

## The Legal News.

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Under the amendment made last year by the provincial legislature (7 Leg. News, 217), the long vacation begins on the 1st of July instead of on the 10th, and extends to August 31 inclusive. The Courts are not obliged to sit between Aug. 31 and Sept. 10. The labours devolving upon the judges of late, under the pressure of increasing business and insufficient accommodation, have been more arduous and harassing than usual, and the necessity of a vacation is more imperative. We hope that the members of the bench will be able to take advantage of it to the fullest extent.

The important amendments made by the provincial legislature during the recent session with reference to abandonment of property and assignments, have been issued in the form of a neat manual by Mr. A. Periard, Mr. R. D. McGibbon, advocate, having undertaken the editorial supervision. The text of the amended law is given and the editor has added some notes and forms, together with an Index which will be found convenient by those consulting the clauses of the law as it stands at present. It may be remarked that the defect in the law of *capias* exposed in the case of *Molson & Carter* (6 L. N. 189), and again adverted to in *Goldring & La Banque d'Hochelaga* (8 L. N. 97), has at length been remedied, and imprisonment can now be ordered in a case like that of *Molson*.

In the judgment in *re Bell Telephone Patent*, 8 Leg. News, p. 34, reference was made to the case of *Barter v. Smith*, which was the first of its kind in Canada, the Telephone case being the second. As this decision is of special interest to all who may have to do with patent cases, we have obtained a copy of the official report prepared at Ottawa, and begin its publication in the present issue, in order that it may be on record for the use of the members of the profession and others interested.

The number of indictable offences committed in England, in the years 1882 and 1883, was 49,534. The returns show that only 20,450 persons were apprehended, and that 15,258 were committed for trial, of whom 11,443 were convicted. There were also 588,710 persons convicted on summary proceedings before magistrates. The punishment of whipping, it may be observed, is far from becoming obsolete, as it appears to have been inflicted in 3,115 cases.

### SUPERIOR COURT.

MONTREAL, April 13, 1885.

Before LORANGER, J.

Low, *es-qualité*, v. BAIN, and PHILLIPS et al., opposants, and plaintiff contesting.

*Inscription for enquête.*

The plaintiff contestant inscribed as follows:—"On the rôle d'enquête for the adduction of evidence."

Opposants moved to strike the inscription "because no such inscription is legal without the consent of the opposants."

"Because no such consent was ever given by the said opposants."

At the argument, opposants relied on *The Exchange Bank v. Craig*, M.L.R., 1 Q.B. 39.

The judgment was as follows:—"Considérant que la demanderesse *es-qualité* a inscrit la présente cause sur le rôle d'enquête pour audition de la preuve et que cette inscription est conforme à l'article 234 du code de procédure civile;

"Considérant qu'en vertu de cette inscription l'inscription peut être prise au long ou par notes en la manière indiquée par les articles 236 et 263 du code de procédure civile;

"Considérant que le consentement des parties n'est pas requis que pour le cas où l'enquête doit être prise au long (article 284 du même code);

"Considérant que l'inscription, telle que produite ne demande pas que l'enquête soit prise au long;

"Renvoie la motion des opposants avec dépens."

*Robertson, Ritchie, Fleet & Falconer*, for opposants.

*Maclaren, Leet & Smith*, for plaintiff contesting.

## PATENT OFFICE.

Before THE DEPUTY OF THE MINISTER OF  
AGRICULTURE.

OTTAWA, NOV. 1876.

BENJAMIN BARTER v. GEORGE THOMAS SMITH.

*Patent Act of 1872—Forfeiture for non-manufacturing—Importation after twelve months.*

This case was one in which a *dispute* was raised against the existence of three patents granted to the respondent in 1873, for alleged forfeiture on the ground of *non-manufacturing*, within two years of the date of each Patent, and on the ground of *importing* after twelve months, in the terms of section 28 of "The Patent Act of 1872."

