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## SECTION XXIX.

## MISCELLANEOUS.

## § 1. The Regulation of Immigration into Australia.

1. **Pre-Federal Restrictions.**—(i.) *Alien Races.* The several States of Australia had regarded it as desirable, long prior to Federation, to impose certain restrictions upon the admission of persons wishing to become inhabitants of those States. The influx of Chinese into the States, for example, was limited by stringent statutes, and later general Acts were passed in some of the States which had the effect of restricting the immigration of other—principally Asiatic—races.

(ii.) *Undesirable Immigrants.* Further restrictions were placed upon the admission of persons who were undesirable as inhabitants, either for medical or moral reasons, or who were likely to be an economic burden upon the community.

2. **Powers and Legislation of the Commonwealth.**—(i.) *Constitutional Powers.* By Chap. I., Pt. V., Sec. 51, xxvii. and xxviii., of the Commonwealth Constitution Act the Parliament of the Commonwealth is empowered to make laws with respect to immigration and emigration and the influx of criminals. (See page 27 herein.)

(ii.) *Legislation.* The powers specified have now been exercised, and the laws passed in pursuance thereof supersede the State laws above referred to.

The first Act passed was the Immigration Restriction Act 1901, which contained provisions restricting the immigration of the classes of persons mentioned above. The clauses restricting the immigration of persons under contract were, however, repealed, and the Contract Immigrants Act 1905 was substituted therefor. (See page 41 herein.)

The Immigration Restriction Act of 1905 amends certain parts of the Act of 1901, and the immigration of alien races and undesirable persons is now regulated by the two Acts, viz., those of 1901 and 1905. This last applies only to immigrants under contract or agreement to perform manual labour in Australia. The admission of such persons is permitted if the contract is in writing, is made by or on behalf of some person named, who must be resident in Australia, and approved by the Minister. Such approval will not be given if the contract is made with the view of affecting an industrial dispute or if the remuneration and other terms are not as advantageous to the contract immigrant as those current for workers of the same class at the place where the contract is to be performed.

There is an additional provision where the proposed immigrant is not a British subject born in the United Kingdom or descendant of such a person. In such case it has to be proved that there is a difficulty in the employers obtaining in the Commonwealth a worker of at least equal skill and ability.

In case of infraction of the law it is provided that the contract is absolutely void and the immigrant and employer are both liable to penalties, and the employer is also liable to pay the immigrant until he obtains employment, or, at the option of the immigrant, to provide expenses for his return to the country whence he came.

The above matter is referred to also herein in connection with industrial legislation.

3. **Prohibited Immigrants.**—(i.) *Provisions of the Acts.* Persons comprised in the following classes are prohibited from entering the Commonwealth, viz. :—(a) Any person who fails to pass the dictation test; that is to say, who fails to write out not less than fifty words of a language prescribed by regulation when dictated to him by an officer

administering the Act. (b) Any person likely to become a charge upon the public. (c) Any idiot or insane person. (d) Any person suffering from an infectious or contagious disease. (e) Any person who has been convicted of an offence, other than a mere political offence, and has been sentenced to imprisonment for one year or longer and has not served his sentence or received a pardon. (f) Any person undesirable for moral reasons.

Regarding (a) it may be stated that the Act of 1901 provided for the dictation of not less than fifty words of a European language. The Act of 1905 provided for the retention of this test until regulations be passed prescribing the languages to be employed. No such regulations have yet been made, and the provision of the Act of 1901 is therefore *de facto* still in force. It may be stated that the dictation test is not and never has been imposed upon persons of European race.

(ii.) *Exemptions.* To these restrictions there are the following exemptions, viz.:—  
 (a) Any person holding an exemption certificate. (b) Members of the King's regular land and sea forces. (c) The master and crew of any public vessel of any Government. (d) The master and crew of any other vessel landing during the stay of the vessel in a Commonwealth port; but before the ship can obtain her outward clearance the crew must, at the demand of an officer administering the Act, be mustered, and if any member of the crew be missing, and would otherwise, in the opinion of the officer, have been a prohibited immigrant, then such person is deemed to be a prohibited immigrant, and until the contrary be proved, to have entered the Commonwealth contrary to the Act. (e) Any Commissioner of, or other person accredited from, the Imperial or any other Government.

(iii.) *General Provisions.* An immigrant may be required to pass the dictation test at any time within a year after he has entered the Commonwealth.

A prohibited immigrant within the meaning of (a) above may, at the discretion of an officer, be allowed to enter the Commonwealth, or to remain within it, upon depositing £100 and within thirty days either obtaining an exemption certificate or departing from the Commonwealth; in either event the deposit is returned.

The punishment for breach of the Act by a prohibited immigrant is imprisonment for six months and deportation in addition, if so ordered.

4. *Liability of Shipmasters and Others.*—The master, owners, agents, and charterers of a vessel from which a prohibited immigrant enters the Commonwealth are jointly and severally liable to a penalty not exceeding £100 for each entrant. The vessel may be detained as security, but may be released upon the giving of a bond with two sureties for the payment of any penalties; the vessel may be seized and sold in default of payment of penalties. The master, owners, agents, and charterers may be required to provide a return passage for the prohibited immigrant, and to pay for his maintenance during his detention prior to deportation. Masters of vessels are authorised to prevent such a person from landing and to obtain any necessary assistance.

5. *Agreements with other Countries.*—Arrangements may be made with the Government of any country regulating the admission into Australia of the subjects or citizens of such country, such subjects being not, during the subsistence of the arrangement, required to pass the dictation test.

Persons who have resided either continuously or from time to time in the Commonwealth for a period of five years in the whole, and who are about to depart from it, being persons who, if they return, would be prohibited immigrants, may obtain a certificate of exemption entitling them to return.

Certificates of exemption are granted by the Minister of External Affairs, whose department administers the Act.

