specific item how does he justify the abolition of export controls?—A. We have been discussing, these last few minutes, the two tons of T-bar steel. This is just a fraction of the various types of enquiries and orders which are coming into Canadian business houses at the moment. Canadian manufacturers generally, at the moment, have enquiries and orders on their books for millions and millions of dollars worth of materials. In my particular case, we receive enquiries and we do not even send them up to the export permit branch because we know there is either a shortage or we would not get a permit.

Q. May I interrupt to ask, is not that all the more reason why we should have the controls?—A. I beg your pardon?

Q. Is not the statement you have made proof of the need for the controls we are discussing?—A. In certain commodities, I would say yes, such as anything pertaining to national welfare such as atomic bombs, yes. So far as anything which is manufactured is concerned, this export permit department is very troublesome. Manufacturers are still going to retain and supply the domestic market. They are all taking a long-range view to try and establish connections, an export business, and if they can only send out of the country token shipments, something to keep the customers happy, it would make a considerable difference. Perhaps, in two, three or four years time all the Canadian manufacturers, or most of them, will be on their hands and knees for business. It is no use starting an export connection or an export business when you reach that particular time.

By Mr. Stewart:

Q. May I ask if Canada was ever a heavy exporter of structural steel?—A. No, the largest exporting lines were raw materials, wheat, lumber, paper and so on. With the exception of a few manufacturers, it is only within these last two years, or perhaps the last three years, that Canada has really been looking for an export market from an industrial point of view.

By Mr. Jaenicke:

Q. Does not the export board permit token shipments?—A. Yes, but not as much as the manufacturers would like to have.

Mr. LESAGE: That is the very reason we need the controls.

By Mr. Isnor:

Q. I should like to ask the witness two or probably three questions, each one hinging on his answer. I am particularly interested in the statement con-

cerning export business because of the effect it is going to have on the economy of our country. Your association has been operating for how many years?—A. Fifteen years.

Q. In 1935, what would your export business be as compared with to-day, in volume?—A. It would be about the same.

Q. How would it be in 1939 as compared with 1935?—A. That would be more so.

Q. I beg your pardon?—A. It would be more in 1939 than in 1935.

Q. Were you representing the same number of manufacturing firms?—A. No.

Q. Then your volume of business to-day is just about the same as it was in 1935. Do you remember the total export business of Canada in 1938?—A. No.

Q. Do you know which place Canada occupied? You stated a moment ago we were now in third place?—A. Yes.

Q. Were we in third place in 1935?—A. No.

Q. Then, we are in a better position to-day, notwithstanding export controls?—A. Yes.

Q. Than we were in 1938?

Mr. FLEMING: Do you mean relatively or absolutely?

By Mr. Isnor:

Q. Relatively, we are in a better position to-day than we were in 1938?—A. Yes.

Mrs. STRUM: Mr. Bull, in giving us the over-all picture told us of the whole field of production under examination, that the allocation had been made on the ratio of 30 per cent to the export market and 70 per cent to the domestic market, is that correct?

Mr. BULL: That is just a case in point; some are down as low as 5 per cent and some go as high as 30 per cent. It is based on our experience. Some industries were just entirely export and they carry a very much higher figure. Other industries were normally very small exporters and we tried to hold something like the pre-war pattern on a percentage basis, taking account of the increased production in Canada at the present time. This gives us an increased volume, so we are actually exporting more than we have ever exported in our lives before.

Mrs. STRUM: On what basis did you give this 30 per cent?

Mr. BULL: Just as a case in point; several of our commodities we have based on a 30 per cent figure. Some of our public utilities, toasters and ironers which have come in comparatively free supply and which we normally exported, we are continuing to export. We try to base it on what is necessary to maintain the domestic market and what is necessary to maintain our position in foreign markets.

Mrs. STRUM: It seemed to me that was a very generous ratio.

Mr. BULL: The over-all ratio for all of Canada is running about 35 per cent of our production going into export. Some industries go as far as 80 per cent, such as newsprint, and some go down to 2 or 3 per cent.

Mr. FLEMING: Is that based on value?

Mr. BULL: That is on a value basis.

Mrs. STRUM: It is even a better picture than the one I wanted to present. It is a little more than a third, which means, in the over-all picture, the people at home are getting, roughly, twice as much as we are sending abroad.

Mr. BULL: That is right.

Mrs. STRUM: It is a fairly good picture in view of the scarcities we are suffering at home.

By Mr. Macdonnell:

Q. Could the witness give us the percentage of manufactured articles as distinct from raw materials exported?—A. I am afraid I cannot.

The CHAIRMAN: Mr. Bull may be able to do that.

Mr. BULL: I am sorry, I have not the over-all figures. I know the figures for some individual commodities, but I do not know what the average would be. I believe, in truck tires we are doing 90 per cent, that is based on a percentage of what we formerly exported. For motor cars, I believe it is something in the neighbourhood of 30 per cent. They go out in what we call a C.K.D. condition; they are incomplete. These people are short the same materials as we are in trying to build motor cars in Canada. The motor cars go out without upholstery, many without bodies; they go out as a chassis and motor. On radios, I think we are doing 30 per cent.

Mr. MACDONNELL: Do you happen to know the case of tool steel, Mr. Bull?

Mr. BULL: Yes.

Mr. MACDONNELL: It was suggested to me it was not in short supply.

Mr. BULL: Tool steel is in an unusual position. We greatly expanded our production during the war. It is made in electric furnaces using various types of steel many of which are alloy steels which go in to be broken down. It is made from a type of scrap which cannot be readily used in the manufacture of carbon steel. There is a critical shortage of scrap for the manufacture of carbon steel, that is the common or garden variety of steel used for plates, sheets, tubes and that sort of thing.

Tool steel is made from various metals made up from alloys. They can take alloy scrap such as battle scrap, melt it down with an electric furnace and get the percentage of nickel and other alloys. They are the only people who can use that type of complex scrap. Therefore, we are virtually giving the tool steel industry a free hand on export. We give them blanket permits for as much as 20 million pounds. No serious requests for the export of tool steel have been denied.

Mr. MACDONNELL: Will you explain why, in that case, the blanket permit is needed?

Mr. BULL: It is difficult to check the tool steel for export. It saves the collector of customs a lot of work attempting to ascertain whether it is tool steel or carbon steel. We know the tool steel exporters and we give them this blanket permit. The only work, so far as the exporters are concerned, is the quoting of the S.P.L. number on their B-13b form. There is really no serious restriction on these goods at all.

The CHAIRMAN: What is the delay involved in obtaining these blanket permits?

Mr. BULL: There is no delay at all. We keep ahead of it. We give permits to them on a six months basis. If they run out during the six months, they tell us and we extend it or give them another large quantity. If we run out of steel we can put the finger on them and hold the goods in Canada.

Mr. MARQUIS: If I am correctly informed, the price of steel, that is structural steel in Canada, is three or four cents a pound?

Mr. BULL: That is right. It varies a great deal. It runs anywhere from $40 to $60 to $70 a ton.

Mr. MARQUIS: In Canada we have a ceiling price?

Mr. BULL: A ceiling price.

Mr. MARQUIS: But in the United States there is no ceiling price?

Mr. BULL: That is right.

Mr. MARQUIS: So, in the United States, steel reached a price of 10 to 12 cents a pound?

Mr. BULL: We have been offered large quantities of steel in the United States for prices ranging as high as 12 cents a pound.

Mr. MARQUIS: Therefore, if there were no export permit needed, all the steel could be sent to the United States at that price and the people of Canada would not be supplied at all?

Mr. BULL: That is very true.

The CHAIRMAN: Now, would you care to give the committee the particulars concerning the individual complaint made by the witness, namely, the export of bench vises?

Mr. BULL: Mr. Marshall is a very good friend of mine, but is in a very unfortunate position in that his trade consists of these machine tools and steel, all these items in which the supply situation is critical. In the first part of his statement he stated that only 3 per cent of the orders he is getting have been filled because of the difficulty in getting export permits. Now, for the country as a whole, in the month of November, we handled 17,154 applications and we only refused 736. This means that for all the exported commodities across the board, we refused something less than 5 per cent of the applications which came in. This is just the reverse of Mr. Marshall's experience. If he were in, for example, the silver fox fur business or some other commodity, he would experience no difficulty whatever. He just happens to be concentrating on the commodities which are in critical supply in Canada.

On this question of bench vises, applications have been turned down on bench vises fairly generally because the bench vise is an article of very simple manufacture. It is made from grey iron castings which, in turn, are made from pig iron. There is a definite shortage of pig iron. It is one of the few commodities which are being allocated by the steel controller and doled out a carload at a time to essential users in Canada who can claim they need this pig iron. There is a minimum amount of machining going into a bench vise so the price, on export, is not a great deal more than the price of the raw steel going into it. These vises are going to Holland where we never sold bench vises in the past and it is very doubtful if we will ever sell them in the future. We have difficulty competing in an article of simple manufacture. We usually do much better in a complex piece, such as a generator or a motor. We can compete with the world on those items, but so far as the simple types are concerned, we cannot compete.

Our steel controller looks on the bench vise as being very close to pig iron and castings because of the minimum amount of machining and labour which goes into them. For that reason, he is holding back on the permits. There is no shortage of bench vises in Canada. There is a shortage of the raw material which goes into the manufacture of them.

Mr. MACDONNELL: That seems to me to introduce a very different and interesting principle. If I have understood you correctly, that seems to be a question not of a shortage but of the steel controller determining it is not wise for us to try to have certain kinds of manufacturing in Canada. Have I stated it correctly?

Mr. BULL: I get your point exactly, but the problem is not that it is not wise to have that manufactured in Canada but that with the shortage of material, not enough material to go around to satisfy all demands, it is in the best interests of Canada to have that material go out say in an extrusion machine made by Modern Tool Works in Toronto, where it goes out at $1 a pound rather than to go out as a bench vise where it goes out at 30 or 20 cents a pound, the difference being labour, or go out in a complex piece of electrical machinery at $5 per pound, such as a watt hour meter. It is better to have it go out

in that form rather than have it go out of the country in a form of simple manufacture or primary form.

Mr. MACDONNELL: I am not competent to have an opinion on it, and what you say sounds very persuasive as it always does, but I am still wondering whether if you accept the principle of token shipments sometimes one's predictions do not come true. Could you say anything more on that? How far has that control discriminated in saying it is wise to do this and it is not wise to build that? I am very nervous about judgments of that kind because my own predictions are nearly always wrong, and I think perhaps other peoples are.

Mr. MACKENZIE: May I say a word? I am speaking now not of any particular item but I am talking of the general policy of those unfortunate people who have to administer export permits. Where we have a very small supply to meet a large demand we have to make some decision and some choice because everybody's demands cannot be met. One of the guiding principles is that token shipments should go to those markets where it appears that there will be some continuing value. Mr. Bull pointed out that in the case of these items which require a very small amount of manufacturing in Canada, and are only one degree removed from the raw material, it is highly improbable that under more normal conditions, if those ever come, that we will be able to compete with manufacturers much closer to the markets. Under circumstances like that we would deliberately use our influence—

Mr. MACDONNELL: Power, not influence.

Mr. MACKENZIE: —to try to direct what limited supply there was to the markets where we thought there was some advantage. The witness has said that these export demands for this type of product are something entirely new. It is not business we ever had before.

Mr. MACDONNELL: But prima facie one would think that you should encourage the new, would you not?

Mr. MACKENZIE: If there was enough to go around, but not if it involved cutting off somebody else who had an established market and had a very good prospect of continuing it.

Mr. MACDONNELL: We are talking on the basis of token shipments. I do not want to labour the point. I think perhaps I have talked about that enough, but I just leave that point with you. It seems to me that prima facie a thing that is new ought to be encouraged, and you might take a flyer on a token shipment on something that is new even though it did not look as if it were going to continue.

Mrs. STRUM: I am very much interested in this. Would it be correct to say that five years from now shipping these things to Holland we could not compete with Sweden, for instance, because they are very much closer to the market?

Mr. MACKENZIE: Nobody can predict with certainty what will happen, but there is every reason to believe that will be the situation. We will not be able to compete in that type of product.

Mr. FRASER: It would depend on the quality, too.

Mr. FLEMING: There are two points I should like to make in that connection for Mr. Mackenzie's comment. The first is this. Is the effect of that policy, as you have indicated, not to favour the existing producer at the expense perhaps of the new producer? Secondly, are you not prepared to admit that with the tremendous development during the wartime of our industrial potential and the admitted need of finding new markets we are looking not simply for extended markets for pre-war products but are looking for new markets for new products?

Mr. MACKENZIE: I quite agree we are looking for new markets for new products. I was not speaking about established manufacturers or new manufacturers. I was talking about the prospects of a continuing market. I am basing this whole thing on the fact that somebody has to make a decision and that there is not enough to go around. In other words, a choice has to be made.

Mr. IRVINE: If you were not making it who would be making it? That is what I should like to know.

Mr. BREITHAUPT: It seems to me that it is wise that the supply of material should be directed to the making of articles such as the motors mentioned by Mr. Bull.

The CHAIRMAN: That is the important point, as it appears to me. Are there any further question the committee would like to ask Marshall?

By Mr. Lesage:

Q. There is only one as far as I am concerned. You said at the beginning of your remarks that on account of the fact there was a system of control of exports your clients could export only 1, 2 or 3 per cent of what was asked for, not applied for but asked about. Then later on you mentioned that they could not export in 90 per cent of the cases. Which one is right?—A. In the first place we receive a lot of inquiries and orders that never go up to the Export Permit Branch at all. That is a very small percentage, as I have said, approximately 3 per cent.

Q. Then what is the 90 per cent for? I understood it was the same thing? —A. No.

Q. What is it?—A. Would you repeat that about the 90 per cent, please?

Q. You mentioned 90 per cent, Mr. Marshall.—A. Yes.

Q. As being the percentage of the demands that were made to your firm that you had to turn down yourself?—A. The first one of 3 per cent would be generally on orders and inquiries coming in. We would handle about 3 per cent of them. Then you say about this 9 per cent—

Q. Ninety per cent, that you would turn down on account of reasons firstly of short supply and secondly you could not secure permits.—A. Now then out of those where we would have about 3 per cent we would put them in another category of articles that would go out to the export control branch or items we would be able to sell. Does that answer your question?

Q. No, I still do not understand it. What is the difference between your 90 per cent and 97 per cent, because I understood clearly that you were referring to the same demands and you changed your figures?—A. I do not remember—

Mr. MACDONNELL: I think there was substantial agreement between Mr. Bull and the witness that in this particular line that he was in by reason of shortages the department had to restrict them very seriously.

Mr. LESAGE: Right, but I want to know why he changed his figures.

Mr. JACKMAN: May I say that I understood—although I may have understood incorrectly—that when the witness said that only 3 per cent of foreign orders could be filled he meant that of the total volume of business that we could export from Canada, apart from our basic raw materials, that only about 3 per cent of the potential actual demand could be fulfilled. I did not take it to mean that only 3 per cent of the applications were O.K.'d.

Mr. LESAGE: Not applications.

Mr. JACKMAN: Ninety-seven per cent of these demands for steel and other things are remaining unfilled.

Mr. LESAGE: Then there would be 7 per cent difference between the potential demand and the demand itself.

Mr. BELZILE: Following the line Mr. Lesage has taken Mr. Marshall stated that applications were sent to the department for permits in the number of about 30 per week. That is right?

The WITNESS: Yes.

By Mr. Belzile:

Q. And those applications were granted in the proportion of 50 per cent?—A. Yes.

Q. How many applications were declined in percentage?

The CHAIRMAN: Fifty per cent.

Mr. BELZILE: He said some were postponed, too.

By Mr. Jackman:

Q. Fifty per cent were automatically granted?—A. Fifty per cent were granted.

By Mr. Belzile:

Q. And some were postponed?—A. You have to make re-application.

Q. What is the percentage of those?—A. Approximately 10 per cent re-applications.

Q. And then 40 per cent are declined?—A. Yes.

Q. How does that 50 per cent of applications granted compare with that figure which you gave of 3 per cent or 10 per cent that you just gave Mr. Lesage?

Mr. IRVINE: You are making it very clear.

By Mr. Belzile:

Q. You said you had inquiries made to your firm for millions and millions of dollars out of which goods could be exported in a proportion of 3 per cent. Then you said that applications sent in amounted to 30 a week of which 50 per cent were granted?—A. That is of the 3 per cent?

Q. How does that 50 per cent of applications granted compare with the 3 per cent?

Mr. FLEMING: That is the 3 per cent, is not not?

Mr. BELZILE: I want to know what is the amount in dollars really represented in exports of the 50 per cent granted?

Mr. LESAGE: What does the 50 per cent of your applications represent in dollars, in value, in a year?

The WITNESS: A year's trade?

Mr. FLEMING: You have got 30 a week. Stick to the week.

Mr. LESAGE: Let us say a week then. It is only $1\frac{1}{2}$ per cent of the total, is it not?

The CHAIRMAN: I would hardly think it is fair to the witness to ask him to figure that out.

Mr. LESAGE: This is cross-examination.

Mr. FRASER: It is not fair to the reporter, either.

Mr. BELZILE: You mentioned that the export business is now stifled by the troublesome—that is the word you used—

Mr. LESAGE: Stick to your question, what is the value of the $1\frac{1}{2}$ per cent?

By Mr. Belzile:

Q. I want to find out what is the value of what goes out of Canada under these permits that are granted?—A. I cannot tell you, but I will tell you this. We get inquiries for automobiles, stoves, lathes, machines, presses, sugar refining plants, various types of motors, any available quantity.

By Mr. Isnor:

Q. I suppose you get inquiries for anything that is scarce in the world market?—A. Well, we get inquiries for what people are requiring.

Mr. MARQUIS: The people in Canada.

The WITNESS: In many cases they know what they want. In a lot of cases they want so many motors. They want to find out if you can supply them with electric motors. Some of these countries want them in any available quantity.

By Mr. Belzile:

Q. There is a scarcity of goods all over the world now, and any available quantity of goods that could be shipped out of Canada would be very easily sold in the world market. That is a fact on account of the scarcity, but for that very reason do you not believe we should keep our own goods for our own people in the amount that we need?—A. From a selfish point of view, yes.

Mr. MARQUIS: What we absolutely need? Is that selfish?

Mr. JACKMAN: We must realize we have to pay for our oranges, our coffee, our sugar, and a great many imports if we want to have a balance left in this country.

By Mr. Fraser:

Q. May I ask the witness this question? He said he had agents in 53 countries and is receiving inquiries for goods from these 53 countries. If you do get the goods here do you ever have any difficulty with the countries to which you ship them allowing those goods in there?—A. No.

Q. Do they restrict you on imports?—A. Yes.

Q. That is what I am getting at. Some of these 53 countries restrict you on imports?—A. Yes.

Q. On what kind of goods do they restrict you?—A. If we do not get an import permit—

Q. You must get that first?—A. We do not make any further inquiries without one.

Q. And your people, your agents, write to you, and they say they have an import permit?—A. Yes, they send it to us.

Q. They send that import permit to you?—A. Yes. That is our official O.K. to go ahead and try to secure the material. We then apply for our export permit and we submit the import permit to show that we have the necessary prmission to send it to the country in which our agent resides, the country with which we wish to deal.

Q. And the department know about that?—A. They have all the particulars, that it is all above board and shipshape.

Q. And there is another question I would like to ask; you are in this exporters' association; does the export association make suggestions to or advise the manufacturers in Canada as to what they should manufacture or ship; do they make suggestions of that kind, or is that done by the Canadian Manufacturers' Association? Do you keep them informed as to what you receive inquiries for?—A. No. Naturally, if a manufacturer wants to know what importers from other countries are interested in, if they want particular information regarding export demand, our association would do its best to supply the information for them. And I may add that we do the same thing for the Department of Trade and Commerce. Any time they want any information we get all we possibly can for them. The same thing is done by the Canadian Manufacturers' Association.

Q. Let us say that you receive inquiries for a certain line of goods. Do you go to the manufacturers and tell them that people in other countries are interested in that sort of thing? Does the Canadian Manufacturers' Association do that?

Or do you refer such inquiries to Mr. Mackenzie or Mr. Bull here in the department?—A. No. We generally apply to the manufacturers and ask them if they can manufacture it or if they cannot manufacture it.

Mr. IRVINE: Mr. Chairman, I would like to ask the witness a question.

The CHAIRMAN: Mr. Michaud has the floor.

Mr. MICHAUD: I came in late, Mr. Chairman, and I am not just sure who the witness represents. I understand he represents the association of exporters and that he has come here to express the views of that association. Now, I am just going to ask you one particular question because I am not in a position to go into detailed discussion of what has been given here. Considering the well-being of the people of Canada as a whole are you still of the opinion that export control should be abolished?

Mr. IRVINE: The answer to that is, obviously, no. I was just wondering, Mr. Chairman; I do not think we are getting very far. I think we are using atomic bombs against the mosquitoes of objection. I think we ought to get on with the bill.

The CHAIRMAN: We have Mr. Mackenzie with us to-day and he will supply some information asked for by the committee, if there are no further questions of this witness.

Mr. MARQUIS: I have one question I want to ask, Mr. Chairman.

By Mr. Marquis:

Q. You stated, Mr. Marshall, that you had orders amounting to a million dollars, do those involve Canada only or foreign trade as well?—A. They all involve what is manufactured in this country.

Q. Do they apply to the needs of this country alone or to other countries as well?—A. Yes, it is needed all over.

Q. You say it is needed all over; so in these inquiries there are demands for things by foreign countries which may be needed at home. What is the proportion of requests or requirements by foreign countries in this million dollars of inquiries which you say your association holds?

Mr. JACKMAN: They are all from foreign countries.

Mr. FLEMING: Yes, one hundred per cent.

The WITNESS: They are all foreign countries.

The CHAIRMAN: I do not think the witness understood your question, Mr. Marquis. I understand that his evidence to-day has dealt solely with the requirements of other countries.

Mr. MARQUIS: I am sorry, Mr. Chairman; I did not understand it that way.

By Mr. Lesage:

Q. As a matter of fact, all the inquiries which come to you come from abroad, do they not?—A. They are all from abroad.

Q. All from abroad?—A. Yes.

Mr. BREITHAUPT: I think the important thing in this whole discussion is the trend. I think I would like to ask Mr. Marshall this question.

By Mr. Breithaupt:

Q. Is it easier now to get export permits than it was let us say six months or a year ago?—A. Yes.

Q. All right, then the trend is satisfactory. I think there is a balance here involving Canada's export trade. We have to look to the future and take care of our own Canadian people as well. We also have to back up the Department of Trade and Commerce in their efforts to get a certain amount of exports to help us hold our foreign trade. The fact that we have not been able to export

certain things does not mean that we will not be able to export them in the future. I think that if the trend is satisfactory, as Mr. Marshall has said, that with the change of our economy from war to peace we will have no difficulty securing permits in our endeavours to enlarge foreign trade.

By Mr. Belzile:

Q. Mr. Marshall, you said in your statement that waiting for permits sometimes had the result of cancelling orders, that orders were lost because of delay; you mentioned that, did you not?—A. Yes.

Q. Have you figures to support that? Because if I understand your statement correctly it means that while you are waiting for export permits, some of which were subsequently granted, business deals were called off; could you tell us what the percentage of business lost in that way amounts to?—A. I cannot give you any actual figures, but there is one thing I will say just to add to what I have already said; after an inquiry comes in and we have to quote it is not easy to quote unless that we know we can get an export permit. In the meantime, by the time we do get export permit, even although it is only a matter of thirty-six hours or twenty-four hours, our price is too late.

Mr. RINFRET: I think in fairness to the witness, Mr. Chairman, we ought to let him state whether he has any further representation to make to the committee.

The WITNESS: No.

By Mr. Jackman:

Q. The witness said that now was a crucial time in the development of our export trade, particularly in relation to some of our newer manufacturing lines. May I ask him if it has ever come to his notice that some Canadian manufacturers who might in the near future greatly desire to have an export outlet for some of their products do not even try to get into the export business because of the necessity of applying for permits and the other government regulations? Do you find that to be a stumbling block in the minds of some people who temporarily find a complete market for their product in Canada?—A. Yes, when they come to these export permits they just pass the business up right away.

Q. I don't suppose you would care to elaborate on that; or, can you elaborate on that at all?—A. No. There are a number of the smaller manufacturers who realize and appreciate that this domestic business will not last much longer at its present volume and they are turning to the export field for continued outlet. It is really something new for Canada. We have been shipping wheat, lumber and paper all over the world for many, many years, but this export field is going to be a very important asset for Canada in the years that are ahead; but a good many of these smaller concerns know that there is this export permit branch and it is inclined to make them feel that they just can't export.

Mr. JACKMAN: Mr. Chairman, I wonder if I might put to one of the department officials a question which is prompted by a remark Mr. Irvine made. As I recall it, Mr. Irvine asked who decides what should be allowed to be exported; in other words, on whose authority is the decision made? One might ask that question at any time in our economy looking to either the long or short supply; who would decide what particular branch should be allowed to export; whether such export should be allowed, etc. As I appreciate it the ruling authority before the war, and I think this is pretty generally accepted and I think there is considerable authority for it, was largely the question of price. With that little preface to my question I should like to ask Mr. Mackenzie or Mr. Bull: how would you decide, let us say in the case of the steel industry, when controls should come off? When there is a glut of steel on the market here? How do you differentiate between the needs of the Canadian consuming public and their desires? For instance, none of us has ever been satiated with new

ways and new articles, we are always looking for more; we always want to increase our consumption because our desire is never satisfied. There is always something someone wants to buy. Let us take the case of steel, when and how would you say that export controls on steel should be removed?

Mr. MACKENZIE: Mr. Chairman, I tried to answer a similar question a couple of days ago. It is impossible to give a precise answer to a question of that nature. There is a continual process going on between officials on just that very problem. And as I said before, the officials of the Department of Trade and Commerce approach these things with a bias in the field of getting rid of export controls; the official responsible for domestic supply approaches with a natural bias to make sure that he has got an adequate supply in this country to meet the demand. You get these two groups together, or the representatives of the two groups, and a discussion is held and out of that discussion comes a recommendation. Now, there is no precise rule by which these decisions are reached, or by which these recommendations are prepared. They are in effect recommendations by officials to council either to do something to end export control, or to put it under export control. I think perhaps the answer to your question will come when we table, as we want to do today, a list of items that have been taken off control and a list of items that have been put back under control. Now, we can give you the commodities and the dates, and of course from that information as supported by our records you can probably ascertain the particular factors which influenced decisions at the time. But I really do not think it is possible to be precise.

Mr. JACKMAN: I do not think it could be done mathematically, but there must be some authority under which it is done, something which enables you to decide when a control should be taken off or put on, when you make a recommendation to council that it should be done. Sometimes you find the ministers bringing down recommendations where they do not know very much about the reasoning behind them except that they are the recommendations of those in whom they placed their confidence. May I ask you this, if there were no export controls I presume those firms in Canada would do their exporting where they would get the longest price, the longest price being offered by importers of other countries, and that likely would represent the greatest need. That is the old system, and that would be what would happen if you did not have any controls here.

Mr. MACKENZIE: I would not like to speak for Canadian manufacturers. We can assume that a Canadian manufacturer endeavouring to build up an export business would pay attention to a great many factors of which price would be one; but he would be equally concerned as to his prospects for continuing business relationships in the export field. There are so many factors that come into play there, I do not think that you could say that it was entirely or essentially a matter of the highest price.

Mr. LESAGE: Some do it.

By Mr. Jutras:

Q. I think the discussion sums up to this; Mr. Marshall recognizes the necessity of looking after the domestic market. If I understand correctly, he wishes to be in a position, or his association wishes to be in the position, of sending more token shipments out of the country at the present time by having the export control removed. I presume, Mr. Marshall, you have studied the domestic and world situation and you are satisfied that we can send more token shipments out of the country at the present time. Now, would you be in a position to state, generally, what increase in the percentage of exports we would be justified in giving at the present time.

Mr. FLEMING: In his line?

By Mr. Jutras:

Q. No, generally. Perhaps I should make my point more clear.

The CHAIRMAN: No, I think you have made your point quite clear. The witness will give you an answer in a moment.

The WITNESS: I doubt if I could even give you any percentage. The only thing we, in this association, know is this; that we are really trying to build up Canada as an exporting nation. The more token shipments we can send out, the better it is going to be. So far as the actual percentage more which we desire is concerned, it would all depend upon the size of a man's business at present as to how much he would want to send abroad. I could not possibly give you a definite answer to that.

By Mr. Quelch:

Q. Is it fair to say you would favour curtailing consumption in Canada in order to expand our exports?—A. Yes, to a point.

By Mr. Fraser:

Q. The same as is done in England?—A. Yes. In England the average manufacturing plant supplies 40 per cent to the domestic market and 60 per cent to the export market. I know of firms in Canada, I know of a number of them, and they are not even considering 5 and 10 per cent for export due to the fact they are looking after the domestic market.

By Mr. Stewart:

Q. Is the reason for the large exports in the United Kingdom not entirely different from the position we have in Canada? The United Kingdom simply must have foreign exchange.

Mr. FLEMING: So must we.

Mr. STEWART: Not to the same extent.

Mr. QUELCH: England has a very large unfavourable balance of trade.

Mr. STEWART: England is looking forward to holding the markets she had before the war.

By Mr. Rinfret:

Q. The 5 per cent to which you referred as being exported in Canada and the 40 per cent being exported from England, do those figures refer to similar goods—as a matter of fact, I think it was 60 per cent you said?—A. Let me try to explain it this way: If I had a manufacturing plant in England, automatically, my figure—I do not know where it comes from—automatically the figure is 40 per cent to the domestic market and 60 per cent to export.

By Mr. Michaud:

Q. Would that be on all lines?—A. All lines. Here in Canada it is really taking us all of our time to get 5 or 10 per cent allocated for export. I am not talking about wheat, lumber and paper, because I do not know about them. In general, we will say, so far as the manufactured articles are concerned, the balance of it is going to the domestic trade, so the domestic trade is being well looked after.

By Mr. Rinfret:

Q. The answer to my question then, is yes, they are similar goods?—A. Yes.

Q. We export less than 5 per cent whereas England exports 60 per cent?—A. Yes.

By Mr. Marquis:

Q. Is it not true that in Canada we export 35 per cent of our production, that includes everything?

Mr. FLEMING: You mean raw materials, now?

Mr. MICHAUD: Newsprint, do you consider that a raw material?

Mr. ISNOR: I should like to ask Mr. Mackenzie this question. Is it necessary for the minister to announce any change in regard to the removal from or putting on your list of an article?

Mr. MACKENZIE: Is it necessary for him to announce or is it necessary for him to make the decision?

Mr. ISNOR: Announce in the House.

Mr. MACKENZIE: It is not the question of announcing of which I was speaking. The decision to put things on the list or to take them off the list is in accordance with the order in council which provides that the Governor in Council takes action.

Mr. ISNOR: You have a list in your office and it is simply added to or removed from as the case may be?

Mr. MACKENZIE: That is right.

Mr. ISNOR: On a decision made by the officials?

Mr. MACKENZIE: I say recommendation made by officials to the Governor in Council.

Mr. ISNOR: A recommendation made in your office, and there is no announcement made in regard to that in the House as to particular items?

Mr. MACKENZIE: It might well be that the House was not in session. It may be just an announcement to the trade, an announcement to the press. Ordinarily I do not think they are announced in the House.

Mr. JACKMAN: It was not the Minister of Trade and Commerce to whom I had reference.

The CHAIRMAN: Are there any further questions of the witness? If not, there is one question I should like to ask the witness.

By the Chairman:

Q. In answer to Mr. Jackman you stated that you believed the fact that export permits were necessary was deterring small manufacturers from seeking export markets. Would you elaborate on that, please, and tell me why you believe it has a deterrent effect with respect to small manufacturers?—A. First of all the small manufacturer is not altogether well versed in export. That is one of the reasons why recently you have had a lot of what they call export merchants and a few export agents taking over this business for them, but as far as the actual manufacturer is concerned, the export merchant and the export agent in Canada generally really would like him to export because we all have the feeling, as I said before, that in two or three years time we will want that export business. I am not talking against the Department of Trade and Commerce because I am backing them up all over the world, but there is also the feeling all through the trade that this export permit department is definitely holding back the export business as we see it today. During wartime it was a different proposition, but now private enterprise feels that that was a war control, and we are in the second postwar year now. They are watching the domestic requirements, and they feel as though they want to get after this export business.

Mr. MICHAUD: More money.

The WITNESS: No, not more money. Do not think because you are exporting you can get more money. In some countries you can, but you are still up against competition with other countries.

By the Chairman:

Q. What is there about the control that is discouraging to the small industrialist?—A. It is a waste of time. To put it very bluntly it is just red tape.

Q. Have you any suggestions as to ways and means by which the system can be improved?—A. Yes, apart from taking it off.

Q. What period of time do you think should be applied?—A. I think if we were given maybe a period of six months, or some specified time, that would help to ease the situation.

Q. A period in which what is to be done?—A. For the permit branch to find out; or let the manufacturers, let the exporters generally, have time in which to find out what is actually short. We hear that we are short of a great many things, I think we should know what we are actually short on.

Q. I am trying to find out what is wrong, and to find out from you if you can make any helpful suggestions to correct what may be wrong. What is there about the routine of applying for export permits that you think is harmful? Is it the delay; is it the number of forms that have to be dealt with; or, what is the trouble?—A. We think it is the delay.

Q. Tell us what delay occurs, then.—A. Well, we cannot commit ourselves at all until we get permission from the export permit department that what we are interested in can be shipped out of the country.

Q. Yes, I agree with you; but what is the delay you are complaining about, what delay occurs?—A. It is more or less that decision, having to wait to find out.

Q. There is no delay at all there—A. There is delay in that particular end of it.

Q. You see, you made a statement, and I want to know the answer.

Mr. MACDONNELL: Mr. Chairman, is not this the position: You have somebody who wants to do business, somebody who is ready to close a deal, and it cannot be closed because they have to go to the department. I imagine that is what the witness has in mind.

The CHAIRMAN: It is not the delay in the department, it is the fact that the manufacturer cannot commit himself.

Mr. JAENICKE: No, that is not right. I think what he means is the delay in pointing out whether a particular commodity is going to be allowed to be exported; is that what it was?

The WITNESS: There is a slight delay there, yes.

By Mr. Jaenicke:

Q. May I just ask the witness this: there is a published list of the articles on which you have to get export permits; do you know what articles require permits and what are on the free list?—A. Yes.

Q. You mentioned a moment ago— A. Sometimes they are changed.

Q. You mean by that that the lists are not specific enough?—A. Well, sometimes they are changed. First of all you are allowed to export and then you are not allowed to export and then a week later maybe you are able to export.

Q. If you are notified more frequently of the lists of articles on which you need permits and those on the free lists do you think it would expedite your doing business?—A. Yes, it would.

The CHAIRMAN: Gentlemen, before we adjourn: I understand that the departmental officials are now ready for us to deal finally with section 19 of the Patent Act, and if the committee are willing we will devote the entire morning Tuesday of next week to patents, and Tuesday afternoon we will come back to the export-import permit bill. Is that satisfactory?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Do you wish to sit this afternoon?

Some Hon. MEMBERS: No.

The CHAIRMAN: Then before we adjourn, on your behalf, I would like to thank Mr. Marshall for taking the time and trouble of coming to our committee meeting and presenting the views of the exporters' association.

The WITNESS: Thank you, Mr. Chairman.

The committee adjourned at 1.10 p.m. to meet again Tuesday morning next, March 25, at 11.00 o'clock a.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

TUESDAY, MARCH 25, 1947

WITNESS:

Mr. M. W. Mackenzie, Deputy Minister of Trade and Commerce.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

NOTE.—*The Banking and Commerce Committee held a meeting on the morning of March 25 when Bill No. 16, An Act to amend the Patent Act, 1935, was considered. The minutes of proceedings and evidence of that meeting will appear in No. 12.*

MINUTES OF PROCEEDINGS

TUESDAY, March 25, 1946.

The Standing Committee on Banking and Commerce met at 4.00 p.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Fleming, Fraser, Hazen, Jackman, Jaenicke, Lesage, Macdonnell (*Muskoka-Ontario*), Rinfret, Sinclair (*Ontario*), Smith (*York North*), Stewart (*Winnipeg North*).

In attendance: Mr. M. W. Mackenzie, Deputy Minister, and Mr. W. C. Bull, Director, Export Division, Department of Trade and Commerce.

The Committee resumed consideration of Bill No. 11, An Act respecting Export and Import Permits.

Mr. Mackenzie was called. He submitted answers to questions asked at previous sittings and filed statements which appear as *Appendices "A", "B", "C", "D", "E"*, and *"F"* to this day's Minutes of Evidence.

At 4.20 p.m., the Committee adjourned to meet again on Thursday, March 27, at 11.00 a.m.

R. ARSENAULT,
Clerk of the Committee.

85241—1½

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

March 25, 1947.

The Standing Committee on Banking and Commerce met at 4.00 p.m. The Chairman, Mr. Cleaver, presided.

The CHAIRMAN: Gentleman, as you are aware the object of the meeting this afternoon is to permit the tabling of answers to questions and the tabling of material promised by the Deputy Minister of Trade and Commerce, for the convenience of the members so you will have an opportunity of considering this material before our final meeting on Thursday morning. I have taken the matter up with the clerk of the committee and we hope to be able to have printed copies of the material tabled in your hands late to-morrow afternoon.

M. W. Mackenzie, Deputy Minister of Trade and Commerce, recalled:

The WITNESS: Mr. Chairman, we were asked I think during the first or second meeting for a list of the commodities removed from export control during the period December 11, 1944, to March 15, 1947; December 11, 1944, being the peak period, the time when the greatest number of items were under control. We have here a list, classified by the same grouping as is used in the export permit regulations showing what items have been taken out from under control. This is followed by a second list of the items which were reinstated under export control during that same period, December 11, 1944 to March 15, 1947. There is also a third list of the commodities added to the export control schedule during that same period.

We were asked as well for a list of the items under export control as a result of the Canadian government's commitment under the International Emergency Food Control and other international contracts. We have prepared a list which we now table, but I should like to point out in that connection the fact of there being an international arrangement or a contract with the United Kingdom may be part of the reason. It may not be the whole reason. For instance, we have items here which were in short supply in any event, so we have headed the statement,

> The following articles are under export control as a result, in part, of the Canadian government's commitments under the International Emergency Food Council, and the contracts made with the United Kingdom.

Mr. FLEMING: Will these be printed as an appendix or incorporated right into the proceedings?

The CHAIRMAN: They will be printed as an appendix.

The WITNESS: Mr. Fraser asked a question in connection with the export of confectionery to Newfoundland. I think this statement which I have meets the point.

During the war, exports of confectionery to Newfoundland was substantially increased over normal pre-war shipments due to the presence of Canadian army, navy and air force personnel, and purchases by canteens operated by such agencies as navy, army and air force institutes, Y.M.C.A., Knights of Columbus and Salvation Army. With the removal of the troops surplus stocks were no doubt disposed of through normal commercial channels.

Production of confectionery in Canada in 1946 amounted to 132,347,000 pounds of which 3,919,400 pounds, or 3 per cent were exported to all countries in that period. Of the total exported Newfoundland received 972,712 pounds or three-quarters of 1 per cent of production.

One question was raised, I think by Mr. Hazen, with regard to export control of clams and Atlantic salmon. I am not sure if that question was answered before, but the answer is that export control of those items was removed on December 18, 1946, and is included in the loose sheet amendment to the book which was distributed to the committee, "Export Permit Regulations." It is just another indication of the impossibility of keeping a printed record up to date.

I think those are the main questions which were raised.

The CHAIRMAN: I believe a question was asked as to what the United States has done and is doing in regard to export control. Have you any information on that?

The WITNESS: Yes, I have here a statement which appears in the Congressional Record of the United States which is a message from the President to Congress requesting the extension of export control for a period of one year. Would you care to have the President's statement?

The CHAIRMAN: I do not think the comment should go in, but I think the actual statement should go in.

Mr. MACDONNELL: Take it as read.

Mr. FLEMING: I suppose it is very short.

The WITNESS: His message is actually three and a half pages long.

Mr. FLEMING: We do not want the whole message, just the part dealing with this export control.

The WITNESS: It all deals with export-import control.

Mr. FLEMING: All of it? Then, we ought to have the whole thing.

The CHAIRMAN: What is the date of it?

The WITNESS: It appeared in the *New York Times* of March 20 of this year. I have not the exact date of his message but I would assume it was the 19th, probably.

The CHAIRMAN: Gentlemen, I will see that this material is printed.

Mr. FRASER: May I ask a question?

The CHAIRMAN: Our agreement was we would ask no questions.

Mr. FRASER: I am sorry, I did not know about the agreement.

Mr. FLEMING: I thought we were going to have a list of the commodities which are under export control today.

The WITNESS: This has been tabled with the amendments.

Mr. FLEMING: That is complete to date now?

The WITNESS: That was complete to the date it was tabled and there has been no change since it was tabled.

The CHAIRMAN: I will endeavour to have all this material printed and in your hands late to-morrow afternoon. I thank you for coming. I have tried to keep my promise that it would only take a few minutes. The committee is adjourned until Thursday morning at eleven.

At 4.20 p.m., the committee adjourned to be resumed on Thursday morning, March 27, 1947, at 11.00 a.m.

APPENDIX "A"

List No. 1

DEPARTMENT OF TRADE AND COMMERCE

EXPORT PERMIT BRANCH

COMMODITIES REMOVED FROM EXPORT CONTROL DURING THE PERIOD DECEMBER 11, 1944—MARCH 15, 1947

Group 1—Agricultural and Vegetable Products

Beverages, Distilled, All Kinds, including Whiskey, Brandy, Rum, Gin, Cordial and Liqueurs.
Blueberries, Fresh or Frozen.
Broom Corn.
Essential Oils—
- Bergamot Oil.
- Cassia Oil.
- Eucalyptus Oil.
- Jasmine Oil.
- Lavender Oil.
- Lemongrass Oil.
- Neroli Oil.
- Patchouli Oil.
- Peppermint Oil.
- Sandalwood Oil.
- Essential Oils, N.O.P.

Lac.
Litmus and all Lichens.
Patchouli Leaves.
Quassia Juice.
Sphagnum (Peat Moss).
Parsnips, Fresh.
Tomatoes, Fresh.
Certified Seed Potatoes.
Dried or Dehydrated Soups and Vegetables
Horseradish.
Mustard, Prepared and Ground.
Vinegar.
Yeast, N.O.P.
Field Crops and Vegetable Seeds—
- Asparagus.
- Beans (Garden).
- Beet.
- Borecole or Kale.
- Broccoli (Sprouting).
- Brome Grass.
- Brussels Sprouts.
- Cabbage.
- Carrot.
- Cauliflower.
- Celeriac.
- Celery.
- Chewing's Fescue.
- Citron.
- Clover, Sweet.
- Corn (Garden).
- Creeping Red Fescue.
- Cress.
- Crested Dog's Tail.
- Crested Wheat Grass.
- Cucumber.
- Egg Plant.
- Endive.
- Kohlrabbi.
- Leek.
- Lettuce.
- Mangel.
- Meadow Fescue.
- Millet.
- Musk Melon.
- Mustard.
- Onion.
- Onion Grass.
- Parsley.
- Parsnip.
- Peas (Garden).
- Pepper.
- Pumpkin.
- Radish.
- Red Top.
- Reed, Canary Grass.
- Rough Stock Meadow Grass.
- Rye Grass.
- Salsify.
- Sorghum.
- Spinach.
- Squash.
- Sudan Grass.
- Sugar Beet.
- Swede.
- Swiss Chard.
- Tall Oat Grass.
- Timothy.
- Tomato.
- Turnip.
- Vegetable Marrow.
- Vetch.
- Watermelon.
- Slender Wheat Grass.
- Western Rye Grass.

Spices—
- Allspice.
- Cloves.
- Coriander Seed.
- Cumin Seed.
- Fennel Seed.
- Ginger.
- Turmeric.

Peaches.

Group 2—Animals and Animal Products.

Ambergris.
Candles.
Cattle, ox and calf tail hair, including switches.
Fleshings, tanners'.
Gelatin Capsules, empty.
Hog, cattle and horse hair, n.o.p., other animal hair, n.o.p.
Musk, of animal origin.
Beef bladders.
Beef bungs.
Beef bung caps.
Beef casings.
Beef middles.
Beef rounds.
Hog bungs.
Hog bung caps.
Horsehair (Tails and Manes).
Furs and Fur Skins.
Clams, in the shell, shucked, or in any other form.
Fish, Atlantic, n.o.p., dried, salted or pickled.
Herring, Atlantic, salted, pickled or smoked, including bloaters, but not kippers.
Lobster, canned.
Lobster Meat, fresh or frozen.
Mackerel, salted or pickled.
Salmon, Atlantic, fresh, frozen, salted or smoked.
Salmon Pacific (White Spring and Red Spring varieties only), fresh, frozen, salted or smoked.
Smelts, fresh, frozen, filleted or not.
Canned anchovies.
Canned clams, quahaugs and mussels.
Canned crabmeat.
Canned eels.
Canned halibut.
Canned lobster paste and tomalli.
Canned fish paste, n.o.p.
Canned shad.

Group 3—Fibres, Textiles and Textile Products.

Feather manufactures.
Felt base floor coverings.

Group 4—Wood, Wood Products and Paper.

Balsa and manufactures.
Barrels, kegs, casks and other similar containers of wood.
Cooperage stock: barrel heading, hoops and staves, in the rough or manufactured.
Pails and tubs of wood.
Paper and board manufacturers, excepting facial tissues, sanitary pads, cellophane, toilet paper, paper towels and paper bags.
Teakwood: boards, planks, logs and scantlings.
Books, other than those to the Armed Forces.
Cellophane.
Christmas trees.

Cork—
Cork, corkwood or bark, in a natural, ground, milled, or processed or semi-processed state.
Cork products (of which cork constitutes fifty per cent or more by volume, or of which cork is the single component material of chief value) including bottle tops or crowns lined with cork.
Lignum vitae: logs, boards and lumber.
Newsprint.
Fine Papers.
Facial Tissues.
Sanitary Pads.
Sandalwood.
Wood pulp, alphacellulose bleached, rayon and chemical grades.
Wood pulp, soda.
Wood pulp, sulphate and sulphite bleached and unbleached.
Wood pulp, screenings.
Wood pulp, chemical, other.
All other wood pulp, including screenings.
Wood charcoal.

Group 5—Iron and Steel (including Alloy Steel) and Their Products.
Iron ore and concentrates.
Pig Iron.
Automobile tire-service equipment and parts.
Blanks for tool bits.
Bolts, nuts, screws, rivets and washers.
Cranes.
Derricks.
Dredging machinery.
Dredging machinery parts.
Electrical conduit.
Elevators, freight and passenger and parts therefor.
Fence posts.
Flax machines of all kinds.
Hoists.
Laundry and dry-cleaning equipment and parts.
Machinery and parts, n.o.p., over $25 in value.
Metal and wood-working machine tools and machinery, other manufacturing machinery and parts, including—
Drilling and boring machines (horizontal and vertical).
Grinding machines.
Lathes.
Melting or casting furnaces and machines.
Milling machines.
Planers.
Presses (hydraulic and mechanical).
Reamers.
Shapers and slotters.
Bits and drills of all descriptions.
Broaching machines.
Die machines.
Dies.
Draw benches.
Engraving machines.
Forging machines.
Gear cutters.

Hobs.
Honing machines.
Jigs.
Jig-boring machines.
Lapping machines.
Milling cutters.
Machine tools, portable or non-portable.
Machine-tool fixtures.
Rolling-mill machinery.
Stamping machines.
Taps.
Thread millers.
Tools incorporating industrial diamonds.
Welding sets.
Wire-drawing machines.
Used or rebuilt machine tools of any description.

Oil well-drilling machinery and parts, including petroleum and gas-well equipment and parts.

Petroleum refining machinery, equipment and parts.

Plastic moulding machines and presses.

Precision instruments—
Gauges.
Balancing machines.
Testing machines.
Measuring machines.

Pumps, hydraulic, except for domestic use.

Ferro-alloys.

Group 6—Non-Ferrous Metals and Their Products.

Aluminium—aluminium ores and concentrates, refined metal and alloys semi-fabricated and fabricated, scrap, salts and compounds, paint and inks containing aluminium in any form.

Cerium—cerium metal, alloys, salts and compounds, and manufactures.

Columbium—columbium ores and concentrates, metal and alloys (including ferro-columbium).

Magnesium—magnesium ores and concentrates, metal and alloys semi-fabricated, scrap, salts and compounds.

Mercury—mercury ores and concentrates, metallic mercury, salts and compounds.

Silicon—silicon metal and alloys (including ferro-silicon).

Selenium and Tellurium—selenium and tellurium residues, metal, salts and compounds.

Strontium—strontium ores, salts and compounds.

Thorium manufactures (including incandescent mantles).

Zirconium—zirconium ores and concentrates, metal and alloys (including ferro-zirconium), sand, salts and compounds.

Beryllium—beryllium ores and concentrates (except gem varieties), metal, alloys, scrap, salts and compounds.

Bismuth—bismuth matte, slimes and residues, metal and alloys, salts and compounds.

Bronze powder.

Cadmium—cadmium residues, metal and alloys, pigments, scrap, dross, salts and compounds.

Carbide.

Chromium—chorium ores and concentrates, ferro-chrome, pigments, salts and compounds.

Chromite refractories containing chromium in excess of 10 per cent in semi-fabricated or fabricated form.
Cobalt—cobalt ores and concentrates, residues, metal and alloys (including stellite), salts and compounds.
Manganese—manganese ores and concentrates, metal and alloys (including ferro-manganese, spiegeleisen, silico-spiegel and silico-manganese), salts and compounds.
Molybdenum—molybdenum ores and concentrates, metal and alloys (including monel metal), semi-fabricated and fabricated, scrap, salts and compounds.
Platinum Metals Group—platinum, iridium, osmium, osmiridium, palladium, rhodium, ruthenium-concentrates and residues, metals, alloys, manufactures, scrap, salts and compounds.
Spiegeleisen.
Tantalum—tantalum ores and concentrates, metal and alloys (including ferro-tantalum), salts and compounds.
Titanium—titanium ores and concentrates, metal and alloys (including ferro-titanium), pigments, salts and compounds.
Tungsten-tungsten ores and concentrates, metal and alloys (including ferro-tungsten and tungsten carbide), semi-fabricated and fabricated, salts and compounds.
Vanadium—vanadium ores and concentrates, metal, alloys (including ferro-vanadium), salts and compounds; petroleum ashes, soot and residues, containing vanadium.

Group 7—Non-Metallic Minerals and their Products

Carbon Electrodes.
Carbon brushes and stock, carbon stoppers, lightening carbons and carbon products, N.O.P.
Clays, not further manufactured than ground.
Cryolite—Cryolite, natural or artificial.
Gas, helium.
Glass—cullet (broken glass), including ground glass.
Demijohns or glass carboys, bottles, decanters, flasks, jars, phials and balls of glass.
Glass, non-shatterable or bullet-proof.
Glass optical, but not including spectacles or ordinary reading glasses.
Glass, plate, window and sheet.
Glassware, table.
Lamps and lantern chimneys of glass, over $50 in value Limestone, ground.
Lime, N.O.P.
Pyrites, iron.
Jewels and Jewel Bearings, industrial.
Pumice, Calcareous tufa, pumice stone and lava.
Quartz crystals—Piezelectric and optical.
Talc, steatite, soapstone and pyrophyllite, crude and ground.
Abrasives—Abrasive wheels of emery, corundum and garnet; artificial abrasives, crude and in grains; grindstones of natural and of artificial abrasives; sand-paper and other abrasive paper and cloth; other natural and artificial abrasives, hones and whetstones.
Asbestos—Asbestos in primary forms, refuse, sand and waste; asbestos brake lining, clutch facings, gaskets, packing and all other manufactures, *except* roofing products and shingles.
Chromite refractories.
Diamonds—Industrial, including dust and bort.

Earths, diatomaceous, infusorial and Fuller's.
Fluorspar.
Ganister.
Graphite—Amorphous, flake and crystalline, crucibles, retorts and stoppers.
Graphite products, N.O.P.
Magnesia refractories—Magnesia, including crude or calcined rock, excepting dolomite, containing magnesia in excess of 20 per cent in semi-fabricated or fabricated form.
Mica—Mica blocks, sheets and splittings, scrap and waste, and manufactures.
Petroleum Products—

(*a*) aviation motor fuel, i.e. high octane gasolines, hydrocarbons and hydrocarbon mixtures (including crude oils) boiling between 75 degrees and 350 degrees F. which, with the addition of tetra-ethyl lead up to a total content of 3 c.c. per gallon, will exceed 80 octane number by the A.S.T.M. Knock Test Method; or any material from which by commercial distillation there can be separated more than 3 per cent of such gasoline, hydrocarbons or hydrocarbon mixtures.
(*b*) Other motor fuels and gasoline.
(*c*) Lubricating oils.
(*d*) Crude oils.
(*e*) Blending agents of petroleum origin, all kinds, including iso-octanes, alkylates, and hydrocodimers.
(*f*) Naptha, mineral spirits, solvents and other light products.
(*g*) Kerosene (including all burning oils).
(*h*) Gas oil, distillate fuel oil and residual fuel oil.
(*i*) Lubricating greases.
(*j*) Liquefied petroleum gases.
(*k*) Paraffin wax, refined and unrefined.
(*l*) Petroleum asphalt (including road oil).
(*m*) Petroleum and petroleum jelly.
(*n*) Paraffin wax manufactures (including candles).

Group 8—Chemical and Allied Products

Calcium chloride.
Coal and pine pitch, burgundy pitch, and coal and pine tar.
Cosmetics.
Glycerin.
Nitric Acid.
Perfumery.
Proprietary medicinal products, packaged for retail sale, and in bulk form.
Soda ash (sodium carbonate).
Toilet preparations.
Cellulose, regenerated (cellophane) in sheets or otherwise.
Copper sulphate, all grades, including blue vitriol or bluestone.
Acetate or lime, or calcium acetate.
Acid, pyroligneous.
Agar-Agar.
Charcoal, animal, N.O.P.
Charcoal, vegetable and medicinal.
Chenopodium.
Coal tar chemicals used in connection with explosives, N.O.P.

Drugs, herbs and leaves, roots.—
Aconite, leaves and roots.
Arnica, flowers, leaves or root, whole, granulated or powdered.
Belladonne, crude, extracts and products thereof.
Colchicum.
Cube (timbo or barcasco) root, powder and extract.
Digitalis seeds and digitalis compounds.
Hyoscymus, crude and extracts thereof.
Nux vomica, crude.
Psyllium seed.
Senna.
Stramonium, crude, extracts and products thereof.
Balsams.
Explosives not included in Category VII of Group 10.
Ferric ammonium oxalate (iron salt).
Ferric chloride.
Glycerophosphoric acid and glycerophosphates.
Hexamethylene tetramine.
Indigo, Indigo paste and extracts thereof.
Iron liquor, being solution of acetate or nitrate of iron.
Lecithin.
Liquor, red, being crude acetate of aluminum prepared from pryroligneous acid.
Muriatic acid (hydrochloric acid).
Sodium aluminium fluoride and products containing sodium aluminium fluoride.
Acetic Acid and Acetic anhydride.
Acetic Aldehyde.
Acetone.
Acids and Acid anhydrides, N.O.P.
Activated carbon.
Acrylonitrile.
Alcohols and glycols, N.O.P.
Amyl alcohol or fusel oil.
Aniline.
Aniline and coal tar dyes and intermediates, and other chemical preparations for dyeing or tanning, N.O.P.
Aniline oil, aniline salts, alizarin and artificial alizarin.
Argols and cream of tartar.
Arsenic trichloride.
Arsenic salts and compounds, N.O.P., including arsenical medicinals.
Arsenic acid and arsenious acid; products containing arsenic acid and arsenious acid.
Arsenous oxide.
Ascorbic acid.
Atropine.
Baking Powder.
Barium chemicals.
Benzyl chloride.
Beta Naphthol.
Biological products, animal or vegetable, N.O.P., for parenteral administration, such as vaccines, antitoxins and serums.
Bisulphate of soda or nitre cake (Sodium acid sulphate).
Blueing, laundry.
Borates.
Borax, fused, and borax glass.

Boric acid.
Bromides, crude.
Bromine.
Butadiene.
Butly alcohol.
Butly acetate.
Butylene.
Butyric alcohol (primary, secondary, tertiary).
Caesium (cesium) salts and compounds.
Caffein, caffein salts and compounds.
Calcium arsenate and products containing calcium arsenate.
Calcium carbide.
Calcium cyanide, including crude cyanide.
Calcium hypochlorite and products containing calcium hypochlorite.
Calcium salts and compounds, N.O.P.
Calcium silicide.
Calomel and products containing calomel.
Carbon bisulphide and products containing carbon bisulphide.
Carbon black, including gas black.
Carbon tetrachloride and products containing carbon tetrachloride.
Casein, casein glue and other casein products.
Casings, synthetic, for meats.
Cementing preparations for repairing, N.O.P.
Cements for sealing cans.
Chlorinated hydrocarbons, N.O.P.
Chlorinated phenols, N.O.P.
Chlorine.
Chloroacetyl chloride.
Chloroprene.
Chlorobenzenes, N.O.P.
Chlorotoluenes, N.O.P.
Chlorpicrin, ethylene oxide, methyl bromide, methyl formate, cyanides, or mixtures containing any of these.
Chromium tanning mixtures.
Coconut shell char in any form.
Collodion.
Copper carbonate and products containing copper carbonate.
Corrosive sublimate and products containing corrosive sublimate.
Creosote or dead oil.
Cresylic acid and cresols.
Cyanogen bromide.
Dibutyl phthalate.
Dichlorethyl ether.
Dichlor-Diphenyl-Trichlorethane.
Dicyanodiamide.
Diethyl phthalate.
Diethylene Glycol.
Dimethylaniline.
Dimethyl sulphate.
Dipentine.
Diphenylamine.
Dipropylphthalate.
Drugs, herbs, and leaves, roots—
    Camphor, natural and synthetic.
    Menthol, natural and synthetic.
    Quinine barks, cinchona or other barks from which quinine may be extracted.

Red squill.
Egg substitutes.
Elixirs, tinctures, fluid extracts, ampoules and similar liquid solutions N.O.P.
Ergot.
Ethyl acetate.
Ethyl alcohol.
Ethyl chloride.
Ethyl ether.
Ethyl lactate.
Ethylene.
Ethylene alcohol (Ethylene glycol, diethylene glycol).
Ethylene chlorhydrine.
Ethylene dibromide.
Ethylene dichloride and products containing ethylene dichloride.
Ethylene glycol monoethyl ether.
Formic acid.
Formaldehyde and products containing formaldehyde.
Gases, N.O.P. (liquefied, solidified, compressed).
Guanidine.
Guanidine nitrate.
Hexachlorbenzene.
Hexachlorethane.
Homatropine.
Hydrofluorsilicic acid.
Iodine, iodine salts and compounds.
Iron blues (prussian blues, etc.).
Isopropyl acetate.
Isopropyl alcohol (isopropanol).
Lacquer solvents. N.O.P.
Lead arsenate and products containing lead arsenate.
Liquid gum inhibitors for treating petroleum distillates.
Liquorice extract and mass;
Metaldehyde.
Methyl alcohol (methanol) and derivatives.
Methylamine.
Methyl chloride.
Methylene chloride;
Methyl ethylaketone.
Methyl methacrylate.
Methyl methacrylate fabricated products.
Monochloroacetic acid.
Monohydrate copper sulphate and products containing monohydrate copper sulphate.
Naphthalene and products containing naphthalene.
Nitrocellulose, having nitrogen content of less than 12 per cent.
Nitroderivatives of benzene, toluene, xylene, naphthalene and phenols.
Nitroguanidine.
Nitrous ether, sweet spirits of nitre.
Oil of citronella.
Omega chloroacetophenone.
Organic mercurials and products containing organic mercurials.
Organotherapeutical preparations, enzymes, ferments, etc., prepared from animal glands.
Oxalic acid.
Ink, shoemaker's, printing, rotogravure and writing.
Paradichlorbenzens and products containing paradichlorbenzene.

Paraformaldehyde.
Paris Green, dry (copper acetoarsenite.).
Pentachlorethane.
Pentaerythrite.
Perchlorethylene.
Perchlorethylene.
Peroxides of hydrogen.
Phenol.
Phenothiazine.
Phosphoric acids.
Phorphorus, ferro-phosphorus and compounds.
Phthalic anhydride.
Plasmochin.
Polishes, automobile, metal and shoe.
Polishes, wax, floor, wood and furniture.
Preparations or chemicals for disinfecting, dipping, spraying or fumigating, N.O.P.
Propylene dichloride.
Propylene glycol (methylethylene glycol).
Pyroxylin plastics, cellulose acetate, cellulose ester plastics, including moulding compositions thereof, other synthetic plastic materials, N.O.P., and articles partially or fully fabricated therefrom.
Quinine, quinine salts and compounds, including proprietary and non-proprietary preparations containing quinine.
Refrigerants, gaseous (other than ammonia), N.O.P.
Resins, synthetic, of all kinds, including synthetic resin moulding compositions made therefrom, and articles partially or fully fabricated therefrom.
Riboflavin.
Rochelle salts (potassium sodium tartrate).
Roots, medicinal, viz: alkanet, crude, crushed, or ground; calumba folia, digitalis, gentian, gensen, jalap, ipecacuanha, iris, orris-root, liquorice, sarsaparilla, squills, taraxacum, rhubarb and velerian
Santonin.
Scopolamine.
Sodium arsenite and products containing sodium arsenite.
Soda lime.
Sodium acetate.
Sodium bromide.
Sodium chlorate and products containing sodium chlorate.
Sodium cyanide.
Sodium hydroxide (caustic soda or lye).
Sodium hypochlorite and products containing sodium hypochlorite.
Sodium silicofluoride and products containing sodium silicofluoride.
Sodium sulphate (saltcake).
Sodium salts and compounds, N.O.P.
Stains and dressings, N.O.P. for wood, leather, etc.
Stains, coal-tar colours.
Styrene.
Sulfacetamide.
Sulfadiazine.
Sulfaguanidine.
Sulfanilamide.
Sulfapyridine.
Sulfathiazole.
Sulphate of iron (Copperas).

Sulphide of arsenic.
Sulphur.
Sulphur chlorides.
Sulphuric acid, all kinds.
Sulphuryl chlorides.
Sulphuric ether; chloroform; N.O.P.; preparations of vinyl ether.
Tannic acid.
Tar acids and products containing tar acids.
Tetrachlorethane.
Tetrachlorethylene.
Tetraethyl lead, pure tetraethyl lead, ethyl fluid or any mixture containing more than 3 c.c. of tetraethyl lead per gallon.
Tetraethyl lead, compounds of, in which tetraethyl lead is the preponderant constituent by weight (ethyl fluid).
Thallium.
Theobromine and salts thereof.
Theophylline and salts thereof.
Thiocyanates for insecticide purposes.
Thiodiglycol.
Toluol and light oil resulting from the distillation of coal tar.
Trichlorethylene.
Tricresyl phosphate.
Triethanolamine.
Triphenyl phosphate.
Urea.
Vanillin.
Vinylidene chloride.
Water softeners, purifiers, boiler and feet water treatment compounds.
Xanthates.
Xylol (xylene).
All chemicals not enumerated elsewhere, except Rosin.

Group 9—Miscellaneous.

Aircraft parts, equipment and accessories.
Aircraft pilot trainers.
Aximuth (Astronomical) instruments.
Bags, physicians', tool, duffle and sports; musical instrument cases.
Binoculars.
Brushes.
Buttons and parts, other than metal.
Brooms, and whisks, of corn.
Brushes, containing hog or pig bristles.
Buttons and parts, of metal.
Cartridges, .22 calibre and smaller.
Clocks, clock movements, watch cases and metal watch attachments.
Luggage, all kinds, N.O.P., except all-leather-covered luggage, cases and bags.
Luggage, bags, cases, all-leather-covered.
Microscopes and accessories.
Musical instruments, parts and accessories, except phonographs and record players.
Musical instruments: phonographs, record players.
Navigation instruments, N.O.P.
Optical elements.
Pencils, all kinds, including mechanical.
Pens (commonly known as pen nibs).

Photographic and projection apparatus and supplies.
Recording instruments, N.O.P.
Rifles, revolvers and pistols, .22 calibre and smaller.
Scientific and professional instruments, apparatus and supplies.
Shotguns.
Shotgun shells.
Tachometers.
Telescopes.
Umbrellas and umbrella frames.
Fountain and stylographic pens, and parts thereof.
Jewellery.

APPENDIX B

List No. 2

DEPARTMENT OF TRADE AND COMMERCE

EXPORT PERMIT BRANCH

COMMODITIES RE-INSTATED IN THE EXPORT CONTROL SCHEDULE DURING THE PERIOD DECEMBER 11, 1944-MARCH 15, 1947

Group 4—Wood, Wood Products and Paper

Barrels, kegs, casks and other similar containers of wood.
Wood charcoal.

Group 5—Iron and Steel (including Alloy Steel) and Their Products

Iron ore and concentrates.
Pig iron.
Automobile tire-service equipment and parts.
Blanks for tool bits.
Bolts, nuts, screws, rivets and washers.
Cranes.
Derricks.
Dredging machinery.
Dredging machinery parts.
Electrical conduit.
Elevators, freight and passenger and parts therefor.
Fence posts.
Flax machines of all kinds.
Hoists.
Laundry and dry-cleaning equipments and parts.
Machinery and parts, n.o.p., over $25 in value.
Metal and wood-working machine tools and machinery, other manufacturing machinery and parts, including—
Drilling and boring machines (horizontal and vertical).
Grinding machines.
Lathes.
Melting or casting furnaces and machines.
Milling machines.
Planers.
Presses (hydraulic and mechanical).
Reamers.
Shapers and slotters.
Bits and drills of all descriptions.
Broaching machines.
Die machines.
Dies.
Draw benches.
Engraving machines.
Forging machines.
Gear cutters.
Hobs.
Honing machines.