SECTION 28.—Every Patent granted under this Act shall be subject and expressed to be subject to the condition that such patent and all the rights and privileges thereby granted shall cease and determine, and the Patent shall be null and void at the end of two years from the date thereof, unless the Patentee or his assignee or assignees, shall, within that period, have commenced, and shall, after such commencement, continuously carry on in Canada the construction or manufacture of the invention or discovery patented, in such manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; and that such Patent shall be void if, after the expiration of twelve months from the granting thereof, the Patentee, or his assignee or assignees, for the whole or part of his interest in the Patent, imports, or causes to be imported into Canada, the invention for which the Patent is granted; and provided always, that in case disputes should arise as to whether a Patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture or his Deputy, whose decision shall be final.

"2. Whenever a Patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the Commissioner may, at any time more than three months before the expiration of that period, grant to the Patentee a further delay on his adducing proof to the satisfaction of the Commissioner that he was for reasons beyond his control prevented from complying with the above-mentioned condition."— "*Patent Act of 1872, as amended in 1875.*"

The petition addressed to the Honorable the Minister of Agriculture (bearing date the 10th October, 1876,) by the disputant, represented that Patents 2409, for a process of Milling; No. 2257, for a Flour Dressing Machine, and No. 2258, also for a Flour Dressing Machine, granted to George Thomas Smith, in 1873, are null and void, and should

be so declared for non-compliance with the provisions of the 28th section of the Patent Act of 1872, requiring manufacturing within two years and forbidding importation after twelve months.

The petition asked that the Patentee should be required, in case he should state his inventions have been manufactured, to furnish the particulars. The petition furthermore alleged that importations of the said inventions had taken place on the 25th day and on the 29th day of April, 1876.

The parties were notified to appear with their witnesses before the Deputy of the Minister of Agriculture at the office of the Minister of Agriculture, at Ottawa, on the 26th October, 1876; but on a joint request of both parties, the hearing was postponed to the 3rd November.

On the 3rd November, the disputant opened his case by reading and filing his own statutory declaration in support of the allegations of his petition; the analysis of which declaration is given hereinafter. On this evidence, and in regard to further proceedings, the case was preliminarily argued in substance as follows:—

The counsel for the disputant contended: That having made a case, and having established *prima facie* evidence of the delinquency of the Patentee, the respondent should be forced to assume the burden of proof, by reason, first, of the peculiar constitution of the present tribunal, instituted to protect the public against the extension of the patentee's privileges; second, from the absence of power to compel witnesses to appear; and, third, because it would otherwise be forcing the disputant to prove a negative;

That on failure, on the part of the respondent, to adduce evidence of his having manufactured within two years, and on failure of rebutting the *prima facie* proof of having imported his inventions, the case should be decided against him;

That, in connection with the importation, it was clear that the importation of the machinery of Patents No. 2257 and No. 2258, did cover the importation of the process of Patent No. 2409, the former being the necessary means of operating the last mentioned invention;

That the Patents having been made null and void at the expiration of the delays granted by law for manufacturing and importing, they should be declared so in the decision which is to be given.

The respondent contended: That it would be a most extraordinary thing to force the patentee to prove a forfeiture against himself, especially when there is positively no other evidence adduced by the disputant than the re-assertion made by himself, of the allegations of his petition, and when really no case is made;

That the whole meaning of the proceeding is plain before the tribunal, namely: It is an attempt on the part of a rival patentee to fish out a grievance, in order to deprive a competitor of his acquired rights;

That unless the disputant declares himself ready to go on with his evidence, of which not a thread is so far shown, this day's proceedings on his part amount to a non-suit, and the case should be dismissed at once.

It was decided that the burden of proof lies on the disputant, but that a sufficient case had been made out to necessitate a thorough investigation of the matter in dispute.

The proceedings were then adjourned to the 17th November.

It was afterwards, by common consent, further adjourned to the 23rd and then fixed for the 25th of November, at which date the evidence was completed on both sides, the case was argued and the decision reserved.

