

BETWEEN:

FELT GAS COMPRESSING COM-
PANY AND A. J. PARIS, JR. PLAINTIFFS.

AND

1913
April 10.WILLARD O. FELT, R. S. WALKER,
Trustee, A. Park, Lucinda J. Bisnett,
administratrix of C. L. Bisnett, de-
ceased, who died on or about the 7th
day of October, A.D. 1912; R. L.
Brackin and J. B. Detwiler. DEFENDANTS.*Patents for Invention—Jurisdiction of Exchequer Court in Cases not falling within
the Statutes—Rights of parties dependent upon Contract—Validity of Assign-
ments.*

1. The Exchequer Court has no jurisdiction at common law in actions respecting patents of invention, and where any relief is sought in respect of such matters the jurisdiction of the Court to grant the same must be found in some statute.
2. The Court cannot entertain proceedings to obtain a declaration of the respective rights of parties *inter se* arising under assignments of a patent of invention; nor for a declaration that such assignments are invalid, and that the registration thereof should be vacated.

THIS was an action brought for the purpose of determining the respective rights of certain parties to patents of invention under special assignments. The defendants Brackin, Bisnett and Detwiler having denied the jurisdiction of the Court to determine the issues raised in the plaintiff's statement of claim, the case came on for hearing on points of law under Rule 161.

April 7th, 1913;

Dr. J. Travers Lewis, K.C., appeared for the plaintiffs; *M. G. Powell*, for the defendants A. Park, R. L. Brackin, and Lucinda J. Bisnett; and *J. E. Caldwell*, for defendants J. B. Detwiler, W. O. Felt and R. S. Walker.

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AUDETTE, J., now April 10th, 1913) delivered judgment.

This matter comes before the Court under the provisions of Rule 161 for the argument of the points of law, raised by the pleadings, respecting the jurisdiction of this Court to hear and determine the issues raised by the statement of claim herein.

It appears among other things, by the statement of claim filed herein, that:

“3. The said defendant Felt is the inventor of
 “certain new and useful improvements and processes
 “for compressing, purifying and drying air and other
 “gases.

“4. On or about the 16th day of September, 1907,
 “an agreement was made between the said defendant
 “Felt and one Charles P. Collins and others relating to
 “the said invention, and by which the said Felt agreed
 “to transfer to a Corporation to be formed, all patents
 “of the said invention in the United States and such as
 “might be taken out elsewhere, including any and all
 “improvements that he might discover within three
 “years from the said date.

“5. Pursuant to the said agreement the Plaintiff
 “Company was formed and incorporated, and became
 “entitled to the benefit of the said agreement, and
 “pursuant thereto the defendant Felt executed an
 “assignment, to the Plaintiff Company in the words
 “and figures following:

“ASSIGNMENT OF PATENT.

“Whereas I, Willard Oliver Felt, now residing at
 “Bradford, Pennsylvania, but formerly a resident of
 “the City, County and State of New York, did obtain
 “Letters Patent of the United States of America
 “for certain new and useful improvements in processes

“for compressing and purifying air and other gases,
 “which Letters Patent bear date the fifth day of
 “November, one thousand nine hundred and seven,
 “and numbered 869,966;

“And whereas by an instrument in writing I have
 “agreed for a valuable consideration to convey to the
 “Felt Gas Compressing Company of Bradford, Penn-
 “sylvania, a corporation organized and existing under
 “the laws of the State of Pennsylvania, the said in-
 “vention and all Letters Patent of the United States,
 “and of all foreign countries which may be issued to me
 “on the said improvements.

“And whereas the said Felt Gas Compressing Com-
 “pany is desirous of acquiring the whole and every
 “interest therein.

“Now This Indenture Witnesseth that for and in
 “consideration of the sum of one dollar to me, the said
 “Willard Oliver Felt, in hand paid, the receipt of which
 “is hereby acknowledged, I have assigned, sold and set
 “over and do hereby assign, sell and set over unto the
 “said Felt Gas Compressing Company, its successors
 “and assigns, all the right, title and interest which I
 “have in the said invention as secured to me by said
 “Letters Patent of the United States; and, in con-
 “sideration aforesaid, I agree to make, execute and
 “acknowledge and deliver from time to time any and
 “all other further assignments in writing necessary,
 “useful or proper to vest in the said Felt Gas Com-
 “pressing Company, its successors and assigns, all
 “foreign patents in any and all foreign countries that
 “may be issued to me thereon, but without expense to
 “me. The same to be held and enjoyed by the said
 “Felt Gas Compressing Company, its successors and
 “assigns, for its own use and behoof, and for the use and
 “behoof of its legal representatives, to the full end of

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“the term for which said Letters Patent are granted, as
 “fully and entirely as the same would have been held
 “and enjoyed by me if this assignment and sale had
 “not been made.

