

ture the patented article in Canada according to law."

Mr. Cameron, for the respondents, in substance, argued that from the evidence brought here by the disputants, we find that, as a matter of fact, the manufacture of the instruments known in commercial language as the Edison telephone, was commenced in April, 1879, and continued to the year 1880 in Mr. Foster's shops in Toronto, and that the instruments manufactured were the result of the patents concerned in this case. The manufacture was contemporaneous with the petitioning for and obtaining of the two patents Nos. 9,922 and 9,923. As to the patent No. 8,026, it is embodied in the two others, which are improvements in the putting into operation of the claims of No. 8,026. No instruments were made under the precise description of this last mentioned patent, and after 1880 it does not appear that instruments were made after the two other Edison's patents in Canada, for the very simple reason that there was no demand for them, and that the owners of these patents had a quantity of these Edison's instruments on their shelves, of which they could not and cannot at this moment dispose. The facts of this case are totally different from the facts of the Bell case, tried before the Minister of Agriculture. In the present case the disputants are driven to the paltry importation of \$12 worth of carbon buttons, applied to the manufacture of \$15,000 worth of instruments, which insignificance brings to memory the maxim *de minimis non curat lex*. As regards manufacture its meaning is the supply of a demand, and when no demand is made there is no breach of the condition imposed by law, as ruled by *Barter v. Smith*.* "The case then sums itself up to this, that the importation after the year was a bagatelle, and no violation of the spirit of the act at all, and I submit no violation even of the letter of the act; that the manufacturing had been going on continuously as long as the public wanted the instruments, and we must assume that a certain number of them were imported during the period when the law allowed the importation. Between those

that were so imported and those that have since been made there has been a manufacture of a greater quantity than the public now want; there is a lot of them on hand and comparatively useless and unasked for. I ask you then to dismiss this application on the ground that the petitioner has not established any violation either of the letter or of the spirit of the act."

Mr. Lash, for the respondents, argued, in substance, that in the decision in *Barter v. Smith* and the *Bell Telephone case* it is established that it is not the mere fact of importation, but injury to home labor which was intended to be guarded against by the Legislature. The evidence in this case is entirely out of question, it comes within the class laid down in those two cases as one which would not void a patent. It was a surprise to hear the counsel for the disputants arguing that the onus of proof in this case is upon the respondents. We hold a title which is good as long as the contrary is not proved against us, surely not by us, but by the disputants, as was ruled in *Barter v. Smith*. This case must be treated as the other cases, holding the law as not being directed to matters of form or minutiae, but to broad principles of the articles invented, the broad manufacture of the industry in Canada, the manufacture of articles when demanded.

Mr. Wood remarked that the part of the argument delivered by the learned counsel of the disputants, to the effect that the instruments manufactured by Mr. Foster, for the patentee, were generally under Edison's patents, without referring to any one in particular, does not agree with Mr. Foster's evidence, where it is distinctly stated that these instruments were made under patents 9,922 and 9,923.

Mr. Roaf, in reply, said, in substance, that no attempt whatever was made here in Canada to carry out the combination referred to in the first patent. As to the two other patents the question would be as to whether the patentee has satisfied the law by manufacturing instruments in which all the claims of the separate patents are not taken in and put in operation. Mr. Sise, who appeared for the respondents, cannot identify that manufacture with any one of the three

* 8 Leg. News, 210.