
H. G. F.
present facts no limitations were put on this prima facie authority. Interpreted broadly, the ratio of this case could be that any limitations on authority which are to render a note unenforceable within Section 32 must be expressed. This view, I submit, is desirable as it would add certainty to commercial transactions, an element much appreciated by the business community. In effect, by this view, a holder of a blank note need fill it in only in accordance with express conditions stated and need not worry that a court would draw inferences of limited authority from surrounding circumstances. D.R.O'C.

K. PATENTS


The decision of the Supreme Court of Canada in C.H. Boehringer Sohn v. Bell-Craig Limited, [1963] S.C.R. 410, 25 Fox Pat. C. 36 is of considerable importance in determining the form of claims to be employed in applications for patent made under Section 41(1) of the Patent Act. That section provides as follows:

In the case of inventions relating to substances prepared or produced by chemical processes and intended for food or medicine, the specification shall not include claims for the substance itself, except when prepared or produced by the methods or processes of manufacture particularly described and claimed or by their obvious chemical equivalents.

In other words, in patents of the type referred to there can only appear what are known as process-dependent claims.

The Supreme Court of Canada held that an applicant for a patent can not satisfy the requirements of Section 41(1) of the Patent Act for a claim for a substance by the filing of a broad process claim for the production of a whole genus of which a substance is one, if the claim, because of its generality, is found to be invalid. The Court pointed out that the subsection was intended to place a strict limitation upon claims for substances by chemical process and intended for food or medicine. As provided in the subsection such a substance can not be claimed by itself. It can only be claimed when produced by a particular process of manufacture. The applicant for patent must claim not only the substance but that process by which it is manufactured. Therefore, in order to comply with the subsection he must make two claims. He must make valid claims to both the process and the substance if he is to be entitled successfully to claim the latter. The Court further held that to interpret the subsection as meaning that all that is necessary is to file a claim for the process, valid or not, would be to defeat its purpose.

It will thus be seen that when a substance prepared or produced by a chemical process and intended for food or medicine is claimed, it must be claimed by reference to a claim for the process by which it is produced and that process claim must be valid. The applicant
must be under the necessity, if he wishes to claim the substance, of framing two claims each of which must be valid. It is apparent that a claim to such a substance can not be supported by a process claim which is invalid.

The Court discussed its previous decision in the *Commissioner of Patents v. Winthrop Chemical Company Inc.*, [1948] S.C.R. 46, 7 Fox Pat. C. 183. In that case it was held that a claim for a substance alone can not, under section 41(1) of the Patent Act, be entertained and the applicant’s specification should describe the method or process by which the substance is prepared or produced and claim a patent therefor in the manner specified in the Act. The Court pointed out and held that the reasoning of the *Winthrop* case was authority not only for the precise point before the Court in that case, namely, that an applicant for a patent for a substance under section 41(1) must make a specific process claim, but was applicable also to the issue before the Court in the present case, namely, that there can not be a valid patent for a substance within that subsection if the process claim, which has been made for the process of its production, is found to be invalid.

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L. REALTY

(i) EXPROPRIATION

In four cases the Supreme Court had occasion to consider the law on the principle of compensation in expropriation procedures. Two of these were appeals from the Court of Appeal for Ontario, the other two came from the Exchequer Court (both involving Her Majesty in right of Canada).

In all these cases the basic issue was—“the value of the land”. The variations between the amounts of compensation sought by the owner and those offered by the expropriating authority, recommended by the proper administrative tribunal, or eventually awarded by the courts are a constant source of amazement to the layman and to the lawyer alike.

Mr. Justice Abbott delivering the majority judgment in *Standish-Hall Hotel Inc. v. The Queen*, [1963] S.C.R. 64 at 71 says: “... in a case such as this the tribunal of fact must first determine in accordance with well established principles the value of the land to the owner as of the date of expropriation...” (emphasis added). This statement is most reassuring, yet disconcertingly only in one out of the four cases did the Supreme Court render a unanimous judgment. The average student or practitioner might well wonder what well established principles Abbott J. is talking about.