THE LEGAL NEWS.

Vol. IX. MONTREAL, JANUARY 23, 1886. No. 4.

Editor.—James Kirby, D.C.L., LL.D., Advocate.
Office, 67 St. François Xavier Street, Montreal.

CONTENTS OF Vol. IX., No. 4.

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MONTREAL, P. Q.,

The Legal News.

VOL. IX. JANUARY 23, 1886. No. 4.

At the instance of the Chief Justice of the High Court of Calcutta, an Imperial statute (Cap. 75, A.D. 1885) has been passed to amend the law relating to taking evidence by commission in India and the colonies. The effect of the Act is to have the examination of witnesses under commissions from English courts conducted by an examiner, instead of before the Colonial Court, as appears to have been the case in India heretofore.

The illness of Mr. Russell, a distinguished member of the English bar, and the death of Mr. Bangs, a very prominent member of the New York bar, are both ascribed to overwork. Our Albany contemporary, referring to the latter, says:—"Men are frequently not conscious what an unnatural strain they are putting on themselves. The mental and physical machinery move along smoothly. 'I never had a headache,' said a great lawyer once to us. 'So much the more dangerous for you,' said we; 'you are destitute of a useful monitor.' The clock ticks regularly, till all of a sudden it stops with a crash. The bright candle goes out with a puff."

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*SUPERIOR COURT—MONTREAL.**

Sale by action—Warranty—Soundness of horse.

HELD—1. That a statement in an advertisement of an auction sale that a pair of horses were "warranted sound" did not constitute a warranty; especially when the conditions of sale announced by the auctioneer, at the time of the sale, expressly stated that "no warranty would be given."

2. That in the present case the horses in question were "sound," notwithstanding one of them was "bent over," or "sprung" in the knees.—*Allan* v. *Burland*, Doherty, J., May 5, 1885.

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* To appear in full in Montreal Law Reports, 2 S. C.

Curé—Services spirituels—Dîme—Administration des sacrements.

JUGÉ:—1o. Que la dîme établie par la loi, dans la province de Québec, en faveur et pour le maintien des curés, couvre légalement tous les services qu'ils rendent à leurs paroissiens dans cette qualité.

2o. Que les services rendus par les curés à leurs paroissiens dans l'administration des sacrements, sont essentiellement gratuits.—*Aubin* v. *Leclaire*, Jetté, J., 7 Sept. 1885.

Compagnie de chemin de fer—Possession—Vente judiciaire—Opposition—Formalités.

JUGÉ:—Que lorsqu'un propriétaire d'immeuble laisse une compagnie de chemin de fer s'emparer de son terrain, y établir et exploiter un chemin de fer, il ne peut ensuite empêcher par opposition la vente judiciaire de son immeuble par un créancier de la compagnie, sur le principe que cette dernière n'avait pas rempli toutes les formalités exigées par la loi de ces compagnies avant qu'elles puissent s'emparer des terrains d'autrui pour les fins de leur exploitation; la possession qu'elle aurait eu sans trouble équivaut à une vente de la propriété.—*Mongeon* v. *La Cie. du Chemin de Fer de Montréal & Sorel, et Huet Massue, oppt.* Loranger, J., 21 oct. 1885.

Capias—Arrestation illégale—Moyens de forme et de fond—Renonciation.

JUGÉ:—1o. Qu'un défendeur arrêté sous *capias* peut, après avoir contesté le *capias* par requête avec des moyens au fond, demander sa libération par une autre requête alléguant des moyens suffisants de forme.

2o. Qu'un huissier porteur d'un bref qui ordonne d'arrêter le défendeur dans le District de Montréal ne peut faire légalement l'arrestation dans un autre district.—*Lefebvre* v. *Boudreau*, Mathieu, J., 7 mars 1885.

Vente judiciaire de meubles—Informalités—Tiers—Nullité—Rescision.

JUGÉ:—Que lorsqu'un adjudicataire à une vente judiciaire de meubles a payé son prix d'achat, la vente ne peut être annulée et mise de coté pour informalités, mais seulement pour fraude et collusion.—*Nordheimer* v. *Leclaire et al.*, Gill, J., 27 mai 1885.

