

RIDDELL, J., delivering the judgment of the Court, referred to the agreement between the parties made in the month of March, 1910, and quoted clause 2, as follows: "Pollock agrees not to engage, either directly or indirectly, for himself or as agent or employee of any other person, firm, or corporation, in the manufacture or sale of disc talking-machines in Canada during the life of said letters patent No. 103332, with the exception of the sale of his present stock. . . ." The defendant contended that, by virtue of the acts of the plaintiff company set out in the proposed amended statement of defence, the "life" of the patent had gone, and the time during which the defendant was bound had expired.

In the absence of special circumstances, the "life" of any patent is "the term limited for the duration:" sec. 23 of the Patent Act, R.S.C. 1906 ch. 69. The mere occurrence of the circumstances set up in the proposed amended defence did not bring the "life" of the patent to an end, within the meaning of the contract. There might be no discovery of the facts; or, if such discovery should be made, no one might be sufficiently interested to dispute the continuance of the patent. Moreover, as to the alleged importation, at least, the patent might be in existence quoad any one but the importer: sec. 38(b).

It may well be that if a judgment in rem of a Court of competent jurisdiction were obtained declaring the patent void, the "life" would be considered to have come to an end—but there was nothing of that kind here.

Appeal allowed, with costs throughout.

SECOND DIVISIONAL COURT.

DECEMBER 11TH, 1915.

RE HAMILTON.

Deed—Construction of Trust-deed Settling Share of Beneficiary under Will—Effect as to Restraint upon Anticipation—Judgment in Former Proceeding—Effect of—Reasons for Judgment—Master's Report not Appealed against—Binding Effect on Parties—Stay of Judgment.

Appeal by William Fortye Hamilton from the order of LENNOX, J., ante 144.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.