Jigs.
Jig-boring machines.
Lapping machines.
Milling cutters.
Machine tools, portable or non-portable.
Machine-tool fixtures.
Rolling-mill machinery.
Stamping machines.
Taps.
Thread millers.
Tools incorporating industrial diamonds.
Welding sets.
Wire-drawing machines.
Used or rebuilt machine tools of any description.

Oil well-drilling machinery and parts, including petroleum and gas-well equipment and parts.

Petroleum refining machinery, equipment and parts.

Plastic moulding machines and presses.

Precision instruments—
Gauges.
Balancing machines.
Measuring machines.

Pumps, hydraulic, except for domestic use.

Ferro-alloys.

ADDITIONAL 66 ITEMS PARTIALLY EXEMPTED BUT LATER RE-INSTATED.

Group 6—Non-Ferrous Metals and Their Products

Thorium manufactures (including incandescent mantles).

Group 7—Non-Metallic Minerals and Their Products

Glass—
Cullet (broken glass), including ground glass.
Demijohns or glass carboys, bottles, decanters, flasks, jars, phials and balls, of glass.
Glass, plate, window and sheet.
Lamp and lantern chimneys of glass, over $50 in value.

Group 8—Chemical and Allied Products

Pine pitch, burgundy pitch and pine tar.

Glycerin.

Casein.

APPENDIX "C"

List No. 3

DEPARTMENT OF TRADE AND COMMERCE
EXPORT PERMIT BRANCH

COMMODITIES ADDED TO THE EXPORT CONTROL SCHEDULE DURING THE PERIOD DECEMBER 11, 1944—MARCH 15, 1947

Group 1—Agricultural and Vegetable Products

Broom corn.
Soybean flour (full-fat and defatted).

Group 2—Animals and Animal Products

Animal glandular products, all forms, whether concentrated, liquid or desiccated, including ox-gall (also known as ox-bile), sheep gall, hog gall and spleen.
Fleshings—
Calf fleshings.
Cattle fleshings.
Fleshing stock.
Limed fleshings.
Sulphide fleshings.

Group 4—Wood, Wood Products and Paper

Clothes pins.
Doors, sash and millwork.
Houses, pre-fabricated or pre-cut.
Pickets, of wood.
Piling, Douglas fir and western hemlock.
Piling, of wood, n.o.p.
Poles, of wood, n.o.p.
Sheathing and building papers, dry, saturated or laminated, over $25.

Group 6—Non-Ferrous Metals and Their Products

Thorium and its derivatives, n.o.p.

Group 7—Non-Metallic Minerals and Their Products

Aluminum nails and staples.
Asbestos building products, n.o.p., over $25.
Asphalt or tar roofing and siding products, floor tile and shingles, over $25.
Coal.
Coke (mineral).

Group 8—Chemical and Allied Products

Streptomycin.

Group 9—Miscellaneous

Brooms and whisks, of corn.

APPENDIX "D"

DEPARTMENT OF TRADE AND COMMERCE

EXPORT PERMIT BRANCH

CANADA

The following articles are under export control as a result, in part, of the Canadian Government's commitments under the International Emergency Food Council, and the contracts made with the United Kingdom:—

International Emergency Food Council.

List I—

1. Animal Feeding Stuffs.
2. Cereals (rice, including rice starch and flour).
3. Cocoa.
4. Fats and Oils (Edible and non-Edible, including all oil bearing seeds, and soap).
5. Nitrogenous Fertilizers.
6. Fish (canned until March 30, 1947, salt until June 30, 1947).
7. Meat (excluding poultry, rabbits and venison).
8. Peas and beans.
9. Seeds (red, white, crimson and alsike clover, spring vetch and perennial ryegrass).
10. Sugar and Molasses.

List II—

Items not properly under I.E.F.C. allocation, but over which the Council closely watches the supply position, and prepares shipment programmes.

1. Cereals (Wheat and wheat flour, barley, oats, rye, corn and grain sorghums).
2. Vitamin A oils.

United Kingdom Contracts.

1. Meat and Meat Products—bacon and hams, beef, lamb and mutton, canned meat, hog casings, ox tails, beef and pork offals (livers, kidneys and tongues).
2. Dairy Products—Cheese, evaporated milk and skim milk powder.
3. Dressed poultry and eggs.
4. Dried peas and beans.
5. Flax Fibre.
6. Wheat and flour.

APPENDIX "E"

DEPARTMENT OF TRADE AND COMMERCE

CANADA

EXPORT PERMIT BRANCH

Confectionery—Newfoundland

During the war, exports of Confectionery to Newfoundland were substantially increased over normal prewar shipments due to the presence of Canadian Army, Navy and Air Force personnel, and purchases by canteens operated by such agencies as navy, Army and Air Force Institutes, Y.M.C.A., Knights of Columbus and Salvation Army. With the removal of the troops surplus stocks were no doubt disposed of through normal commercial channels.

Production of confectionery in Canada in 1946 amounted to 132,347,000 pounds of which 3,919,400 pounds or three per cent were exported to all countries in that period. Of the total exported, Newfoundland received 972,712 pounds or three-quarters of one per cent of production.

APPENDIX "F"

EXTRACT FROM CONGRESSIONAL RECORD OF U.S.A.

The text of the President's message is quoted from yesterday's Congressional Record as follows:—

To the Congress of the United States—in my message to the Congress on January 31, 1947, concerning the extension of specified parts of the Second War Powers Act, I stated that it was desirable to delay any communication on the subject of the control of this country's exports until it became clear whether or not an extension of such controls would be necessary beyond June 30, 1947.

Further review of domestic and world supplies has now convinced me that this government must continue its control over the export of products in critically short supply here and abroad, in order to protect the economy of the United States, as well as to discharge our international responsibilities. The situation, although essentially temporary in character, will certainly remain acute for some time to come.

As a result of the war, many nations have been stripped of essential supplies and their productive capacity has been curtailed. Foreign demands for these supplies are therefore extremely large. Prices of many commodities in other countries are far above present levels in the United States. Uncontrolled exports of food products would result in a marked increase in the already substantial burden of living costs borne by the American people. Unlimited export of feeds, seeds, and fertilizers would make extremely difficult the achievement of the food-production goals which we have asked American farmers to meet and would increase the cost of production of farm products.

This country is the great undamaged centre of industrial production to which the whole world looks for materials of every kind. Our steel, lumber, building materials, industrial chemicals, and many other basic industrial commodities are sought throughout the world. Shortages of many of these commodities restrict our own domestic production of other essential products. Unrestrained export would inevitably limit the level of our own industrial production and employment. Furthermore, there are instances in which we wish to direct exports to those countries which produce commodities essential to our own economy. Thus, limited amounts of equipment have been directed to certain countries to increase the production of tin, hard fibre, sugar, and fats and oils.

Serious as would be the effect of unlimited and completely undirected exports upon a nation still troubled by many shortages, our domestic problems are not the only ones which lead me to urge upon the Congress a further extension of export controls. The United States has become a nation with worldwide responsibilities. During a period of world shortages, the distribution of this country's exports has serious international significance. If we retain the ability to channel commercial exports of critically scarce materials, we can permit export of these products to countries whose need is greatest while still protecting the United States from excessive export drains. Our international responsibilities cannot be fulfilled without this machinery. In its absence, foreign purchasing would tend to be concentrated on those commodities in greatest world shortage. Not only would our domestic supply and price structure be seriously affected, but the commodities would go to destinations where the need is comparatively less pressing.

Furthermore, we have granted loans and other monetary aid to nations whose existence must be preserved. These loans will accomplish their purpose only if the recipient nations are able to obtain critically needed supplies from this country. Export control is an important instrument in carrying out the purpose of these loan programmes.

The record clearly shows that this authority over exports has been exercised in the past only with respect to those commodities in critically short supply and that, as rapidly as the supply situation has improved, commodities have been removed from control. The list of items subject to export control has been reduced from a wartime peak of over 3,000 to approximately 725 on October 1, 1946, and approximately 500 at the present time. We will continue to remove export controls as rapidly as the supply situation permits. I look forward to the day when the United States and other countries can remove these interferences to the free flow of commodities in world trade. But the danger of immediate and complete decontrol in the face of continuing domestic and world scarcities is too great for this nation to undertake at this time.

I, therefore, recommend that the authority derived from the Export Control Act be extended for a period of one year beyond its present expiration date, June 30, 1947. It is essential that this extension be made well in advance of this date. Delay would prove unsettling to business and would handicap the planning and execution of our food and other export programmes. Effective administration of the export control orders requires the assurance of continuity in operations. I urge upon the Congress prompt action in extending this authority.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

BILL No. 16—AN ACT TO AMEND
THE PATENT ACT, 1935

TUESDAY, MARCH 25, 1947

WITNESSES:

Mr. J. T. Mitchell, Commissioner of Patents.
Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.
Major J. H. Ready, Office of the Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

TUESDAY, March 25, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Argue, Arsenault, Belzile, Black (*Cumberland*), Breithaupt, Cleaver, Dechene, Dionne (*Beauce*), Fleming, Fournier (*Maisonneuve-Rosemont*), Jaenicke, Jutras, Lesage, MacNaught, Marquis, Mayhew, Michaud, Nixon, Pinard, Quelch, Smith (*York North*), Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State; Mr. J. T. Mitchell, Commissioner of Patents, Major J. H. Ready, office of the Judge Advocate General, and Mr. Christopher Robinson, Vice-President, Patent Institute of Canada.

The Committee resumed consideration of Bill No. 16, An Act to amend The Patent Act, 1935.

The Committee agreed to reconsider clause 4 and the amendments thereto adopted on March 6.

A redraft of the said clause was submitted, viz:

4. The said Act is further amended by inserting immediately after section nineteen, the following headings and sections:—

GOVERNMENT OWNED PATENTS

19A. (1) Any officer, servant or employee of the Crown or of a corporation which is an emanation of the Crown, who, acting within the scope of his duties and employment as such, invents any invention in instruments or munitions of war, shall, if so required by the Minister of National Defence, assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention; and any other person who invents any such invention may so assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention.

(2) An inventor, other than an officer, servant or employee of the Crown or of a corporation which is an emanation of the Crown, acting within the scope of his duties and employment as such, shall be entitled to compensation for an assignment to the Minister of National Defence under this Act. In the event that the consideration to be paid for such assignment is not agreed upon it shall be the duty of the Commissioner to determine the amount of such consideration provided his decision shall be subject to appeal to the Exchequer Court. Proceedings before the Exchequer Court under this subsection shall be held in camera upon request made to the court by any party to the proceedings.

(3) The assignment shall effectually vest the benefit of the invention and patent in the Minister of National Defence on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual, notwithstanding any want of valuable consideration, and may be enforced accordingly by the Minister of National Defence.

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(4) Any person who, as aforesaid, has made an assignment under this section to the Minister of National Defence, in respect of any covenants and agreements contained in such assignment for keeping the invention secret and otherwise in respect of all matters relating to the said invention, and any other person who has knowledge of such assignment and of such covenants and agreements, shall be, for the purposes of *The Official Secrets Act*, deemed to be persons having in their possession or control information respecting the said matters which has been entrusted to them in confidence by any person holding office under His Majesty and the communication of any of the said information by such first mentioned persons to any person other than one to whom they are authorized to communicate with by or on behalf of the Minister of National Defence shall be an offence under section four of *The Official Secrets Act*.

(5) Where any agreement for such assignment has been made the Minister of National Defence may submit an application for patent for the invention to the Commissioner, with the request that it be examined for patentability, and if such application is found allowable may, before the grant of any patent thereon, certify to the Commissioner that, in the public interest, the particulars of the invention and of the manner in which it is to be worked should be kept secret.

(6) If the Minister of National Defence so certifies, the application and specification, with the drawing, if any, and any amendment of the application, and any copies of such documents and drawing and the patent granted thereon, shall be placed in a packet sealed by the Commissioner under authority of the Minister of National Defence.

(7) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened save under the authority of an order of the Minister of National Defence.

(8) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by the Minister of National Defence to receive it, and shall if returned to the Commissioner be kept sealed by him.

(9) On the expiration of the term of the patent, the sealed packet shall be delivered to the Minister of National Defence.

(10) No proceeding by petition or otherwise shall lie to have declared invalid or void a patent granted for an invention in relation to which a certificate has been given by the Minister of National Defence as aforesaid, except by permission of the said Minister.

(11) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(12) The Minister of National Defence may at any time waive the benefit of this section with respect to any particular invention, and the specification, documents and drawing shall be thenceforth kept and dealt with in the regular way.

(13) No claim shall be made in respect of any infringement of a patent which occurred in good faith during the time that such patent was kept secret under the provisions of this section; and any person who, before the publication of such patent, had in good faith done any act which, but for the provisions of this subsection would have given rise to any such claim, shall be entitled, after such publication, to obtain a licence to

manufacture, use and sell the patented invention on such terms as may, in the absence of agreement between the parties, be settled by the Commissioner or by the Exchequer Court on appeal from the Commissioner.

(14) The communication of any invention for any improvement in munitions of war to the Minister of National Defence or to any person or persons authorized by the Minister of National Defence to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

(15) In order to preserve the safety of the state, the Governor in Council may make rules and regulations for the purpose of insuring secrecy with respect to any application or patent for an invention relating to any instrument or munition of war, considered to be an invention vital to the defence of Canada, and whether assigned under the provisions of this section or not.

"**19**B. If by any agreement between the government of Canada and any other government it is provided that the government of Canada will apply the provisions of the last preceding section to inventions disclosed in any application for a patent assigned or agreed to be assigned by the inventor to such other government, and the Commissioner is notfied by any minister of the Crown that such agreement extends to the invention in a specified application, such application and all the documents relating thereto shall be dealt with as provided in the last preceding section, except subsection two thereof, as if the said invention had been assigned or agreed to be assigned to the Minister of National Defence.

PATENTS RELATING TO ATOMIC ENERGY

"**19**C. Any patent application for an invention which, in the opinion of the Commissioner, relates to the production, application or use of atomic energy shall, before it is dealt with by an examiner appointed pursuant to section six of this Act, be communicated by the Commissioner to the Atomic Energy Control Board."

On motion of Mr. Fleming, sub-clause (15) of the said redraft was deleted and the following substituted therefor:

The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the state, may order that such invention and application and all the documents relating thereto shall be treated for all purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

(15). On motion of Mr. Fleming, the following new sub-clause (16) was adopted:

The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

Clause 4, as amended, carried.

Clause 14 of the Bill, as amended on March 6, was, by unanimous consent, reconsidered and further amended to read as follows:

Sub-sections two, three and four of section thirty-five of the said Act are repealed and the following substituted therefor:—

(2) The specifications shall end with a claim or claims stating distinctly and in explicit terms the things or combinations which the applicant regards as new and in which he claims an exclusive property or privilege.

(3) When the number of claims in an application exceeds *twenty* a *prescribed fee* shall be imposed for each claim in excess of that number, *provided that when the number of claims in an application for reissue exceeds the number of claims granted in the original patent an additional fee shall be imposed only for each claim over and above twenty in excess of the number of claims granted in the original patent.*

The Committee then considered a new clause to the Bill as suggested and recorded in the Minutes of Proceedings of March 11, page 156.

On motion of Mr. Fleming, the said new clause was amended by deleting the words "thirty-first day of March, 1947" at both places where they appear, and substituting therefor the words "*date this Act comes into force*". The clause was adopted as amended.

The following new clause was also adopted, viz:—

Section nineteen of this Act shall come into force on the first day of May, 1947.

Ordered,—That the Chairman report the Bill as amended.

On motion of Mr. Marquis,

Ordered,—That the Bill be reprinted as amended.

In the course of this day's proceedings Messrs. Mitchell, Robinson and Major Ready answered questions on the several amendments presented.

The Committee adjourned at 12.15 p.m., to meet again at 4.00 p.m., this day.

R. ARSENAULT,
Clerk of the Committee.

(For minutes of proceedings and evidence of meeting held at 4 p.m. this day, see No. 11).

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
March 25, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. The meeting called this morning is to deal with the patent bill No. 16. The members of the committee will recall that sections 3 and 4 of the bill were allowed to stand in an endeavour to redraft a satisfactory definition for a war patent which would be sufficiently narrow to exclude from its effect all industrial patents which were not intended to be covered. You will find in the reprinted bill which you have before you that subsection (15) of section 19A has been redrawn. In its present form it meets with the approval of the Commissioner of Patents and both of the interested ministers, the Secretary of State and the Minister of National Defence. Subsection (15) is short and I should like to read it.

> In order to preserve the safety of the State, the Governor in Council may make rules and regulations for the purpose of insuring secrecy with respect to any application or patent for an invention relating to any instrument or munition of war, considered to be an invention vital to the defence of Canada, and whether assigned under the provisions of this section or not.

Are there any questions in regard to this?

Mr. LESAGE: Would it be more satisfactory if Major Ready were to say a few words as to the necessity for this section? Were there any cases during the war in which you had to force the secrecy of some applications?

Major READY: I am afraid I am not in a position to discuss the technical necessity for it.

The CHAIRMAN: I think, perhaps, the Commissioner of Patents could answer that question.

Major READY: Other than the fact you might want me to quote the cable from England which we received. I have been requested to read a cable which was received on the 17th of March from England and which will show that England as well as the United States is interested in what we are doing with regard to secret patents.

> Paragraph 1: In respect to patent security for inventions of minister of supply, understand emergency order 19 expires March 31, 1947.
>
> Paragraph 2: On expiratory present security minister supply anxious ascertain position regarding patents at present prohibited from publication.

This has reference to patents which England has forwarded to Canada.

> Paragraph 3: Advise will secrecy be maintained on existing cases. Can new secrecy orders be issued after 31st of March.

That relates to patents which they contemplate sending to Canada for the use of the minister.

> Subparagraph (c): What safeguards does Canada propose to maintain in respect of patents held under security in U.K. for which corresponding patent applications are filed in Canada.
>
> Paragraph 4: Existing U.K. emergency defence regulations have been extended to the 3rd December, 1947, and may be reviewed at that time.
>
> Paragraph 5: Confirm immediately that no security patent will be released without reference to supply minister.

That paragraph again refers to English patents or specifications which have been forwarded to the commissioner for his retention on a secret list.

We have also had the same type of enquiry from the United States requesting information as to what the Commissioner of Patents intends to do with those applications which have been in his possession and held secret as well as with any further applications or specifications which the United States might forward to Canada for the use of the department.

The CHAIRMAN: Mr. Robinson, have you any further representations which you wish to make to the committee before we deal with these sections?

Christopher Robinson, Vice-President, The Patent Institute of Canada, recalled:

The WITNESS: I would propose, Mr. Chairman, that subsection (15) as printed in the bill be redrafted to provide for an order in council when an application is to be made, rather than general regulations under which orders for secrecy may be made. That is the basis of the draft which you have before you, Mr. Chairman; would you like me to read it?

The CHAIRMAN: I did not see it until two minutes ago and I do not suppose any member of the committee has a copy of this proposed draft. I think you had better read it.

Hon. Mr. GIBSON: I might say, gentlemen, Mr. Robinson brought in a new draft for subsection (15) which he took up with the Minister of National Defence to ascertain whether it would meet his requirement. I received a note from Mr. Claxton approving of this draft to replace subsection (15) of section 19A as it appears in the March 20th redraft of bill 16 and stating that he will notify Mr. Cleaver. I understand Mr. Claxton has not notified you.

The CHAIRMAN: No.

Hon. Mr. GIBSON: Mr. Robinson interviewed him and that is the note I received.

By Mr. Lesage:

Q. If I understand your amendment, you come to the same point. You prevent the Governor in Council from making any rules or regulations to ensure secrecy.

Hon. Mr. GIBSON: I think perhaps I will read your draft, Mr. Robinson, as submitted for subsection (15). It is as follows:

> The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the State, may order that such application and all the documents relating thereto shall be treated for the purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

Mr. JAENICKE: The Governor in Council would still have to make regulations for the guidance of the Commissioner of Patents. How does the Governor in Council know an invention should be kept secret unless there are some rules and regulations by which the Commissioner of Patents informs the Governor in Council?

The CHAIRMAN: I think we should hear from Mr. Robinson as to the reason why he feels everything should wait, with respect to secrecy, until a certain event happens, then the Governor in Council should pass an order in council with respect to each individual patent.

The WITNESS: Mr. Chairman, the point is this: as was indicated by the witnesses at the last hearing of the committee, the difficulty that was felt about general secrecy regulations for non-assigned patents was that they might be thought by inventors to be a discouragement to disclosing to the Minister of National Defence for fear, as a result of that disclosure which could take place only by a voluntary act, that is either by direct disclosure or the filing of an application, the inventors would lose the benefits of their inventions because, obviously, an order for secrecy could mean an inventor might not be able to exploit his invention or disclose it to anyone. The proposed redraft is designed to name the security that is necessary for the exceptional case of which various witnesses have spoken but, at the same time, reduces as far as possible the undesirable effect of a provision which provides now for general regulations which would be passed once and for all, then dealt with purely administratively. It represents a compromise between the views of the witnesses which were put forward at the last meeting of the committee, who really suggested that no provisions of this kind were necessary at all and the views of the other witnesses, particularly for the Department of National Defence, who thought some provision was necessary to deal with the exceptional case of which they spoke as being something which might arise only once in ten years or so.

Hon. Mr. GIBSON: May I interrupt you for a moment? Is your complaint that, if the Governor in Council makes rules and regulations for the ensuring of secrecy, those rules and regulations would then be interpreted by, perhaps, a minor official in the Patent Office who would apply them to certain inventions which such official considered to be essential to the safety of the State?

The WITNESS: That was, in effect, the point. An important thing such as that, considering it arose so rarely, might well be dealt with by order in council.

By Mr. Marquis:

Q. The effect of an amendment such as that will be to multiply the orders in council instead of having one regulation?—A. I understood the witnesses who had spoken of the necessity for some supervision indicated it would only be the extremely rare case when resort to a provision of this kind would be necessary. I gathered that was the whole point in the representations which were made.

Mr. FLEMING: Mr. Chairman, may I ask Mr. Robinson a question? I follow your redraft of subsection (15) until you reach the concluding clause. I am not clear yet as to the extent of its application.

