public welfare, not be overruled automatically. The "evil" of working an invention abroad but not in one's own country, often attacked by compulsory license laws, is nothing but an expression of protectionism (¶ 174), autarchy, which an economist cannot approve, except for cases that might come under starting an "infant industry" that would later become able to compete, or for needed military self-sufficiency.

[473] The evil of conflicting patents, often attacked by compulsory license laws, is a real and serious one. It commonly occurs where one patentee holds a basic patent, while others have made later improvements on it, or hold other, perhaps earlier patents that could most effectively be worked along with it. Neither party can work at full efficiency, nor perhaps work at all, without the other's license. Each can hold up the other, there is no market price for guidance, the situation is a tough one, as we said in ¶ 281–3, an actionable degree of interference can hardly be defined by a compulsory license law, and the situation is most often resolved in America, if painfully, by mutual cross-licensing or a patent pool. A compulsory license law could perhaps help here. A complainant would not have to prove anything about the defendant's business, but would still have to go into court to take some of his property away from him, giving in return a royalty (determined how?) and a cross-license on his own patent(s), which might be of little value. Dr. Bush proposes such a law.[460] Thorougher solutions, and cheaper in proportion to their usefulness, might be a mutual cross-licensing of all patents between two firms, or a wider patent pool for the industry, or our still wider trade association patent pool system (chap. 11).

[474] Compulsory licensing is sometimes advocated as a means to enable little companies to beard the big, forcing entrance into a monopolized industry by extracting a patent license from them. But others say that compulsory licensing would most hurt the independent inventors, who have no resources but their patent to fight with[232]—the big fellows would take away their patent for a small royalty.

[475] Writers on compulsory licensing seem to take for granted that the royalties ordered by it are rather meager, so that the compulsory licensing system directly lessens the reward for inventing. It seems to have decreased patenting by the companies affected at least 20%.[461] To be sure, it might conceivably enhance patents' value, if it stimulated competition, industry, and invention through enlarging the applicability of all inventions. But though it be established custom, we see no necessity that the royalties be small, if they were allotted and from time to time adjusted by an expert and vigorous bureaucracy. But of course the higher the royalty, the more it will discourage the use of the invention (¶ 253–7), and encourage evasion. We see no possibility of a simple rule, such as the market price of the patent, or a percentage of the price of the article, or of the saving made, which could efficiently determine the charge without judicial or bureaucratic discretion.

[476] "Licenses of Right" may be mentioned here, as a variety of compulsory licensing. The phrase refers to patents listed as open to license, on terms to be fixed by Government failing agreement between the parties, having got on this list either by purpose-category or by administrative or court order (compulsory licensing), or by the patentee's choice. The U.S. published such a list in 1952 and 1963, when