JUGÉ:—Que si la déconfiture est suffisamment constatée par la preuve, le tribunal pourra *de plano* ordonner au tiers-saisi, qui a en mains une certaine somme d'argent appartenant au défendeur, de la rapporter en Cour, pour là y être distribuée suivant que de droit (art. 602 C.P.C.)—*Quesnel* v. *Barrette et Vadeboncoeur*, *T. S.*, En Révision, Johnson, Bourgeois, Gill, JJ., 31 oct. 1885.

COUR SUPÉRIEURE.

JOLIETTE, 13 janvier 1886.

Coram CIMON, J.

DESORMIERS v. GALÈSE dit LÉVEILLÉ, & LESIÈGE dit LAFONTAINE et al., opposants, & LE DIT DEMANDEUR, contestant.

Procédure — Exécution — Opposition afin de charge fondée sur titres—Servitude—C.P.C., arts. 651, 659, 709—*Rente foncière.*

JUGÉ:—1o. *Qu'une opposition afin de charge, même lorsqu'elle est fondée sur titres ou documents authentiques, n'autorise pas le shérif à surseoir à la vente d'un immeuble, si elle n'est pas accompagnée de l'affidavit requis par l'art.* 651 *C. P. C., attendu que le dernier article a eu l'effet d'abroger la* 82e *règle de pratique de la Cour Supérieure.*

2o. *Que néanmoins lorsque le shérif a suspendu ses procédés sur production d'une telle opposition, et qu'il en a fait rapport suivant la loi, le tribunal de la Cour Supérieure, sur motion du saisissant demandant le rejet de l'opposition pour défaut d'affidavit, peut ex officio admettre la dite opposition comme valablement produite au dossier, en usant du pouvoir accordé à un juge par l'article* 651 *C. P. C. d'ordonner le sursis à la vente.*

3o. *Qu'une opposition afin de charge ne peut pas être reçue par le shérif pour la conservation d'un droit de passage mitoyen existant entre l'héritage saisi et celui des opposants nonobstant l'omission de telle charge dans les annonces; attendu qu'un tel droit de passage constitue une servitude réelle et que par l'art.* 659 *aucune opposition afin de charge ne peut être reçue pour la conservation de quelque servitude* (709 *C. P. C.*)

4o. *Que la charge imposée sur un héritage de payer annuellement à perpétuité, à qui elles sont dues, les rentes foncières constituées d'un autre héritage adjacent, ne constitue pas un droit de servitude réelle, mais une délégation de payement pure et simple.*

Vóici les faits de la cause:

Un bref de *Fi. Fa. de terris* est émané de la Cour de Circuit contre un emplacement du défendeur situé en la ville de Joliette. Le shérif dans ses annonces dans la gazette officielle a omis de mentionner un certain droit de passage mitoyen existant sur l'emplacement saisi en faveur de l'emplacement voisin, la propriété des opposants. De plus, cet emplacement du défendeur est assujetti par contrat dûment enregistré, à payer à la corporation épiscopale catholique romaine de Montréal les rentes foncières constituées existant au profit de cette dernière, sur le dit emplacement voisin des opposants. Or le shérif a aussi omis de mentionner cette dernière charge dans ses annonces. C'est à raison de ces deux omissions que les opposants se sont pourvus par une opposition afin de charge produite le 16e jour avant la vente.

L'opposition n'était pas appuyée d'un affidavit ni d'un ordre de sursis signé par un juge; mais elle était fondée sur des titres authentiques.

Le saisissant a comparu sur la dite opposition. Il l'a contesté et en a demandé le rejet par motion alléguant: 1o. défaut d'affidavit; 2o. que les deux droits distincts mentionnés dans la dite opposition n'étaient rien autre chose que des droits de servitude pour lesquels aux termes de l'article 659 C. P. C. aucune opposition ne peut être reçue.

La cour tout en admettant le principe que l'affidavit était de rigueur au bas de l'opposition suivant l'article 651 C. P. C., nonobstant la 82e règle de pratique qui se trouve abrogée, et en déclarant l'opposition non fondée quant au droit de passage mitoyen, vu les articles 659 et 709 C. P. C., a trouvé la dite opposition sérieuse et bien fondée quant au second droit réclamé en icelle, attendu que ce dernier droit des opposants relatif à la rente foncière ne constitue pas une servitude mais une simple créance personnelle.