6. *Statistics.*—The following tables show the number of persons who desired but were not permitted to land, those who were allowed to land, and the nationality of the persons admitted:—

PERSONS ADMITTED OR REFUSED ADMISSION TO COMMONWEALTH  
UNDER PROVISION OF IMMIGRATION RESTRICTION ACT.

| Year.    | Persons Admitted who Passed Education Test. | Persons Admitted without Passing Education Test. | Persons Refused Admission. |
|----------|---|--|----------------------------|
| 1902 ... | 33  | 45,468   | 653                        |
| 1903 ... | 13  | 44,117   | 152                        |
| 1904 ... | 1   | 47,940   | 117                        |
| 1905 ... | 3   | 47,940   | 106                        |
| 1906 ... | Nii.  | 57,646   | 53                         |
| 1907 ... | NIL.  | 71,988   | 62                         |

## NATIONALITY OF PERSONS ADMITTED.

| Nationality.              | 1902.         |            | 1903.         |            | 1904.         |            | 1905.         |            | *1906.        | *1907.        |
|---------------------------|---------------|------------|---------------|------------|---------------|------------|---------------|------------|---------------|---------------|
|                           | Without Test. | With Test. | Without Test. | Without Test. |
| <b>EUROPEANS—</b>         |               |            |               |            |               |            |               |            |               |               |
| Austrians ...             | 647           | ...        | 809           | ...        | 930           | ...        | 683           | ...        | 691           | 651           |
| Belgians ...              | 14            | ...        | 20            | ...        | 20            | ...        | 25            | ...        | 33            | 64            |
| British ...               | 35,330        | ...        | 35,061        | ...        | 39,026        | ...        | 39,975        | ...        | 47,396        | 60,172        |
| Danes ...                 | 52            | ...        | 94            | ...        | 103           | ...        | 125           | ...        | 259           | 280           |
| Dutch ...                 | 45            | ...        | 30            | ...        | 26            | ...        | 43            | ...        | 91            | 94            |
| French ...                | 1,011         | ...        | 1,390         | ...        | 2,076         | ...        | 1,402         | ...        | 1,866         | 1,685         |
| Germans ...               | 1,162         | ...        | 1,028         | ...        | 823           | ...        | 926           | ...        | 1,339         | 1,909         |
| Greeks ...                | 268           | ...        | 210           | ...        | 194           | ...        | 121           | ...        | 240           | 202           |
| Italians ...              | 1,181         | ...        | 793           | ...        | 814           | ...        | 734           | ...        | 839           | 992           |
| Poles ...                 | 9             | ...        | 8             | ...        | 8             | ...        | 13            | ...        | 5             | 6             |
| Portuguese ...            | 4             | ...        | 5             | ...        | ...           | ...        | 2             | ...        | 3             | 6             |
| Rumanians ...             | 10            | ...        | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Russians ...              | 100           | ...        | 148           | ...        | 122           | ...        | 157           | ...        | 293           | 388           |
| Scandinavians ...         | 221           | ...        | 382           | ...        | 320           | ...        | 281           | ...        | 776           | 1,173         |
| Spaniards ...             | 32            | ...        | 53            | ...        | 27            | ...        | 35            | ...        | 32            | 86            |
| Swiss ...                 | 55            | ...        | 20            | ...        | 79            | ...        | 63            | ...        | 68            | 78            |
| Turks ...                 | 12            | ...        | 13            | ...        | ...           | ...        | 3             | ...        | 8             | 6             |
| Europeans (not specified) | 1,121         | ...        | ...           | ...        | 7             | ...        | 17            | ...        | 18            | 29            |
| <b>AMERICANS—</b>         |               |            |               |            |               |            |               |            |               |               |
| North Americans...        | 471           | ...        | 561           | ...        | 563           | ...        | 603           | ...        | 867           | 889           |
| South Americans...        | 6             | ...        | 6             | ...        | ...           | ...        | ...           | ...        | 12            | 15            |
| Negroes ...               | 5             | 2          | 10            | ...        | 13            | ...        | 15            | 1          | 4             | 9             |
| French Creoles ...        | ...           | 1          | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| West Indians...           | 3             | 5          | 7             | 3          | 6             | ...        | 3             | 1          | ...           | 13            |
| <b>ASIATICS—</b>          |               |            |               |            |               |            |               |            |               |               |
| Afghans ...               | 9             | ...        | ...           | ...        | ...           | ...        | 7             | ...        | 3             | 9             |
| Arabs ...                 | 1             | ...        | ...           | ...        | ...           | ...        | 3             | ...        | ...           | 8             |
| Burmese ...               | ...           | 1          | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Chaldeans ...             | 2             | ...        | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Chinese ...               | 1,336         | ...        | 986           | ...        | 847           | 1          | 1,269         | ...        | 1,134         | 1,424         |
| Cingalese ...             | 15            | ...        | 8             | 2          | 9             | ...        | 15            | ...        | 6             | 12            |
| East Indians              | ...           | ...        | ...           | 1          | ...           | ...        | ...           | ...        | ...           | ...           |
| Eurasians ...             | ...           | 2          | ...           | 2          | ...           | ...        | ...           | ...        | ...           | ...           |
| Filipinos ...             | 98            | 1          | 37            | ...        | 54            | ...        | 74            | 1          | 120           | 57            |
| Hindoos ...               | 66            | 6          | 48            | 2          | 461           | ...        | 146           | ...        | 75            | 129           |
| Japanese ...              | 513           | 8          | 558           | 1          | 461           | ...        | 251           | ...        | 356           | 521           |
| Javanese ...              | 3             | ...        | ...           | ...        | 75            | ...        | 62            | ...        | 52            | 1             |
| Kurds ...                 | 3             | ...        | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Malays ...                | 321           | ...        | 526           | ...        | 469           | ...        | 289           | ...        | 436           | 370           |
| Syrians ...               | 43            | 4          | 43            | 1          | 39            | ...        | 51            | ...        | 66            | 58            |
| <b>OTHER RACES—</b>       |               |            |               |            |               |            |               |            |               |               |
| Maoris ...                | ...           | ...        | ...           | 1          | ...           | ...        | 1             | ...        | 2             | 8             |
| Mauritians ...            | 5             | 1          | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Pacific Islanders         | 1,176         | 1          | 1,098         | ...        | 193           | ...        | 98            | ...        | 156           | 121           |
| Papuaans ...              | 93            | ...        | 145           | ...        | 552           | ...        | 415           | ...        | 368           | 493           |
| St. Helena Blacks         | ...           | 1          | ...           | ...        | ...           | ...        | ...           | ...        | ...           | ...           |
| Unspecified ...           | 25            | ...        | 20            | ...        | 20            | ...        | 33            | ...        | 32            | 30            |
| <b>Total</b> ...          | <b>45,468</b> | <b>33</b>  | <b>44,117</b> | <b>13</b>  | <b>47,940</b> | <b>1</b>   | <b>47,940</b> | <b>3</b>   | <b>57,646</b> | <b>71,988</b> |

\* No persons were admitted after passing the test in either of the years 1906 or 1907.

