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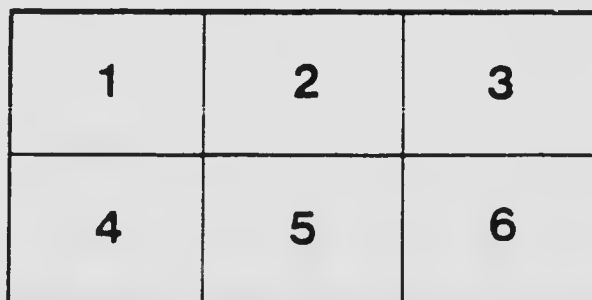
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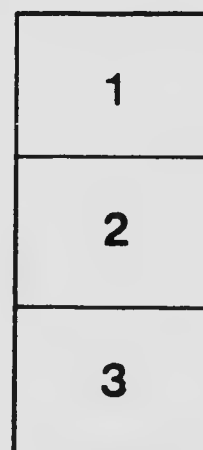
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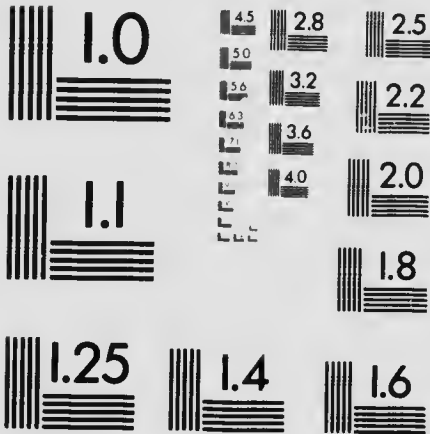
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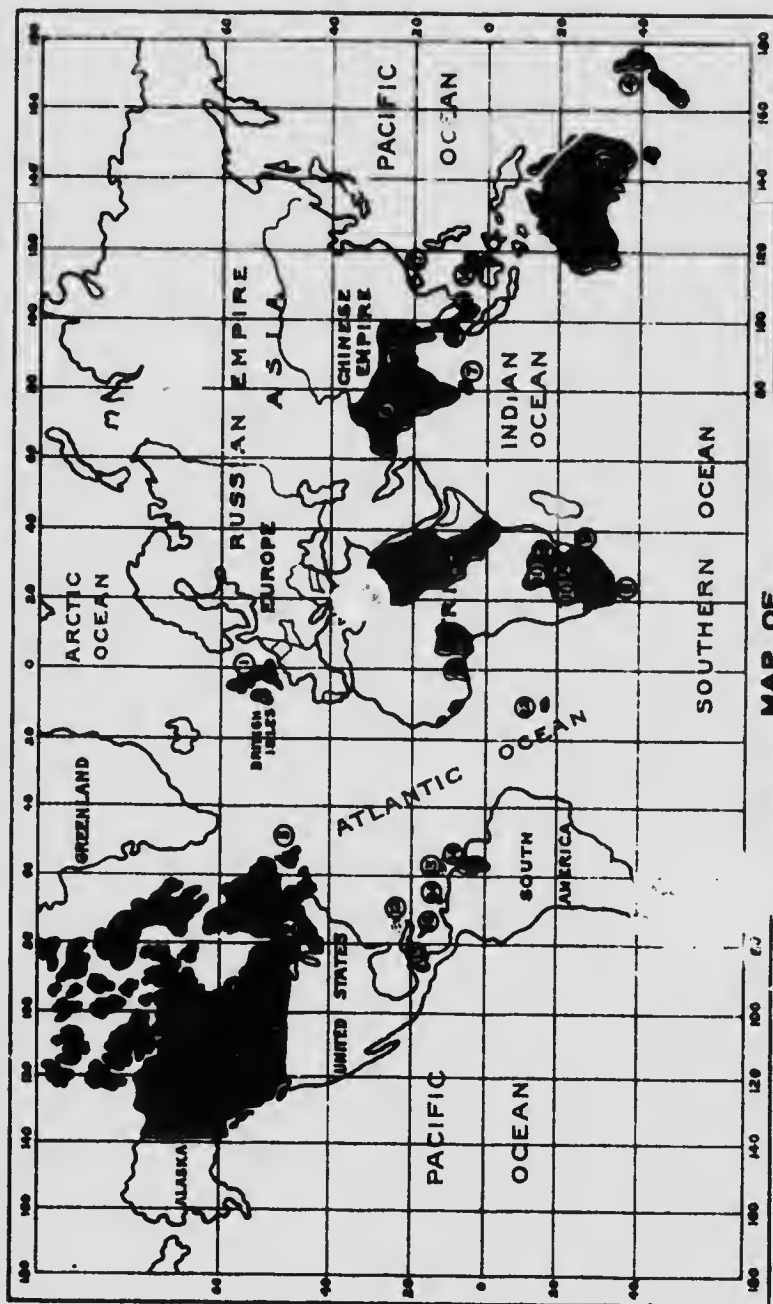
A Uniform Patent Act for the British Empire



