BURBIDGE, J.] [Jan. 18.

AUER INCANDESCENT LIGHT CO. *v.* O'BRIEN.

Patent of invention—Illuminant device—Infringement — Process — Result—Equivalents—Manufacture—Price—Importation.

An inventor, in the specification to his first Canadian patent, after disclaiming all other illuminant appliances for burners, claimed:

"An illuminant appliance for gas and other burners consisting of a cap or "hood made of fabric impregnated with the substances hereinbefore mentioned "and treated as herein described." Eight years afterwards the owner of the original patent surrendered the same and obtained a re-issue, the specification whereof differed from that of the original only in respect of the claim, which was as follows:—"The method herein described of making incandescent "devices, which consists in impregnating a filament thread or fabric of com- "bustible material with a solution of metallic salts of refractory earths suit- "able when oxidized for an incandescent, and then exposing the impregnated "filament, thread or fabric to heat until the combustible matter is consumed."

Held, that inasmuch as the method or process claimed in the re-issue was described in terms identical with the description of the method or process claimed in the original patent, the mere use of the word "device" instead of the earlier word "appliance" did not enlarge the claim and so invalidate the re-issue.

2. Although in the process of manufacturing the hood or mantle of the illuminant described in the claim of the re-issue there were no words of reference or limitation to the refractory earths mentioned in the specification, yet the words "salts of refractory earths" occurring in the claim must be limited or restricted to such refractory earths as were mentioned in the preceding part of the specification, or to their equivalents.

3. That it was open to the owners of the patent to import the impregnating fluid mentioned in the specification of their patent, without violating the provisions of the law as to manufacture.

4. That although the plaintiffs had at the outset put an unreasonable price upon their invention, yet as it was not shown that during such time anyone desiring to obtain it had been refused it at a lower and reasonable price, the plaintiffs had not violated the provisions of the law as to the sale of their invention in Canada.

5. That it is not open to anyone in Canada to import for use or sale illuminant appliances made in a foreign country in accordance with the process protected by the plaintiff's patent.

Semble, inasmuch as the illuminant appliance which could be produced by the process described was a new and useful appliance, and as the process was also new, and useful for no other purpose than that to which the inventor has applied it, it is immaterial whether the patent was issued for the process by which the appliance was produced, or for the appliance produced by the process, or for both. The law would protect the inventor against an infringement in respect of either the precess or the appliance.

I. F. Hellmuth and *C. A. Duclos*, for the plaintiffs.

J. E. Martin, for the defendant.