## § 2. Patents, Copyrights, Trade Marks, and Designs.

1. **Devolution of Jurisdiction upon the Commonwealth.**—Prior to the establishment of Federation, and for a few years thereafter, each Australian State possessed independent jurisdiction in respect of patents, copyrights, trade marks, and designs, and had in nearly all cases enacted its own laws governing them. Any person, therefore, who desired to protect a patent, copyright, trade mark, or design had necessarily to incur the trouble and expense of making six separate applications—one in each State. The Commonwealth Constitution Act conferred upon the Federal Parliament power to legislate respecting these matters. (See page 27 hereinbefore.)

The State Acts, though in general based upon the Imperial Statutes dealing with these subjects, were not wholly governed by them. The Commonwealth Acts, both in regard to principle and practice, have the same general foundation, but in some respects have been modified and brought into line with the totality of Australian experience.

2. **Patents.**—The first Commonwealth Patents Act was passed in 1903, and was amended in 1906. (See page 41 hereinbefore.) Under these Acts, which are administered by a "Commissioner of Patents," the power of the States to grant patents was abolished, and their functions in that respect were transferred to the Commonwealth. A single Commonwealth patent now gives throughout the Commonwealth that protection which formerly could only be obtained by procuring a patent in each State. The rights of State patentees are in all cases reserved to them. A holder of a State patent in force may obtain, for a period not exceeding the unexpired time thereof, a Commonwealth patent for the invention comprised in the State patent. Any State may, however, be excepted from the patent if the Commissioner of Patents is satisfied that the invention either (a) is not novel, (b) has been made the subject of a pending application, or (c) has been published in such State. Comparatively small fees, totalling £8, are now sufficient to obtain for an inventor protection throughout the Commonwealth, and the only renewal fee (£5) is payable before the expiration of the seventh year of the patent.

(i.) *Applications for Patents.* Any of the following persons may make application for a patent:—(a) The actual inventor. (b) His assignee, agent, attorney, or nominee. (c) The actual inventor or his nominee jointly with the assignee of a part interest in the invention. (d) The legal representative of a deceased actual inventor or of his assignee. (e) Any person to whom the invention has been communicated by the actual inventor, his legal representative, or assignee (if the actual inventor, his legal representative or assignee is not resident in the Commonwealth). An application for a patent must be for one invention only, and must be made in the form prescribed, and lodged by being left at or sent by post to the Patent Office at Melbourne. It must be accompanied by either a provisional or a complete specification. The application must contain a declaration in the prescribed form setting out the facts relied on to support the application, and must be signed by the applicant and attested by a witness.

(ii.) *Term for which Granted.* The term for the duration of every patent is limited to fourteen years from the date of application. A patent ceases if the patentee fails to pay the renewal fee within the prescribed time. If in any case, however, by accident, mistake, or inadvertence a patentee fails to pay the renewal fee within the prescribed time, he may, on application to the Commissioner and on payment of the prescribed fees, obtain an extension of the time for not more than one year.

(iii.) *Opposition to Grant of Patent.*—Within three months of the advertisement of the acceptance of a complete specification any person may give notice at the Patent Office of opposition to the grant on any of the following grounds:—(a) That the applicant has obtained the invention from the opponent. (b) That the invention has not been communicated to the applicant by the actual inventor (if the actual inventor is not resident within the Commonwealth). (c) That the invention has already been patented in the Commonwealth. (d) That the complete specification describes an invention other

than that described in the provisional specification, and that the opponent has applied for a patent for such other invention in the interval between the leaving of the provisional and complete specifications. (e) Want of novelty. (f) Prior publication.

The case is heard and decided by the Commissioner, from whose decision an appeal lies to the High Court or the Supreme Court.

(iv.) *Additional Patents and Amendments.* An important feature of the Patents Act of 1903 was that special provisions were made for granting patents to a patentee in respect of any improvement on his invention. Such patents are called "additional patents," and are granted for the unexpired term of the original patent, the amount of the fee for an additional patent being half that for an ordinary patent.

Amendments to specifications by way of disclaimer, correction, or explanation may be allowed on request to the Commissioner, provided that the specification, if amended as requested, does not claim an invention substantially larger than or different from the original invention. Any person may oppose an amendment on giving notice of opposition at the Patent Office.

(v.) *Revocations of Patents and Compulsory Licenses.* Revocation of a patent may be obtained by petition to the High Court or the Supreme Court of a State. A petition must be presented by either (a) the Attorney-General or person authorised by him, (b) any person alleging that he was the actual inventor or that the patent was obtained from him by fraud, or (c) by any person alleging that he had publicly used, made, or sold within the Commonwealth before the date of the patent anything claimed by the patentee as his invention.

A compulsory license to work a patent in the Commonwealth, or a petition for revocation of a patent, may be granted upon proof by any person interested that the reasonable requirements of the public with respect to the invention have not been satisfied. The Act also contains provisions regarding the remedies for infringement of patents.

(vi.) *International Protection of Patents.* The Patents Act of 1903 contained provisions under which the international arrangements for the protection of patents contained in the Imperial Acts could be made applicable to the Commonwealth by order of the King-in-Council. The necessary proclamation was issued by the Imperial Government as regards England and Australia on the 1st February, 1907, and as regards all other countries in the International Convention on the 5th August, 1907. British and foreign inventors are now, therefore, if they apply in Australia within twelve months of their original application, entitled to receive a patent for their inventions in priority to other applicants, and such patent has the same date as the date of the application abroad. Corresponding arrangements have also been made by the Commonwealth with New Zealand.

(vii.) *Patent Attorneys.* Any person on passing the prescribed examination, and on paying a fee of £5, may be registered by the Commissioner as a patent attorney. A solicitor may practise as a patent attorney without passing the prescribed examination and without being registered as a patent attorney.

