

great weight to the doctrine and rules of interpretation laid down in that judgment of the deputy minister, which judgment embodies the jurisprudence adopted in Canada, when dealing with that section of the Patent Act.

The feature of Patent No. 7,789, granted for what is known under the name of "Bell's System of Telephony," is peculiar in so far as it consists both of a process or art and of a portion of the machinery necessary to carry it into practice. The two elements are inseparable; the electric circuit and the two instruments are the means of giving a practical and tangible shape to "Bell's system of telephony." Moreover, the instruments—described in the specification and illustrated in the drawings of the patent—are the mechanical contrivances which distinguish this invention from other methods of getting at a similar result. All the elements of which these instruments are composed are of the public domain, and public are also the means of erecting an electric circuit; therefore the patent is a patent for a new and useful combination of old elements, to attain an object known beforehand. The combination is the invention, and consequently the subject matter of the patent, and the mechanism of which it is constituted are new articles of manufacture.

The doctrine, universally admitted, of the patentability of a variety of combinations of the same elements for the same object has been clearly laid down by the Supreme Court in *Smith v. Goldie*. What is patentable is the subject of a privilege, and in Canada submitted to the conditions of section 28 of the Patent Act.

This patent, like every other patent granted, is therefore under the obligations exacted from all patentees by section 28 of the Patent Act of 1872, and subject to the adjudication of this tribunal, should disputes arise as to whether it has or has not become null and void under the provisions of this section.

The patent was granted on the 22nd of August, 1877, to Mr. Alexander Graham Bell, and is now, through a series of assignments, the property of "The Bell Telephone Company of Canada," the respondents in the case. It must be remarked that it matters not who

the owners are for the time being or were at any time; it is the patent which stands before me as the minister of agriculture to be adjudicated on, not the owners. The patent does so stand with the uninterrupted privileges as well as with the uninterrupted obligations attached to it.

This tribunal has not to investigate the *locus standi* of disputants nor of respondents, nor in relation to companies, to inquire whether they are legally incorporated or not; such questions are not within its jurisdiction and, besides, are quite indifferent to the issue in such cases. When this tribunal is made aware that disputes are raised, in accordance with the provisions of the 28th section, by some person who undertakes to prove his allegations, it immediately becomes the duty of the judges of such disputes to investigate the matter in the interest of public rights, if the policy of the law has not been carried out, or in the interest of patent rights if the obligations have been fulfilled. I, as minister of agriculture, have not to undertake to initiate cases of disputes, but I must take notice of all cases brought before me in a formal way.

The first allegations of the petitioners in this case are that illegal importations have been made of the patented articles, after twelve months from the date of the patent, specifically in the latter days of August, 1878, in January, 1879, and during the years 1880 and 1881.

The facts of the first alleged act of illegal importation are as follow:—During the first year of the existence of the patent, the patentee or his representatives in Canada had contracted with Mr. Charles Williams, of Boston, in the United States, for one thousand telephones to be delivered within the twelve months allowed by law for importing the invention. At the expiration of the twelve months Mr. Williams had not been able to complete his contract, more than half of the number contracted for having not been furnished. Under the misapprehension created by the date of the registering of the patent (24th August) that the twelve months would only expire with the 24th day of August, 1878, Mr. Williams did forward from Boston, on the 23rd day of the same month, a lot of seventy-five telephones, which, in the