> —may order such application and all the documents relating thereto shall be treated for the purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

Does that mean we incorporate the effect of the sections dealing with compensation and any other matters, as well as those dealing specifically with the ensuring of secrecy?

The WITNESS: No, because the compensation section deals only with the consideration to be paid for an assignment of an invention. The concluding clause of the redrafted section (15) would apply, or would have the effect of applying subsection (5) and the following subsections of section 19A.

Subsection (5) says,

> "Where any agreement for such assignment—" and so on, the minister may present an application and may certify it. Now, the concluding clause of subsection (15) says that the application and all the documents relating thereto shall be treated as if the invention had been assigned. In other words, it would empower the minister then to give his certificate

provided in subsection (5) that the particulars of the invention should be kept secret, and it would apply to the following provisions of section 19A concerning the sealed packets delivered only to authorized persons.

Mr. LESAGE: You would have to compensate the inventor or it would not be fair. If the inventor cannot use his own invention, you would have to compensate him. He cannot use it if it is secret. In the United States, it is done in that manner.

The WITNESS: The present section does not provide for compensation. If the members of the committee feel that compensation could be given, certainly we would think it desirable. That was not put forward because an attempt was made to keep as close to the printed provisions as possible. Personally, I would certainly favour a provision for compensation in those cases.

Mr. FLEMING: Mr. Chairman, just dealing again with the specific terms of the redrafted subsection (15), I am still not convinced that this redraft does not incorporate the other provisions of section 19, including the provision for dealing with compensation.

Now, the effect of an application of secrecy by the Governor in Council in the case of an application for an invention in relation to munitions of war, is to incorporate, by reference, all the provisions of this section and to be treated as though it had been assigned. Applying subsection (2) it surely means, then, by reference, that the applicant for that particular patent is treated as though his application had been assigned or agreed to be assigned to the Minister of National Defence. Under subsection (2) if the inventor and the minister cannot agree on the compensation, then it goes to the Exchequer Court to determine the compensation.

Hon. Mr. GIBSON: I think you are right on that.

Mr. FLEMING: With respect, I do not quite follow Mr. Robinson when he says some of the provisions of section 19 would apply in that event, and not others, because if it is treated as if an assignment had been made or there was an agreement to assign it, then, for all purposes under the section, I do not see how you exclude the application of subsection (2).

The CHAIRMAN: Certainly, if any doubt arose, an inventor could bring himself within the provisions of subsection (2) by assigning.

Mr. FLEMING: If the Governor in Council wanted an assignment.

By the Chairman:

Q. Mr. Robinson, you have already been asked this question but I want to be absolutely sure I understand your answer. Do I understand your objection to subsection (15) as it appears in the redraft of the bill under date of March 20th, is that the discretion to be exercised would be exercised by an official in the department instead of by the minister?—A. Our point, Mr. Chairman, was that in a very exceptional case of this kind, the discretion is one which should be exercised by the minister rather than administratively.

Q. Yes. Then, would not the same result be achieved by inserting the words, "by the Minister of National Defence," in line 36 of the reprint after the word "considered".

Mr. LESAGE: I think it would be well to have an order in council passed every time we force an assignment. It may only happen once or twice in ten years.

The CHAIRMAN: My point is this, Mr. Lesage, this subsection (15) of section 19A has been drafted by Dr. Ollivier and the committee is convened for the purpose of approving this section. Now, at the last minute, without any opportunity on the part of Dr. Ollivier to check the drafting of the subsection,

we have a brand new subsection brought to the committee. I do not want to have to adjourn this matter again and recall the committee. If we can agree on the addition of a few words to the draft as we have it, I would consider we are on perfectly safe ground.

The WITNESS: I may say Dr. Ollivier has seen it.

The CHAIRMAN: Why has everybody but the committee seen it?

The WITNESS: I had gathered from Mr. Claxton he would inform you of it.

Mr. FLEMING: I think we are all agreed that we desire to bring this matter to a finality. On the other hand, I think the committee is in the same position with respect to the amendment just introduced by Mr. Robinson, and with respect to the draft in the reprinted bill because I think, outside of one or two, no one has seen that draft before coming to this meeting. For my own part, I approach this with a feeling that I do not want, as I have indicated in earlier meetings, to give to the Governor in Council under the guise of power to make rules and regulations what is, in fact, the power to legislate. If this present redraft of Mr. Robinson's is acceptable to the minister and provided we can clarify this matter to the satisfaction of the committee, it seems to me it disposes of any fear that the subsection does give the power to legislate.

The CHAIRMAN: I have sent for Dr. Ollivier, but I think the Commissioner of Patents should have a few minutes to consider this proposed amendment carefully. Mr. Mitchell had no word of it and had not seen it until coming here this morning.

Mr. MITCHELL: When an application is filed there is no provision in this section for it to be held in secrecy. The whole office will have access to it. Now, until an application is considered by the office and the office requests a technical officer from the Department of National Defence to call at the office to review the application, no one knows whether it is an application which should come within this category of subsection (15) or not. There is no provision made here for the office consulting with senior officers or technical officers of the Department of National Defence. I think such provision should be made. I think that section as it appears in the reprinted bill is just as effective as this redraft. It would only be one order in council and it would not be exercising a great deal of discretion because it would be exercised only on the authorization of the Department of National Defence and the technical officers of that department.

The CHAIRMAN: Would you be content to have the words added after the word, "considered" in line 36, "considered by the Minister of National Defence to be an invention vital — —", or, "considered by the Governor in Council to be an invention vital — —".

Mr. MITCHELL: The Governor in Council will have to be guided by the Department of National Defence, consequently it should be by the Minister of National Defence.

The CHAIRMAN: Would you be content to have the words added, "considered by the Minister of National Defence to be an invention vital — —"?

Mr. MITCHELL: If acceptable to the Minister of National Defence, I would say yes.

The CHAIRMAN: Mr. Fleming, would that meet your objection?

Mr. FLEMING: I do not quite follow the commissioner, but perhaps he could clarify it in my mind. He said there is no provision made here for dealing by rules, as may be necessary, with such applications. I do not see any difference in that respect between the form of the reprint and Mr. Robinson's draft, because neither of them deals explicitly with that matter it is left to be dealt with in the other subsections of section 19.

Mr. MITCHELL: This subsection (15) of the bill—

Mr. FLEMING: Let us distinguish between this bill and the draft, which do you mean?

Mr. MITCHELL: This section in the reprinted bill does make provision for rules and regulations. This redraft makes no provision at all for any rules or any regulations. It simply says, that the Governor in Council may order that such application and all the documents relating thereto shall be treated for the purposes of this section — — and so on. Until an application reaches that position where it is referred to the Governor in Council, what is going to happen? Something has to happen under the provisions in the reprint up to that point. Then we changed it.

Mr. FLEMING: The effect is good up to that point, but from that point on the two drafts differ as to what is to happen.

The WITNESS: The reprint does not provide for the Governor in Council making rules and regulations. I would like to clarify that. The Governor in Council may make rules and regulations under which the Commissioner of Patents may bring to the attention of the Minister of National Defence any patent which appears to him to be of necessity to the safety of the state. The commissioner would operate under this provision. In the redraft there is no provision for these rules and regulations to be provided.

Mr. LESAGE: Section 12 would give the necessary powers to the Governor in Council; section 12 of the Act as amended by section 3 of the bill.

Mr. JAENICKE: Those are the general regulations.

Mr. LESAGE: Yes.

The CHAIRMAN: Would that cover it?

Mr. LESAGE: Yes; for carrying into effect the objects of this Act.

Mr. JAENICKE: I think your suggestion is a good one, Mr. Chairman. I think it should satisfy those who are objecting to this in subsection (15) by inserting "Minister of National Defence" after the word "consider". Then there is another matter there to which I would like to direct attention and it is that in Mr. Robinson's proposed amendment he includes the words "safety of Canada"; I think that is better than "in the defence of Canada." That presumes an enemy on the outside.

The CHAIRMAN: Well, the opening words of subparagraph (15) read: "in order to preserve the safety of the state". That refers to the safety of Canada.

Mr. JAENICKE: The secrecy would only be applied to such matters as were considered by the minister to be vital to the defence of Canada. I think that should be, "for the safety and defence of Canada".

Mr. MARQUIS: I have not the amendment before me. I think according to this proposed amendment the Governor in Council would be obliged to pass an order in council each time an application is made. For that reason I do not think it could be worked out at all.

Mr. FOURNIER: It would be the same procedure every time.

Hon. Mr. GIBSON: That might only happen once in three years.

Mr. FLEMING: The rules and regulations would govern that, would they not?

Mr. MARQUIS: But they have no power to make rules and regulations under subsection (15).

Mr. FLEMING: They would need to have that at some point.

Mr. LESAGE: In connection with that subsection (15) I think we need a change there; instead of "the Minister of National Defence", I think it should be accompanied by the words "by the Governor in Council". You know how it is.

Hon. Mr. GIBSON: It would be done under the recommendation of a minister anyway.

Mr. LESAGE: Yes, of course; I think it would be all right.

Mr. RINFRET: I think it should state, "Minister of National Defence"; of course, he is the one who would make the recommendation.

Mr. LESAGE: Yes, but as there would be orders in council I suggest that it should be on the responsibility of the government as a whole. That would be much more satisfactory.

Mr. RINFRET: If there is an order in council it would be at the request of the Minister of National Defence, nobody else.

Mr. LESAGE: Yes.

Mr. RINFRET: And if you put in "governor in council" that would mean that nobody else could do it.

Mr. FLEMING: Mr. Chairman, may I ask Mr. Robinison a question?

The CHAIRMAN: Yes.

Mr. FLEMING: It is this; in moving from the bill in the form in which it was before, at our last meeting previous to this a reprint of subsection (15) has been supplied to us. It then read (reprint of March 13, 1947):

> 19A. (15) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

We have in the reprint a provision to empower the Goveronor in Council to make regulations for the purpose of ensuring secrecy with respect to any application and patent for an invention relating to any instrument or munition of war, considered to be vital to the defence of Canada—in this draft you do not make provision for any power to make rules and regulatioins either specifically with reference to an invention relating to an instrument or munition of war considered vital to the defence of Canada or generally as was contemplated in the former draft for purposes of ensuring secrecy with respect to applications and patents to which the section applies generally with respect to the purpose and intent of the whole of section 19. What do you say about that?

The WITNESS: That is a point that had not struck me, Mr. Fleming. It may well be that subsection (15) as it appeared in the bill when it was launched before the committee should be retained and that proposed subsection (15) might become subsection (16).

Mr. FLEMING: That is just what I have been wondering, if it was not just omitted in the reprint; if the intention was not to insert a new subsection (15) and then change the former subsection (15), the general subsection dealing with regulations, and make it subsection (16).

Hon. Mr. GIBSON: Then you have the question of the payment of remuneration which might be provided under section 2.

Mr. FLEMING: I think it might be; I mean, if it is considered by the Governor in Council that a particular application—

Hon. Mr. GIBSON: Should be kept secret.

Mr. FLEMING: —is of such a nature that it is vital to the state and the Governor in Council in effect has clamped secrecy on that application, that will have the effect of tying it up completely with the result that no benefit can be derived from it by the inventor. Then I think it is a proper case for compensation.

Hon. Mr. GIBSON: Yes.

Mr. FLEMING: The minister acting through the Governor in Council might say, well as long as time runs we are going to tie this up, and in that event I think it is a proper matter for compensation. I think this subsection would be much stronger and much more fair if all the provisions of the other subsection

applied to it, not just those beginning with subsection (5). And with respect to the view put forth by Mr. Robinson, it seems to me that the first draft does have the effect of incorporating that in the section because he says, the patent to which the action applies; in such event such patent is being treated for all purposes of the section as a patent assigned or agreed to be assigned.

Mr. LESAGE: I think the only change needed there is instead of saying "for the purposes of this section," let us say "for all purposes of this section."

Mr. FLEMING: Right; and then add as subsection (16), Mr. Chairman, what we had before us at a previous meeting as subsection (15) in the reprint of March 13, 1947, namely:

> 19A. (15) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

Hon. Mr. GIBSON: If you made it as broad as that they would not get compensation and the department would not get the use of the patent because there would be no assignment.

Mr. FLEMING: Then what would happen in that case surely is that an agreement is going to be worked out for the assignment for the reason that the man may not use his patent because of the blanket of secrecy which has been imposed on it by the Governor in Council in the interests of the state.

The CHAIRMAN: Dr. Ollivier assured me that the last draft of subsection (15) would be in lieu of the previous subsection (15) and in addition would restrict the exercise of this secrecy power to inventions vital to the defence of Canada. Now, I do not like to depart from a subsection drafted by a law officer of the Crown. Mr. Robinson has merely indicated that his objection to the present subsection (15) would be met by putting in the words "by the Minister of National Defence"; and I would suggest that if we have reached agreement we insert those words. Obviously, someone has to exercise discretion as to whether or not an application with respect to a patent is vital to the defence of Canada. I do not know of any person better fitted to exercise that discretion than Canada's Minister of National Defence. And, as to compensation I would suggest I think that the present subsection (15) would apply to the entire section. But if any question should ever arise as to the right of compensation all the applicant would have to do would be to assign the patent or the application to the minister and then under the law he comes under the compensation provision.

Mr. FLEMING: Is Dr. Ollivier going to be with us to-day?

The CHAIRMAN: Unfortunately, Mr. Fleming, he will not be available this morning. Is it the wish of the committee that we should amend subsection (15), line 36, by adding the words "by the Minister of National Defence"?

Mr. MARQUIS: I would so move, Mr. Chairman.

Mr. FLEMING: Wait a minute, Mr. Chairman; I would like to put my point before the committee and then you can vote it down if you like. I would move an amendment that we strike out subsection (15) of the reprint and substitute therefor the following:

> (15) The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the state, may order that such application and all the documents relating thereto shall be treated for the purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

And, subsection (16):

(16) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

The CHAIRMAN: You are reading from subsection (15) of the old draft?

Mr. FLEMING: Yes, the one I have now designated as (16) to follow the amended subsection (15) and subsection (15) as we had it before us previously. It appears in the reprint which is designated on the top "March 13, 1947". That is the same as Mr. Robinson's draft with the exception of one word; I have said "for all purposes of this section."

The CHAIRMAN: You would delete the word "the" and substitute therefor the word "all"?

Mr. FLEMING: Yes.

The CHAIRMAN: Would you mind reading the new subsection (16) again so that I can check your wording?

Mr. FLEMING: Mr. Chairman, there is one other change just indicated to me which should be made in there. May I read the whole thing again for the purpose of clarity?

The CHAIRMAN: Certainly.

Mr. FLEMING:

(15) The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the state, may order that such invention and application and all the documents relating thereto shall be treated for all purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence.

(16) The Governor in Council. . . . .

Hon. Mr. GIBSON: Will you read it a little more slowly, please; I mean the part you are now reading.

Mr. FLEMING:

(16) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

May I just add this one word with reference to that, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. FLEMING: With all respect to Dr. Ollivier I cannot help but feel that the old subsection (15) has been overlooked.

The CHAIRMAN: Oh no, he assured me that it had not.

Mr. FLEMING: That is the point.

The CHAIRMAN: I asked him about that and he assured me very definitely that it had not been overlooked.

Mr. FLEMING: Certainly putting in an express provision such as now is contemplated in subsection (16) removes any question whatever and makes it apparent that the powers to make rules and regulations apply to the whole of the section.

Mr. MITCHELL: Would you read it again, please?

Mr. FLEMING:

(16) The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof.

Mr. LESAGE: Mr. Chairman, of course this amendment, this new subsection (16) proposed by Mr. Fleming, is much more clear and goes to the same point.

Hon. Mr. GIBSON: I think it does. I think it is an improvement.

Mr. LESAGE: Oh yes, definitely. Section 19A refers to both applications and inventions and it appears to me something in it there to cover all sections is desirable.

The CHAIRMAN: Yes, but I am just wondering if the word "and" means something which we did not intend. Do you mean that, or do you mean "and/or"?

Mr. LESAGE: "Such applications, such inventions, and all documents relating thereto"; so it applies to the application itself as well as to the invention.

The CHAIRMAN: Yes, just think a minute; "and/or such invention and application". Do you mean that this is only to apply where there is an invention "and"?

Mr. FLEMING: Don't say "patent".

Mr. LESAGE: It may be better to say "that such application and/or invention"—

Mr. MITCHELL: Don't put "or" in; just say "application and invention." We are required under section 56 to put in "and/or."

Mr. LESAGE: Oh, yes.

The CHAIRMAN: Gentlemen, the minister, the Secretary of State, and the Commissioner of Patents accept Mr. Fleming's amendment, that subsection (15) of the redraft of the bill which you have before you should be deleted and a new subsection (15) and a subsection (16) as read to the committee be substituted in lieu thereof. Are you ready for the question? All those in favour of the new amended subsection (15) please signify. Those opposed.

New amended subsection (15) carried.

All those in favour of the new subsection (16) please signify.

New subsection (16) carried.

Shall the entire section 4 of the bill as amended carry?

Carried.

Shall section 3 of the bill without amendment carry?

Carried.

Hon. Mr. GIBSON: There is one other thing, Mr. Chairman: Mr. Robinson has brought forward one other suggestion, and that is that subsection (2) of section 35 of the Act be amended by deleting the last sentence thereof. He told me that when applications are being filed it requires a signature and it is common practice for patent attorneys simply to have the applicant sign a blank sheet of paper and attach it to the end of the application. He feels that it is a waste of time on behalf of the applicant and on behalf of the attorney and is not required by the department and suggests that it be deleted.

The CHAIRMAN: We are now dealing with section 12 of the reprint of the bill dealing with section 35 of the Act.

Mr. MARQUIS: What is the proposed amendment, Mr. Chairman?

The CHAIRMAN: The proposed amendment relates to subsection (2) of section 35 of the Act, that it be amended by deleting the last sentence thereof.

Hon. Mr. GIBSON: I might read it: subsection (2) of section 35 of the Act says:

> (2) The specification shall end with a claim or claims stating distinctly and in explicit terms the things or combinations which the applicant regards as new and in which he claims an exclusive property or privilege. It shall bear the name of the place where and the date when it is made, and be signed by the applicant.

And what has been suggested is that we delete the words, "and be signed by the applicant."

Mr. JAENICKE: You said the whole last sentence.

Hon. Mr. GIBSON: "It shall bear the name of the place where and the date when it is made, and be signed by the applicant." I understood it was just "and signed by the applicant" which should be removed.

The WITNESS: I am sorry I did not make myself clear.

Mr. JAENICKE: I would like to hear Mr. Mitchell on that.

Mr. FLEMING: It is an empty formality at most, is it not?

Mr. MITCHELL: Yes. That invariably is not signed by the inventor at all but by the attorney under his power of attorney. I do not think it is necessary to have that last sheet signed. The authorization given in the petition is quite sufficient. I think it would be quite agreeable to the office to delete; "It shall bear the name of the place where and the date when it is made, and be signed by the applicant." That may be deleted. It does not affect office practice in any way.

Hon. Mr. GIBSON: That is when the application is made?

Mr. MITCHELL: Yes.

Mr. JAENICKE: Would there be any danger with respect to identification later on if that is not signed?

Mr. MITCHELL: No, the petition would cover that because the application is attached to the petition as it arrives in the office, so at most it is a repetition of signatures.

Mr. FLEMING: Now, so long as the commissioner is satisfied. I understand that all we are doing now is to dispense with an empty formality.

Mr. MITCHELL: Yes. It is a phase we can very well do without.

Hon. Mr. GIBSON: We have already amended sections 3 and 4 of this section of the Act.

The CHAIRMAN: May I deal with the proposed amendment? If you will refer to section 12 of the reprinted bill you will find that section 12 of the reprinted bill already deals with subsections (3) and (4) of section 35 of the Act, repeals those and substitutes a new subsection (3). The present proposal is that subsection (2) of section 35 shall be amended. I am referring to the Patent Act, by striking out the last sentence in that subsection. It reads as follows:

> It shall bear the name of the place where and the date when it is made and be signed by the applicant.

The commissioner has indicated that he accepts this proposed amendment and that it makes no substantial alteration in the patent practice.

All those in favour of the amendment please signify?

It is carried and the clerk will make the necessary amendment to the bill. I assume it will mean redrafting section 12.

Mr. FLEMING: I do not think the committee formally adopted the new section 23 of the bill. It was discussed in the subcommittee, but we did not formally adopt it in this committee.

The CHAIRMAN: Will you please turn now to section 23 of the bill. Is your proposal that it should read,

on request made to him not later than the date this Act comes into force?

The WITNESS: Yes.

The CHAIRMAN: Gentlemen, the proposed amendment to section 22 of the bill is made necessary owing to the fact that this measure will not get back to the House and will not be dealt with by the House before the 31st of March. It is moved by Mr. Fleming that we delete the first five words and the figures 1946 in line 39 and substitute in lieu therefor, "the date this Act comes into force," so that section 22 of the bill will read, subsection (1), "On request made to him not later than the date this Act comes into force."

Then, if you will turn over to the next page, there is a similar correction to be made in line 10. The words, "the 31st day of March, 1947," will be struck out and a similar amendment made, "The date this Act comes into force."

Shall those two amendments carry?

Carried.

Mr. FLEMING: Section 23 has to be adopted yet, Mr. Chairman. It is a new section.

The CHAIRMAN: Section 23 is a new section. Shall section 23 carry?

Carried.

Shall I report the bill?

Carried.

Moved by Mr. Marquis that the bill be reprinted as amended. Shall the motion carry?

Carried.

Gentlemen, I do not think we should close out our hearings on this bill without expressing our thanks to the commissioner and to the officers of the Department of National Defence as well as the officials of the Patent Office for their very able assistance to the committee and their great patience in connection with our enquiry.

Hon. Mr. GIBSON: I would also, on behalf of the Patent Office, like to express to the members of the committee our gratitude for the great assistance you have given us in preparing an Act which will not require amendment for a considerable time. I know, on my own behalf, and on behalf of the Commissioner of Patents, we very much appreciate the assistance which has been given.

Mr. FLEMING: I think if I might undertake to add one word, we are also greatly indebted to Mr. Robinson appearing on behalf of The Patent Institute, because he has been of very great assistance to us.