The evidence in the case is composed: 1st. Of official and other documents; 2nd. Of statutory declarations; and 3rd. Of admissions of parties and facts ascertained by the Deputy Minister.

The following is a list and an analysis of the proof adduced:—

*Documentary Evidence.*

1. The exemplification of Patent No. 2257, granted to respondent, George Thomas Smith, for a "Flour Dressing Machine," under date the 18th day of April, 1873.
2. The exemplification of Patent No. 2258, granted to respondent for a "Flour Dressing Machine," under date the 18th day of April, 1873.
3. The exemplification of Patent No. 2409, granted to Respondent for a "Process of Milling," under date the 4th day of June, 1873.

These three patents have, on their face, the conditions of forfeiture prescribed by the 23th section of the Patent Act, hereinbefore quoted.

4, 5, 6. Three petitions addressed to the Commissioner of Patents, in the month of August, 1876, in relation to the three above-named Patents, by the Patentee, George Thos. Smith, representing generally that he has been unable to dispose of his inventions for want of demand or acceptance on the part of the public; that he believes he has fulfilled the spirit of the law, but as doubts and disputes have arisen, he prays for a further extension of delay; and for a declaration that the offering of his invention for public use upon payment of a reasonable royalty is sufficient compliance with the statute.

(The office answer to the petition was that from the allegations of the Patentee, it did not appear that the said patents had been voided.)

7. A letter of Messieurs Grahame, Howland and Ryerson, of Toronto, attorneys-at-law of the Patentee Smith, inquiring about the mode of obtaining a conclusive decision in the matter of the said disputes, and suggesting that parties questioning the existence of their client's patents should be cited to appear and prove their case, and in default that the decision be given on the showing of the Patentee.

(The official answer was to the effect that the Patent Office could not undertake to initiate a case of dispute.)

8. A letter of Messieurs Edgar, Fenton and Ritchie, of Toronto, attorneys-at-law of the Disputant, Benjamin Barter, raising the present dispute against the three herein-above mentioned patents of the respondent.

9. A certified copy of an Invoice dated 21st April, 1876, from Charles Rakes, of Lockport, in the United States, to Messieurs Howland and Spink, of Thorold, in the Province of Ontario, as attested by Wm. Leggett, Collector of Customs.

10. A printed circular addressed "to Millers" by Benjamin Barter, the disputant, not dated, but posterior to the 25th July, 1876, offering for sale "The Original Middlings Purifier." This circular contains certificates of millers having made use of Mr. Barter's machines; of these certificates ten indicate that they are from the Province of Ontario, the oldest of which is dated the 1st December, 1875, and four are dated July, 1876; the others are from the United States, the oldest being dated the 2nd December, 1872.

11. An authenticated copy of a bill of complaint filed in Chancery, in Toronto, on the 9th September, 1876, on behalf of George Thomas Smith (the respondent in this case) against James Lawson (a witness in this case), concerning an alleged infringement of his (Smith's) patent for a "Process of Milling."

*Declaratory Evidence.*

I. A statutory declaration made by the disputant, Benjamin Barter, of the City of Toronto, miller, dated the 30th of October, 1876, stating:—

That he (Barter) during the summer of the year 1876 visited the mill of Messieurs Howland and Spink, at Thorold, and saw machines branded G. T. Smith, patentee, and Rakes, of Lockport, manufacturer. That the said machines were imported machines, and covered the material portions of the inventions claimed by patents No. 2257 and 2258; that these machines were ascertained to have been made in the State of New York, by Rakes, for the Patentee, Smith, who caused the said machines to be imported during the month of April, 1876; that these machines were imported, two on the 25th day of April aforesaid as *Smith's Purifiers Machines*, on which \$109 duties were paid; and two on the 29th, on which the same amount of duties was also paid; that these machines are constructed and adapted for the performance of material and substantial portions of the process patented by patent No. 2409; that diligent inquiries have led him (Barter) to believe that Smith's inventions were not manufactured in Canada until about August, 1876, with the exception of one machine, manufactured during the winter months of the year 1876.