En conséquence la cour considérant que l'article 651 C. P. C. autorise un juge à ordonner au shérif de surseoir à la vente, se prévaut lors de son jugement, des dispositions de ce dernier article, au profit des opposants,

et ordonne que la dite opposition restera au dossier.

Motion renvoyée avec dépens.

Charland & Tellier, avocats du contestant.
Godin & Dugas, avocats de l'opposant.

PATENT OFFICE, CANADA.

OTTAWA, January, 1886.

Before J. C. TACHÉ, DEPUTY MINISTER OF AGRICULTURE.

TELEPHONE MANUFACTURING CO. OF TORONTO v. THE BELL TELEPHONE CO. OF CANADA.

Patent Act of 1872—*Jurisdiction of the Minister of Agriculture—Non-manufacturing.*

The jurisdiction of the Minister of Agriculture in matters of Patents and in relation to Section 28 *of the Patent Act, is exclusive of, and not concurrent with, the jurisdiction of the ordinary courts.*

Barter v. *Smith*, 8 *Leg. News*, 210, *discussed and followed, as to the meaning of non-manufacturing and importing.*

This was a case of *dispute* raised against the existence of three patents granted to Thomas Alva Edison (now owned by the Bell Telephone Company of Canada), namely:—No. 8,026, issued the 17th of October, 1877; No. 9,922, issued the 1st of May, 1879, and No. 9,923, issued the 1st of May, 1879, for alleged forfeiture on the ground of non-manufacturing and of importing, in the terms of Section 28 of "The Patent Act of 1872."

Mr. *J. R. Roaf, Q.C.*, was counsel for disputants, and Messrs. *Hector Cameron, Q.C., S. G. Wood, Q.C.*, and *Z. A. Lash, Q.C.*, counsel for respondents. The case was heard before the deputy of the Minister of Agriculture. The petition addressed to the Minister of Agriculture bears date the 9th of October, 1885. The case was opened on the 4th day of November. After some proceedings had taken place to establish the particulars of disputants' complaint, the question of jurisdiction of the tribunal was argued, on a new point, substantially as follows:—

Mr. *Cameron* said, in substance, that they maintain the same objection to the jurisdiction of the tribunal as was raised in the other case, tried before the Minister, between the same contending parties—an objection which is the object of an application for a *certiorari* to remove the proceedings and review the decision. Under such circumstances, the tribunal should not proceed with the adjudication upon this case. "I have also," added the learned counsel, "another objection to the jurisdiction, which is a new one, and has not been urged before, arising from the circumstances of this case: . . . . the jurisdiction which you are authorized to exercise under the 28th Section of the Act in cases of this kind is concurrent with the jurisdiction to try those same questions of importation and refusal to sell and manufacture by the ordinary courts of the country. . . . . A suit is now pending in which the Bell Telephone Company have brought an action against Mr. Roaf's clients for an infringement of these very patents. In that suit the disputants in this case have pleaded, as a matter of defence, that these patents are void in consequence of importation, non-manufacture and refusal to sell. That question is, therefore, pending, and was pending, before the filing of this petition in the Chancery division of the High Court of Justice in the province of Ontario; the parties are at issue upon it; the question is to be tried in that case. . . . . I submit to you that that tribunal being seized of this question you ought not now to proceed, and I can show ample authority that, by the practice of the courts, where two courts have concurrent jurisdiction, the court which is first seized of litigation on any particular question is allowed to determine that question, and no other court which has concurrent jurisdiction will interfere with it pending the decision of the court which is already seized of the question." By the Patent Act, added the learned counsel, Section 26, concurrent jurisdiction is given to the other court, and the disputants in this case have themselves invoked the jurisdiction as a matter of defence, they have thereby admitted its existence. The 26th Clause is as follows:—

"26. The defendant in any such action may specially plead as a matter of defence any fact or default which, by this act or by law, would render the patent void; and the court shall take cognisance of that special pleading and of the facts connected therewith, and shall decide the case accordingly."

Mr. *Roaf* said, in substance, that it is established by the courts that the sole jurisdiction in such cases is vested in the Department of Agriculture. Section 26 has reference to matters that render the patent void from its commencement—cases in which a patent should not have been granted, but does not apply to a forfeiture of the patent by a breach of the terms upon which the patent was granted. . . . . The Act says that, in questions as to the breach of the terms, the Minister shall settle, and it is his duty to settle any dispute arising under that matter. He submitted that there is no decision establishing concurrent jurisdiction.