“In Testimony Whereof I have hereunto set my
 “hand and affix my seal this sixteenth day of November
 “one thousand nine hundred and seven.”

(Sgd.) “WILLARD OLIVER FELT.

(L. S.)

“Sealed and delivered in
 “presence of

(Sgd.) “D. H. JACK.
 “H. M. JACK.”

“6. Thereafter the Plaintiff Company procured
 “Letters Patent to be issued to the defendant Felt by
 “the Commissioner of Patents under the Great Seal of
 “the Dominion of Canada, comprising the said inven-
 “tion, which said Patents are numbered respectively
 “112,044 and 126,144.

“7. The said Patents are and each of them is still in
 “force.

“8. By agreement bearing date the 18th day of
 “September, 1908, and made between the plaintiff
 “Paris and the defendant Felt, it was, amongst other
 “things, agreed that the said plaintiff Paris and the
 “said defendant Felt should be equally entitled to
 “receive the benefits of the said invention, and the said
 “agreement was duly recorded in the Canada Patent
 “Office on the 30th day of May, 1910, against the said
 “Patents numbered 112,044 and 126,144.

“9. The said last-mentioned Agreement was entered
 “into and is subject to the prior rights of the plaintiff
 “Company under the said Agreement of the 16th
 “September, 1907.

"10. On or about the 26th day of January, 1910,
 "the defendant W. O. Felt assumed to assign to the
 "defendant R. S. Walker, Trustee, the said Letters
 "Patent numbered 112,044 and 126,144, and the said
 "assignment of Letters Patent numbered 112,044 was
 "registered in the Canada Patent Office on or about the
 "28th day of January, 1910, as number 58,784, and the
 "assignment of Letters Patent Number 126,144 was
 "registered in the Canada Patent Office on or about 5th
 "day of November, 1910, as number 61,411, and said
 "assignments still remain of record there.

"11. The said defendant Walker, in taking the said
 "assignment, took the same with full notice of the prior
 "rights of the plaintiffs to the said Letters Patent, and
 "also took the same solely as the agent and on behalf of
 "one F. W. Huestis and one Charles Q. Freeman, who
 "had also full knowledge of the plaintiffs' said rights.

"12. In or about the month of February, 1911,
 "Messrs. Stone, Gundy & Brackin, Solicitors, of
 "Chatham, Ontario, assumed to issue a writ out of the
 "County Court of the County of Kent against the said
 "defendant Walker as Trustee, claiming certain moneys
 "then alleged to be due by the said defendant Walker to
 "them, and thereafter the said Stone, Gundy & Brackin
 "assumed to enter up judgment in the said action
 "against the said defendant Walker, and to issue a writ
 "of execution thereon, under which the Sheriff of the
 "County of Kent assumed to seize and take in execution
 "the interests of the said defendant Walker in the said
 "Patents numbered 112,044 and 126,144, and by Deed
 "bearing date the 1st day of March, 1911, the said
 "Sheriff of the County of Kent, assumed to transfer the
 "interests of the said defendant Walker in the said
 "Patents and each of them to the defendant A. Park,
 "who caused the said writ in the said action of Stone,

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“Gundy & Brackin against the said Walker, and the
 “said Deed to be registered in the Canada Patent
 “Office against the said Patents, and the same now
 “remain of record as numbers 62,604 and 62,604½ in
 “the said Patent Office.

“13. The said defendant Walker is a citizen of the
 “United States of America, and never was a citizen of
 “or resident of the Dominion of Canada or of the
 “Province of Ontario, and he owed no allegiance or
 “obedience to the Province of Ontario, or to the Courts
 “thereof, and was never served with any process
 “in the said action, and had never appeared to any such
 “process, or otherwise submitted himself to the
 “jurisdiction of the said Court, and the said judgment
 “against him was pronounced against him without
 “jurisdiction and was and is a nullity.

“14. The said defendant Walker was not indebted
 “to the said Stone, Gundy & Brackin, and he had no
 “interest in the said Letters Patent or either of them
 “which was exigible under the said execution against
 “him, and the said alleged sale by the said Sheriff was
 “and is void and of no effect.

“15. Subsequently the defendant C. L. Bisnett
 “issued a writ against the said defendant Park, claiming
 “an interest in the said Patents and each of them, and
 “on the 27th day of July, 1911, caused the said writ to
 “be registered in the Canada Patent Office as number
 “63,977, and the same still remains of record there.

“16. On or about the 26th day of January, 1912,
 “the defendant Felt executed an assignment to the
 “Plaintiff Company of the said Patent number
 “112,044.

