PATENT OFFICE, CANADA.

Before THE DEPUTY OF THE MINISTER OF AGRICULTURE.

OTTAWA, February 15, 1877.

BARTER v. SMITH.

Patent Act of 1872—*Onus probandi—Importation after twelve months—Non-manufacturing within two years — Interpretation of provisions of Patent Act.*

1. *In case of a dispute under the Patent Act of* 1872, *the onus probandi lies on the disputant who seeks to defeat the patent, and not on the respondent,—the patent held by the latter being a public title which must be taken as good so long as nothing to the contrary is established, even if the evidence involved the the proof of a negative.*
2. *An invention being recognized as property, and the granting of letters patent being a contract between the State and the discoverer, the patentee's rights are not to be interfered with, except for serious reasons deduced from the liberal interpretation of the terms of the contract.*
3. *The words "carry on in Canada the construction or manufacture" mean that any citizen of Canada residing on federal soil has a right to exact from the patentee a licence of using the invention patented, or to obtain the article patented for its use at the expiration of the two years' delay, on condition of applying to the owner for it, and on payment of a fair royalty; and the words "imports or causes to be imported into Canada" imply that injury is done to home labor.*
4. *Where a patentee refused no one the use of his invention, and the importation made with his consent after the expiration of the year was inconsiderable and inflicted no injury on Canadian manufactures, but was made as a means to create a demand for the invention which the patentee intended to manufacture and did in fact offer to manufacture in Canada, it was held that he had not forfeited his patent, though the manufacture or construction of the patented article had not been commenced in Canada within the statutory delay.*

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J. C. TACHÉ, DEPUTY MINISTER:

The importance of this case, serious in itself, is enhanced by the circumstance that it is the first of its kind in Canada, and that the legal interpretation and the appreciation of facts which it involves apply to very many Patents granted, and, eventually, to all Patents to be in future granted. For these reasons ample time has been devoted to the study of the question, and it has been thought not only desirable, but almost necessary to enter at some length into the explanation of the principles and construction of facts upon which the present decision is based.

It seems proper to take up first the preliminary points raised in the case, which were at once decided, as stated in the report of the proceedings hereinbefore given.

It was asked that it be ruled that the *onus probandi* lies with the respondent, inasmuch as this tribunal, being an exceptional one, not restrained by any form of proceedings or subjected to any special kind of evidence, and having no power to compel witnesses to appear, is bound to exact from the respondent proof that he has complied with the requirements of the law; and furthermore, inasmuch as to rule otherwise would be imposing upon the disputant the duty of proving a negative.

The constitution of this tribunal is not of an unknown character; such jurisdiction is given to the administration in many countries; and in some, in the Austro-Hungarian Empire, for instance, that jurisdiction extends so far as to vest in the Executive officer the exclusive power of deciding all cases concerning invalidity or lapsing of patents. The tribunal is not devoid of all means of getting at the truth, the fact of not being restrained by fixed rules of procedure and stringent modes of evidence, being a compensation for the want of power to compel witnesses. It is self-evident that it was the intention of the law maker to exact only one condition in the judge's mind in delivering his decision, that he be convinced of the substantial justice of such decision on sufficient information, no matter how obtained.