

These few remarks seem sufficient to show the real meaning of this incident, and to prove that the fact of the Patentee having presented the said petitions and the terms of these petitions cannot, in the least, affect his position.

The Counsel of the disputant has argued in favor of the conclusions of his dispute from an official answer given to a letter written to the Patent Office at his (the Counsel's) advice *pendente lite*. As this is a matter of constant occurrence, and as it gives the occasion of showing how different is necessarily an answer to a question put in the abstract from the decision of a case presented with all its bearings and particulars, it is of importance for the Patent Office and for the public to dispose of the argument.

The letter written contained the following question:—"Is it considered as 'construction' sufficient to hold the patent, if an article composed of various parts is imported in parts and put together and constructed in a Canadian manufactory?"

The letter in answer was as follows:—"You ask if the manufacturing clause of the Patent Act would be complied with by importing the whole of the parts of a machinery to be only put together in Canada? Evidently this would not be in compliance with the requirements of the law."

To such an interrogation no other than an answer based on the supposition of a breach of the law could be safely given. But if, departing from the abstraction of the above given question, the investigation were made as regards a certain patent, under specific circumstances, the conclusion might be widely different from the general answer. In fact, it is not difficult to imagine a case in which the importation of all and every one of the component parts of an invention, to be simply put together in Canada, would not be an importation in the meaning of Section 28 of the Patent Act, but, on the contrary, would be the only means of obeying the Statute as to manufacturing, and therefore to all intents and purposes, in full compliance with the spirit of the law and the nature of the contract: such would be, for example, the case of a Patent granted for a composition of matter, all the ingredients of which would

be products not to be found in the country; a compound of exotic gums and extracts, for instance, or a medicine composed of portions of tropical plants.

This is sufficient to illustrate the difference of cases, every one of which must stand on its own merits, viewed in the light of the facts confronted with the spirit of the law.

The conclusion is, that the respondent having refused to one the use of his inventions, and that the importation, assented to by him to be made, being inconsiderable, having inflicted no injury on Canadian manufactures and having been so countenanced, not in defiance of the law, but evidently as a means to create a demand for the said inventions, which the Patentee intended to manufacture and did, in fact, offer to manufacture in Canada, he has not forfeited his Patents.

Therefore, George Thomas Smith's Patents No. 2257, for a "Flour Dressing Machine," No. 2258 for a "Flour Dressing Machine" and No. 2409 for a "Process of Milling" have not become null and void under the provisions of Section 28 of "The Patent Act of 1872."

JURISPRUDENCE FRANÇAISE.

Compensation—Société en nom collectif—Dette de la société—Créance d'un associé—Faillite de la société—Absence de réclamation directe contre l'associé.

La compensation entre deux obligations, également liquides et exigibles, ne peut avoir lieu, de plein droit, qu'autant que le créancier de l'une des obligations est débiteur personnel et principal de l'autre obligation, et que, réciproquement, le créancier de cette dernière obligation est débiteur direct et personnel de la première.

Spécialement les associés en nom collectif, bien que tenus solidairement des obligations de la société, n'en sont tenus cependant que subsidiairement, à titre spécial, et en dehors des actions dont la société peut être elle-même principalement l'objet.

En conséquence, le créancier d'une société en nom collectif ne peut considérer comme compensée, de plein droit, sa créance sur la société avec la somme dont il peut être débiteur de l'un des associés, tant qu'il n'a pas élevé une réclamation directe et personnelle contre cet associé.