(viii.) *Applications Filed, Provisional Specifications Accepted, and Letters Patent Granted, 1901 to 1906.* The numbers of individual inventions in respect of which applications were filed in the Commonwealth during each year from 1901 to 1906, inclusive, were as follows:—

NUMBER OF INVENTIONS FOR WHICH APPLICATIONS FILED.

| Date ... ..      | States Patents Acts. |        |        |                          | Commonwealth Patents Acts. |       |       |
|------------------|----------------------|--------|--------|--------------------------|----------------------------|-------|-------|
|                  | 1901.                | 1902.  | 1903.  | 1904,<br>to<br>1st June. | 1904,<br>From<br>13th Feb. | 1905. | 1906. |
| Applications ... | 1,610*               | 1,933* | 1,772* | 345*                     | 2,243                      | 2,685 | 2,743 |

\* Approximate.

From the 13th February, 1904, to the 1st June, 1904, applications were made both under the States and the Commonwealth Acts.

The subjoined table shews the number of provisional specifications accepted and the number of patents granted in each State and in the Commonwealth from 1901 to 1906, inclusive. Under the Commonwealth Patents Act of 1903 these functions ceased to be exercised by the States, and were transferred to the Commonwealth Patent Office on the 1st June, 1904:—

PROVISIONAL SPECIFICATIONS ACCEPTED AND LETTERS PATENT GRANTED, 1901 TO 1906.

| State, etc. | States Patents Acts. |       |       |                          | Commonwealth Patents Acts. |       |       |
|-------------|----------------------|-------|-------|--------------------------|----------------------------|-------|-------|
|             | 1901.                | 1902. | 1903. | To<br>1st June,<br>1904. | From<br>1st June,<br>1904. | 1905. | 1906. |

PROVISIONAL SPECIFICATIONS ACCEPTED.

|                       |       |       |       |     |     |       |       |
|-----------------------|-------|-------|-------|-----|-----|-------|-------|
| New South Wales ...   | 319   | 476   | 388   | 74  | ... | ...   | ...   |
| Victoria ...          | 403   | 533   | 557   | 115 | ... | ...   | ...   |
| Queensland ...        | 171   | 238   | 207   | 32  | ... | ...   | ...   |
| South Australia ...   | 169   | 219   | 228   | 35  | ... | ...   | ...   |
| Western Australia ... | 137   | 216   | 208   | 41  | ... | ...   | ...   |
| Tasmania ...          | 70    | 132   | 152   | 17  | ... | ...   | ...   |
| Commonwealth ...      | 1,269 | 1,814 | 1,740 | 314 | 782 | 1,628 | 1,498 |

LETTERS PATENT GRANTED.

|                       |       |       |       |     |     |       |       |
|-----------------------|-------|-------|-------|-----|-----|-------|-------|
| New South Wales ...   | 717   | 795   | 704   | 96  | ... | ...   | ...   |
| Victoria ...          | 699   | 797   | 680   | 83  | ... | ...   | ...   |
| Queensland ...        | 422   | 479   | 395   | 52  | ... | ...   | ...   |
| South Australia ...   | 417   | 442   | 458   | 82  | ... | ...   | ...   |
| Western Australia ... | 356   | 379   | 380   | 61  | ... | ...   | ...   |
| Tasmania ...          | 272   | 279   | 259   | 35  | ... | ...   | ...   |
| Commonwealth ...      | 2,883 | 3,171 | 2,876 | 409 | ... | 1,097 | 1,739 |

In the above table the figures given for each State shew the number of provisional specifications accepted or of patents granted in each State. The total for the Commonwealth for each year up to the 30th June, 1904, does not, therefore, shew the number of separate inventions, as specifications may have been accepted or patents granted for the same inventions in any number, from one to six, of the States. On the other hand the figures given under the Commonwealth Acts represent separate inventions for the whole Commonwealth.

(ix.) *Revenue of Patent Office.* The revenue of the Commonwealth Patent Office for each year since its creation to the end of the year 1906 is shewn in the subjoined table. Particulars as to the revenue of the State Patent Offices for previous years are not available:—

## REVENUE OF PATENT OFFICE, 1904 TO 1906.

| Particulars.                                 | 1904. | 1905.  | 1906.  |
|--|-------|--------|--------|
|  | £     | £      | £      |
| Fees collected under States Patents Acts ... | 3,181 | 5,567  | 6,233  |
| "    "    "    Patents Acts 1903 to 1906     | 2,459 | 13,379 | 14,667 |
| Receipts from publications... ..             | ...   | 102    | 134    |
| Petty receipts ... ..                        | 19    | 37     | 43     |
| Total ... ..                                 | 5,659 | 19,085 | 21,077 |

3. **Copyright.**—Prior to the establishment of Federation the copyright legislation enacted by all the States except Tasmania was based upon and closely followed the English law of copyright, differing, however, in some cases therefrom as to the periods for which a copyright was granted. Only local publications were affected by it. A colonial law did not affect the rights of authors and artists where copyrights were acquired outside the colony. The Imperial statutes governed copyright in those colonies which had not passed a local copyright law.

(i.) *Copyright Acts.* The first Commonwealth Act was passed in 1905 (see page 41 herein). It follows English legislation even more closely than the State Acts. It deals with literary, musical, dramatic, and artistic copyrights, and applies only to Australian publications. It may be applied to foreign publications by registration of them under it.

(ii.) *Principal Feature.* The principal feature of the Australian Act is that it provides the same term of copyright and performing right for all publications under the above heads, namely, the life of the author and seven years thereafter, or forty-two years from publication, whichever be the longer. Every book published in Australia for which copyright is claimed must be printed from type set up or from plates or negatives made in Australia. With respect to lectures, it is provided that the author shall be the first owner of the lecturing right, and that he may prevent publication of a report of the lecture by giving notice at the beginning of the lecture, or by a conspicuous written notice on the entrance door or in the lecture-room stating that reporting is prohibited. The author of an article first published in a periodical to which it was contributed for valuable consideration retains the copyright in the article, but may not republish it until one year after the end of the year in which it was first published. The owner of the copyright in a book may be compelled to translate it, or to permit translation, if it be not translated within ten years of publication. The person ordering a photograph for which consideration is paid is the owner of the copyright in it.

(iii.) *Registration.* Registration is a necessary preliminary to an action for infringement, but copyright exists independently of registration. The Commissioner of Patents has been appointed "Registrar of Copyrights."

Proceedings for the rectification of the register may be taken before the Supreme Court of any State.