The CHAIRMAN: Oh, yes, that omission I assure you was not an intentional one, Mr. Robinson.

In connection with the other bill which is before us, I think it would be very wise if we could clear this bill before the Easter recess. Are you willing to sit this afternoon?

Mr. FLEMING: I do not want to do that. Might I suggest we have a meeting at two o'clock because the business in the House this week may necessitate the attendance of many of us there. I, for one, would like to do all I could, as a member of the committee, to expedite the completion of our consideration of the bill and get it finished before Easter. I do not want to do that if it means absenting ourselves from the House. I would be quite willing to sit at two o'clock.

The CHAIRMAN: We will adjourn until Thursday morning at eleven o'clock and hope to clear it all up then.

Mr. FLEMING: Is it possible for us to have, in advance of the meeting, what the deputy minister of Trade and Commerce was going to file with the committee? If we could have that in advance of the meeting, I think it would shorten up the proceedings.

The CHAIRMAN: That is a very good suggestion. Would it meet the convenience of the committee to sit at four o'clock this afternoon for ten minutes, simply to permit the deputy minister and the officials of his department to table this information. We will meet purely for the purpose of the information being tabled, then we will sit on Thursday morning until we report the bill even if we have to sit after one o'clock.

The committee adjourned at 12.15 p.m. to meet again at 4.00 p.m.

NOTE—*The minutes of proceedings and evidence of the afternoon sitting relate to Bill No. 11, an Act respecting Export and Import Permits, and are contained in No. 11 of the printed proceedings.*

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

BILL No. 11—AN ACT RESPECTING EXPORT AND IMPORT PERMITS

THURSDAY, MARCH 27, 1947

WITNESSES:

Mr. M. W. Mackenzie, Deputy Minister of Trade and Commerce.

Mr. W. F. Bull, Director of Export Division, Dept. of Trade and Commerce.

Mr. D. Harvey, Director of Import Division, Dept. of Trade and Commerce.

Mr. T. G. Hills, Chief of Export Permit Branch, Dept. of Trade and Commerce.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

REPORTS TO THE HOUSE

FRIDAY, March 28, 1947.

The Standing Committee on Banking and Commerce begs leave to present the following as a

THIRD REPORT

Your Committee has considered Bill No. 16, An Act to amend The Patent Act, 1935, and has agreed to report it with amendments.

A reprint of the said Bill as amended has been ordered.

A copy of the relevant printed minutes of proceedings and evidence of the Committee—Nos. 1, 2, 3, 4, 5, 6 and 12—is appended.

All of which is respectfully submitted.

HUGHES CLEAVER.
Chairman.

FRIDAY, March 28, 1947.

The Standing Committee on Banking and Commerce begs leave to present the following as a

FOURTH REPORT

Your Committee has considered Bill No. 11, An Act respecting Export and Import Permits and has agreed to report it with amendments.

A reprint of the said Bill as amended has been ordered.

A copy of the relevant printed minutes of proceedings and evidence of the Committee—Nos. 7, 8, 9, 10, 11 and 13—is appended.

All of which is respectfully submitted.

HUGHES CLEAVER.
Chairman.

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MINUTES OF PROCEEDINGS

THURSDAY, March 27, 1947.

The Standing Committee on Banking and Commerce met at 11.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Bradette, Cleaver, Dorion, Fleming, Fraser, Gour, Hazen, Isnor, Jackman, Jaenicke, Jutras, MacNaught, Marquis, Mayhew, Michaud, Pinard, Quelch, Sinclair (*Ontario*), Stewart (*Winnipeg North*), Timmins.

In attendance: Messrs. M. W. Mackenzie, Deputy Minister, W. F. Bull, Director of Export Division, D. Harvey, Director of Import Division, and T. G. Hills, Chief of Export Permit Branch, all of the Department of Trade and Commerce.

The committee resumed its consideration of Bill No. 11, An Act respecting Export and Import Permits.

At the request of Mr. Fleming, it was ordered that the following corrections be made in the printed Minutes of Proceedings and Evidence of March 18, 1947, viz:—

1. On page 249, in the second line in the second last paragraph, insert the word *"not"* between the words "does" and "wish".

2. On page 254, in the third line of the second last paragraph, insert the word *"not"* between the words "was" and "specifically".

Mr. Mackenzie was recalled and further examined.

Some questions were also answered by Messrs. Bull, Harvey and Hills.

Clause 1 was adopted.

On motion of Mr. Mayhew, clause 4 was amended by adding at the end of the said clause the following words:

> , or unless the price of such article is supported under The Agricultural Prices Support Act, 1944, The Fisheries Prices Support Act, 1944, The Agricultural Products Cooperative Marketing Act, 1939, or is in effect supported under The Agricultural Products Act.

On motion of Mr. Stewart, clause 4 was further amended by substituting the word *"ensuring"* for the word "insuring" in the second last line thereof.

Clauses 5, 6, 7, 8, 9 and 11 were adopted, further consideration of the other clauses being deferred until the next sitting.

At 12.35 p.m., the Committee adjourned to meet again at 8.00 p.m., this day.

AFTERNOON SITTING

The committee resumed at 8.00 p.m., Mr. Cleaver, presiding.

Members present: Messrs. Argue, Arsenault, Breithaupt, Cleaver, Fleming, Fraser, Isnor, Jaenicke, Marquis, Michaud, Sinclair (*Ontario*), Stewart (*Winnipeg North*), Timmins.

In attendance: Messrs. M. W. Mackenzie, Deputy Minister, W. F. Bull, Director of Export Division and D. Harvey, Director of Import Division, all of the Department of Trade and Commerce.

The committee resumed consideration of Bill No. 11.

On motion of Mr. Marquis, clause 2 was amended by deleting paragraph (*a*) thereof.

Clause 2, as amended, carried.

On motion of Mr. Fleming, clause 3 was amended by deleting the words "published in the *Canada Gazette*" in the third line thereof, and substituting therefor the words "*which order shall be published in the Canada Gazette within fifteen days after the passing of such order.*"

Clause 3, as amended, carried.

On motion of Mr. Fleming, clause 4 was further amended by deleting the words "published in the *Canada Gazette*" in the third line thereof, and substituting therefor, the words "*which order shall be published in the Canada Gazette within fifteen days after the passing of such order*".

Clause 4, as amended, carried.

Clauses 10, 12 and 13 carried.

Mr. Fleming moved that clause 14(1) be amended by adding to the end of same the following words:

"or the thirty-first day of March, 1948, whichever shall be the earlier date".

The said amendment was negatived and clause 14 adopted on division.

On motion of Mr. Fleming, the following new clause was added to the Bill, viz:—

> As soon as practicable after the thirty-first day of December, 1947, the Minister shall prepare and lay before Parliament, if Parliament is then in session, a report of the operations under this Act for the year 1947, or if Parliament is not then in session, within the first fifteen days of the next ensuing session thereof.

Ordered,—That the Chairman report the Bill as amended.

On motion of Mr. Fleming,

Ordered,—That the Bill be reprinted as amended.

At 8.35 p.m., the committee adjourned to the call of the Chair.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
March 27, 1947.

The Standing Committee on Banking and Commerce met this day at 11.00 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: We have a quorum, gentlemen, and we will get on with bill No. 11. I believe perhaps the next thing the committee should do would be to hear from the department in regard to the actual issuance of permits. You will recall when Mr. Marshall was before the committee at previous sittings he made some comment, perhaps criticism, in regard to the issuance of permits.

Mr. JAENICKE: Did we not have an explanation of that at the last meeting at which Mr. Mackenzie gave evidence explaining the procedure? We have all heard that evidence, I think.

The CHAIRMAN: I believe in view of the rather explicit statements that were made by Mr. Marshall including, I believe, some remarks as to the percentage of applications made by him and the percentage that were declined the officials of the department should have the opportunity of making a reply.

Mr. M. W. Mackenzie, Deputy Minister of Trade and Commerce, recalled:

The WITNESS: Mr. Chairman, I think it would be useful to the committee to put on the record some of the information that we have developed in regard to the evidence that Mr. Marshall gave and the statements he made to the committee as they appear at page 283 of the record. He said they were sending in about thirty applications a week—the answer he made there is not just clear as to its meaning, but I think what he was trying to say was that of the thirty applications a week which they were sending in about fifty per cent were declined.

Mr. JAENICKE: Or postponed.

The WITNESS: Or postponed. Then he cited two cases one of which involved a delay I believe of forty-five days and the other one also involved a long delay. We cannot keep actual records or take the time to compute statistics on 18,000 applications a month, the number which comes before the export permit branch; but we have taken all the applications that Mr. Marshall sent in. Now, one point I would like to make is that all these applications deal with steel and they are not representative of the average application coming before us. I think it is safe to say that fifty per cent of applications, covering all types of commodities, are cleared within four or five days, but in the case of steel, it is a particularly difficult situation, first because steel is in very short supply and secondly because each application involves consultation with the steel controller or the administrator in the Wartime Prices and Trade Board or both. We find from the records that for the period of twelve months preceding Mr. Marshall's appearance before this committee he filed 263 applications, that is an average of five a week. Of those applications 230 were approved, that is ninety per cent; ten per cent were refused and six were withdrawn as not being required or cancelled at the request of the applicant. Now, that is the actual case history

of the applications filed by one particular applicant and recorded in his name. The average over-all time it took to dispose of each of these 263 applications including all the bad ones, the ones which took forty-five days, (and I may say that we found one that was even longer), the average time for the whole 263 was twelve days. Some were cleared in one day while the worst one, the slowest one, took sixty days to clear; but more than half of them were cleared in about a week, seven or eight days. May I say also that for all these cases I am giving you the elapsed time from the time the application was received until the final answer went out. It does not take into account Sundays and holidays. Very often an application would come in on a Friday night and possibly would not be finally dealt with until the Monday following. But including these delays at least one half of them went out in eight days, and the average was twelve days. I might also just put on the record a notice which the United States export permit authorities send out to people applying for permits. This is a quotation from their regulations: "Every effort is made to examine applications and advise applicants of action in the shortest time. Applicants should allow a period of two weeks plus mailing time, before inquiring as to the progress of individual applications. Certain types of application require more time for necessary examination and consideration". I think that possibly gives you a better understanding of the actual time that is involved in the issuance of these permits.

By Mr. Michaud:

Q. How many hours of labour on the part of the staff of your office was involved in getting out the information you have just given to the committee?— A. The Export Permit Branch has a staff of about eighty. I do not know what it is translated into actual hours of work. There is a good deal of overtime in it. Perhaps Mr. Hills could answer that better than I could.

Mr. MICHAUD: Mr. Hills, how long did it take your staff to get out this information which has just been given to us?

Mr. HILLS: About four or five persons worked on it two days and two nights. In actual hours, that would be six and a half working hours a day, thirty-three hours of my own time; and I should say ten to twelve hours of time on the part of that staff.

Mr. JACKMAN: Mr. Chairman, I wonder if I may refer to a matter which I cannot quite understand, and that is whether we have an actual import control on wool. When I brought the matter up the other day I was told despite the fact that there is a tremendous amount of wool in storage, in Australia for instance, nevertheless the types of wool varied greatly; that the best wool was being used throughout the war for army uniforms, etc., and was not generally available to the trade. I read recently, just the other day, that the total production in the United States had gone down very considerably. Unfortunately, I could not lay my hands on the clipping just before coming down to this meeting. I do not think I am exaggerating when I say that the production in the States has declined about a third because it is considered to be cheaper for American industry to import wool rather than to grow it there. If that be true, that being the case, I do not know why we in Canada should have control over the importation of this commodity. I do not know why it should be. If we are willing to pay reasonable prices I think we ought to be able to get plenty of it. What is the reason for the need for this import control? I am merely raising the question, I do not wish to take up the time of the committee to deal with it.

Mr. HARVEY: Mr. Chairman, the situation there is that there is not actually any shortage of wool. The shortage arises in the conversion of wool into yarn; that is a question of industrial capacity. On the question as to why we should have any import control, in actual fact there is no import control applied at the

present time. If you can obtain the fabrics, yarns or tops you can import them. The situation with respect to imports from the United Kingdom, however, is that the British government exercises its own allocation authority which says where exports shall go, and we ourselves are involved in negotiations with the United Kingdom government to obtain supplies under their allocation plan. But although the import control exists on paper in the form of an import control authority, the import control is in no sense restricting any imports at all because the general permit number is endorsed on the face of the invoice and the customs entry is otherwise normal.

Mr. JACKMAN: Then, why are we not importing from the United States?

Mr. HARVEY: We import from wherever we can obtain it. There is no restriction on import buying from any country where the importer can buy; that is, there is no import restriction; there are restrictions on the ability to purchase in foreign countries exercised by the government of those countries.

Mr. JACKMAN: I was more particularly interested along the conversion line. I might say that it does seem strange, and I think the committee might be interested in going into a particular case such as wool, why we were able to maintain ourselves during the war and provide Canada with woollen clothing requirements for the armed services and that at a time when the demand was much heavier than it is for private use to-day. It is now two years since the war ended and there is plenty of raw material, raw wool around. Why is there lack of capacity; is it because we are not willing to pay a reasonable price for it. I cannot understand why we should have this bottleneck continuing after this length of time. I believe we have reached a point now where we should get away from this bottleneck. I would like to know just why the situation is what it is, it does not exactly seem right.

Mr. HARVEY: An answer to that broad, general question would require a considerable amount of study of many aspects one of which is the reopening of markets which were closed during the war. For instance, demand is now effective on world supplies from central European countries; and also the return to normal of the shipping movement has reopened markets which were closed by wartime conditions. Another factor is the enormous increase of consumer demand in general. I am not positive but I believe that our present rate of consumption is considerably higher than it was during the war years on the finer clothing types. And the third factor that you have is the situation between certain foreign countries where they commit a certain part of their export to each other under their commercial treaties and trading arrangements with the result of these supplies being channelled from one country to another; that has an effect on the normal supply and demand relationships in world markets generally. We in this country are not nearly self-sufficient in production capacity in respect to worsted yarns. We also are not self-sufficient in fabrics, but processing or finishing are less significant than our dependence on imports of worsted tops and worsted yarns. But there is now no restriction effective so far as prices are concerned to our purchasing, but there has been during the course of price regulation in Canada. I believe that Mr. Gordon, chairman of the Wartime Prices and Trade Board, pointed out that a number of these commodities which at times have been under price ceilings have also been assisted by subsidies.

Mr. QUELCH: Has there been any study made as to the relationship of the production of yarns and fabrics to-day as compared to 1939; and also as to how wool and yarn fabrics stand?

Mr. HARVEY: I could only give you a vague guess.

Mr. QUELCH: Is it greater to-day?

Mr. HARVEY: Not enormously greater.

Mr. QUELCH: It is greater?

Mr. HARVEY: Yes.

Mr. QUELCH: Is production greater in Canada to-day than it was?

Mr. HARVEY: In some categories, definitely.

Mr. ISNOR: Mr. Harvey, is it not a fact that the supply position is affected by the increasing demand for the better qualities of yarns, tops and fabrics? I mean, is it not a fact that considerable demand shows a preference for the finer qualities, and that is a necessary sequence to the change from wartime demand?

Mr. HARVEY: Yes, that is a very definite factor. I had that in mind when I mentioned the increase in the demand for finer clothing types of fabric.

Mr. QUELCH: And would you say there was a considerable supply being held back off the market in anticipation of a price rise?

Mr. HARVEY: I see no evidence of that at all.

Mr. JAENICKE: Is wool a commodity which has or may be brought under the Agricultural Prices Support Act?

Mr. HARVEY: I am afraid I cannot answer that.

Mr. JAENICKE: Would not that be one of the import control factors to which Mr. Ilsley had reference when he appeared before this committee on March 14? He did not have reference to wool, of course; but I was just asking if wool would be one of the commodities that would be included under that Act?

Mr. HARVEY: That would be subject for decision. At the present time there is no effective import control on wool, yarn or tops.

Mr. JAENICKE: I mean raw wool.

Mr. HARVEY: There is no import control on raw wool.

Mr. JAENICKE: I think that is what Mr. Jackman was referring to.

Mr. HARVEY: There is no restriction on raw wool. There is, on types of yarns and fabrics, what is in form only an import control. There is no import control on the raw wool to-day.

Mr. JACKMAN: But there is a control on wool fabrics, tops, I think they call them.

Mr. HARVEY: Just in form only.

Mr. TIMMINS: What does that mean, "in form only"?

Mr. HARVEY: It means that the import control is not effective on the individual customs entry. If you wish to import fabrics, yarns or tops and can obtain those you merely endorse the customs entry with the general permit number; that is simply written by the importer across the face of the customs invoice—I think that number is G2041.

Mr. TIMMINS: And that means that it does not have to be referred to the department?

Mr. HARVEY: No, it does not have to be referred to any administrator whatever.

Mr. JACKMAN: Is that because the country which is the source of the wool has export control?

Mr. HARVEY: I think every country has export control on woollens at the present time.

Mr. JACKMAN: Would you say that Canada is getting its fair share of the wool in its various forms available in the countries at the present time?

Mr. ISNOR: What kind of wool do you mean?

Mr. JACKMAN: The kind of wool that human beings wear.

Mr. JAENICKE: I thought you were referring to raw wool when you first asked your question.

Mr. HARVEY: So far as a fair share is concerned, Mr. Chairman, I think the situation might be put this way, that in general we are very much better situated than many other countries in our supplies, but we could use a good deal more. If it were possible to negotiate for increased supplies, then we would very gladly endeavour to do so.

Mr. PINARD: At the present time, what country is the largest exporter of wool to Canada?

Mr. HARVEY: England.

Mr. MICHAUD: That is raw wool?

Mr. HARVEY: The United Kingdom is for the forms in which we need it. We have no difficulty in obtaining all the raw wool we want to buy. Of wool, in the semi-converted and converted forms, the United Kingdom is our biggest supplier.

Mr. PINARD: Would the United States come next?

Mr. HARVEY: That is a very difficult question to answer, because I am trying to include in one answer about a dozen different categories of goods in different forms.

The CHAIRMAN: Gentlemen, if there are no further questions shall section 1 of the bill carry?

Mr. FRASER: I do not want to talk about wool, but I should like to ask Mr. Bull a question concerning structural steel. On page 287 of the evidence, Mr. Bull said this the other day:

> We saw the words "structural steel" which is one of the most critical items in Canada. You have only to look at the Ford Hotel in Montreal and see the difficulty they have had in putting up their building there. We referred it to the steel controller following our usual procedure. He saw the word, "structural" and refused it.

I understood there was no control on structural steel, at least, that is according to a report I received, that the steel controller does not control structural steel.

Mr. BULL: That is true, he does not control the use of structural steel in Canada. If you can get it from the United States or somebody in Canada and have a building permit to put up a building, which permit you have secured from your local community, then you can go ahead with your structural steel in that building; but, there are priority buildings, such as hospitals and industrial buildings and that kind of thing where the steel controller attempts to obtain supplies of structural steel. He is having it constantly brought to his attention. There is a definite shortage of structural steel in Canada.

Mr. FRASER: You mentioned the Ford Hotel, that would not be a priority building?

Mr. BULL: No, it is just a building we have all seen which represents a large investment and which is only half completed or has been so for many months because of the shortage of steel. There has been much about it in the newspapers. They had a great deal of difficulty in trying to find steel. Most of our structural steel is coming in from the United States at very high prices. People who are building find small lots down there and bring it into Canada.

Mr. FRASER: I just wondered why you referred it to the steel controller when there is no control on it. All he does is direct it, there is no control on it. Something special, something which is really for the country's good then the steel controller ships it in that direction?

Mr. BULL: Yes, but he controls all steel for export. Every article which contains steel and which you desire to export, must be cleared by the steel controller.

Mr. FRASER: On March 4th, the Minister of Reconstruction told me there had been no export of nails.

Mr. FLEMING: That is, no lawful export.

Mr. FRASER: In checking up in your export book which is just off the press, re nails, I find there is mention of some $300,000 worth of wire nails and some $500,000 of iron nails. Now, export control went on nails on the second of February. Mr. Mackenzie told me the other day that if there had been export permits for nails, they might continue for six months. Does that apply not only to nails but to everything else, that is, the length of time these export permits run?

Mr. BULL: The usual life of our permit is six months unless, for some special reason, we issue a permit in connection with critical materials for one month, two months or three months. The usual life is six months. The strikes in the United States and Canada completely reversed our steel position. Up to January and February 1946, we were issuing limited permits for nails covering essential requirements to Newfoundland and the British West Indies. They were getting nails from us as they have for the past forty or fifty years. We stopped the issuance of permits on instructions and request of the Department of Reconstruction and Supply, as soon as the situation as the result of the strikes showed we were going to have a critical situation on nails, but we did not cancel the outstanding permits.

Mr. FRASER: That would allow the permits to run for another six months.

Mr. BULL: A permit could have been issued in January which would carry through to July, the end of the six months' period. Shipments would be made during that period. Nails are so short in the West Indies they are renting them. If you are putting up a concrete reinforcement, you rent the nails to put up your rough wooden structure for the concrete. Then, you pull the nails out and send those nails back to the man from whom you rented them.

Mr. FLEMING: May I have one moment to make a correction? I would not trouble the committee with a trifling correction but, in this case, the reporter has just the opposite to what I said. On page 249 of the evidence, about ten lines from the bottom.

"And I am not asking Mr. Gordon to go into that field if he does wish to—"

It should read,

"And I am not asking Mr. Gordon to go into that field if he does not wish to—".

Similarly on page 254, the fifth line from the bottom of the page reads,

"that this bill was specifically directed or aimed to cope with our exchange problems."

It should read,

"that this bill was not specifically directed or aimed to cope with our exchange problems."

Mr. JACKMAN: May I ask a question or two about this wool problem and this whole procedure? I think Mr. Harvey said any wool importer in Canada merely had to fill out his form and he automatically had his permit. I think I recall, in some of the earlier sessions we were told, even if there was no immediate necessity for exercising export or import control, nevertheless, if the article was not one which was in the clear, it was well to find out where it was

going so we would not use more in Canada than our international allocation. In order to keep some bookkeeping record, we still made use of these permits, even though it was merely a matter of bookkeeping. Is that the reason why we use it in connection with wool?