FREDERICK H. LETHBRIDGE, M.A.

of the Law of Patents, and of the Law of Trade Marks

London: The Law Book Co. Ltd.



THE BRITISH EMPIRE

Showing Possessions Where Patents are Granted, by Number, as Indexed Below:

- | | | | | |
|----------------------------|----------------------|-------------------------|-------------------|-------------------------|
| 1. Great Britain & Ireland | 6. India | 11. Orange River Colony | 16. Br. N. Borneo | 21. Rhodesia |
| 2. Canada | 7. Ceylon | 12. Bahamas | 17. Hong Kong | 22. St. Helena |
| 3. Australia. | 8. Cape of Good Hope | 13. Barbadoes | 18. Jamaica | 23. Straits Settlements |
| 4. New Zealand | 9. Natal | 14. Br. Guiana | 19. Mysore | 24. Trinidad |
| 5. Newfoundland | 10. Transvaal Colony | 15. Br. Honduras | 20. Perak | 25. Zululand |

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A Uniform Patent Act
for
the British Empire

An Address

delivered at the Annual Meeting of the Toronto Branch
of the British Empire League on December 8th, 1905

By

Frederick B. Fetherstonhaugh, M.E.

of Osgoode Hall, Barrister-at-Law
Counsel and Expert in Patent Causes

TORONTO
1906

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R. CHAIRMAN and gentlemen of the British Empire League, it is much diffidence, that I approach a subject with which I am familiar, but which, when viewed from an Imperial standpoint, has such far reaching possibilities, and that subject is a uniform IMPERIAL PATENT ACT OR ACTS

to cover Great and Greater Britain and dependencies including Great Britain and Ireland, Canada, Australia, Tasmania, New Zealand, Newfoundland, India, Ceylon, Cape of Good Hope, Natal, Transvaal Colony, Orange River Colony, Bahamas, Barbadoes, British Guiana, British Honduras, British North Borneo, Hong Kong, Jamaica, Mysore, Perak, Rhoderia, St. Helena, Straits Settlements, Trinidad and Zululand, the Colonies where Letters Patent may at present be obtained.

It may be a matter of surprise to you that I should advocate a measure, which, if consummated, would undoubtedly curtail the amount of business of Pat

Solicitors, Agents, and others of the same profession as myself, but I can assure you that I feel that consideration of the public good should be paramount to private gain.

The great theme, which without doubt occupies the attention of all thinking Britons of to-day, is how to promote the unity and further consolidation of the British Empire. Mr. Chamberlain's Policy and the Fiscal question have occupied the attention of the whole of Great Britain and Ireland since early in the summer of 1903. It strikes me forcibly that not only is the Fiscal question and the question of defence important questions in reference to trade and commerce, but also an Imperial Act to cover Letters Patent of invention is equally, if not more, important. Now, invention is the base of all progress, Without it, where would be our home comforts of to-day. Without it, where would be the Empire in the matter of transportation and communication across the Continents and various parts comprising the Empire, and the seas, whereby these parts are linked together. Without it how could we have produced those marvellous instruments of warfare, such as the guns of our Army and the guns and battleships of our Navy, which are so necessary for our defence.

You will, therefore, readily perceive that Letters Patent of Invention are necessarily involved in the progress of any nation which would achieve greatness, and for this reason improvements in the Arts and Sciences,

which Letters Patent cover, are among the greatest factors for the material advancement of a nation by imparting to it self-reliance and independence of thought and action, so requisite in fighting the great battle of commercial supremacy among nations.

