

"Patent to prove that the plaintiffs neglected or refused to sell the patented invention for reasonable prices when application was made to them to purchase."

The French legislation, as does the legislation of most countries, contains conditions similar to those of the 28th section of our "Patent Act of 1872."

The doctrine and jurisprudence adopted on the subject is amply summed up in the quotations of two eminent writers on Patents and Patent laws, which will follow, after citing the text of the law.

The French law reads thus:—Article 32. "Shall be deprived of all his rights;

"..... 2. The Patentee who shall not have worked his invention in France, within a delay of two years from the date of the signature, or who shall suspend his operations for two consecutive years unless he show cause for such inactivity. 3. The patentee who will have introduced into France articles manufactured in foreign countries similar to those guaranteed by his patent."

It must be remarked that the last proviso, at the end of paragraph 2, of the French law is similar in effect to the means adopted by our statute for making the non-manufacturing a condition of nullity to take effect only when rendered applicable by an administrative decision. The nullity enacted by the French law can be pleaded in Courts; the nullity enacted by our Act is conditional upon a decision of the Minister of Agriculture, who alone is to say whether the condition is to be enforced or not.

Renouard, after quoting Arago's speech, in the *Chambre des Députés*, (1844) against the stringency of the then proposed legislation, goes on to explain how it is to be understood:—

"The tribunals will appreciate, he says, according to circumstances, whether it has been worked or not; whether or not the working has been interrupted; if the reasons of not working are sufficiently justified." (*)

This was said by a magistrate of the highest order and a specialist, in anticipation of the judicial decisions which afterwards con-

(*) Renouard—*Traité des Brevets d'Invention*, Paris, 1844—Page 243.

firmed his views of the matter; many years after, Bédarride, reviewing the jurisprudence established on the subject, recapitulates it, and exposes the doctrine in the following sentences:—

"The spirit of the law is therefore indubitable. It intends to punish only voluntary, premeditated, and calculated inactivity." (1)

It is to be remarked that Bédarride is not a loose but rather a strict interpreter of laws; he holds that the laws of France do not admit of prætorian interpretation, and are not to be mitigated by the Courts, no matter how severe and hard they may be. Bédarride again says:—

"The voidance of paragraph 2 of article 32, touches only voluntary inactivity. The law wishes to punish for inaction, the only one who has willingly remained idle. *It would have been really too unjust* to extend the penalty to the one who has abstained on account of circumstances independent of his will." (2)

As regards the importation, Bédarride says:

"The prohibition having for its unique object the protection of national labour, it would have been unreasonable to extend it to cases in which such protection could not be injured." (3)

"The judicial authority, exclusively inspired by this spirit, refused to apply the penalty of forfeiture, when the importation, although non-authorized, was not in its nature susceptible of damaging national labour." (4)

"It is proper to decide to-day, as it was decided by the courts of Douai and Paris in 1846 and 1855. Should not be considered as violation of the prohibition of the law, the importation of a few specimens of the articles or the importation of machines, having no other object in view than to find either associates or licences for the invention." (5)

It would only be a matter of time and labour to extract similar authorities and decisions from the records of other countries where the laws are either identical or similar to our

(1) Bédarride—*Commentaires des lois sur les Brevets d'Invention. Marques de Fabrique et de Commerce*, &c., &c. Paris, 1860—Volume I, page 448.

(2) Bédarride—Vol. I. p. 450.

(3) (4) (5) Bédarride—Vol. I, page 455—457—463.