

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN—

CANADIAN GENERAL ELECTRIC COMPANY
LIMITED - - - (Plaintiff) *Appellant.*

— AND —

FADA RADIO LIMITED (Defendant) *Respondent.*

JOINT APPENDIX OF STATUTES.

No.	DATE.	DESCRIPTION OF STATUTE.	PAGE.
1.	1849	Statutes of Province of Canada 12 Vic. Cap. 24 Sections 1, 2 and 4	3
2.	1859	Consolidated Statutes 22 Vic. Cap. 34, Sections 3, 5 and 25	4
3.	1869	Statutes of Canada 32-33 Vic. Cap 11, Sections 6, 7 and 40	5

No.	DATE.	DESCRIPTION OF STATUTE.	PAGE.
4.	1872	35 Vic. Cap. 26, Sections 6, 7 and 40	6
5.	1886	Revised Statutes of Canada Cap. 61, Sections 7, 8 and 16	7
6.	1892	55-56 Vic. Cap. 24 Section 8	8
7.	1903	3 Edw. VII Cap. 46, Section 2	9
8.	1906	Revised Statutes of Canada Cap. 69, Sections 7, 8, 10, 17, 22 (1) and 29	10
9.	1921	11-12 Geo. V., Cap. 44, Section 7 (1)	13
10.	1927	Revised Statutes of Canada Cap. 150, Sections 7, 8, 19, 25, 31, 66, 67 and 68	14

No. 1.

STATUTES OF PROVINCE OF CANADA.

1849, 12 Vic. cap. 24, Sections 1 (part), 2 (part) and 4 (part).

1. * * * * any person a subject of Her Majesty and resident in this Province having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, or the principle thereof, the same not being known or used in this Province by others before his or their discovery or invention thereof, and not at the time of the application for a Patent in public use or on sale in this Province with his consent or allowance, as the inventor or discoverer thereof, and desiring to obtain an exclusive property therein, may make application by petition, in the manner provided in and by the said recited Acts, to the Governor or Administrator of the Government of this Province, expressing such desire, and the said Governor or Administrator shall, on the due proceedings being had as by the said Acts directed to be done, grant such Patent, which shall be good and available to the said grantee, his heirs, lawful representatives, or assigns, for the period of fourteen years from the granting of the same, after the said Letters Patent shall have been recorded in the manner directed by the said Acts, and upon the assignment of the same previous to the grant aforesaid, for the same period, after such assignment shall have been recorded in the office of the Secretary of the Province.

2. * * * * that whenever it shall satisfactorily appear that the Patentee at the time of making his application for the Patent, believed himself to be the first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery or part thereof, having been before known or used in a foreign country, it not appearing that the same or any material or substantial part thereof, had before been patented or described in any printed publication; * * * *

4. * * * * in case of interfering applications for Patents, the decision of the same shall be made by Arbitrators in the manner and according to the directions in the said recited Acts contained: Provided always, that nothing in the said Acts nor in this Act contained shall be construed to deprive an original and true inventor of the right to a Patent for his invention by reason of his having previously taken out Letters Patent therefor in a foreign country, and of the same having been published at any time within six months next preceding the filing of his specification and drawing, as required by the said Acts or by this Act * * * *

No. 2.

CONSOLIDATED STATUTES OF CANADA.

1859, 22 Vic. cap. 34, Sections 3, 5, 25.

WHO MAY OBTAIN A PATENT, AND HOW.

* * * * *

3. Any person being a subject of Her Majesty, and resident in this Province, having discovered or invented—any new and useful art, machine, manufacture, or composition of matter,—or any new and useful improvement on any art, machine, manufacture, or composition of matter,—the same not being known or used in this Province by others before his discovery or invention thereof, and not being at the time of the application for a Patent in public use or on sale in this Province with his consent or allowance as the inventor or discoverer thereof,—and desiring to obtain an exclusive property therein,—may apply by petition, in the manner provided by this Act, to the Governor of this Province, expressing such desire. 10

(2) And the Governor, on due proceedings being had as by this Act directed, shall grant such Patent, which shall be good and available to the said grantee, his heirs, lawful representatives or assigns, for the period of fourteen years from the granting of the same, after the Patent has been recorded in the manner directed by this Act,—and upon the assignment of the same previous to the grant aforesaid, for the same period, after such assignment has been recorded in the office of the Minister of Agriculture. 12 V. c. 24, s. 1 and 14, 15, V. c. 79, s. 13. 20

5. An original and true Inventor shall not be deprived of the right to a Patent for his invention, by reason of his having previously taken out a Patent therefor in a foreign country, and of the same having been published at any time within six months next preceding the filing of his specification and drawing, as required by the Act. 12 V. c. 24, s. 4. 30

RIGHTS OF PATENTEES AND OTHERS AS TO THINGS PATENTED.

* * * * *

25. Whenever it satisfactorily appears that the Patentee at the time of making his application for the Patent, believed himself to be the first inventor or discoverer of the thing patented, the Patent shall not be held to be void on account of the invention or discovery or part thereof, having been before known or used in a foreign country, if it does not appear that the same or any material or substantial part thereof, had before been patented or described in any printed publication. 12. V. c. 24, s. 2—*Part.* 40

No. 3.

STATUTES OF CANADA.