II. The statutory declaration of Thomas Laurie, of the city of Hamilton, millwright, dated 22nd of November, 1876, accompanied with two exhibits marked "a" and "b," the first being copy of specifications of Smith's Patents, and the other a printed circular from Thomas Pringle, of Montreal, dated 21st March, 1873, advertising "Middling's Purifiers," stating:

That on the 6th November, 1876, he called, in company with disputant, on Charles Rakes, at Lockport, State of New York, for the purpose of making enquiries; that the said Rakes informed them that he had manufactured for the Patentee, Smith, the machines erected in Messieurs Howland and Spink's mill, at Thorold, that he (Rakes) had nothing to do with selling these machines to Howland and Spink; that the said Rakes told further, that Smith was charging for his machines considerably more than the cost of manufacturing; that being asked to make an affidavit of these facts, Rakes refused to do so; that he (Laurie) has visited during the then current month of November, 1876, the mill of Howland and Spink, at Thorold, and as a practical millwright of forty years standing, says that these machines are the machines, and the putting into operation of the process described in Smith's specification; that Smith's machines do not require a large expenditure, but could be readily manufac-

tured at any mill with ordinary tools; that for at least three years past there has been a great demand among millers in Ontario for Middlings Purifiers of the description patented by Smith; that he is aware that many machines as advertised in the annexed circular were sold in Ontario during the years 1873, 1874 and 1875; that he is not aware of any of Smith's machines having been manufactured, sold, or offered for sale in Canada for more than two years after the date of Smith's patents, and that if any active effort had been made to introduce them, he (Laurie) should have become aware of it.

III. The Statutory declaration of James Lawson, of the town of Thorold, Miller, dated 11th November, 1876, stating:—

That he knows the Respondent, Smith, who, in company with one Charles Rakes, of Lockport, N.Y., visited him at his (Lawson's) mill, in May, 1876, to ask him (Lawson) to purchase the same machines as he (Smith) was putting up in Messieurs Howland and Spink's mill; Smith informed Lawson that Rakes was making these machines for him (Smith) at the price of \$350, to which price Smith was adding \$250 additional; that he (Lawson) asked to be furnished with the said machines at a lower price, to which proposal Smith's answer was that this was his lowest price; that before that interview Rakes had told about Smith coming to Thorold, and expressed his hopes that Lawson might purchase the machines from Smith to give Rakes the job of building them; that he (Lawson) is acquainted with Smith's machines, and knows they are not of expensive manufacture, but could be built with ordinary tools and materials at any mill. He (Lawson) having been a miller for about twelve years on his own account, is aware that for at least four years past there has been an active demand among millers in Ontario for these Middlings Purifiers. Mr. Spink had told him (Lawson) that he had been negotiating with Smith for the purchase of his machines, and afterwards that he had purchased them from Smith; that in the early part of last summer he (Lawson) saw Smith, who was regulating the purifiers at Spink's mill, and on having remarked about the workmanship, Smith told that he was not to have any more constructed by Rakes; that Mr. Spink told that he had a written contract with Smith for the Purifiers, but being asked by Barter, on the 14th November, 1876, in his (Lawson's) presence, to give affidavit on the subject, Spink declined to do so.

IV. A second statutory declaration of Benjamin Barter, dated 16th November, 1876, accompanied with an exhibit marked "a," being letters exchanged between the said Barter and the firm of Howland and Spink, stating:—