The DEPUTY MINISTER decided that the case should go on before him, as there is nothing to show the existence in law of the concurrent jurisdiction here now, for the first time, invoked.

The counsel of the disputants not being ready to produce his evidence, the case was adjourned until Wednesday, the 9th of December, 1885, at 11 o'clock a.m., on which day, the hearing being resumed, the evidence and the arguments were offered on both sides. The proof adduced consists of the record of another case between the same contending parties, in relation to the Bell Patent, No. 7,789; of the office documents relating to the three patents concerned in this dispute; of the two sworn depositions of Messrs. C. F. Sise and C. F. Sclater, manager and secretary of the Bell Telephone Company, taken by Mr. J. A. Archibald, commissioner, appointed to that effect in relation with a suit before the High Court of Justice, Chancery division of Ontario; of a number of customs' copies of invoices, certified by the Toronto Customs' officials; of the verbal evidence of Mr. J. N. Foster, instrument maker, of Toronto; of Mr. D. E. Simoneau, electrician, of Montreal, and of Mr. C. F. Sise. The following is a short analysis of the arguments furnished on both sides:—

Mr. *Roaf*, for the disputants, in substance said:—As regards Patent No. 8,026, the evidence shows that there was no attempt whatever to manufacture a single instrument under this patent until August, 1882; there was no attempt to even offer Patent 8,026 to the public. In relation to patents Nos. 9,922 and 9,923, the Gold & Stock Telegraph Company, who held the two patents at the time, sent several instruments as models, and had instruments made according to those; but they did not specify, nor can the evidence identify, this manufacture with these particular patents. The instruments manufactured were simply stamped "T. A. Edison's patent." That is not a compliance with Section 49 of the Patent Act, which requires the date of the patent to be stamped on every article under a penalty. This manufacture comes down to one instrument made in two different forms. Extensive orders were given, and there was a public demand for these instruments, they were manufactured during sixteen months at the rate of nearly $1,000 worth a month. When does the stoppage take place? As soon as the Canadian Telephone Company is incorporated and acquired all the patents that it can acquire, the Bell Telephone Company comes in, then, and we find these instruments dropped out of the way. They intended to build up a monopoly, and it led them beyond the provisions of the Patent Act in the case of the Bell patent, according to the decision of Mr. Pope,* and I submit that it has also led them beyond the provisions of the Patent Act in relation to these other patents. "As to the importation, it is true there is no importation of any one of those instruments made. The only importation is one upon which I do not lay much stress. I do not rely upon the importations as being of themselves importations sufficient to upset these patents without more proof." About the carbon button, it is an essential part of the patent, and it was imported, and the question arises whether they would have the right to import that button. There has never been a carbon button made in Canada. It lies with the respondents, who assert that they have complied with the conditions of the act, to show, and to show conclusively, that the articles made by them, or the parties through whom they claim manufacture, complied with the provisions of these patents. "I submit that we are entitled to have the patent declared void, because the parties did not manufac-

* 8 Leg. News, 34.

ture the patented article in Canada according to law."

Mr. *Cameron*, for the respondents, in substance, argued that from the evidence brought here by the disputants, we find that, as a matter of fact, the manufacture of the instruments known in commercial language as the Edison telephone, was commenced in April, 1879, and continued to the year 1880 in Mr. Foster's shops in Toronto, and that the instruments manufactured were the result of the patents concerned in this case. The manufacture was contemporaneous with the petitioning for and obtaining of the two patents Nos. 9,922 and 9,923. As to the patent No. 8,026, it is embodied in the two others, which are improvements in the putting into operation of the claims of No. 8,026. No instruments were made under the precise description of this last mentioned patent, and after 1880 it does not appear that instruments were made after the two other Edison's patents in Canada, for the very simple reason that there was no demand for them, and that the owners of these patents had a quantity of these Edison's instruments on their shelves, of which they could not and cannot at this moment dispose. The facts of this case are totally different from the facts of the Bell case, tried before the Minister of Agriculture. In the present case the disputants are driven to the paltry importation of $12 worth of carbon buttons, applied to the manufacture of $15,000 worth of instruments, which insignificance brings to memory the maxim *de minimis non curat lex*. As regards manufacture its meaning is the supply of a demand, and when no demand is made there is no breach of the condition imposed by law, as ruled by *Barter* v. *Smith*.* "The case then sums itself up to this, that the importation after the year was a bagatelle, and no violation of the spirit of the act at all, and I submit no violation even of the letter of the act; that the manufacturing had been going on continuously as long as the public wanted the instruments, and we must assume that a certain number of them were imported during the period when the law allowed the importation. Between those that were so imported and those that have since been made there has been a manufacture of a greater quantity than the public now want; there is a lot of them on hand and comparatively useless and unasked for. I ask you then to dismiss this application on the ground that the petitioner has not established any violation either of the letter or of the spirit of the act."

