

dicata. The law of 1872 extended the right of obtaining patents to all comers, and appointed a special tribunal to apply the law in the manner mentioned in the 28th section hereinbefore quoted.

So far, the intention of the Legislature, as shown by the history of the legislation, is evidently to guard against the danger of Canadian patents, granted to aliens, being made instrumental to secure the Canadian market in favour of foreign patents to the detriment of Canadian industry; for, in the measure that the right of taking patents was extended, the remedy against the dreaded danger was made more ample, but at the same time the jurisdiction over such cases of dispute as might arise was transferred from the judicial tribunals to the administrative tribunals, evidently for the purpose of avoiding an overstrict application of the provision made against the possible evil of a patent being taken for the sole purpose of depriving Canada of the use of a useful invention. The 28th section is also intended as a sort of protective policy in favour of Canadian labour. The Legislature has, certainly not without intention, provided for a kind of paternal tribunal, formed by the Commissioner of Patents, the natural protector of patentees, which intention can be no other than that every case should be adjudicated upon in a liberal manner.

The duty of this tribunal is, therefore, on one hand, after having satisfied itself of the facts, to apply the remedy if the mischiefs provided against by the statute have been really committed in intent or effect; and, on the other hand, to guard against the cruel injustice of inflicting such a punishment as the total destruction of an acquired and vested right, when no real damage was either intended or done. The common principle of justice which says that when there is no injury inflicted no damages are to be granted, and that when no offence has been committed no penalty is to be imposed, must govern this matter as well as the principle that no offender should be sheltered from the punishment for offence or injury perpetrated by him.

In order to arrive at a correct interpretation of the words *construction or manufacture*

*of the invention*, it is necessary to well understand and carefully consider the nature of the obligation thereby imposed.

As to Patents, it applies to every Patent granted; as to subjects, it applies to every conceivable object which may be invented or improved; as to persons who have the right to exact it, it applies to all inhabitants of the Canadian Confederacy; as to extent of territory, it applies to the whole Dominion from Ocean to Ocean, and to every Province and locality therein; as to time, it applies to 13 out of 15 years of the longest Patent and to 3 out of 5 years of the shortest.

This simple enunciation of the nature of things to which the law refers, is sufficient to demonstrate that the law maker could not have had in contemplation to force, on penalty of forfeiture, the Patentee to actually fabricate his invention with his own capital, within specific establishments, with his own tools, and to keep stock for every moment of the existence of his privilege; and where? All over the Dominion, and whether he has purchasers or not.

The Patent might be for a process, for an object to be used in conjunction with something else or for an improvement on another Patent still in existence; it might be for a railway bridge, switch, or spike; it might be for a mail bag, and in all these cases it does lie within the power of others than the Patentee to say whether the invention shall or shall not be used at a given time or at any time.

Therefore the real meaning of the law is that the Patentee must be ready either to furnish the article himself or to licence the right of using, on reasonable terms, to any person desiring to use it. But again that desire on the part of such a person, is not intended by the law to mean a mere operation or motion of the mind, or of the tongue; but in effect a *bond fide* serious and substantial proposal, the offer of a fair bargain accompanied with payment. As long as the Patentee has been in a position to hear and acquiesce to such demand and has not refused such a fair bargain proposed to him, he has not forfeited his rights.

If it were necessary to furnish a collateral proof of this intention of the Legislature,