It is not my purpose here to discuss the Fiscal question, nor the great advantage, which I believe will accrue to the British Empire by the consummation of Mr. Chamberlain's Policy. I consider the possibility of a Patent Act for the British Empire, and how it will serve in the advancement of each of its constituent parts and of the Empire as a whole.

It is not my intention as a free born British subject and as a citizen of the premier Colony of the Empire to advocate any measure which would lessen in the slightest degree the control of internal affairs which Great Britain has bestowed on the self-governing Colonies and which they now freely exercise.

The Patent Law of each individual portion of the Empire is based in a great measure upon that of Great Britain, where all Patent Law had its foundation.

It is well known to all Patent Lawyers, Solicitors and Agents and others interested in Patents, of the great differences which exist in the Patent Laws of each and every portion of the Empire. Now, it appears to me that there should be no reason why, at the next Colonial Conference in London, England, this subject, which is

most intimately connected with the welfare and development of the Empire, viz., a uniform Imperial Patent Act, should not be taken up.

There, of course, would be a great many suggestions from all parts of the Empire, which would have to be taken into consideration and undoubtedly the consideration of the Acts now in force throughout the Empire would be most important. Representatives might be chosen from Great Britain and the Colonies to frame an Act which will be beneficial and equally applicable to all the States and Colonies. The Act should, in my humble opinion, be first passed in London, the hub of the Empire, and then passed in all the Colonies. This Act should be such an Act that it would not prevent, but rather set forth that each self-governing Colony has the right to legislate under the Act as to any question, which would effect the commerce and trade of such individual Colony, such as the question of Manufacture and Importation and Compulsory License.

A great benefit to inventors, manufacturers and others interested in inventions and the protection of the same throughout the Empire, which might readily be provided for, would be the printing of patents. Printing Bureaus could be established in Great Britain and the principal self-governing Colonies, such as Canada, Australia and South Africa, for the lithographing of Patents, and copies of patents could be issued in these portions of the

Empire, and not only in these portions, but for the portions contiguous to them. For instance, the patents granted not only in Canada, but also in Newfoundland and the Bahamas and Jamaica might be printed in Canada, or as otherwise might be arranged, thus saving expense of printing bureaus to the smaller Colonies. All copies of patents wherever printed within the Empire would be distributed to the other portions gratis, so that each portion would be conversant with the other portion as to what improvements are being made in the Arts and Sciences, and this, too, at a minimum expense.

A provision should, in my opinion, be also made whereby a patentee in any Colony should have the right to have his patent extended to any other portion of the Empire upon the payment of the fee prescribed by such Colony. In other words, an Imperial Act, such as is proposed, is not intended to take away from any Colony or State the right of granting patents, but still give each State that right, and further is intended to cheapen the cost to the inventor and manufacturer, as necessarily the printed specification and drawings of one State of the Empire could be utilized in any other State in extending the patent to such State, thereby conferring a great benefit on inventors and manufacturers.

There should be a provision, and this would be for the benefit of the public in every portion of the Empire,

that if within a year, *or say two years*, the inventor or manufacturer owning the patent in the country where it has been granted should not apply in a certain Colony or state of the Empire to have patent extended to such State, then in such case the invention should become public property in such Colony or State; provided, however, that if the inventor applies within such period aforesaid, that in each and every Colony where he applies within the time limit he shall be granted the exclusive privilege as first inventor, to make, use and sell his invention within such State or States.

In analogy to this might be mentioned the International Union for the protection of Industrial Property, which gives to Citizens of States which are members of the Union certain rights for a certain period of one year as to obtaining patents in the other States. What I propose is to some extent based on this, but is much broader and more beneficial to the public of the Empire at large.

Among the many advantages which would accrue from such an Act would be :

All Letters Patent would expire at the same time and consequently the public in every portion of the Empire would acquire the right to use the invention at the same time.

After a patent has been taken out in the State of origin of the invention the cost of patents subsequently

taken out in the other parts of the Empire would be greatly reduced as compared to present charges, and yet without reducing the Government fees in force and consequently the revenue in the separate Colonies.

An examination as to novelty having been made in one of the parts of the Empire, no further examination would be required in any other part, thereby facilitating the speedy grant of a patent subsequent to the patent of origin, thus providing for the prompt introduction of an invention in each separate Colony or State.

The cost to the different Governments maintaining their respective Patent Offices would be reduced to a minimum, for the reason that the examinations in one Patent Office would preclude the necessity of an examination in the remaining Patent Offices of the Empire.

