

matic stools, one dated 25th November, 1897, and numbered 57,537, and the other dated 5th May, 1898, and numbered 59,888. He obtained a foreign patent in respect of his invention on 8th September, 1896, and applied for his first Canadian patent on 8th September, 1897. The action is to restrain defendants from infringing the patents and from manufacturing and selling the articles.

A. Mills and W. E. Raney, for plaintiff.

Frank Denton, K.C., and H. L. Dunn, for defendants.

ROBERTSON, J.—The 8th section of the Patent Act provides that “any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the same is applied for within one year. . . .” After a full consideration of the cases I find that the plaintiff applied within the year as required by the section: *McWilliams v. Nash*, 28 Beav. 93; *Russell v. Ledsam*, 14 M. & W. 574, per Parke, B., at p. 581; *Webb v. Fairmaine*, 3 M. & W. 473; *Gurney v. Higgon*, 6 M. & W. 49; *Thomson v. Quirk*, 18 S. C. R. 695. . . . On the whole evidence I also find that the defendants have failed to establish that the invention covered by plaintiff’s patent, numbered 59,888, was known or used by any other person before the plaintiff’s invention, and which has been in practical use or on sale, with the consent or allowance of the inventor, for more than one year previously to his application for patent therefor in Canada, and plaintiff is within the provisions of sec. 7. And, having regard thereto, and to sub-sec. 16 (6) (d), evidence may be given shewing that, before the patent, the invention was known, or was in possession of the public with the allowance of the inventor, and if this is established it vitiates the patent: *Reg. v. La Force*, 4 Ex C. R. 14; *Smith v. Greey*, 11 P. R. 169: but the evidence fails to establish such knowledge or possession. . . . The onus was on defendants, and they have not satisfied it: see on this point *Ehrlich v. Shlee*, 5 R. P. C. 206, 207; *Neilson v. Betts*, L. R. 1 H. L. 15, 24; *Lyon v. Goddard*, 10 R. P. C. 33, 11 R. P. C. 354. . . . To defeat a new patent it must be clear that the antecedent specification disclosed a practical mode of producing the discovery, which was the object and effect of the subsequent discovery: *Betts v. Menzies*, 10 H. L. C. 117; *Morrison v. American B. W. Co.*, 6 R. P. C. 518; *Thierry v. Rickman*, 12 P. R. C. 412, 428; *Von Heyden v. Newstadt*, 14 Ch. D. 230; *Hill v. Evans*, 4 DeG. F. & J. 288. . . . The Courts are now more liberal in protecting patents: *Carter v.*