

to produce the bustle claimed to be protected by it. All the learned judges in the Court of Appeal, although they arrived at the same conclusion, stated that they had done so with hesitation, and expressed the opinion that but little invention was requisite, and that the case was near the border line. I entirely agree, and have not been without doubt as to the proper decision to be arrived at."

The effect of a disclaimer under s. 25 of the Patent Act has not been considered very frequently by Canadian Courts. S. 25 reads:—

25. Whenever, by any mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, a patentee has,—

(a) made his specification too broad, claiming more than that of which he or the person through whom he claims was the first inventor; or,

(b) in the specification, claimed that he or the person through whom he claims was the first inventor of any material or substantial part of the invention patented, of which he was not the first inventor, and to which he had no lawful right;

the patentee may, on payment of the fee hereinafter provided, make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereon.

2. Such disclaimer shall be in writing, and in duplicate, and shall be attested in the manner hereinbefore prescribed, in respect of an application for a patent; one copy thereof shall be filed and recorded in the office of the Commissioner, and the other copy thereof shall be attached to the patent and made a part thereof by reference, and such disclaimer shall thereafter be taken and considered as part of the original specification.

3. Such disclaimer shall not affect any action pending at the time of its being made, except in so far as relates to the question of unreasonable neglect or delay in making it.

4. In case of the death of the original patentee, or of his having assigned the patent, a like right shall vest in his legal representatives, any of whom may make disclaimer.

5. The patent shall thereafter be deemed good and valid for so much of the invention as is truly the invention of the disclaimant, and is not disclaimed, if it is a material and substantial part of the invention, and is definitely distinguished from other parts claimed without right; and the disclaimant shall be entitled to maintain an action or suit in respect of such part accordingly: R.S. c. 61, s. 24.

The language of the Canadian statute follows that of the United States R.S. 4917. In *Dunbar v. Myers*, 94 U.S. 187 and 194, the Supreme Court of the United States points out that after disclaimer the "construction must be the same as if such matter had never been included in the description of the invention, or the claims of the specification." Authorities on this may also be found in Robertson on Patents, vol. II., p. 9, and Walker on Patents, 5th ed., p. 268.

In *Graham v. Earle*, 82 Fed. Rep. 740, it was held that the deleted portion of the specification should not be referred to for the purpose of construction.

The English cases on this point are to the same effect (*George Hattersley & Sons v. George Hodgson*, 21 R.P.C. 517 and 524, affirmed in the House of