That he, in company with Thomas Laurie, visited Charles Rakes at his place of business at Lockport, where they were informed by said Rakes that he (Rakes) had manufactured the machines at Messieurs Howland and Spink's mill for G. T. Smith, who made the bargain for them; that the said Rakes informed them that he (Rakes) "never saw the" said Messrs. Howland and Spink or any one "on their behalf, until he went to Thorold, "at the request of and for the said Smith, "to make arrangements about putting the "said machines into the said mill;" that Rakes told Laurie in Barter's presence that Smith charged considerably more than the cost of manufacturing; that Rakes refused to make affidavit of his said statements; that Smith admitted to him (Barter) that the machines put in Howland and Spink's mill are his (Smith's) Purifiers; that Smith's machines do not require much expenditure, but can be built with ordinary tools and machinery at any mill; that for several years past there has been an active demand among millers in Ontario for machines of that description; that the letter annexed is in the handwriting of Mr. Spink, of the firm of Howland and Spink, and was received by him (Barter); that he (Barter) was informed by Mr. Spink, on the 26th February, 1876, that Smith had been telegraphed to come over to close the bargain for the purchase of the said machines; that later, Mr. Howland told him (Barter) that he was too late, their firm having bought from Smith, who had come to Toronto to sell his machines; that Messieurs Howland and Spink have declined to give evidence in the case.

The letter of the firm of Howland and Spink, dated the 9th February, 1876, annexed to the above declaration and referred to, is to the effect:—That Mr. Spink has just returned from the United States; that he has found Smith's process of milling the best he has ever yet seen; that Smith's Purifiers are sold for less money than Barter's machines; that Smith's machines have such a reputation that American millers will have no other; that they expect Smith to come soon, and in the meantime should like to see Barter, as their machines will have to be ordered from some manufacturer in a few days, and that he (Barter) had better call on them at once.

The answer of Mr. Barter to this letter, is dated 12th February, 1876, and is to the effect:—That he purposes soon going to Thorold; that the (so-called in the States) Smith's plan of milling is good, meaning the mode of milling at present adopted there; but that "as the means by which it is effected "belong to myself (Barter) the mode of milling for which the means were invented, "must also of necessity belong to me" (Barter); that he is anxious for the patronage of the firm, and should be most sorry if they do not come to terms.

V. A third statutory declaration of Benjamin Barter, dated 20th November, 1876, stating:—

That he (Barter) had been informed, in February 1876, by Mr. Spink, that G. T. Smith had had one of his machines manufactured at Dexter, in the county of Elgin; that he (Barter) went in the month of May 1876, at Dexter and St. Thomas, to enquire about the fact; that he, having enquired from millers around, "could not find any "one who knew of any such machine as a "Middlings Purifier having been made or "offered for sale in that neighborhood;" that he verily believes that no such machine as patented under No. 2257 was ever constructed there previous to May, 1876.

VI. An affidavit, in the form and manner in practice in the United States, from the respondent, George Thomas Smith, made and signed in Jackson county, State of Michigan, and dated 23rd November, 1876, stating:

That he (Smith) has never imported into Canada any of the machines manufactured under his Canadian patents; that he has offered to millers in Canada, personally and through agents, to sell the right to use his inventions for a reasonable compensation; that he never refused to furnish his machines manufactured in Canada; that he did not purchase for import the machines placed in Messrs. Howland & Spink's mill at Thorold; that the sale of said machines and the payment thereof was a transaction between the millers and Rakes, in which he (Smith) had no interest; that he (Smith) sold to Messrs. Howland & Spink the right of using his process under patent No. 2409, and superintended the arrangements of the machinery for carrying on the said process; that his (Smith's) royalty for the use of his process and machine No. 2257 was the only profit and emolument which he received in connection with the said Howland & Spink's mill at Thorold.

VII. The statutory declaration made in Toronto on the 22nd day of November, 1876, by Charles Rakes, machinist, of Lockport, in the State of New York, stating:

That he has constructed at Lockport the machines put up in Messieurs. Howland & Spink's mill at Thorold; that such machines are after American patents, of which G. T. Smith is the patentee, and are nearly equivalent to the Canadian Patent No. 2257, and that the distinguishing feature of No. 2258, viz., the grading reel, does not appear in the machines set at Thorold; that the first opening in connection with this transaction was the meeting of Mr. Spink, in December 1875, at the North Buffalo Mills; that the said Mr. Spink told there, to him (Rakes), that he had been visiting that part of the state of New York to enquire into the relative merits of the various Middling Purifiers, and that he