One common method could be adopted by each Patent Office of the several States when examining an application as to novelty.

The Act might also be drawn to include Designs, Trade Marks and Copyrights, or there might be separate Acts as to these different properties.

In contradistinction to the Fiscal question or the question of defence, my subject, I think, does not lend itself to a discussion as to whether a certain policy is right or not, but as to the best means of carrying out a certain policy, which must admittedly commend itself to all those who desire to promote the arts of

peace, and not those of war in any sense, in our common Imperial heritage.

The benefit of the consummation of such an Act or Acts can hardly be over-estimated in its far reaching results. How little indeed any of us in Canada know of the progress in Great Britain in scientific, literary, artistic, and industrial or commercial pursuits. How prone we are to consider that all progress in the world in such matters is being made by our neighbors to the South of us, who are continually "blowing their own horn" in our own land by means of their magazines, literary, scientific, artistic and otherwise, which they perseveringly introduce and spread so insinuatingly throughout our fair Dominion to the detriment of the trade and prestige of the Britisher. Where are the British magazines that we should have? And they are not a few. How many everyday Canadians know that the home of the steam engine is England, and that Great Britain is still ahead in steam engineering, producing the first turbine engines, which have been used successfully, commercially, in steamships crossing the Atlantic. How many Canadians know that the first steamship to cross the Atlantic was built in Canada. How many of us know that the perfection of Mechanism is the British Locomotive, not the American. How many of us understand that Great Britain is and has been away ahead of the United States in cutlery and other hardware, silverware, automobiles, shipbuilding,—shall I go on?

How many of us realize that Great Britain is still the envy of the world in her manufactures, and that she is not dead, but very much alive, as the Canadian Manufacturers found out on their recent tour to Great Britain. But why all this? For one simple and sufficient reason. We must be up and doing. In unity is strength. If this Empire is to grow strong, not only must we protect ourselves from without, but fortify ourselves from within. Bind ourselves together in peace as well as in war, and how? By lending to each other in all parts of the Empire a helping hand in all matters relating to progress made in every other part in the Sciences and Arts, and Literary, and Commercial, or Industrial pursuits.

Will such an Act or Acts, as is proposed, affect this object? In my humble opinion I think it will. To put my ideas briefly, one of the main objects of such an Imperial Act is to benefit the Empire by spreading throughout the Dominion or States thereof, continually, accurate knowledge of progress as it takes place in all parts of the King's Dominions, by means of printed publication of all Letters Patent granted for new and useful inventions, thereby serving to bring all the portions of the Empire into closer touch industrially and commercially through the Arts and Sciences, as by common sentiment they are brought together by our King, "the key stone of our Empire."

AN AFTER THOUGHT.

As this pamphlet is going to press the results of the British elections are coming in. The tide of victory seems to have gone with the Liberal party. I have noted, however, that Mr. Chamberlain, the Champion of the Colonies, and of the Imperial idea, and his followers have been all returned in Birmingham.

Two years ago last Summer I visited Great Britain and Tariff Reform was in its infancy, Mr. Chamberlain having just retired from the British Cabinet. Last Summer I visited Great Britain, and the growth of Tariff Reform and Preferential Trade astounded me as endorsed by a meeting which I attended at Albert Hall.

To-day is an age of protection. One of the oldest forms of protection adopted by Great Britain itself was protection by Letters Patent where the individual is protected in his invention and the industry resulting. Trade unionism is a form of protection for the workmen, and, therefore, for a class, and Tariff Reform in Great Britain, as I understand it, is a form of protection for the Nation including the individual, trade unionists and other workmen, manufacturers and others, designed to overcome unfair competition in industrial pursuits from highly

protected countries, and, therefore, in my opinion, a benefit to inventors, workmen, and manufacturers in every field.

I did not expect in the present election, nor do I think that any of the advocates of Tariff Reform expected, a victory, but the elections have so far, to my mind, proved that Tariff Reform is to be a live issue in the near future. I cannot help thinking that the British people, when they appreciate the trade of the Colonies and within the Empire and the disadvantages that they labor under under Free Trade as against countries with high tariff walls, will adopt what appears to me the only logical solution, viz., Tariff Reform and Preferential Trade. Is it not nearly time that we should act upon the old adage, "Britons hold your own"?