Mr. *Lash*, for the respondents, argued, in substance, that in the decision in *Barter* v. *Smith* and the *Bell Telephone case* it is established that it is not the mere fact of importation, but injury to home labor which was intended to be guarded against by the Legislature. The evidence in this case is entirely out of question, it comes within the class laid down in those two cases as one which would not void a patent. It was a surprise to hear the counsel for the disputants arguing that the onus of proof in this case is upon the respondents. We hold a title which is good as long as the contrary is not proved against us, surely not by us, but by the disputants, as was ruled in *Barter* v. *Smith*. This case must be treated as the other cases, holding the law as not being directed to matters of form or minutiæ, but to broad principles of the articles invented, the broad manufacture of the industry in Canada, the manufacture of articles when demanded.

Mr. *Wood* remarked that the part of the argument delivered by the learned counsel of the disputants, to the effect that the instruments manufactured by Mr. Foster, for the patentee, were generally under Edison's patents, without referring to any one in particular, does not agree with Mr. Foster's evidence, where it is distinctly stated that these instruments were made under patents 9,922 and 9,923.

Mr. *Roaf*, in reply, said, in substance, that no attempt whatever was made here in Canada to carry out the combination referred to in the first patent. As to the two other patents the question would be as to whether the patentee has satisfied the law by manufacturing instruments in which all the claims of the separate patents are not taken in and put in operation. Mr. Sise, who appeared for the respondents, cannot identify that manufacture with any one of the three

* 8 Leg. News, 210.

patents, then, I say, the onus of the proof does lie on the respondents to show what part of the patents they intended to maintain. The disputants come here because of a Chancery suit which is now pending between these very parties, in which these very patents are now in issue, and which the respondents are attempting to use to prevent the petitioners in this case manufacturing telephones for use in Canada. It is a part of their policy to keep everything to themselves by holding to a dozen different patents for the sake of monopolizing the business. We have proved that they manufactured something different from the articles patented; the witness who made it is unable to identify it, except that he supposes it was made under these patents. They have patents with thirty or forty different claims; they do not manufacture any one of these; but manufacture something which is a combination of these two or three put together; in reality, they have made something which would be the subject of a new patent, being new combinations of parts. The policy of patent laws is to favor new combinations, and not to stop the exercise of superior brain and push from utilizing in a better way the elements previously made use of.

On the conclusion of the hearing, the Deputy Minister reserved his decision for a future day.

J. C. TACHÉ, DEPUTY MINISTER.—It is proper first, to refer to the renewal of objections against the jurisdiction of this tribunal, and especially to the new point raised, which is, let it be remarked, in contradiction with the absolute denial of competency in this tribunal. This new exception is to the effect that the jurisdiction possessed by this tribunal is one concurrent with the jurisdiction of the ordinary courts in matters of patents and in relation to section 28 of the Patent Act. Of course, if it were so that a concurrent jurisdiction existed, it would follow that the Court first possessed of the question would be the proper tribunal to adjudicate upon it, it would be one of the many applications of the maxim—*prior tempore potior jure*: the point is here as to whether there is or not concurrent jurisdiction? The law leaves no possibility of doubt about the jurisdiction of this tribunal, about this jurisdiction being an exclusive one, and about its decisions being final, and therefore binding on every one. These three characters the Patent Act distinctly establishes in the 28th section, which governs the matter; after reciting special causes of forfeiture, it goes on enacting as to the manner and way, and as to by whom such forfeiture is to be ascertained and declared in the following terse, imperative and unmistakable language: "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." Such a clear enactment could not fail to be sustained by the courts before which an objection might be raised against it; and, as a matter of fact, it has been so sustained by the courts where the question has been brought. It is now argued that, in virtue of the 26th section of the Patent Act, a concurrent jurisdiction is given to ordinary courts, whenever it is there specially pleaded, as a matter of defence in suits for infringements, that the patentee's rights are forfeited for want of manufacture and for importation in the terms of the 28th section. To this contention the counsel for the disputants answered that the 26th section does not refer to such defaults as are created by the 28th section. The 26th section, however, most assuredly has reference to such defaults as well as to other defaults; for it says: "Any fact or default which, by this Act or by law, would render the patent void;" but it does not, for all that, give rise to a concurrent jurisdiction, which is not mentioned nor even hinted anywhere in the Act; and in that there are neither difficulties nor conflicts created. It is very easy to reconcile the two provisions of the statute in keeping with the ordinary rules of law and of procedure. When the forfeiture, on account of illegal importation and non-manufacture is specially pleaded as a matter of defence in any suit for infringement, it simply becomes a *question préjudicielle*, which has to be determined by the arbitrator appointed by the law, whose decision, being final, is the only evidence which can be accepted to establish or

