

Quebec.]

LEFEUNTEUM v. BEAUDOIN.

Dec. 9, 1897.

Appeal—Reversal on questions of fact—Evidence—Affirmative testimony—Interested witnesses—Art. 1232 C.C.P.—Title to land—Prescription by ten years—Limitation of actions—Equivocal possession—Mala fides—Sheriff's deed—Nullity.

The Supreme Court of Canada may take questions of fact into consideration on appeal, and if it clearly appears that there has been error in the admission or appreciation of evidence by the courts below, their decisions may be reversed or varied. *North British and Mercantile Ins. Co. v. Tourville*, 25 S.C.R. 177, followed. In the estimation of the value of evidence in ordinary cases the testimony of a credible witness who swears positively to a fact should receive credit in preference to that of one who testifies to a negative. The evidence of witnesses who are near relatives or whose interests are closely identified with those of one of the parties, ought not to prevail over the testimony of strangers who are disinterested witnesses.

Evidence by common rumour is unsatisfactory and should not generally be admitted. Appeal allowed with costs.

Belcourt and Beaubien, for appellant. *Lajoie and Lussier*, for respondent.

EXCHEQUER COURT.

AUER INCANDESCENT LIGHT v. DRESCHEL.

Patent of invention—Canadian patent—Foreign patent—Expiration of.

The expression "any foreign patent" occurring in the concluding clause of the 8th section of the Patent Act, viz.: "Under any circumstances if a foreign patent exist: Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires," must be limited to foreign patents in existence when the Canadian patent was granted.

[OTTAWA, Jan. 24. BURBIDGE, J.]

The facts appear in the reasons for judgment.

C. A. Duclos, for plaintiff. *J. E. Martin*, for defendant.

BURBIDGE, J.—The question in this case is as to the meaning of the concluding clause of the eighth section of the Patent Act, as re-enacted in s. 1 of 55-56 Vict., c. 24. That clause, which was first enacted as part of s. 7 of the Patent Act, 1872, is as follows:

"And under any circumstances if a foreign patent exists, the Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires."

If the expression "foreign patent," where it last occurs in the clause has reference to a foreign patent existing at the time when the Canadian patent is granted, the plaintiff is entitled to judgment in this case. If on the contrary it means any foreign patent, and includes a foreign patent taken out after the date of the Canadian patent as well as one obtained prior to such date, the Canadian patent on which the plaintiff relies has expired, and the defendants