(Rakes) had been recommended to him (Spink) by M. A. Chester, of the firm of Thornton & Chester, millers, of Buffalo; that previous to that interview with Mr. Spink he had not had any communication with G. T. Smith, nor with any person on his behalf, in regard of putting Purifiers in the said mill of Messrs. Howland & Spink, and that he (Rakes) never said that he had had such previous communication with G. T. Smith,—“the assertion contained in Benjamin Barter's declaration to that effect is false;” that on the occasion of the said first interview, Mr. Spink visited Rake's factory at Lockport; that he (Rakes) visited Thorold on or about the 11th of February, 1876, and met there George T. Smith and Mr. Spink, arranging for the sale of the right to use Smith's inventions.

They all three went to Toronto to meet the other member of the firm, and it was when returning to Thorold that he (Rakes) finally bargained with Mr. Spink to build the said machines for him at the price of \$350 a piece, free on board at Lockport; that he was to be paid by Messrs. Howland & Spink; was paid \$1100 by them, and looks to them for the balance still due; that he (Rakes) has had, for about two years, an agreement with Smith to furnish millers with Smith's inventions in the United States at stated prices, but not for use in Canada; that at the time that he (Rakes) was putting up the machines in Messrs. Howland & Spink's mill at Thorold, the said Smith proposed to him (Rakes) to undertake the manufacture in Thorold of machines to be used in mills in Canada; that it was expressly proposed by the said Smith that if Mr. James Lawson should purchase the right of using his inventions, that he (Rakes) should manufacture the necessary machines at Thorold, in Canada; that the said Lawson did not purchase the said right; that he (Rakes) does not recollect having told Barter, in the terms of Barter's declaration, that the bargain for the machines had been made by Smith; if anything were said on the subject it must have been that Smith had concluded an agreement for the sale of the right to use his inventions; that to the best of his (Rakes) knowledge, Smith has had no interest or commission or profit on the sale of machines manufactured by him (Rakes), in any case; that he had travelled a good deal in Canada during the last four or five years for the purpose of selling mill machinery, and that until within the last year or two he saw very little use of and heard of very little demand for Middlings Purifiers; that the connecting machinery to apply Smith's process at Messrs. Howland & Spink's mill at Thorold were made by the millwrights at the said mill at Thorold, under direction of said Smith; that he (Rakes) declined to give an *ex parte* affidavit, but ex-

pressed his willingness, to Barter, to appear before any judicial authority to be examined on oath; that he (Rakes) has made the present declaration on account of having been informed by Messrs. Grahame, Howland and Ryerson that the conversation he (Rakes) had with Barter was to be made use of to influence the decision of the Commissioner of Patents, and because the statements reported as contained in Barter's declaration “were misrepresentations and tended to “give a false impression of the facts of this “case.”

#### FACTS ADMITTED OR ASCERTAINED.

a. The disputant admits that nothing is proved as regards the alleged importation of the invention patented under No. 2258.

b. The disputant admits that he has never made any request to George Thomas Smith for the use of Smith's patented machines and process.

c. It is ascertained by the records of the Patent Office that the disputant, Benjamin Barter, has obtained a patent for a “Flour-dressing Machine” on the 20th day of January, 1874, numbered 3014; another patent for “The Original Middlings Purifier” on the 8th day of April, 1876, numbered 5942, and another patent for “Middlings Purifier” on the 17th day of July, 1876, numbered 6325. These three patents are for the same object as respondent's inventions, and therefore competing with them.

The case was first argued by the counsel of the respondent, reviewing the evidence of the disputant before producing his own evidence (Declarations VI and VII), which he read and filed at the conclusion of his arguments.