countermand the fact of forfeiture alleged in the case. It does not vest the court seized of the suit for infringement with the jurisdiction of another tribunal, but it resolves itself into a simple question of the kind of evidence which is admissible on that specific point, which evidence, according to the Canadian Patent Act, can only be the decision of the Minister of Agriculture or his deputy. The allegation of importation after the expiration of twelve months from the granting of each of the three patents involved in this case, has not been in any way sustained by evidence. It is not even necessary to examine whether the few articles imported after twelve months from the dates of any one of these patents could be properly, or to what extent properly, qualified as illegal importations, for the simple reason that the insignificance of their total value forbids the view of their being susceptible of affecting in the least any patent. The counsel of the disputants has, with commendable good faith, admitted this in saying: "I do not rely upon the importations as being of themselves importations sufficient to upset those patents without more proof."

The dispute raised in this case, as regards non-manufacture, must have been so raised through a misapprehension of the technical meaning of the word manufacture employed in the 28th section of the Patent Act; unless it was intended to rest exclusively on applying the three refusals proved in the case of the Bell Telephone, tried by the Minister of Agriculture, to the three patents aimed at in this case. The technical and legal meaning of the words "carry on in Canada the construction of manufacture of the invention or discovery patented," is not to be searched for in Webster or the Imperial dictionary, but must be extracted from the very matter itself, in accordance with the reason of things and the application, to the subject, of the ordinary rules of legal interpretation; it is not a question of grammar but of jurisprudence. Forfeiture might reach a patent for want of manufacturing, when Canada is at the same time flooded with the patented article; a patent might be proof against any attack for non-manufacturing, when not a single one article patented has been produced, or manufactured in the grammatical sense of the word. The interpretation of the 28th section is laid down at length in the decision of the case *Barter* v. *Smith*;* that interpretation has been sustained by several of the highest courts in Canada, and by the Supreme Court in the case of *Smith* v. *Goldie*;† therefore it is not necessary to enter here into any further details on the subject. The whole case then, as regards the three patents, subject of this dispute, resumes itself into ascertaining whether or not the refusals to sell telephones, which have been proved in the dispute raised against Bell's patent, No, 7,789, apply to Edison's patents, No. 8,026, No. 9,922, and No. 9,923, as it is alleged by the disputants, who have filed, as sole evidence on this point, the evidence produced in the Bell case tried by the Minister of Agriculture. If it were clearly proven that the refusals to sell, which were a part of the defaults that have caused the forfeiture of Bell's patent 7,789, were also refusals to sell Edison's patents, the forfeiture of those last mentioned patents would have also to be declared as the conclusion of the present dispute. The proof adduced, in Bell's patent case, of refusal to sell to Mr. Bate of Ottawa, to Mr. Dickson of Montreal, and to Mr. Dinnis of Toronto, was brought against the existence of patent No. 7,789, Bell's, and contributed in part to the voidance of that patent; it is evidence specifically concerning the patent mentioned and under trial in another case; therefore it cannot legitimately serve to destroy three other distinct patents, Edison's, unless it is specifically proved that the same refusal which applied to Bell's one patent, was also extended to Edison's three patents. Nothing of the kind has been proved; Edison's patents are not specified in the declarations and correspondence of Bell's case, and nothing has been brought in this, Edison's case, to assert and establish, as a matter of proof, that the said refusals applied to Edison's three patents, on a formal demand to purchase them. In the absence of proof in any case, the legal presumption is in favor of the subsistence of the patent, and, in this case, there is more than the ordinary presumption; for it is impossible to reasonably pretend that in the demand