In the matters of copyright the Commonwealth possesses the privileges conferred upon each signatory of the Berne Convention.

4. **Trade Marks.**—The remarks made concerning the unification of the patent system of the Commonwealth apply equally to trade marks. Under the Trade Marks Act 1905, which came into force on the 2nd July, 1906, the Commissioner of Patents is appointed to act also as "Registrar of Trade Marks." There are two trade marks, viz., the "Workers' Trade Mark" and the "Commonwealth Trade Mark," which call for the special references to be found in the section herein dealing with "Industrial Legislation," see p. 880.

(i.) *Essential Particulars of Trade Marks.* A registrable trade mark must consist of essential particulars with or without additional matter. The essential particulars must be one or more of the following :—(a) A name or trading style of a person printed,

impressed, or woven, in some particular and distinctive manner; (b) a written signature of the person applying for registration thereof or of some predecessor in his business; (c) a distinctive device, mark, brand, heading, label, or ticket; (d) one or more invented words; (e) a word or words having no reference to the character or quality of the goods, and not being a geographical name used or likely to be understood in a geographical sense. The additional matter which may be added must be either (a) any letters, words, or figures or (b) any combination of letters, words, or figures or any of them.

(ii.) *State Registrations.* State registrations cease to be in force at the expiration of fourteen years from the date of the Commonwealth Act, if the registration has not previously expired. Commonwealth registration of a State-registered mark may be effected, and the fact of its registration in a State prior to the coming into force of the Commonwealth Act, may entitle the registered proprietor in the State to Commonwealth registration, notwithstanding the existence of defects which might be ground for refusal of an original application for Commonwealth registration.

(iii.) *Duration of Registration and General Provisions.* The registration of a trade mark is for a period of fourteen years, but may be renewed from time to time. International and intercolonial arrangements for the protection of trade marks may be made in a manner similar to that provided for the protection of patents. Registration may be opposed by any person lodging a notice of opposition at the Trade Marks Office within three months after the advertisement of the application. During the year 1906 there were 3373 applications for registration of marks received at the Trade Marks Office. The total fees received amounted to £3476.

5. **Designs.**—The Designs Act of 1906 came into operation on the 1st January, 1907. Under this Act a Commonwealth Designs Office has been established and the Commissioner of Patents appointed "Registrar of Designs."

(i.) *Registration.* Any new and original design which has not been published in Australia before the lodging of an application for its registration may be registered in respect of all or any of the articles enumerated in the classification contained in the regulations, which comprise jewellery, paperhangings, carpets, floor-cloths, lace, hosiery, millinery, wearing apparel, textile fabrics, bookbinding, and articles composed wholly or chiefly of a variety of solid substances. After an application for the registration of a design has been lodged the design may be published and used without prejudice to the validity of the registration.

(ii.) *Duration of Copyright in Designs.* The registration takes effect as from the date of the lodging of the application, and, subject to the provisions of the Act, remains in force for a period of five years from that date. The owner of a registered design must, within two years after registration, use the design in Australia, and if he fails to do so the copyright ceases. If, however, such design is used in any manufacture abroad the above period is limited to six months.

(iii.) *General.* The Act also contains provisions regarding the remedies for infringement of designs, the rectification of the register, and for making arrangements for the international and intercolonial protection of copyright in designs.

### § 3. Old-age Pensions.

1. **General.**—A system for providing for the relief of the aged poor by some means which did not involve the stigma associated in so many minds with the idea of charitable aid, and which, while protecting the recipients from actual want, still left to them as large a degree of freedom as possible, has long been sought for by economists, statesmen, and social reformers. The difficulties surrounding a satisfactory solution of the question are numerous and great, and various schemes have been propounded with the object of overcoming them. Two of the principal objections which have been urged against the introduction of a general system of old-age pensions are—

(i.) its costliness.

(ii.) its tendency to induce thriftlessness.

The former is undoubtedly a serious difficulty, since in any normally constituted population the number of persons aged say sixty-five years and upwards will represent about 5 per cent. of the total population, and the provision of the sum required to pay to these a sum which would provide the pensioners with even the barest necessities of life would be a very considerable burden upon the State Treasury. To limit this amount various suggestions have been made, of which probably the most effective have been those which provide, the one for a contribution to the pension fund by the pensioner during his earlier years, and the other by a reduction of the amount of pension payable to those in receipt of income from other sources. The former of these is the principle which has been acted upon in the scheme in operation in Germany, while the latter is that which underlies the schemes in vogue in the Commonwealth and New Zealand.

The objection which has sometimes been raised to the payment of old-age pensions on the score of the tendency to thriftlessness thereby induced is one which, in Australia, at all events, is not accorded much weight, the general feeling being that the number of cases in which the prospect of a pension of, say, 10s. per week from sixty-five onwards would lead to thriftlessness in earlier years is so small as to be practically negligible.

**2. Introduction of Old-age Pensions into Australia.**—At the present time systems of old-age pensions are in force in two of the States, viz., New South Wales and Victoria, while proposals to introduce the principle have been under the consideration of the Parliament of the Commonwealth and of those of the other States. The credit of introducing old age pensions into the Southern Hemisphere, however, belongs not to the Commonwealth, but to her sister dependency, the Dominion of New Zealand, where pensions have been payable since 1st April, 1898. The first State of the Commonwealth to make provision for the payment of old-age pensions was Victoria, whose legislation on the subject came into operation on 18th January, 1901. Later in the same year, viz., on 1st August, 1901, the pension system of New South Wales came into force.

**3. Rates of Pensions Payable.**—In Victoria, under the Acts which came into force on 18th January, 1901, the maximum rate of pension was fixed at ten shillings per week, but later in the same year under an Act which came into operation on 7th December, 1901, the rate of pension was reduced to eight shillings per week and the claims in connection with all existing pensions had to be reheard, and children of pensioners, when proved to be able to contribute towards the pension, were compelled to do so.

In New South Wales the maximum rate of pension has remained as originally fixed, viz., ten shillings per week, except in the case of husband and wife living together, when each receives seven shillings and sixpence per week. In Victoria no distinction is made between married and single rates.