*Grahame, Howland & Ryerson*, counsel for the respondent, argued in substance:—

That to void a patent on account of non-manufacturing it is necessary to prove that the patentee has refused to furnish his invention to some one desirous of obtaining it, and that to void a patent on account of having imported the invention requires the proof that the patentee himself, or his assignees, has imported or caused to be imported the said invention;

That nothing of the kind has been proved. The evidence, such as it is, being only an attempt to establish that Smith did not actually manufacture his machines, and that he was a party to the importation of invention No. 2257, which the plaintiff tries to connect with patent No. 2409, for a process, a position which is utterly untenable;

That it is plain that machines of a large size and costing several hundred dollars, and especially a process which involves the construction of a mill to apply it to, are not things which may be made in advance of demand and kept in stock. For several years the Canadian millers have waited for the result of experiments carried on in the United States with these Middlings Purifiers, and it is only of late that a demand has been created for them in Canada;

That the whole evidence given by Barter and his witnesses is mere hearsay, mere conversations filtered through the medium of interested parties. The subsequent declarations of Barter amount to an admission that he tried to get information on what he had already presumed, in advance of such information, to become a witness;

That Rakes' alleged answers to the enquiring Barter and friends, are susceptible of an interpretation very different from that attributed to them in the declarations filed in this case. Smith admits that he did sell to the millers, on payment of a royalty, the licence to use his invention; but nothing proves that Smith was the channel through which Rakes undertook to manufacture the machines imported at Thorold; the correspondence between Barter and Spink, filed by Barter himself, is a proof to the contrary;

That the whole evidence adduced by Barter is quite consistent with the interpretation that the negotiations which have caused the importation of machine 2257 are totally independent of Smiths' contract with the millers for the privilege of using his process of milling, or even the imported machine; the whole in fact proves very little more than the Customs Records, which show that the goods were sent by Rakes to the miller. To have imported or caused to be imported in the spirit of the statute, the patentee must be either the consignee, the consignor or the owner of the thing imported. Smith is proved to be neither the consignor nor the consignee. Was he the owner? Nothing is proved to show that he was;

That there is not evidently any proof that Smith, the patentee, did refuse manufacturing for or selling to any applicant, and there is no proof that he imported or caused to be im-

ported any of his three inventions; but to add, to the want of proof of the plaintiff, a positive proof that the defendant has done nothing to forfeit his patents, he (the counsel) filed an affidavit of Smith and a statutory declaration of Rakes the manufacturer.

*Edgar, Fenton & Ritchie*, disputant's counsel, argued in substance:

That, to start with, the application of the defendant for an extension of time is an admission of non-manufacture, besides containing in words the admission that he did not manufacture. The stringency of the law rests on the word *unless* the patentee does a certain thing, which ought to be construed in its strictest sense, because it refers to an exclusive privilege which the Legislature intended to restrict in certain expressed limits; the patent is a restriction in favor of an individual against the public and these conditions are restrictive upon the individual in favor of the public;

That the law is not to be interpreted to mean what it ought to mean or as any one would like it to be, but as it is. The patentee loses his patent *unless he shall have commenced*, &c. (see the 28th section hereinbefore cited). To the plain condition of manufacturing, the law adds another condition, which is that it must be done in a manufactory; if the law had stopped at the word *patented*, it might have been made in a cellar, but the Act requires that it must be done openly. The letter of the law must be taken as it is, because it shows the spirit of the law. Here the Counsel quoted passages from Potter's *Dwaris* on interpretation and construction of the laws);

That this tribunal has no latitude; it is a Court in which the Minister, or his Deputy, is not acting as an executive officer, who, in the ordinary dealings of the Patent Office, can exercise a certain discretion and show a certain leniency; here he is bound to take the words of the law. There are cases in which the strict meaning of the law would create impossibilities, such as, for instance, the case spoken of in a previous conversation, of a graving dock being patented; if the law had not provided for such cases it would become necessary to fight for the spirit of the law as applied to an exceptional case: but the statute has provided for such cases by subsection 2 of the 28th section, which gives to the Commissioner the power of granting an extension of time, which may be for any number of years of the

duration of the patent. The letter of the law is binding for this tribunal as well as for any Court of law ;