Mr. HARVEY: No, Mr. Chairman, there is no international allocation at all. The international allocation is the basis of the commitment which requires certain of these controls to which you are referring. So far as the wool situation is concerned, control of woollen yarns, fabrics and tops is one which has enabled us, in the past, to secure far better consideration of our claims on supplies from the United Kingdom.

Mr. JACKMAN: In other words, there is a useful purpose to be served in keeping books on imports of wools into this country in order that we may show the United Kingdom how much wool comes into Canada and that our demands have not been fully supplied; is that the reason?

Mr. HARVEY: I think in his evidence the chairman of the Wartime Prices and Trade Board pointed out that in the United Kingdom, sponsorship is exercised over the granting of export licences by the British Board of Trade and that sponsorship is, in essence, an endeavour to obtain supplies in the required forms from the United Kingdom. Associated, of course, with that sponsorship is the necessity, in form, for the existence of import control. In essence there is, thus, control over the form of supply exercised by The Wartime Prices and Trade Board, on what comes from England.

Mr. JACKMAN: But if the purpose of gathering this information, at some little cost to the country and some little cost to the user in Canada, is as you say and if that information is available already to the sender, the United Kingdom in this case, because the exporters in the United Kingdom have filed their export licences and forms, is there not duplication there? Is there any chance we would be getting our larger share of the international wool clip or wool in its various forms? Must we not go to the one exporting country to get it? Why is information not available to the exporting country without your going through all this business of keeping books and keeping people employed both in the civil service and in business itself to make out all these unnecessary bookkeeping forms?

Mr. HARVEY: I do not think, associated with the form of import control which exists in this particular case, there is necessarily any expense at all because it is not a case where there is any special bookkeeping. The situation is that certain of these foreign governments will not go to the lengths of enforcing the channeling of their exports to us at our request unless we give them an indication that the situation is very serious.

Mr. JACKMAN: Do they not know how much wool was sent to Canada?

Mr. HARVEY: They do.

Mr. JACKMAN: Is not that sufficient evidence?

Mr. HARVEY: If we make this market entirely free, that is to say, it is free, but if in essence we said from here forward we are going to have no interest in the question of allocation or the question of control, we abandon that form and place the trade on a free commercial basis, we have had it intimated to us that then our requests to these foreign governments would not be taken as seriously as they are. The over-all quantity of our supply, therefore, might suffer.

Mr. JACKMAN: The trade in Canada, as I understand from what you have said, is entirely free except that you know what the total quantity is by adding up all the applications which come under this general import licence?

Mr. HARVEY: That bookkeeping is not done with respect to the import licence on yarns and fabrics.

Mr. JACKMAN: How can you tell the supplying country how much has been used?

Mr. HARVEY: There is the normal Dominion Bureau of Statistics records which are available, the bureau's export statistics. A vast amount of information has been contributed by the industrial concerns in order to obtain our assistance.

Mr. JACKMAN: I must have misunderstood you. I thought you said the reason for having this import licence still in force, and the reporting of what a particular importer was bringing in as well as the automatic granting of a licence to him was for the purpose of letting the exporting country, we will call it the assigning country if you like, to let that country know exactly what we were getting here. Otherwise, our application for an increase in the supply of wool would not be as favourably considered. Was not that what you told us?

Mr. HARVEY: In essence, but perhaps if I put it this way it may be more easily understood. If we exhibit no more interest in special treatment from these foreign countries then, so far as they are concerned, they would have other uses for some parts of these exports which we are pressing them to deliver to us. Now, the supply situation here is not such that, if you let nature take its course, we would obtain what we want, particularly from the United Kingdom. The market is far more attractive to the manufacturer in the United Kingdom if he were to manufacture and ship to Canada knitting wools, hand knitting wools, whereas what we require are the finer clothing types of yarn. We require industrial weaving yarn and industrial knitting yarn. Consequently, we are persuading the Board of Trade, with its export licence system, to channel certain varieties of materials of this type to Canada in place of others. It is not a question there at all of there being any specific control on the import at this end, the control is at the other end. If there were no control here at all, if it were eliminated, our persuasion would be somewhat weak, or our position would be weak in attempting to exercise persuasion on the Board of Trade to give us special treatment.

Mr. JACKMAN: Did I understand you correctly when I say there is no control exercised here except for the compilation of statistical information?

Mr. HARVEY: There is even no statistical compilation.

The CHAIRMAN: If you will refer to page 265 of the evidence and read Mr. Gordon's very long answer on that page, I think it will answer your question.

Mr. JACKMAN: May I ask if anyone from the Department of Trade and Commerce knows whether the United States has a similar permit system in connection with the importation of wool and these varieties?

Mr. FRASER: We secured a lot of wool from India during the war, did we not, excellent wool?

Mr. HARVEY: That was carpet wool. There is no import control of wool in the United States.

Mr. JACKMAN: The United States gets its wool from the same source as we do?

Mr. HARVEY: Yes, but the United States is self sufficient, very largely, in the conversion of raw wool into yarns and fabrics.

Mr. MAYHEW: Is this about our situation, that we have insufficient capacity in the combing, carding and knitting of wool?

Mr. HARVEY: Yes.

Mr. MAYHEW: Therefore, we have to look to Great Britain for some of that yarn?

Mr. HARVEY: Yes.

Mr. MAYHEW: The U. K. position is this, if they can convert it into worsted and completed goods, their dollar value on the wool exported is much greater than it would be at the present time. Therefore, they would not readily, unless there were pressure from the Board of Trade, send us the semi-raw material; is that nearly correct?

Mr. HARVEY: I should say that is correct. One cannot speak for the Board of Trade's policy, but it is fairly obvious.

Mr. MAYHEW: It would be obvious that that is what is happening?

Mr. HARVEY: Yes.

Mr. ISNOR: It is reasonable to say that would be the tendency. You spoke of finer wools and fingerings. Naturally, they would slip more fingering than the coarser types of yarns?

Mr. MAYHEW: Our solution is to encourage the first process, that is, the making of it into yarn.

Mr. HARVEY: Yes.

Mr. JACKMAN: How much does Canada have to say about the allocation or the sharing of the total wool supply in the United Kingdom?

Mr. HARVEY: The United Kingdom has given our requests a great deal of consideration. They have certainly assisted us materially. So far as what say we have in the matter, since we are the applicant to the United Kingdom government for an export allocation, we have been and we are at the present time—

Mr. JACKMAN: Can you say from your background knowledge how our present allocation in the various types of wool would compare to our pre-war importation from that source, relating the whole to the total amount now available as compared to the total amount in the pre-war years?

Mr. HARVEY: That is a difficult question to answer offhand. The situation is that the United Kingdom, itself, is by no means back on its feet. With regard to production, the textile industry generally is one industry, I think, where reports indicate that labour and coal are the biggest problems. Production is not up to pre-war levels and our receipts in the very many categories we are receiving from the United Kingdom are, on an average, below pre-war levels.

Mr. PINARD: Has it increased?

Mr. HARVEY: It has increased.

Mr. JACKMAN: The United Kingdom over-all supply is likely lower than it was in the pre-war years because of labour conditions and so on. Therefore, our total take in Canada is less. What is the relationship between the pre-war take and the pre-war available supply and the post-war take and the post-war supply? Are we getting as good a percentage as we received prior to the war?

Mr. HARVEY: I would say there is definitely an increase in our own production in Canada and our receipts from the United Kingdom are slightly below pre-war.

Mr. JACKMAN: In percentage?

Mr. HARVEY: Yes.

Mr. MARQUIS: And there is a much greater demand?

Mr. HARVEY: A very much greater demand for the finer clothing type.

The CHAIRMAN: Shall section 1 of the bill carry?

Carried.

Section 2?

Mr. FLEMING: There is a question in connection with the definition of "goods". It is rather a broad definition. Has any thought been given to some

definition more specific than that, "goods" includes every article of commerce? After all, an article of commerce might include securities, for instance. What you are getting at here, I take it, is merchantable goods.

The CHAIRMAN: Could we say, "every consumable article of commerce."

Mr. FLEMING: I think that would be a help.

The WITNESS: I do not know whether a change in the definition would help. I am wondering if the wording of the definition, taken in conjunction with the wording of sections 3 and 4, does not cover Mr. Fleming's point. Section 3 says, "a list of goods shall be drawn up." Then, the proviso states, that no article, other than certain things, shall be included. It would seem to me that would really take care of the point Mr. Fleming raises.

Mr. PINARD: Why not say that, "goods" would include only the goods mentioned in the list. Otherwise, the definition is too wide. "Goods" includes the goods mentioned on the list which could be established by order of the Governor in Council.

The WITNESS: The operative sections of the Act only apply to the goods which are on the list.

Mr. FLEMING: I do not know that the answer of Mr. Mackenzie is a complete answer. What we are trying to do is to pass legislation which is as complete as possible without leaving legislative powers in the hands of the Governor in Council. I was wondering whether that was not an unnecessarily broad definition. By your definition you are creating a sort of pool of things to which the Governor in Council can apply import control by means of the list he draws up under these sections.

The CHAIRMAN: I am not a draftsman, but I do not see any need for the definition of goods at all. Subject to consultation with the law officers of the Crown, shall we delete that subsection?

Mr. FLEMING: I do not think, for instance, it was ever intended that it should include securities, specialties or anything of that nature.

Mr. MAYHEW: I thought the word might be deleted, but would we not be in rather a serious position if we were to drop out three or four items?

The CHAIRMAN: Let the section stand and I will consult the law officers of the Crown.

Mr. FLEMING: I have one question I would like to ask with respect to section 3, referring to the matter of the order in council published in the *Canada Gazette,* that all orders made under this Act and all amendments thereto shall be published. That is provided for, but there is no time limit in either section 3 or section 4 for publication in the *Canada Gazette.* It seems to me that there should be a time limit set for that publication. I have no specific period in mind. Perhaps Mr. Mackenzie could suggest what would be an acceptable period for gazetting. I think it should be a short period because these changes are of immediate and direct importance to the business community and therefore I think should be promptly gazetted.

Mr. MARQUIS: Perhaps they might do the same as they do with this list, publish it every week.

Mr. FLEMING: Yes, that list is published every week.

Mr. PINARD: And the provision with respect to the list is that it must be published in the next following issue of the *Gazette.*

The CHAIRMAN: What have you to say about that, Mr. Mackenzie?

The WITNESS: Mr. Chairman, I can assure you that the practice is to publish these orders just the minute they are passed because the whole purpose of it is to get the information to the exporters and importers as quickly as possible. I see no objection whatsoever to putting in a time limit of fifteen days, or something like that.

Mr. FLEMING: Possibly we might take Mr. Pinard's suggestion of having it appear in the next following issue of the *Canada Gazette.*

The WITNESS: That might be a little inflexible in the odd case. I can conceive of a situation arising which might make that impossible, but certainly within fifteen days will be perfectly satisfactory.

Mr. FLEMING: That will apply to section 4 as well.

The WITNESS: It might be put in as a separate section perhaps, that orders in council in connection with this Act will be published—

Mr. FLEMING: That is, orders under section 3 and section 4?

The WITNESS: Yes.

The CHAIRMAN: Shall we say, "shall be published in the *Canada Gazette* within fifteen days thereafter"; and we will let the law officer of the Crown draft that in proper form. That is the intent.

Mr. FLEMING: That would apply to both section 3 and section 4?

The CHAIRMAN: Yes.

Mr. MACNAUGHT: I cannot see the necessity for Mr. Fleming's suggestion that it is necessary to have them published.

Mr. FLEMING: Oh yes, it is.

The CHAIRMAN: It says, "may be established by order of the Governor in Council published . . . ."

Mr. MACNAUGHT: Oh, it has to be published.

Mr. FLEMING: I think that is the interpretation. It is not very clear, it seems to me, and that is why I raised the point.

The CHAIRMAN: I was re-reading the section and I am inclined to think you are right. It says, "A list of goods to which section five of this Act shall apply may be established by order of the Governor in Council published . . . ."

Mr. FRASER: May I ask Mr. Mackenzie a question on that? In the past when the department put a control on a certain article did they not do that without the order being published?

The WITNESS: The minute approval is granted to an order in council putting something under control we do everything we can to publish it, including press releases.

Mr. FRASER: The point I am getting at is this, the control would go on before it is published?

Mr. MICHAUD: Yes, but that was under this order in council procedure; henceforth it will be under this new Act.

Mr. FRASER: But even under the Act I think that the deputy minister would immediately put the control on and see that the control was put into effect, even before it was published.

The CHAIRMAN: You mean, and not wait for its publication?

Mr. FRASER: No.

The WITNESS: There are cases when it may be announced that export control would become effective in two days time, for instance.

Mr. FRASER: So when you say published, that means published in the newspapers?

The WITNESS: We do, in fact.

Mr. FRASER: You do that, but in the meantime perhaps within four or five hours that control goes on?

The WITNESS: That could happen.

The CHAIRMAN: I have made a note of the point and I will be glad to discuss it thoroughly with the law officers of the Crown.

Mr. BRADETTE: I would like to have Mr. Fleming enlarge on his point about the necessity for publishing these orders in the *Gazette*. Personally I do not see why it is necessary.

Mr. FLEMING: The question is whether it is necessary or not. If the order provides for the publication of all orders under this Act in the *Canada Gazette*, then I think a similar provision should apply to all amendments to such orders. I do not think it is fair and that is why I proposed the amendment I did. If it is, that is not the way in which I read it. I am in entire accord with the chairman's idea that we should refer this to the law officers of the Crown so that it may be clarified and any ambiguities removed.

Mr. BRADETTE: I would ask Mr. Mackenzie if he has any direct criticism of this?

Mr. FLEMING: All I can say to that is what Mr. Michaud has just said, that now we are legislating rather than depending on orders in council. I want to do it so that it will be free of any ambiguity.

By Mr. Fraser:

Q. As soon as you issue a notice of control you pass an order under this part and although that may not be published for two or three days it is in effect from the moment it is passed?—A. Here is a typical case: on February 27, 1947, this notice was sent to the collectors of customs; by order in council No. so-and-so, of February 25, effective on and after March 3, the date set forth herein, see schedule so-and-so.

Q. That gives them six days?—A. It gives them a couple of days to get these notices out to the collectors and get things working. It also gives notice to the exporters that the control is being put on. I suppose it is possible that there may be situations where it had to go on instantly, but this is the general procedure.

Q. But you have on occasion put them on the same day? I have seen notices from your department. I think I am right.—A. That is right. There have been emergencies like that. I think this is more indicative of general practice, but there have been emergencies as you say.

Mr. MARQUIS: Why not put it that way then, that it shall come into effect with publication of the order fifteen days after issue in the *Canada Gazette*.

Mr. FLEMING: Why not leave that to the law officers of the Crown.

Mr. JUTRAS: What was the date of the publication in the *Gazette* in the case to which you referred, Mr. Mackenzie?

The WITNESS: I am afraid I have not got a copy of the *Canada Gazette* here so I cannot tell you the exact date of its publication. The order in council is dated the 25th of February and this notice went out on the 27th, and the order in council was put into effect on and after March 3.

Mr. JUTRAS: So that the effective date is not always the date upon which it appears in the *Canada Gazette*.

Mr. JAENICKE: Mr. Chairman, is there not some general law about the publication of orders in council in the *Gazette?*

The CHAIRMAN: Gentlemen, I shall be pleased to clear this up. I understand very clearly what the point is and I will be pleased to have it cleared up and report back to the commtitee.

Now, in regard to section 4, Mr. Ilsley asked that an amendment should be moved. Mr. Mayhew, would you move this amendment, please: this to be added to section 4 at the end of the section:—

> or unless the price of such article is supported under the Agricultural Prices Support Act of 1944, the Fisheries Prices Support Act, 1944, the Agricultural Products Co-operative Marketing Act of 1939, or is in effect supported under the Agricultural Products Act.

Mr. Mayhew moves that amendment. That section will stand with the amendment moved.

Mr. STEWART: Mr. Chairman, I would call your attention to the word "insuring" in line 32 of section 4. Should not that read "ensuring"?

The CHAIRMAN: Yes. Thank you, Mr. Stewart.

Mr. FLEMING: One further thing about this amendment; "is in effect supported by the Agricultural Products Act". We haven't got such an Act yet. There happens to be a bill passed by the House of Commons which I believe is now before the Senate. What is our position in writing into this bill a reference to something that is a bill at the moment that is referred to here as an Act?

The CHAIRMAN: Well, I would say this Mr. Fleming; that the bill with which we are now dealing would eventually become an Act, and as it becomes an Act after the Agricultural Products Act is in existence I would say then our timing is right. Would you not say so?

Mr. FLEMING: And in the case of the other three Acts they have the word "support" in them, while in the case of this agricultural products bill we use the phrase "is in effect". What is the reason for the difference?

Mr. MAYHEW: In the case of the other three they are Acts when this bill is passed.

Mr. FLEMING: No, but this is different; what we have here is, "is in effect supported by the Agricultural Products Act." The phrase does not appear in that form in the other three Acts. I was wondering what the difference was.

The CHAIRMAN: Well, I do not know as much as I might about the Agricultural Products Act but from following the debate I should think, Mr. Fleming, that the distinction is this: that under the Agricultural Products Act in some instances there is a more or less indirect support and not a direct price support; so that if you left out the words "is in effect" you would be then confining the operation of section 4 to only such commodities as are directly supported by the Agricultural Products Act. If you go through that Act you will find that most of the controls there and most of the support there is quite indirect.

Mr. FLEMING: I think it is a vague expression.

The CHAIRMAN: It is necessarily vague because of the nature of the Act. As I recall it there is no direct support.

Mr. FLEMING: It confers very wide powers on the Minister of Agriculture to do almost everything in the way of regulating the curing, processing, marketing and export of every agricultural product except wheat. However, as they are leaving this section over I will not press the point at the moment.

The CHAIRMAN: An example of indirect support, you see, would be where the price of his raw product was supported or controlled in order eventually to effect control in regard to a finished product. The support effected by the Agricultural Products Act is in most instances remote, indirect.

Mr. FLEMING: I did not want to press this point any further at the moment.

The CHAIRMAN: Does section 5 carry?

Carried.

Section 6?

Carried.

We are now on section 7.

Mr. HAZEN: Mr. Chairman, may I ask a question in connection with this section?

The CHAIRMAN: Yes.

Mr. HAZEN: The same applies to section 10. Section 7 says:

> The minister, or any person designated by the minister, may issue to any person applying therefor a permit to export from Canada, to such place and in such quantity—

and then it goes on:

> —and may amend, suspend or cancel any such permit.

Now, in section 10:

> The Governor in Council may make regulations:—
>
> (*a*) prescribing the terms and conditions upon which permits may be issued and shall continue in force.——

but it does not say anything in that section about regulations being made as to amendments, suspension or cancellation of permits.

The CHAIRMAN: Oh yes, "may be issued"; I would think "shall continue in force" takes care of your point.

Mr. HAZEN: The power to make regulations should be defined in clear language, and while here the Governor in Council is given the power to make regulations and to issue permits nothing is said about amendment, suspension or cancellation with respect to such purpose.

Mr. JAENICKE: Except, "generally for carrying out the provisions of this Act."

Mr. HAZEN: I would like to ask if there is a provision to that effect under the present order in council authority.

Mr. MARQUIS: Mr. Chairman, subsection (*e*) covers the point that has been raised; "(*e*) generally for carrying out the purposes and provisions of this Act."

Mr. HAZEN: No, I would not think so.

Mr. MARQUIS: The section gives the Governor in Council orders to make regulations, to issue permits and so on; and for the purpose of carrying out this section you obviously have the related power to amend, suspend or cancel permits.

Mr. HAZEN: Why do they have that section in there at all?

The CHAIRMAN: Mr. Hazen, if you refer to this publication, this brown book of regulations you will find that there is provision there for cancellation.

Mr. HAZEN: But that must be done by order in council?

The WITNESS: That is right.

Mr. HAZEN: But now that we are going to put this in the form of an Act and it is the intention to convey such powers to the Governor in Council, if he is going to have the right also to amend, suspend and cancel permits, I think we should say so in this Act.

The CHAIRMAN: When we come to section 10 I will be pleased to discuss that section also with Dr. Ollivier and draw your point to his attention.

Mr. FLEMING: The first regulation gives the minister power to cancel or suspend but it does not say anything about amending.

The CHAIRMAN: Shall section 7 carry?
Carried.

Shall section 8 carry?
Carried.

Shall section 9 carry?
Carried.

Section 10 stands.

We are now on section 11.

Mr. FLEMING: On section 11, I take it that follows largely the language of the present regulation No. 18; but I am wondering as to the necessity of it. We have heard nothing from the deputy minister yet as to the necessity for such a provision as you have in section No. 11, and I am wondering if he has anything to say on the point.

The WITNESS: Mr. Chairman, the whole procedure of present controls rests in the last analysis on the physical movement of goods across the border which is under the jurisdiction of the customs officers, and the attempt here was simply to vest in the customs officers the authority to stop improper shipments.

Mr. FLEMING: Excuse me; may I say that I had intended my remark to apply to both section 11 and section 12; I should have said with particular reference to section 12, the point there being that you are incorporating the provisions of another Act into this one in effect.

The WITNESS: Well, the purpose of doing it in this way was to avoid the necessity of setting up extensive provisions covering penalties and giving the right to stop shipments and search and so on. Customs officers must have these rights to examine a parcel of goods to make sure that it is in accordance with the permit which is entered with it. We could just duplicate the provisions of the Customs Act in this bill but it seemed a great deal more simple to deal with it in this way, and we were advised that this was a satisfactory way from the legal point of view.

Mr. FLEMING: As far as the right to search is concerned, I think that is reasonable; but when you put down the right to detain, seize, forfeit and condemn, I am just a little bit troubled about the principle, the idea of incorporating all the provisions of another Act, without sitting down and examining in detail the provisions we are incorporating by one step in this bill.

The CHAIRMAN: Of course, Mr. Fleming, you know that the Customs Act has been in force for quite a long time. It has been added to as the need has arisen. Do you not think we are on reasonable safe ground in introducing for the purpose of the enforcement of this Act the established practice in regard to the export of goods as established by this Act?

