Notwithstanding that this tribunal is not restricted by fixed rules of practice, it is nevertheless bound to abide by the rules of common justice, by the dictation of common reason, and to be enlightened by such decisions as may be held to embody the common consent of mankind.

It is apparent that this case, being one in which the disputant urges the forfeiture of an acquired right which the respondent is presumed not to have lost nor alienated, the burden of proof cannot be admitted to lie on him who holds a public title which must be taken as good so long as nothing to the contrary is established, even if the evidence involved the proof of a negative. In this case the evidence does not rest on establishing a negative but on ascertaining the existence of positive facts.

It would not be right, however, to say—and this ought not to be taken as meaning—that in no case should the respondent be forced to make discovery; there might be cases in which, from the position of the parties and the aspect of affairs, this tribunal might be compelled to make use of all the latitude left to it by the statute, in order to attain the ends of justice. The nature of the 28th Section of the Patent Act, both in providing against certain mischiefs with certain remedy and in establishing a special tribunal to mete out the remedy, involves a policy which goes, on public grounds, beyond the limits of any particular case to be adjudicated upon. This is evidently the reason why the Legislature has selected the Minister of Agriculture to constitute the tribunal to decide such questions in which it will avail of the practical knowledge of and acquaintance with the nature and bearings of such matters acquired in the daily working and dealings of the Patent Office.

It has been hinted in the arguments, that should a decision intervene declaring a patent null and void, it ought to specify that the patent was voided at the date of the expiration of the delay mentioned in the law, and has stood null since to all intents and purposes. As this incidental question touches rights which do not come within this jurisdiction, it appears clear that, in duty and through respect for the higher Courts, this tribunal is forbidden from entering such domain, even by expressing an opinion, being bound to restrict its investigations and decisions within the narrowest possible limits. The law orders that the Minister of Agriculture should say "*whether a patent has or has not become null and void*," consequently the judgment is simply to decide *it has* or *it has not*, as the case may be: all the consequences that may follow are to be adjudicated upon by the ordinary judges of such disputes between citizens.

There is a view of the subject matter of patents for inventions invoked in this case, which it is of great importance to examine, as bearing in a marked manner on the interpretation and construction to put upon both law and facts connected with the working of patents; the question comes to whether a patent should be held as an embarrassing privilege, a kind of onerous monopoly which constitutes the patentee as a sort of adversary to the liberty of the subject, and as opposed to public interest, by the very fact of his holding a position which then, it is argued, should be jealously watched and which ought to be made to terminate at the first opportunity.

It is universally admitted in practice, and it is certainly undeniable in principle, that the granting of Letters Patent to inventors is not the creation of an unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favour; but a contract between the State and the discoverer.

In England, where Letters Patent for inventions are still in a way treated as the granting of a privilege, more in words, howevet, than in fact, they, from their beginning, have been clearly distinguished from the gratuitous concession of exclusive favours, and therefore, were specially exempted from the operation of the statute of monopolies.

Invention being recognized as property, and a contract having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal interpretation of the terms of the contract, have happened, the patentee's rights ought to be held as things which are not to be trifled with, as things sacred, in fact, confided to the guardianship and to the honor of the State and of the Courts.