* 8 Leg. News, 210.
† 9 Can. S. C. R. 46.

for telephonic communication, the parties formulating that demand intended to purchase all the patented instruments owned by the Bell Telephone Company, who were then proprietors of more than a dozen different patents. Reason and justice force on the conclusion that the proof adduced against Bell's patent, without mention of other patents, applies only to that patent which was on trial in the case in which that proof was produced and cannot be accepted, in that round-about way, as sufficient to destroy the other patents, because they happen to be owned by the Bell Telephone Company of Canada. These several patents acquired by the Bell Company are all for the purpose of telephonic communications; they all make use of the same elements; but they are distinct combinations, and have a right to stand as separate inventions. This is a fundamental principle in patents in all countries, there being everywhere a great many patents of combinations for an occasional one for an entirely new art or mechanism. Therefore the voidance of one patent for telephones does not by any means entail the voidance of another patent for telephones, because they stand as distinct combinations. Bell's patent was declared null and void by the Minister of Agriculture, because there was ample proof of importation, in forbidden time, having taken place to the notable detriment of home labor, and because there was sufficient proof of refusal to sell, which amounted to non-manufacture; while in this, Edison's case, there is no such proof as applied to any one of the three Edison's patents. The efforts to prove that there was not, for more than two years, any instrument made according to patent No. 8,026, that the instruments executed by Mr. Foster were not the distinct articles patented in patents 9,922 9,923, as well as the alleged illegal stamping of the articles produced, have no bearing upon the points at issue. A patentee is within the meaning of the law, in regard of his obligation to manufacture, when he has kept himself ready either to furnish the patented article or to sell the right of using, though, may be, not one single specimen of the article has been produced, and he may have voided his patent by refusal to sell, although his patents were in general use. In this case there is absence of the proof without which no patent should be considered forfeited. Therefore, Thomas Alva Edison's patents No. 8,026, for telephonic communication, No. 9,922, for improvements in telephone, and No. 9,923, for improvements in telephones and circuits, have not become null and void under the provisions of section 28th of "The Patent Act of 1872."

INSOLVENT NOTICES, ETC.

(Quebec Official Gazette, Jan. 16.)

Judicial Abandonments.

Joseph Chartrand, merchant, Montreal. Jan. 9.

Venance Paiement, trader, Montreal. Jan. 7.

Benjamin A. Benoit, furniture dealer. Saint Hyacinthe. Jan. 8.

Curators Appointed.

Edward C. McKay, hotel-keeper, Gould.—H. A. Odell, curator, Dec. 10.

Anselme Plamondon, dist. of Richelieu.—Kent & Turcotte, Montreal, joint curators, Jan. 11.

Bradley Bradlow, St. Albans, Vt.—William Cassils, Montreal, curator, Jan. 9.

Joseph Bergeron, St. Hyacinthe.—A. Turcotte, Montreal, curator, Jan. 5.

J. B. H. Sénécal et al., Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 14.

N. Mathurin, Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 13.

Dividend Sheets.

George Galarneau, Montreal. 1st div. open to objection until Feb. 2. Kent & Turcotte, Montreal, curator.

Sale in Insolvency.

Herménégilde Toussignant, Ste. Philomène de Fortierville. Sale of lands in parish of Ste. Philomène de Fortierville, 11 a.m., March 3, at church door of the parish.

Action en séparation de biens.

Dame Exite Gagnon vs. Joseph Michaud, merchant, Fraserville, district of Kamouraska.

DANGER OF ABRIDGING THE LONG VACATION.—We very much regret to hear that the first advocate of the English Bar has paid the penalty of violating the first law of health, and been ordered to relinquish work for some weeks. Mr. Charles Russel "stayed up" during the Long Vacation. He was canvassing a metropolitan constituency, he was waging war against the impurities of the river Lea, he was fighting for Stead, Jarrett & Co. in the police court and the Old Bailey, and was much at chambers. The result is, that he is ordered to take his vacation when the sittings are in full swing. People talk about abridging the Long Vacation. Such a step would cause a fatal deterioration among judges and the Bar.—*Law Times* (London)