

et ordonne que la dite opposition restera au dossier.

Motion renvoyée avec dépens.  
*Charland & Tellier, avocats du contestant.*  
*Godin & Dugas, avocats de l'opposant.*

## PATENT OFFICE, CANADA.

OTTAWA, January, 1886.

Before J. C. TACHÉ, DEPUTY MINISTER  
 OF AGRICULTURE.

TELEPHONE MANUFACTURING CO. OF TORONTO V.  
 THE BELL TELEPHONE CO. OF CANADA.

*Patent Act of 1872—Jurisdiction of the Minister  
 of Agriculture—Non-manufacturing.*

*The jurisdiction of the Minister of Agriculture in matters of Patents and in relation to Section 28 of the Patent Act, is exclusive of, and not concurrent with, the jurisdiction of the ordinary courts.*

*Barter v. Smith, 8 Leg. News, 210, discussed and followed, as to the meaning of non-manufacturing and importing.*

This was a case of *dispute* raised against the existence of three patents granted to Thomas Alva Edison (now owned by the Bell Telephone Company of Canada), namely:—No. 8,026, issued the 17th of October, 1877; No. 9,922, issued the 1st of May, 1879, and No. 9,923, issued the 1st of May, 1879, for alleged forfeiture on the ground of non-manufacturing and of importing, in the terms of Section 28 of "The Patent Act of 1872."

Mr. J. R. Roaf, Q.C., was counsel for disputants, and Messrs. Hector Cameron, Q.C., S. G. Wood, Q.C., and Z. A. Lash, Q.C., counsel for respondents. The case was heard before the deputy of the Minister of Agriculture. The petition addressed to the Minister of Agriculture bears date the 9th of October, 1885. The case was opened on the 4th day of November. After some proceedings had taken place to establish the particulars of disputants' complaint, the question of jurisdiction of the tribunal was argued, on a new point, substantially as follows:—

Mr. Cameron said, in substance, that they maintain the same objection to the jurisdiction of the tribunal as was raised in the other case, tried before the Minister, between

the same contending parties—an objection which is the object of an application for a *certiorari* to remove the proceedings and review the decision. Under such circumstances, the tribunal should not proceed with the adjudication upon this case. "I have also," added the learned counsel, "another objection to the jurisdiction, which is a new one, and has not been urged before, arising from the circumstances of this case: . . . the jurisdiction which you are authorized to exercise under the 28th Section of the Act in cases of this kind is concurrent with the jurisdiction to try those same questions of importation and refusal to sell and manufacture by the ordinary courts of the country. . . . A suit is now pending in which the Bell Telephone Company have brought an action against Mr. Roaf's clients for an infringement of these very patents. In that suit the disputants in this case have pleaded, as a matter of defence, that these patents are void in consequence of importation, non-manufacture and refusal to sell. That question is, therefore, pending, and was pending, before the filing of this petition in the Chancery division of the High Court of Justice in the province of Ontario; the parties are at issue upon it; the question is to be tried in that case. . . . I submit to you that that tribunal being seized of this question you ought not now to proceed, and I can show ample authority that, by the practice of the courts, where two courts have concurrent jurisdiction, the court which is first seized of litigation on any particular question is allowed to determine that question, and no other court which has concurrent jurisdiction will interfere with it pending the decision of the court which is already seized of the question." By the Patent Act, added the learned counsel, Section 26, concurrent jurisdiction is given to the other court, and the disputants in this case have themselves invoked the jurisdiction as a matter of defence, they have thereby admitted its existence. The 26th Clause is as follows:—

"26. The defendant in any such action may specially plead as a matter of defence any fact or default which, by this act or by law, would render the patent void; and the court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly."