PATENT OFFICE.

Before THE DEPUTY OF THE MINISTER OF AGRICULTURE.

OTTAWA, Nov. 1876.

BENJAMIN BARTER v. GEORGE THOMAS SMITH.

Patent Act of 1872—*Forfeiture for non-manufacturing—Importation after twelve months.*

This case was one in which a *dispute* was raised against the existence of three patents granted to the respondent in 1873, for alleged forfeiture on the ground of *non-manufacturing*, within two years of the date of each Patent, and on the ground of *importing* after twelve months, in the terms of section 28 of "The Patent Act of 1872."

SECTION 28.—Every Patent granted under this Act shall be subject and expressed to be subject to the condition that such patent and all the rights and privileges thereby granted shall cease and determine, and the Patent shall be null and void at the end of two years from the date thereof, unless the Patentee or his assignee or assignees, shall, within that period, have commenced, and shall, after such commencement, continuously carry on in Canada the construction or manufacture of the invention or discovery patented, in such manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; and that such Patent shall be void if, after the expiration of twelve months from the granting thereof, the Patentee, or his assignee or assignees, for the whole or part of his interest in the Patent, imports, or causes to be imported into Canada, the invention for which the Patent is granted; and provided always, that in case disputes should arise as to whether a Patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture or his Deputy, whose decision shall be final.

"2. Whenever a Patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the Commissioner may, at any time more than three months before the expiration of that period, grant to the Patentee a further delay on his adducing proof to the satisfaction of the Commissioner that he was for reasons beyond his control prevented from complying with the above-mentioned condition."— "*Patent Act of* 1872," *as amended in* 1875.

The petition addressed to the Honorable the Minister of Agriculture (bearing date the 10th October, 1876,) by the disputant, represented that Patents 2409, for a process of Milling; No. 2257, for a Flour Dressing Machine, and No. 2258, also for a Flour Dressing Machine, granted to George Thomas Smith, in 1873, are null and void, and should be so declared for non-compliance with the provisions of the 28th section of the Patent Act of 1872, requiring manufacturing within two years and forbidding importation after twelve months.

The petition asked that the Patentee should be required, in case he should state his inventions have been manufactured, to furnish the particulars. The petition furthermore alleged that importations of the said inventions had taken place on the 25th day and on the 29th day of April, 1876.

The parties were notified to appear with their witnesses before the Deputy of the Minister of Agriculture at the office of the Minister of Agriculture, at Ottawa, on the 26th October, 1876; but on a joint request of both parties, the hearing was postponed to the 3rd November.

On the 3rd November, the disputant opened his case by reading and filing his own statutory declaration in support of the allegations of his petition; the analysis of which declaration is given hereinafter. On this evidence, and in regard to further proceedings, the case was preliminarily argued in substance as follows:—

The counsel for the disputant contended: That having made a case, and having established *prima facie* evidence of the delinquency of the Patentee, the respondent should be forced to assume the burden of proof, by reason, first, of the peculiar constitution of the present tribunal, instituted to protect the public against the extension of the patentee's privileges; second, from the absence of power to compel witnesses to appear; and, third, because it would otherwise be forcing the disputant to prove a negative;

That on failure, on the part of the respondent, to adduce evidence of his having manufactured within two years, and on failure of rebutting the *prima facie* proof of having imported his inventions, the case should be decided against him;

That, in connection with the importation, it was clear that the importation of the machinery of Patents No. 2257 and No. 2258, did cover the importation of the process of Patent No. 2409, the former being the necessary means of operating the last mentioned invention;