**4. Pension Age.**—In both States the general age at which the right to a pension accrues is sixty-five, but in each case provision is made for the payment of a pension at an earlier age under special circumstances. Thus in New South Wales a pension is payable at ages sixty to sixty-four on satisfactory evidence of physical incapacity through sickness or injury, but is not payable at those ages on account of senile debility. In Victoria a pension is payable at any age on satisfactory evidence of permanent disablement or ill-health caused by the applicant having been engaged in mining or any unhealthy or hazardous occupation.

**5. Length of Residence.**—In New South Wales the applicant for a pension must be a resident of, and must have resided in, the State continuously for the twenty-five years immediately preceding the date on which he establishes his claim. Occasional absence, however, for periods not amounting in all to more than two years, will not invalidate a claim, and the absence of a seaman while serving on board a vessel trading to and from the State is also admissible. In Victoria the applicant must be a resident of the State, and must have so resided for at least twenty years prior to his application. During the time from which these twenty years commenced to run he must not have been absent for more than five years, and during the five years immediately preceding the date of his application he must have resided continuously in the State.

**6. Evidence of Character of Applicant for Pension.**—In both New South Wales and Victoria the recipients are required to be of good moral character, and imprisonment for extended periods will, in both States, operate as a disqualification. Thus in New South Wales imprisonment for four months during the period of twelve years, or for five years during the period of twenty-five years prior to an application, will disqualify; while in Victoria imprisonment for six months during the five years immediately preceding an application, or imprisonment at any time for three years and upwards for any offence, will prevent a claim from being recognised.

**7. Limitations in respect of Income and Property.**—With a view to restricting the pensions to persons actually needing assistance, provision is made, both in New South Wales and Victoria, for reducing the payment when the applicant already possesses income or property above a given amount. In New South Wales the pension is diminished by £1 per annum for every £1 of income above £26 in the case of a separate pensioner, and for every £1 above £19 10s. in the case of husband and wife living together, and by £1 for every £15 of property owned by the pensioner in either case. In Victoria the pension is diminished by one shilling per week for every shilling earned over two shillings per week, and by sixpence per week for every £10 of property other than furniture and personal effects to the value of £25. The maximum income that may be received, inclusive of pension, is, therefore, £52 per annum in New South Wales and £26 per annum in Victoria, and the maximum amount of property that may be held is £389 in New South Wales and £159 in Victoria. In Victoria the possession of money to the value of £10 acts as a disqualification.

**8. Number of Pensioners.**—The following table furnishes particulars of the number of old-age pensioners in each of the two States mentioned at the end of the years 1900-1 to 1906-7:—

NUMBER OF PERSONS IN RECEIPT OF OLD-AGE PENSIONS AT END OF YEAR.

| Year.  | New South Wales. | Victoria. | Total. |
|--------|------------------|-----------|--------|
| 1900-1 | ...              | 16,275    | 16,275 |
| 1901-2 | 13,957           | 14,570    | 28,527 |
| 1902-3 | 22,182           | 12,417    | 34,599 |
| 1903-4 | 20,905           | 11,609    | 32,514 |
| 1904-5 | 20,438           | 11,209    | 31,647 |
| 1905-6 | 21,402           | 10,990    | 32,392 |
| 1906-7 | 21,465           | 10,832    | 32,297 |

It will be seen that during the past three years the number of pensioners has remained practically constant at about 32,000, the number in New South Wales having increased during that period by 560, while the number in Victoria decreased by 777. At the Census of 31st March, 1901, the number of persons in New South Wales aged sixty-five years and upwards represented 3.44 per cent. of the total population of that State, while in Victoria the corresponding percentage was 5.52. Assuming these percentages to hold good for 30th June, 1907, the number of persons in these two States aged sixty-five and upwards may be stated approximately as—New South Wales, 53,400; Victoria, 68,300. On this basis the number of persons in receipt of old-age pensions in New South Wales on 30th June, 1907, represented 40 per cent. of the total number in the State on that date aged sixty-five years and upwards, while in Victoria the corresponding percentage was 16. It is probable that the numbers aged sixty-five and upwards given above are somewhat underestimated, especially in the case of New South Wales, and that in consequence the percentage in receipt of pension is slightly overstated. The error involved is, however, probably not large.

**9. Amount Paid in Pensions.**—Since the inauguration of the old-age pensions schemes in the Commonwealth the total sum paid in this manner has amounted to no

less than £4,369,151, of which New South Wales has provided £2,948,905 and Victoria £1,420,246. Details for the period are as follows:—

AMOUNT PAID TO OLD-AGE PENSIONERS.

| Year.         | New South Wales. | Victoria. | Total.  |
|---------------|------------------|-----------|---------|
|               | £                | £         | £       |
| 1900-1 ... .. | ...              | 129,338   | 129,338 |
| 1901-2 ... .. | 436,183          | 292,432   | 728,615 |
| 1902-3 ... .. | 524,967          | 215,972   | 740,939 |
| 1903-4 ... .. | 508,133          | 205,183   | 713,316 |
| 1904-5 ... .. | 496,300          | 200,464   | 696,764 |
| 1905-6 ... .. | 489,095          | 189,127   | 678,222 |
| 1906-7 ... .. | 494,227          | 187,730   | 681,957 |

In New South Wales the average pension paid during the year 1906-7 amounted to £23 1s. 2d., or approximately 8s. 10½d. per week, while the Victorian average for the same year was £17 6s. 7d., or about 6s. 8d. per week.

10. **Cost of Administration.**—Owing to the differences in the methods of administration the cost involved in paying old-age pensions has throughout been much higher in New South Wales than in Victoria. This has to a large extent been due to the fact that in the former State a heavy charge is levied for commission on payment of pensions by the bank through which such payments are made, while in the latter the pensions are paid through the medium of the Post-office. Particulars of the cost of administration from 1900-1 onwards are given in the following table:—

COST OF ADMINISTRATION OF OLD-AGE PENSION SCHEMES,  
1900-1 TO 1906-7.

| Year.         | New South Wales. | Victoria. | Total. |
|---------------|------------------|-----------|--------|
|               | £                | £         | £      |
| 1900-1 ... .. | —                | 711       | 711    |
| 1901-2 ... .. | 17,258           | 2,799     | 20,057 |
| 1902-3 ... .. | 20,567           | 2,185     | 22,752 |
| 1903-4 ... .. | 20,341           | 1,670     | 22,011 |
| 1904-5 ... .. | 22,040           | 1,682     | 23,722 |
| 1905-6 ... .. | 21,248           | 1,811     | 23,059 |
| 1906-7 ... .. | 20,949           | 1,746     | 22,695 |

For the year 1906-7 the cost of administration in New South Wales represented not less than 4.24 per cent. of the amount actually paid in pensions, while in Victoria the cost of administration amounted to only 0.93 per cent. of the pension payments. Compared with the number of pensioners the cost of administration in New South Wales for 1906-7 represented nineteen shillings and sixpence per head, and in Victoria three shillings and threepence per head. The total cost of administration since old-age pensions were introduced has been £135,007, of which New South Wales has paid £122,403 and Victoria £12,604. It may be mentioned that in New Zealand, for the year 1906-7, the cost of administration represented 1.67 per cent. of the amount actually paid in pensions, or seven shillings and elevenpence per pensioner.