“17. The said assignments to the said defendant R.
 “S. Walker and to the defendants Park, Bisnett,
 “Brackin and Detwiler, as well as the said writs, form

“clouds upon the title of the plaintiffs to the said
 “Letters Patent, and the plaintiffs are therefore unable
 “to obtain the full benefit thereof or to deal therewith

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“The Plaintiffs Claim:

“1. That it may be declared that they are or one
 “of them is entitled to the said Letters Patent
 “numbered 112,044 and 126,144, and that none of
 “the defendants have any title or interest therein.

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“2. That it may be declared that the assign-
 “ments to the said defendants pass no interest in
 “the said Letters Patent as against the plaintiffs
 “or either of them.

“3. That the said assignments to the said de-
 “fendants may be declared to be clouds upon the
 “title of the plaintiffs to the said Letters Patent,
 “and that the registration thereof may be vacated.

“4. That the plaintiffs may be paid the costs
 “of this action.

“5. That the plaintiffs may have such further
 “and other relief as the nature of the case may
 “require.”

The question now to be determined is whether the Exchequer Court of Canada has jurisdiction to adjudge upon the rights of the several parties herein.

It will appear from the perusal of the statement of claim that the question at issue consists in the determination of the rights of the parties to the patents mentioned herein under the contract and assignments above set forth. The action in substance resolves itself into one of contract from which would flow specific performance, damages and the removal of any cloud that might exist upon the title to the said patents of invention.

Proceeding by elimination it must be found that there is no enactment in the *Patent Act* under which

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this Court is given jurisdiction to hear and determine such a case as the present. It would be idle to cite here the several sections of the *Patent Act* under which this Court is given jurisdiction, suffice it to say that none of them cover or provide for a case of this kind.

Coming to the *Exchequer Court Act*, (1) it will be found that section 31, gives this court certain jurisdiction with respect to patents of invention, but it is obviously in relation to a different class of cases from the present one. Under section 23 of *The Exchequer Court Act* this court, by sub-sections (b) and (c) is given jurisdiction in cases of infringement and to impeach or annul a patent of invention. It is conceded the present case does not come within the scope of these two sub-sections.

Much stress is, however, laid upon sub-section (a) of section 23 of *The Exchequer Court Act*, and it is contended by plaintiffs that the words "in all cases of conflicting applications for any patent of invention" do give this court jurisdiction to hear the present case.

Doubt has been manifested with respect to the true meaning of these words. The enactment means certainly something, and it was placed upon the statute book with a remedial object in view. (See *Interpretation Act*, (2). From the perusal of the section it will be seen that it contemplates "conflicting applications" for any patent. There is no conflicting application for a patent in the present case. The jurisdiction given this court by sub-section (a) would appear to be concurrent to the remedy provided by section 20 of *The Patent Act* (3). When several parties make conflicting applications for any patent of invention, they can either proceed under section 20 of *The Patent Act*, or under sub-section (a) of section 23 of

(1) R.S.C. (1906) Chap. 140.

(2) R.S.C. (1906) Chap. 1, Sec. 15.

(3) R.S.C. (1906) Chap. 69.

The Exchequer Court Act. That would be the meaning attaching to sub-section (a) of section 23,—because from its very wording the conflict there contemplated arises with respect to the application for a patent which has not yet been issued.

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We are in this case beyond that stage. The patent has been duly issued, and there is no conflict alleged with respect to the patent in question. The only conflict which arises between the parties to the present suit is with respect to their respective rights under the contract recited in paragraph 5 of the statement of claim, and the several assignments alleged in the subsequent paragraphs.

Therefore this case, as already mentioned, resolves itself into a question of the rights of the parties under the contract and the assignments. The jurisdiction of this court is determined by statute; it has not any common law jurisdiction with respect to patents of invention. Failing to find any statute, or any section thereof, under which it could entertain the consideration of the issues raised by the pleadings, judgment must be entered declaring that this Court has no jurisdiction to hear the present case. (*Sharples v. National Mfg. Co. Ltd.*)(1) The defendants will have the costs of and incidental to the hearing and disposition of the questions of law.

Judgment accordingly.

Solicitors for plaintiffs: *Bicknell, Bain, Strathy & MacKelcan.*

Solicitors for defendant A. Park: *Kerr & Pritchard.*

Solicitors for defendant Lucinda J. Bisnett: *Gosnell & Shillington.*

(1) Audette's Exchequer Court Practice 2nd. Ed. p. 508; and 9 Ex. C.R. 460.

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- Solicitors for defendant Charles L. Bisnett: *Harley
& Sweet.*
- Solicitor for defendant R. L. Brackin: *W. E.
Gundy.*
- Solicitor for defendant J. B. Detwiler: *A. E. Watts.*
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