

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

tion in Canada" are to be read as meaning "not being in public use or on sale *in Canada* for more than one year previous to his application."

Held, also, that the Minister of Agriculture or his Deputy has exclusive jurisdiction over questions of forfeiture under the 28th section of the Patent Act, 1872, and that a defence on the ground that a patent has become forfeited for breach of the conditions in the said 28th section, cannot be supported after a decision of the Minister of Agriculture or his Deputy declaring it not void by reason of such breach.

Per HENRY, J.—The jurisdiction of the Commissioner is administrative rather than judicial, and he may look at the motive and effect of an act of importation, and a single act, such as the importation of a sample tending to introduce the invention, is not necessarily a breach of the spirit of the conditions of the 28th section.

Under the 7th and 48th sections of the Patent Act, 1872, persons who had acquired or used one or more of the patented articles before the date of the patent, or who had commenced to manufacture before the date of the application.

Held, not entitled to a general license to make or use the invention after the issue of the patent.

The defendant at the hearing of the suit in Chancery, moved judgment by way of non suit at the close of the plaintiff's evidence, and judgment was afterwards reversed on appeal. The Supreme Court declined to order a new trial, but directed a decree for the plaintiff.

Appeal allowed with costs.

Bethune, Q.C., and *Howland*, for appellant.

Lash, Q.C., and *Walter Cassels*, for respondent.

BIRKETT ET AL V. MCGUIRE ET AL.

Partners—Giving time to principal—Blended accounts—Payments.

Hulton and McGuire, (defendants,) trading together in partnership, became indebted to Birkett et al, plaintiffs, for goods purchased from them for which the defendants gave notes of the partnership firm. They dissolved partnership in October, 1876, with the knowledge and approval of the plaintiffs, one of them having assisted in arranging it.

McGuire continued to carry on the business alone, and the plaintiffs continued to deal with

him,—in so doing McGuire had several transactions with the plaintiffs, from whom he continued to receive goods on credit, until he became insolvent in the early part of the year 1880,—whereupon plaintiffs brought this action on the notes given by the firm. The circumstances attending the dissolution of the firm of McGuire and Hulton, and the subsequent dealings of the plaintiffs with McGuire, appear in the report of the case in 31 U. C. C. P. 430.

Held, [reversing the judgment of the Court of Appeal, RITCHIE, C. J., and STRONG, J., dissenting,] that Hulton was entitled to a verdict on the grounds that by the course of dealings of the plaintiffs with McGuire subsequently to the dissolution, viz.: by plaintiffs blending the two accounts, and by their taking McGuire's paper on account of the blended accounts, upon which paper McGuire from time to time made sufficient payments to pay any balance remaining due on the paper of McGuire and Hulton, which was in existence at the time of the dissolution, it must be held as a matter of fact, as well as of law, arising from the course of the said dealings, that the paper of the firm of McGuire and Hulton had been fully paid.

Appeal allowed with costs.

MacKelcan, Q.C., for appellants.

McCarthy, Q.C., and *Bruce*, for respondents.

CHANCERY DIVISION.

Wilson C. J. C. P. D.]

[June 6.

MITCHELL V. SYKES.

Factor—Power to sell for repayment of advances without special authorisation—Power to sell by auction.

A., a manufacturer, borrowed money from B., and agreed with B., in writing, that B. should have the selling of the goods manufactured at his A's. factory; that A. should give B. a mortgage on the factory and premises to secure \$5,000, and interest to be advanced by B., and should furnish B. all the goods manufactured at the factory, and manufacture the same to the satisfaction of B., and ship the same to B., as B. directed, at such times, and in such reasonable quantities as he from time to time should direct, and should pay B. a *del credere* commission of 7½ per cent. for selling the same. and interest at 8