11. **Commonwealth Royal Commission on Old-age Pensions.**—On the 27th February, 1905, a Royal Commission, of which the Honourable Austin Chapman, M.P., was chairman, was appointed "to inquire within Australia into (a) the working of the Old-age Pension Acts of New South Wales and Victoria; (b) the probable cost and best means to be adopted for establishing old-age pensions for the Commonwealth; and (c) to continue the inquiry commenced by a Select Committee of the House of Representatives in relation to the said matters." Prior to the appointment of this Commission the Select Committee referred to had held six meetings, and had examined three witnesses,

The Royal Commission visited each of the States of the Commonwealth, and examined sixty-four witnesses, their inquiries extending over thirty-six sittings, of which eleven were held in Melbourne, twelve in Sydney, five in Perth, three in Brisbane, two in Adelaide, two in Hobart, and one in Launceston. As the result of their inquiries the Commission made the following recommendations in their report, dated 16th February, 1906, and addressed to His Excellency the Governor-General:—

(i.) "That old-age pensions should be provided throughout the Commonwealth, and be paid out of the consolidated revenue.

(ii.) "That a bill for this purpose should be submitted by your Excellency's advisers for the early consideration of Parliament.

(iii.) "That the rate of pension should be fixed at a maximum of ten shillings per week, subject to any deductions hereinafter recommended.

(iv.) "That the qualifying age should be sixty-five years, but that it may be reduced to sixty where an applicant is permanently incapacitated for work.

(v.) "That a residential qualification should be imposed as follows:—

"In all cases a continuous residence in the Commonwealth of twenty-five years, provided—

(a) "that where the applicant is a native-born resident with an aggregate residence of at least fifty years in the Commonwealth such continuity shall not be deemed to be interrupted by absences totalling not more than six years; nor

(b) "that in all other cases such continuity shall not be deemed to be interrupted by absences totalling not more than three years.

(vi.) "That where otherwise qualified the following persons shall be eligible for an old-age pension:—

(a) "All natural-born British subjects of a white race.

(b) "All persons resident in the Commonwealth (not being Aboriginal natives of Australia, Asia, Africa, or the islands of the Pacific) who have been naturalised for a period of three years next preceding the date on which they make their pension claims.

(vii.) "That every pension granted should be held subject to review, amendment, suspension, and cancellation, at any time by the authorities clothed with power in that behalf.

(viii.) "That payment to pensioners should be made fortnightly.

(ix.) "That payments should be made through the Post-office.

(x.) "That the general administration should be by a Commissioner, responsible to a Minister of State. That a Deputy Commissioner be appointed for each State; the States to be divided into districts, and each district to have a registrar, to whom all applications should be made, and by whom pension claims should be prepared and placed before a police, stipendiary, or special magistrate for investigation. The magistrate should make recommendations to the Commissioner or a Deputy Commissioner with reference to the granting or rejection of applications. That, in the event of the rejection of any claim, an appeal should be allowed to the Minister. The magistrate should also have power at any time during the currency of a pension to recommend cancellation, amendment, or suspension. In all such cases there should be a right of appeal to the Minister. The power of granting, cancellation, or suspension should be given to the Commissioner or Deputy Commissioners.

(xi.) "That applications be heard in open court, provided that the magistrate have power, if he deem it advisable, to hear any case *in camera*; all evidence to be taken on oath.

(xii.) "That provision should be made to compel a husband, wife, or children, as the case may be, if in a position to do so, to contribute the amount of the pension.

(xiii.) "That if an applicant or a pensioner be proved to be of disreputable or intemperate habits, the magistrate should have power to recommend—

(a) "in the case of an applicant, that the application be refused, or granted conditionally on payment being made through an agent;

(b) "in the case of a pensioner, the forfeiture of one or more instalments, or that payment be made through an agent, or cancellation of the pension.

(xiv.) "That the yearly income of a pensioner from all sources, inclusive of pension, should not exceed fifty-two pounds per annum.

(xv.) "That the deduction on account of income from other sources be one pound for every pound over twenty-six pounds per annum.

(xvi.) "That the net capital value of accumulated property held by an applicant should not exceed £310.

(xvii.) "That the deduction on account of property should be one pound from pension, on every ten pounds of net capital value over fifty pounds, excepting where the property of an applicant consists of a home in which he permanently resides and which produces no income; then an exemption of £100 should be allowed.

(xviii.) "That the property of a pensioner at death should vest in the Registrar of Probates or the Curator of Intestate Estates, as the case may be, as officer acting for the Commonwealth Government, and the indebtedness on account of pension money paid should be liquidated therefrom in priority to all other claims.

"Pension money received from time to time should be a continuing charge on any land acquired by the pensioner before or after the receipt of the pension, notice of such charge to be recorded by the Registrar of Lands Titles as from the date of grant of pension.

(xix.) "That a penalty should be imposed for supplying an old-age pensioner with intoxicating drink."