That the three patents of respondent expired with the two years of delay for want of manufacture. The forfeiture applies to Patent No. 2409 although for a process, as well as to the two others. The law says that this condition is to be inserted in every patent granted ; therefore it is necessary that a meaning be found to that condition as relates to a process as well as to anything else. The Patentee did himself admit that he has no more worked the process than the machines, in his petition for the extension of time ;

That the voidance on account of importation does apply to the process, inasmuch as the machines are the means to carry the process into operation, as it is admitted by the Patentee in his petition where he asserts that these machines are necessary for that purpose. In fact, in the question of importation as well as of manufacturing, the process cannot be separated from the machines ;

That an answer by letter was given the other day by the Patent Office, to a question put at his (Counsel's) advice, that the importation of the various parts of a machine to be put together in Canada is, in the meaning of the law, an importation of the invention ;

That it would have been easy to manufacture these inventions in Canada is fully established ; that it is also proved that there was an active demand for them, the circular received by Laurie in 1873 shows that they were in demand ;

That he (the Counsel) is not prepared to say that Smith imported himself, but it is proved that he caused such importation of Invention No. 2257, and consequently of Invention No. 2409. Smith denies having imported the machines, but he does not deny having caused them to be imported. The Statute does not speak of the interest the Patentee might have in the transaction. Smith got his royalty and superintended the arrangements of these machines. The evidence of Barter, Lawson and Laurie taken together, with the admission of Rakes and Smith, show that the bargain was entered into between Smith, Rakes and the firm Howland and Spink ;

That it is proved that Smith has a written contract with Messrs. Howland and Co., but the last mentioned gentlemen have refused to furnish copy of the said contracts and also refused to give evidence on the subject ;

The defendant's own case shows that Smith has not manufactured, within two years of the date, any of his three Patents and that he has caused to be imported, after the expiration of twelve months from the said date, the machines of Patent No. 2257, and consequently the process of Patent No. 2409.

The respondent, argued, in reply in substance :—

That the hearsay evidence and disconnected conversations adduced by the plaintiff, are destroyed by Rakes' testimony, which gives as proof the history of the whole transaction ; which originated out of Smith's knowledge, during a visit made by the miller in the United States for the purpose of examining Middlings Purifiers there, and of selecting the best he should happen to meet with, irrespective of patents or persons. There is not a shadow of evidence to show that Smith did cause the importation ; of course, having decided after that visit to adopt Smith's process and machines, the millers had to settle with Smith for his royalty. The law rules that the Patentee must allow *any person desirous to use, &c.*, (see section 28 here before cited) ; but the Patentee is not requested to bind the purchaser as to where and from whom the article is to be procured. The Patentee is bound to sell the use of his invention ; he is not bound to dictate to the purchasers what tools and what men they (the purchasers) are to employ. It is argued that Smith did not, in his affidavit, say in so many words that he did not cause the importation ; such technical omission has no weight in such a declaration ; Smith denies, supported by Rakes' evidence, that he (Smith) had anything to do with the importation ;

A Patent is not a matter of privilege, it is a contract, and the interpretation ought to go to limit the conditions of forfeiture and not to extend them. As regards a process there are many ways of carrying the same process into operation, and each particular way of doing it is not necessarily connected with and cannot be taken as being identical with it.

The disputant argued, in reply :—

That there could not be any doubt about the failure of the Patentee to manufacture within two years of the date of his Patents ; he has not sold or produced any machine or mechanical combination to work his inventions in Canada within the time fixed by law, and he admits this in his petition for an extension of the delay primarily fixed by the statute, beyond which delay, having failed to work his inventions, his patents become null and void ; as they are null and void for that cause ;

That as regards importation, it is equally clear that Smith has caused this to take place. Howland and Spink clearly could not purchase or import this machine without the assent of Smith, the Patentee ; Smith assented to the importation before it took place. If he had not given that assent he would have caused it not to be imported ; therefore when he gave his assent he occasioned, or caused its importation.

[To be Continued.]