Mr. FLEMING: As established by the Customs Act, yes; but what I had in mind was the penalty which would fall. That is what I am concerned about. It includes not only search, but detention, seizure, forfeiture and condemnation as well.

The CHAIRMAN: Yes, I wonder if there is any reason though why we should depart from our general practice in regard to export penalties for breaches of the Customs Act in regard to the export of goods?

Mr. FLEMING: But you have section 13, and in that section substantial penalties are provided for breaches of this Act or of any regulations made under it. What troubles me is the idea of ours, without sitting down and examining these forfeiture provisions of the Customs Act, just incorporating them into this Act by a short clause. I was wondering about the principle. We read, in the language of section 13, substantial penalties laid down for breaches of this Act or any regulations made under it.

The CHAIRMAN: Can you see any harm that would flow from what appears to you like duplication of penalties or alternative penalties?

Mr. MARQUIS: I think the principle involved is the possibility that operating under the provisions of this Act an individual might at the same time commit a breach of the Customs Act; for instance, we might have a situation where somebody would report someone for bringing cigarettes through the customs. Points of that kind might arise.

Mr. FLEMING: I have not made a detailed examination of the Customs Act on this point relating to the detention, seizure, forfeiture and condemnation of goods, and I do not know whether other members of the committee have or not. It just troubles me that by the inclusion of a subtle phrase now which has very sweeping limits that we are in fact incorporating a penalty section over and above those proposed in this bill in section 13 for breaches of this Act or regulations made under it.

Mr. MARQUIS: Yes, but he might under a permit issued pursuant to the provisions of this Act try to bring in some commodities from the United States to which his permit does not entitle him and thereby he would be committing a breach of the Customs Act as well as of this Act. With the section in as we have it here now he can be punished under the provisions of the Customs Act; and at the same time, he could commit a breach of this Act by trying to bring in something for which he had no permit, or to which his permit did not apply, then he would be liable to punishment under the provisions of this Act as set out in section 13.

Mr. PINARD: The point which worries me is this matter of condemnation, and so on, in section 12. An individual might lay himself open to prosecution under section 13 for violation of this Act, and at the same time he might also be open for prosecution for a violation of the Customs Act; in other words a man might be prosecuted under both Acts, this Act and the Customs Act.

Mr. MICHAUD: I can see where he is liable for prosecution under the provisions of either section. A man may be guilty of trying to bring in goods and avoid the payment of duty, and at the same time he may commit the offence of trying to bring goods into this country which are not covered by his permit. He could quite possibly lay himself open to prosecution under both Acts.

Mr. FRASER: Under this, Mr. Chairman, if you are importing from the States and you give a description of the goods that were to come in, then after the goods came in and they were inspected the department might turn around and say you have given us a description of goods of a certain type and these are not of that type, they are a little different from those which you were authorized to bring in, you might be liable for prosecution.

The CHAIRMAN: Would it meet with the approval of the committee if I were to discuss this point with Dr. Ollivier with the object of adding a third subparagraph to section 13 providing against duplication of penalties?

Mr. PINARD: It also affects the question of the legality of entry.

The CHAIRMAN: Then, section 11 carries.

Sections 12 and 13 stand.

Section 14, coming into force.

Carried.

Mr. FLEMING: Mr. Chairman, there is one section I think which should be added to this bill.

The CHAIRMAN: Yes?

Mr. FLEMING: There is no provision in this bill for a report being tabled in the house. Now, it is true that this bill is to be in effect for one year, but it seems to me that it is highly important that reports should be laid on the table of the House at the opening of the next session of parliament. A report on the operations under the Act during the present calendar year. I would like to move that the following section be added to the bill:

> 15. The Minister shall prepare and lay before parliament a report of the operations under this Act as soon as practicable after the close of the calendar year 1947, and in any event within thirty days thereafter or if parliament be not then sitting, within thirty days after the commencement of the next ensuing session of parliament.

The WITNESS: I would assume, Mr. Chairman, that that would be dealt with as all the departmental activities are dealt with. It is the practice to put in an annual report of the department which would cover this.

Mr. FLEMING: That does not come to us for about ten months after the close of the fiscal year and it would not be of the slightest help to parliament at its next session in deciding whether this legislation should or should not be extended. Were it permitted to lapse on the 31st of March, 1948, then the report, of course, does not matter so much although I still think it should be tabled, but if there is any proposal that the effect of the Act should be extended, then certainly parliament is entitled to have before it such a report as I have indicated on the operation of the Act for this year. There is another reason, quite apart from the time element, why an annual report of the department will not help us here. It is this, we are dealing with a special power of government under a special Act and I think there should be a special report under this Act.

The CHAIRMAN: While we still have a quorum may we agree on when we will meet again? I would hope to be able to clear up these different points by to-morrow morning. Is it satisfactory if we call a meeting for eleven o'clock to-morrow morning?

Mr. JAENICKE: Why not this afternoon?

The CHAIRMAN: Some members of the committee desire to be in the House this afternoon, and I doubt whether I would have time to have Dr. Ollivier check these points.

Mr. FRASER: Mr. Timmins, Mr. Fleming and myself have a special meeting to-morrow morning.

The CHAIRMAN: Would any other hour of the day suit the committee?

Mr. JAENICKE: What about eight o'clock to-night?

Mr. FLEMING: Make it seven o'clock to-night, then we will not conflict with the sitting hours of the House.

The CHAIRMAN: When we adjourn, we will adjourn until eight o'clock to-night.

Mr. TIMMINS: I think Mr. Fleming made a very good point there. After all, about a year from now we will need such a report or we will not need it at all, depending upon whether we have to consider the matter.

Mr. PINARD: I understand the Act expires sixty days after the commencement of the first session.

The CHAIRMAN: I have made a note of all these different matters.

Mr. FLEMING: There is one point I overlooked. In subsection (1) I think there ought to be the same sort of addition as was made to the National Emergency Powers Act. Subsection (1) of section 14 now says it shall expire sixty days from the commencement of the first session of parliament commencing in the year one thousand nine hundred and forty-eight. I think such words as these

ought to be inserted, "Or the 31st day of March, 1948, whichever shall be the earlier date." This would cover the situation in case parliament were not called until away on in the spring. I think we all understand we are legislating here until the end of the fiscal year.

The committee adjourned at 12.35 p.m. to resume at 8.00 p.m.

EVENING SESSION

The committee resumed at 8.00 p.m.

The CHAIRMAN: Gentlemen, we have a quorum.

On section 2 of the bill, subsection (*a*); the question was raised that the definition of goods was much too wide. On re-checking the bill the law officers of the Crown are content that subsection (*a*) should be deleted. There is no need to define the word "goods."

Mr. Marquis moves that subsection (*a*) be deleted and that subsection (*b*) be re-lettered (*a*).

Carried.

Shall the section carry?

Carried.

Section 3 was allowed to stand. Mr. Fleming moves that the following words be inserted after the word council "which order shall be published in the *Canada Gazette* within fifteen days after the passing of such order;" and that the words, "published in the *Canada Gazette*" be deleted.

Carried.

Shall the section as amended carry?

Carried.

Mr. Fleming moves a similar amendment to line 24 of section 4. Shall the section as amended carry?

Carried.

Mr. FLEMING: Might we have the other amendment, Mr. Chairman?

The CHAIRMAN: The other amendment has already been moved. I understood there was no objection to it. I will read it again if you like.

Mr. ISNOR: You don't need to do that.

The CHAIRMAN: Shall the section as amended carry?

Carried.

Then section 10 was allowed to stand. Members of the committee will recall that Mr. Hazen raised a question in regard to section 10. On checking with the law officers of the Crown I believe that the objection occurred through lack of full appreciation of the other section which was grouped with section 10. In one instance it is the cancellation or otherwise of a permit by the minister whereas section 10 refers to regulation by the Governor in Council. I am sorry that Mr. Hazen is not here but I think when that is called to his attention he will have no objections.

Shall section 10 carry?

Carried.

Well, then, sections 12 and 13, why were they allowed to stand?

Mr. FLEMING: It was a matter of a double penalty question there.

The CHAIRMAN: Here again I had not read the sections with sufficient care. There is no double penalty. Section 12 simply refers to search, detention, seizure, forfeiture and condemnation. There is no fine or other penalty in section 12, whereas I am told that in some instances it is necessary not only to seize the goods but it is also proper that a penalty should be imposed. I believe uranium was one commodity given as an illustration. An attempt was made during the war, and under such circumstances there certainly should be a penalty in addition to seizure.

Mr. FRASER: Of course, that was Defence of Canada Regulations on that, was it not?

The CHAIRMAN: No, that is simply cited as an instance that might arise under this Act.

Mr. FRASER: You mean where there would be a double penalty?

The CHAIRMAN: Yes.

Mr. FRASER: You mean it would come under that?

The CHAIRMAN: Uranium was involved in this instance, and it was under export control.

Mr. FRASER: But it was also under the Defence of Canada Regulations?

The CHAIRMAN: Yes.

Shall sections 12 and 13 carry?

Carried.

In regard to Mr. Fleming's motion for a new section 15—

Mr. FLEMING: Mr. Chairman, there is a point on section 14; not later than the 31st of March, 1948.

The CHAIRMAN: I missed that; I am sorry I did not discuss that with them. I remember you raised it but I wonder what we can do about it. Would you be content to carry it on division? I understand it is going to be the policy of your party to insist on a similar clause in the omnibus bill. It can be introduced by way of an amendment in the House.

Mr. FLEMING: It is easier to get an amendment through here where everybody can discuss these things on their merits.

Mr. JAENICKE: Suppose they do extend it a few days longer to the 31st of March, say on into April.

Mr. FLEMING: I will move the amendment, Mr. Chairman.

The CHAIRMAN: All those in favour of the amendment please signify. Opposed?

The amendment is lost.

Shall the section carry?

On division.

Then, with regard to section 15, moved by Mr. Fleming, the minister accepts that section and I have a draft of it.

Mr. ISNOR: You could not compromise by having Mr. Fleming withdraw his motion now that Mr. Ilsley has accepted the section?

Mr. FLEMING: It is too late now.

The CHAIRMAN: Section 15 as redrafted by the law officers of the Crown reads as follows:—

> As soon as practicable after the thirty-first day of December, 1947, the minister shall prepare and lay before parliament, if parliament is

then in session, a report of the operations under this Act for the year 1947, or if parliament is not then in session, within the first fifteen days of the next ensuing session thereof.

You may care to have a look at that section, Mr. Fleming.

Mr. FLEMING: Thank you.

The CHAIRMAN: Mr. Fleming moves that section 15 as I have read it should be incorporated in the bill. All those in favour?

Carried.

Shall I report the bill?

Carried.

Mr. Fleming moves the bill be reprinted as amended.

Carried.

The committee adjourned at 8.30 p.m.

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND TWELFTH REPORT

No. 14

INQUIRY INTO ADMINISTRATION OF PATENT OFFICE

TUESDAY, JULY 8, 1947

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1947

MINUTES OF PROCEEDINGS

TUESDAY, July 8, 1947.

The Standing Committee on Banking and Commerce met at 10.00 a.m., the Chairman, Mr. Cleaver, presiding.

Members present: Messrs. Belzile, Blackmore, Breithaupt, Cleaver, Fraser, Hackett, Jackman, Jaenicke, Mayhew, Nixon, Ross (*Souris*), Timmins.

In attendance: Hon. C. W. G. Gibson, Secretary of State, Mr. G. D. Finlayson, Superintendent of Insurance, Mr. D. K. MacTavish, K.C., Parliamentary Agent, and Mr. A. W. R. Sinclair, Solicitor for The Canada Permanent Trust Company, Toronto.

The Committee gave consideration to a report by its subcommittee appointed to enquire into the administration of The Patent office in regard to staff, space and equipment.

The Honourable Mr. Gibson expressed his appreciation of the subcommittee's work and of its findings and recommendations.

On motion of Mr. Fraser, seconded by Mr. Timmins, the report was adopted.

(The said Report is appended hereto as the Committee's Twelfth Report.)

NOTE.—The Committee then proceeded to the consideration of a Private Bill.

R. ARSENAULT,
Clerk of the Committee.

REPORT TO THE HOUSE

TUESDAY, July 15, 1947.

The Standing Committee on Banking and Commerce begs leave to present the following as its

TWELFTH REPORT

On March 4, 1947, the House instructed your Committee to inquire into the administration of the Patent Office in regard to staff, office space and equipment.

Your Committee appointed a subcommittee to hold a thorough inquiry and report back. Your Committee has received the following report from its subcommittee which it has considered and adopted as its Twelfth Report to the House:—

"*Report of Subcommittee* of an inquiry into the administration of the Patent Office in regard to staff, office space and equipment:—

The importance of the Canadian Patent Office in the service of Canada must be viewed both in its national and international aspect, since the Patent Office, in addition to Canadian applications, receives and deals with patent applications from the principal countries in the world.

APPLICATIONS

In investigating the backlog of patent applications in the Patent Office, it is found that some three years' work has accumulated which should be completed as soon as possible. The total number of applications uncompleted is approximately 31,400. This may be broken down into applications which have been acted upon by the examiner and await reply by attorneys, and those on which examinations have not been made by the examiner. The actual backlog is 26,000 applications.

The Subcommittee finds that the Commissioner has the Patent Office as well organized as is possible, considering the lack of office space and the lack of sufficient staff as hereinafter referred to, but at the present time there is a time lag of about two and a half to three years in the examination of patent applications. The Canadian Patent Office in this regard is in a similar position to many other patent offices since the cessation of hostilities.

It is unnecessary to go into the details of the building up of the backlog, the principal work of your Subcommittee is to recommend a method of dealing with this backlog and having it removed so that the Patent Office may function in a normal and efficient manner.

Normally the Office received nine to ten thousand applications per year, but the number has greatly increased during the war years. The office scarcely equipped to handle the normal number of applications, now finds itself totally unable to keep up with the increased number of applications. The Patent Office for the fiscal year ending March, 1945, received over fourteen thousand applications and during the last fiscal year it has received far in excess of that number.

There are two contributing factors to the creation of the backlog and these are lack of staff and lack of and the very unsatisfactory nature of the existing space. In the consideration of these we intend to recommend not only what

should be done to eliminate the backlog but to see that in the future more efficient and speedy service can be given to the public and to inventors. It must be stressed that adequacy of staff and office accommodation are inseparable.

STAFF

In order to carry on the work of the Patent Office efficiently and to overcome the backlog, it will require a technical personnel of 50 examiners and in addition they must be provided with clerical assistance, office space and library facilities and we append hereto a table showing the staff required for that purpose.

On January 1, 1939, there were 90 permanent and 24 temporary employees or a total of 114 which included 28 patent examiners in the Patent Office. On January 1, 1946, there were 64 permanent and 30 temporary or a total of 94 which included 19 patent examiners, that is, 29 less than at the beginning of the war. While this reduction of staff has improved slightly, in April, 1947, there are only 97 employees in the Patent Office and it is still 17 under the prewar establishment.

With a staff of 50 examiners and 12,000 patent applications annually, each examiner would receive an average of 240 applications per year. An examiner at present does turn out from six to eight allowed applications per week and taking the average working year, excluding Sundays, holidays and sickness, as being approximately 280 days, it will be found that an examiner should be able to examine and allow an average of 240 applications per year. The classified patent searched by the examiner to determine the prior art is principally Canadian patents but the examiners are also instructed to search British patents and at least the last ten years of the United States classified patents and any French classified patents which are available. At this point it may be emphasized that the Subcommittee was very disappointed with the number of French and American patents classified up to this date. Not only are these patents required by the examiners in the Patent Office but they are of great importance to manufacturers in Canada who search the Patent Office records to ascertain the latest development in the arts in which they are interested. A fuller development of the Patent Office Library is recommended by your Subcommittee on account of its usefulness to the Canadian people. In undertaking the work of classifying these patents, clerical service is required besides supervisory service by a technical officer and it will also mean that thoroughly trained technicial librarians should be on hand to assist in making searches and giving assistance to the public who seek information. The augmenting of the technical staff will require that the clerical staff working with the examiners in typing reports, filing cases, entering amendments and doing other allied work will have to be materially increased.

At the present time, some of the clerical staff are working for four examiners and it is physically impossible to do this work correctly. It is thought that one clerk typist for each two or three examiners or say about 18 to 20 clerk typists are necessary to relieve the examiners of routine work which they should not be called upon to do and which may be performed by a less experienced and lower paid assistance or help.

To co-ordinate all the divisions of the Patent Office there should be an Administrative Officer, since if printing a patent is to be undertaken as hereinafter recommended, it will have to be co-ordinated with the work of other parts of the Office and the Assistant Commissioner could not undertake this additional administrative work as he has other duties which fully occupy his time.

Since the termination of hostilities, the difficulty of obtaining staff is almost as great as that during the war, but for a very different reason. During

the war the men were occupied in probably a more essential work of contributing to the defence of Canada but on the return of many industrial firms to normal conditions the great number of technical men have already obtained positions in private enterprises, the salaries of which are more attractive than those offered in the Government Service and unless proper inducement can be given by adequate salaries it will be difficult to encourage engineers to enter the public service.

PATENT OFFICE SPACE

The main offices of the Patent Branch have been located in the Langevin Block, since the year 1890.

There are also some offices in the Hope Chambers on Sparks Street, in the Fraser Building on Queen Street; all of which offices we visited; and there are also offices in the Trafalgar Building on Queen Street, and in the Sovereign Building on Bank Street, which we did not visit.

Applications for patents have increased by leaps and bounds. There were only 4,628 applications at the turn of the century but there were 14,778 applications in 1946. The office space available in 1946 is apparently not much more than it was in the year 1900, and in addition, the fact that it is now in five different locations greatly increases the problem.

Other Departments of the Government occupy space in the Langevin Block mainly the Post Office Department. On the second floor of the Langevin Block there are long rows of filing cabinets of Patent Office records in the centre corridor, extending far beyond the offices allotted to the Patent Office itself. There are some rooms here and there in the Langevin Block which have been assigned to the Patent Office from the basement up to the garret where the photostatic room is situated. The rooms allotted to the Patent Examiners are overcrowded. There are two or three to a room, and a small room at that, and they cannot possibly work satisfactorily or with efficiency under such circumstances. Because of lack of space the records of American patents are stored in three different places two different places in the Langevin Block and another storage space in the Hope Chambers. This is very awkward, not only for the examiners, but also for the Patent Attorneys and the general public who should have access to records such as these.

The Patent Office owns a very valuable library of British patents and in case of a fire the loss of this library would be irreplaceable. The space in which this library is situated is not fireproof.

The whole Patent Branch should be in one building. Perhaps there is no branch of the Government in which it is more necessary to make references and cross references to matters before the Commissioner and his assistants than in the Patent Office, and files should be readily available at all times. All the documents and matters pertaining to patents should be filed in a place where the staff, and even the public, can have easy access to these files and records.

The Commissioner estimates that at the present time he has about 15,000 square feet of office space and 8,000 square feet of storage space at his disposal and he estimates that he will need approximately an office space of 50,000 square feet together with 40,000 square feet for filing purposes and 20,000 square feet for printing patents as hereafter mentioned, or a total space of 110,000 square feet, and we append, hereto, a table showing details of the space requirements.

PRINTING OF PATENTS

Our Patent Act provides for the printing of patents. This is not being done at the present time as the Patent Office has no printing plant facilities.

Down to the present time all copy work is done on typewriters, which is not satisfactory and which is very expensive, having a cost ranging from $2.00 to $4.00 per patent. The printing of patents is an international obligation which Canada has assumed but has not fulfilled.

After making full inquiries your Subcommittee finds that a suitable printing plant of adequate capacity using the offset process, could be installed at a cost, including all necessary equipment, of approximately $36,000.00. The yearly labour cost of operating such a plant, with a capacity for printing 75 copies of each patent issued, including specifications, claims and drawings, would involve an annual expenditure of $47,700.00. The yearly cost of paper, materials, depreciation, etc., would be about $100,000.00, making a total yearly cost in all of $148,000.00. If a charge is made for these printed copies of 25 cents each, similar to what is charged in other countries, the amount received for copies would not fully meet the cost of printing, however, the Patent Office has through the years earned a substantial surplus and the newly revised schedule of fees will be more than adequate to take care of the cost of printing.

RECOMMENDATIONS

Staff.—Attached to this report is an appendix showing the minimum staff which should be supplied to the Patent Office, and your Subcommittee recommends that this staff should be supplied at the earliest possible date.

Office Space.—Attached to this report is an appendix showing the amount of office space, storage space, etc., required by the Patent Office, and your Subcommittee recommends that when the Government is expanding its building program for the housing of Government departments, suitable space both as to size and of fireproof construction should be made available to the Patent Office.

Printing of Patents.—Your Subcommittee recommends that a printing plant by the offset process should be installed in the Patent Office for the printing of patents, specifications, claims and drawings, and that the necessary staff be employed to operate the same at the earliest possible date.

All of which is respectfully submitted,

JEAN LESAGE,
Chairman."

All of which is respectfully submitted,

HUGHES CLEAVER,
Chairman.

CORRECTIONS

The following communications in respect of errors in the printed record were transmitted to the Clerk of the Committee by the King's Printer:

TORONTO, ONT.,

April 2, 1947.

The King's Printer,
Ottawa, Ontario.

Dear Sir:

Please refer to Minutes of Proceedings and Evidence No. 10 *re* Bill No. 11, dated Thursday, March 20, 1947 and in particular the evidence of Mr. G. R. Marshall on page 280.

Mr. Marshall wishes to draw your attention to an error in your printed record of his evidence. On line 12 the word "unchanged" should have been *"uncharged"*.

I do not know your procedure in connection with correcting an error but thought that you would like to be advised.

Yours very truly,

CANADIAN EXPORTERS' ASSOCIATION

(Sgd.) A. F. TELFER,
General Manager.

TORONTO, ONT.,

April 7 1947.

The King's Printer,
Ottawa, Ontario.

Dear Sir:

With further reference to my letter to you of April 2nd, Mr. Marshall wishes to draw your attention to another error in the printed record of his evidence.

This is on the same page and the same line in connection with the first error I reported to you and the word "revised" should read *"revived"*.

Yours very truly,

CANADIAN EXPORTERS' ASSOCIATION

(Sgd.) A. F. TELFER,
General Manager.