**12. Estimated Cost of a Commonwealth Old-age Pension Scheme.**—At the Census of 31st March, 1901, the population aged sixty-five and upwards represented 4 per cent. of the total population of the Commonwealth. If the same proportion be assumed to hold at 31st December, 1907, the number of persons aged sixty-five and upwards at that date would be approximately 168,000. If it be further assumed that in the event of an old-age pension scheme being established for the Commonwealth the proportion of pensioners would correspond to that experienced in the case of New South Wales, the number of pensioners on 31st December, 1907, would have been approximately 67,200, while the amount payable annually to such pensioners in respect of a maximum pension of ten shillings per week, would, on the basis of the New South Wales results for 1906-7, have been £1,550,000. Assuming the cost of administration to amount to 2 per cent. of the pension payments, the total cost of such a scheme would be approximately £1,580,000. As an indication of the gigantic nature of the responsibility which an old-age pension scheme involves, it may be mentioned that in connection with the evidence tendered to the Commonwealth Old-age Pension Commission a computation was made of the total liability in respect of accrued pensions which the Commonwealth would have incurred if, at 31st March, 1901, the date of the Census, 39 per cent. of the persons aged sixty-five years and upwards were entitled to pensions of 10s. per week. The total liability computed on these assumptions was £10,415,820.<sup>1</sup>

1. See Minutes of Evidence of Royal Commission on Old-age Pensions, p. 80.

### § 3. Valuation of Commonwealth Production.

The want of uniformity in methods of compilation and presentation of Australian statistics renders it an extremely difficult task to make anything like a satisfactory valuation of the various elements of production. At present there is so little accurate statistical knowledge regarding such industries as forestry, fisheries, poultry, and bee-farming, that any valuation of the production therefrom can only be regarded as the roughest approximation. As a matter of fact complete information as to value of production in all States is available in regard to the mining industry alone, and even in this case adjustments have to be made before the returns are strictly comparable. Careful estimates have been made in some of the States in connection with the value of production from the agricultural and pastoral industries, and where such returns are not available estimates have been made which, it is believed, in the main give fairly accurate results. In the case of manufactories, however, only three of the States collect statistics of value of production, and it is obvious that approximations for States which do not collect the information, based on the results from those which furnish returns, are of very inferior value. A glance at the chapter dealing with the manufactories will show the poverty of the statistics hitherto collected on this important field. While the difficulties in the way of obtaining adequate valuations for all classes of production are serious enough at the present time they are still more pronounced in seeking to obtain information as to values for earlier years, when the returns were far more incomplete. It must be clearly understood, therefore, that the values given in the succeeding tables are, in general, approximations only. With the adoption of the forms and methods of tabulation agreed upon at the Statisticians' Conference of 1906 it is hoped, however, that at no distant date fairly complete valuations will be available for all industries. In the meantime the figures quoted must be taken with all their limitations. The table hereunder shows the approximate value of the production from all industries during the year 1906:—

ESTIMATED VALUE OF PRODUCTION FROM INDUSTRIES, 1906.

| State.          | Agriculture.    | Pastoral.        | Dairy, Poultry, & Bee-farming. | Forestry and Fisheries. | Mining.         | Manufacturing.   | Total.           |
|-----------------|-----------------|------------------|--------------------------------|-------------------------|-----------------|------------------|------------------|
| N.S. Wales ...  | £1000.<br>7,518 | £1000.<br>19,743 | £1000.<br>5,118                | £1000.<br>1,686         | £1000.<br>7,932 | £1000.<br>12,083 | £1000.<br>54,080 |
| Victoria ...    | 7,577           | 8,923            | 5,452                          | 899                     | 3,891           | 10,307           | 36,549           |
| Queensland ...  | 3,070           | 9,877            | 1,587                          | 668                     | 4,199           | 3,098            | 22,499           |
| South Aust. ... | 4,102           | 3,623            | 923                            | 150                     | 957             | 2,768            | 12,523           |
| West. Australia | 1,534           | 2,074            | 262                            | 1,218                   | 7,931           | 1,758            | 14,777           |
| Tasmania ...    | 1,548           | 1,149            | 269                            | 258                     | 2,233           | 1,158            | 6,615            |
| C'wealth ...    | 25,349          | 45,389           | 13,611                         | 4,879                   | 26,643          | 31,172           | 147,043          |

A glance at the figures in the above table will give some idea of the distribution of the great producing industries throughout the Commonwealth. Thus New South Wales and Victoria, as might naturally be expected, take the leading position in Agriculture, with Queensland and South Australia following. In Pastoral Production, New South Wales is easily first, with Queensland second. In Dairy-farming the positions are the same as in Agriculture, while in Forestry and Fisheries, and in Mining, New South Wales and Western Australia occupy first and second place respectively. Manufactories on an extensive scale are at present practically confined to New South Wales and Victoria.

The total production from all industries was thus £147,043,000, equal to an average of £35 19s. 10d. per inhabitant.

## VALUATION OF COMMONWEALTH PRODUCTION.

In the next table will be found the value of production at decennial intervals since 1871, and for the year 1906. The figures for the Census years have been taken from "Australia and New Zealand," and, in view of what has been said in a previous paragraph, must be regarded as very rough estimates only:—

## ESTIMATED VALUE OF PRODUCTION, 1871 TO 1906.

| State.                | 1871.              | 1881.             | 1891.              | 1901.             | 1906.               | Develop-<br>ment*<br>since 1871. |
|-----------------------|--------------------|-------------------|--------------------|-------------------|---------------------|----------------------------------|
|                       | £1000.             | £1000.            | £1000.             | £1000.            | £1000.              |                                  |
| New South Wales ...   | 15,379             | 25,180            | 36,740             | 38,954            | 54,080              | 3.5                              |
| Victoria ...          | 19,260             | 22,750            | 30,320             | 30,807            | 36,549              | 1.9                              |
| Queensland ...        | 3,995              | 10,200            | 14,274             | 16,933            | 22,499              | 5.6                              |
| South Australia ...   | 5,228              | 8,457             | 9,026              | 10,314            | 12,523              | 2.4                              |
| Western Australia ... | 707                | 943               | 1,806              | 12,544            | 14,777              | 2.1                              |
| Tasmania ...          | 2,131              | 3,586             | 3,921              | 5,033             | 6,615               | 3.1                              |
| Commonwealth ...      | 46,700             | 71,116            | 96,087             | 114,585           | 147,043             | 3.1                              |
| Average per head ...  | £ s. d.<br>27 17 2 | £ s. d.<br>31 1 3 | £ s. d.<br>29 19 9 | £ s. d.<br>30 2 6 | £ s. d.<br>35 19 10 | 1.3                              |

\* Absolute ratio of present production compared with that of 1871.

In connection with the high values, absolute and relative, shewn by the year 1906, the fact must not be overlooked that this year was a particularly favourable one over the greater part of Australia, while wool, metals, and other articles of domestic production realised very high prices in British and foreign markets.