

The defendants say that registration was not effected without right or irregularly. It had no effect. Their claim as a judicial hypothec is unfounded. The demand of radiation was made and it was not consented to, and the plaintiffs are entitled to have it done.

Judgment for the plaintiffs declaring the pretended hypothec radiated, and that defendants should pay costs of certificate of registration and costs of protest, &c.

Panneton & Mulvena, for plaintiffs.
Hall, White & Cate, for defendants.
(L.E.P.)

PATENT OFFICE.

OTTAWA, February 15, 1877.

Before THE DEPUTY OF THE MINISTER OF AGRICULTURE.

BARTER V. SMITH.

[Concluded from page 215.]

The views taken here on the question at issue are fully sustained by the construction and interpretation put on similar or identical legal enactments in other countries. The jurisprudence established, and the doctrine laid down by Jurists and Patent Experts in countries where the Patent laws contain the same dispositions as ours about *manufacturing* and *importing*, appear, from extensive reading on the subject, unanimous. It will be sufficient to enter into a short exploration of this ground to prove the assertion of such common consent of nations in the matter.

In England the Patent laws do not contain the same prescription as our statute presents, and no *specific* provision is made to secure to the public the use of the invention, or to home labour the benefit of its working, but there exists in the present Letters Patent issued in England a proviso which shows, by analogy, what doctrine prevails on the general question of the obligations of the Patentee, when he is bound to furnish his invention, under pain of forfeiture.

Among the circumstances that cause English Letters Patent to "*cease, determine and become void*," is the following: If he, the Patentee, "shall not supply or cause to be supplied for our service all such articles of the said invention as he shall be required to supply by the officers or commissioners administering the Department of our ser-

"vice for the use of which the same shall be required, in such manner, at such times and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers . . . &c." This shows that it is not supposed that the legitimate obligation of the Patentee towards the customer is to keep open shops, to keep stock, but to supply the invention, only when requested to do so, by a formal demand accompanied with a settlement of the Royalty.

Similarly to the laws of England, the present Patent laws of the United States do not contain the condition of lapsing for reason of non-manufacturing or of importing: the absence of such dispositions from the Patent Acts of those two prominent manufacturing countries is, it must be conceded, antagonistic to the idea of Draconian interpretation of the said conditions where they do exist.

The obligation of manufacturing in the United States did exist for a certain time: it was introduced by a short Act in 1832; this Act was repealed by the Patent Act of 1836, but a provision of the kind was maintained in the last mentioned Statute. By the 15th section, the defendant in an action of damages, was permitted to plead the general issue: at the end of the enumeration of defects, we read:—" . . . or that the Patentee, if an alien at the time the Patent was granted, has failed and neglected, for the space of eighteen months from the date of the Patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the Patent issued; in either of which cases, judgment shall be rendered for the defendant with costs."

The provision of this clause was invoked in one case of an assigned alien's rights (*Tatham v. Lowber*).* Messrs. Justices Nelson and Betts, State of New York, decided:—

"That even if the plaintiffs took their right with the condition attached to alien Patentees, yet they had satisfied the Statute: that they need not prove that they hawked the patented improvement to obtain a market for it, or that they endeavored to sell it to any person; but that it rested upon those who sought to defeat the

* Blatchford C. C. Vol. II., pages 49 to 51.