

countermand the fact of forfeiture alleged in the case. It does not vest the court seized of the suit for infringement with the jurisdiction of another tribunal, but it resolves itself into a simple question of the kind of evidence which is admissible on that specific point, which evidence, according to the Canadian Patent Act, can only be the decision of the Minister of Agriculture or his deputy. The allegation of importation after the expiration of twelve months from the granting of each of the three patents involved in this case, has not been in any way sustained by evidence. It is not even necessary to examine whether the few articles imported after twelve months from the dates of any one of these patents could be properly, or to what extent properly, qualified as illegal importations, for the simple reason that the insignificance of their total value forbids the view of their being susceptible of affecting in the least any patent. The counsel of the disputants has, with commendable good faith, admitted this in saying: "I do not rely upon the importations as being of themselves importations sufficient to upset those patents without more proof."

The dispute raised in this case, as regards non-manufacture, must have been so raised through a misapprehension of the technical meaning of the word manufacture employed in the 28th section of the Patent Act; unless it was intended to rest exclusively on applying the three refusals proved in the case of the Bell Telephone, tried by the Minister of Agriculture, to the three patents aimed at in this case. The technical and legal meaning of the words "carry on in Canada the construction of manufacture of the invention or discovery patented," is not to be searched for in Webster or the Imperial dictionary, but must be extracted from the very matter itself, in accordance with the reason of things and the application, to the subject, of the ordinary rules of legal interpretation; it is not a question of grammar but of jurisprudence. Forfeiture might reach a patent for want of manufacturing, when Canada is at the same time flooded with the patented article; a patent might be proof against any attack for non-manufacturing, when not a single one article patented has been produced, or manufactured in the grammatical sense of the

word. The interpretation of the 28th section is laid down at length in the decision of the case *Barter v. Smith*;^{*} that interpretation has been sustained by several of the highest courts in Canada, and by the Supreme Court in the case of *Smith v. Goldie*;[†] therefore it is not necessary to enter here into any further details on the subject. The whole case then, as regards the three patents, subject of this dispute, resumes itself into ascertaining whether or not the refusals to sell telephones, which have been proved in the dispute raised against Bell's patent, No. 7,789, apply to Edison's patents, No. 8,026, No. 9,922, and No. 9,923, as it is alleged by the disputants, who have filed, as sole evidence on this point, the evidence produced in the Bell case tried by the Minister of Agriculture. If it were clearly proven that the refusals to sell, which were a part of the defaults that have caused the forfeiture of Bell's patent 7,789, were also refusals to sell Edison's patents, the forfeiture of those last mentioned patents would have also to be declared as the conclusion of the present dispute. The proof adduced, in Bell's patent case, of refusal to sell to Mr. Bate of Ottawa, to Mr. Dickson of Montreal, and to Mr. Dinnis of Toronto, was brought against the existence of patent No. 7,789, Bell's, and contributed in part to the voidance of that patent; it is evidence specifically concerning the patent mentioned and under trial in another case; therefore it cannot legitimately serve to destroy three other distinct patents, Edison's, unless it is specifically proved that the same refusal which applied to Bell's one patent, was also extended to Edison's three patents. Nothing of the kind has been proved; Edison's patents are not specified in the declarations and correspondence of Bell's case, and nothing has been brought in this, Edison's case, to assert and establish, as a matter of proof, that the said refusals applied to Edison's three patents, on a formal demand to purchase them. In the absence of proof in any case, the legal presumption is in favor of the subsistence of the patent, and, in this case, there is more than the ordinary presumption; for it is impossible to reasonably pretend that in the demand

^{*} 8 Leg. News, 210.

[†] 9, Can. S. C. R. 46.