That it is plain that machines of a large size and costing several hundred dollars, and especially a process which involves the construction of a mill to apply it to, are not things which may be made in advance of demand and kept in stock. For several years the Canadian millers have waited for the result of experiments carried on in the United States with these Middlings Purifiers, and it is only of late that a demand has been created for them in Canada;

That the whole evidence given by Barter and his witnesses is mere hearsay, mere conversations filtered through the medium of interested parties. The subsequent declarations of Barter amount to an admission that he tried to get information on what he had already presumed, in advance of such information, to become a witness;

That Rakes' alleged answers to the enquiring Barter and friends, are susceptible of an interpretation very different from that attributed to them in the declarations filed in this case. Smith admits that he did sell to the millers, on payment of a royalty, the licence to use his invention; but nothing proves that Smith was the channel through which Rakes undertook to manufacture the machines imported at Thorold; the correspondence between Barter and Spink, filed by Barter himself, is a proof to the contrary;

That the whole evidence adduced by Barter is quite consistent with the interpretation that the negotiations which have caused the importation of machine 2257 are totally independent of Smiths' contract with the millers for the privilege of using his process of milling, or even the imported machine; the whole in fact proves very little more than the Customs Records, which show that the goods were sent by Rakes to the miller. To have imported or caused to be imported in the spirit of the statute, the patentee must be either the consignee, the consignor or the owner of the thing imported. Smith is proved to be neither the consignor nor the consignee. Was he the owner? Nothing is proved to show that he was;

That there is not evidently any proof that Smith, the patentee, did refuse manufacturing for or selling to any applicant, and there is no proof that he imported or caused to be imported any of his three inventions; but to add, to the want of proof of the plaintiff, a positive proof that the defendant has done nothing to forfeit his patents, he (the counsel) filed an affidavit of Smith and a statutory declaration of Rakes the manufacturer.

Edgar, Fenton & Ritchie, disputant's counsel, argued in substance:

That, to start with, the application of the defendant for an extension of time is an admission of non-manufacture, besides containing in words the admission that he did not manufacture. The stringency of the law rests on the word *unless* the patentee does a certain thing, which ought to be construed in its strictest sense, because it refers to an exclusive privilege which the Legislature intended to restrict in certain expressed limits; the patent is a restriction in favor of an individual against the public and these conditions are restrictive upon the individual in favor of the public;

That the law is not to be interpreted to mean what it ought to mean or as any one would like it to be, but as it is. The patentee loses his patent *unless he shall have commenced, &c.* (see the 28th section hereinbefore cited). To the plain condition of manufacturing, the law adds another condition, which is that it must be done in a manufactory; if the law had stopped at the word *patented*, it might have been made in a cellar, but the Act requires that it must be done openly. The letter of the law must be taken as it is, because it shows the spirit of the law. Here the Counsel quoted passages from Potter's Dwarris on interpretation and construction of the laws);

That this tribunal has no latitude; it is a Court in which the Minister, or his Deputy, is not acting as an executive officer, who, in the ordinary dealings of the Patent Office, can exercise a certain discretion and show a certain leniency; here he is bound to take the words of the law. There are cases in which the strict meaning of the law would create impossibilities, such as, for instance, the case spoken of in a previous conversation, of a graving dock being patented; if the law had not provided for such cases it would become necessary to fight for the spirit of the law as applied to an exceptional case: but the statute has provided for such cases by subsection 2 of the 28th section, which gives to the Commissioner the power of granting an extension of time, which may be for any number of years of the