1869, 32-33 Vic. cap. 11, Sections 6 (part), 7, 40.

WHO MAY OBTAIN PATENTS.

6. Any person having been a resident of Canada for at least one year next before his application, and having invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention or discovery thereof, or not being at the time of his application for a patent in public use or on sale in any of the Provinces of the Dominion with the consent or allowance of the inventor or discoverer thereof, may, on a petition to that effect presented to the Commissioner and on compliance with the other requirements of this Act, obtain a Patent granting to such person an exclusive property therein * * *

7. An original and true inventor or discoverer shall not be deprived of the right to a Patent for his invention or discovery by reason of his having, previously to his application, taken out a Patent therefor in any other country, at any time within six months next preceding the filing of his specification and drawing as required by this Act.

MISCELLANEOUS PROVISIONS.

* * * * *

40. The Commissioner may object to grant a Patent in the following cases:—

1. When he is of opinion that the alleged invention or discovery is not patentable in law;

2. When it appears that the invention or discovery is already in the possession of the public with the consent or allowance of the inventor;

3. When it appears that the invention or discovery has been described in a book or other printed publication before the date of the application; or otherwise in the possession of the public;

4. When it appears that the invention or discovery has already been patented except, however, when the case is one within the seventh section of this Act; or one in which the Commissioner has doubts as to whether the patentee or the applicant is the first inventor or discoverer.

No. 4.

STATUTES OF CANADA.

1872, 35 Vic. cap. 26, Sections 6 (part), 7, 40.

WHO MAY OBTAIN PATENTS.

6. Any person having invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention thereof, and not being in public use or on sale for more than one year previous to his application, in Canada with the consent or allowance of the inventor thereof, may, on a petition to that effect 10 presented to the Commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property therein * * * *

7. But an inventor shall not be entitled to a patent for his invention, if a patent therefor in any other country shall have been in existence in such country more than twelve months prior to the application for such patent in Canada; and if during such twelve months any person shall have commenced to manufacture in Canada the article for which such patent is afterwards obtained, such person shall continue to have the right to manufacture and sell such article, 20 notwithstanding such patent; and under any circumstance, where a foreign patent exists, the Canadian patent shall expire at the earliest date at which any foreign patent for the same invention expires.

MISCELLANEOUS PROVISIONS.

* * * * *

40. The Commissioner may object to grant a patent in the following cases:—

1. When he is of opinion that the alleged invention is not patentable in law;

2. When it appears to him that the invention is already in 30 the possession of the public with the consent or allowance of the inventor;

3. When it appears to him that there is no novelty in the invention;

4. When it appears that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public;

5. When it appears that the invention has already been patented in Canada (or elsewhere, when the case is one within the seventh section of this Act,) except, however, when the case 40 is one in which the Commissioner has doubts as to whether the patentee or the applicant is the first inventor.

No. 5.

REVISED STATUTES OF CANADA.

1886, cap. 61, sections 7 (part), 8, 16.

APPLICATIONS FOR PATENTS.

7. Any person who has invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter, which was not known or used by any other person before his invention thereof, and which has not been in public use or on sale with the consent or allowance of the inventor thereof, for
 10 more than one year previously to his application for patent therefor in Canada, may, on a petition to that effect, presented to the commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property in such invention; * * * * *

8. No inventor shall be entitled to a patent for his invention if a patent therefor, in any other country, has been in existence in such country for more than twelve months prior to the application for such patent in Canada; and if, during such twelve months, any person has commenced to manufacture in Canada the invention for
 20 which such patent is afterwards obtained, such person shall continue to have the right to manufacture and sell such article, notwithstanding such patent; and under any circumstances, if a foreign patent exists, the Canadian patent shall expire at the earliest date at which any foreign patent for the same invention expires. 35 V., c. 26, s. 7.

REFUSAL TO GRANT PATENTS.

16. The commissioner may object to grant a patent in any of the following cases:—

- (a) When he is of opinion that the alleged invention is not patentable in law;
- 30 (b) When it appears to him that the invention is already in the possession of the public, with the consent or allowance of the inventor;
- (c) When it appears to him that there is no novelty in the invention;
- (d) When it appears to him that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public;
- 40 (e) When it appears to him that the invention has already been patented in Canada or elsewhere, if the case is one within the eighth section of this Act, unless the Commissioner has doubts as to whether the patentee or the applicant is the first inventor. 35 V. c. 26, s. 40.

No. 6.

STATUTES OF CANADA.

1892, 55-56 Vic. cap. 24, sec. 1.

1. Section eight of *The Patent Act* chapter sixty-one of the Revised Statutes, is hereby repealed and the following substituted therefor :—

“8. Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the same be applied for within one year from the date of the issue of the first foreign patent for such invention; and, if within three months after the date of the issue of a foreign patent, the inventor gives notice to the Commissioner of his intention to apply for a patent in Canada for such invention, then no other person having commenced to manufacture the same device in Canada during such period of one year, shall be entitled to continue the manufacture of the same after the inventor has obtained a patent therefor in Canada, without the consent or allowance of the inventor; and, under any circumstances, if a foreign patent exists, the Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires.”

No. 7.

STATUTES OF CANADA.

1903, 3 Edw. VII, cap. 46, sec. 2 (part).

8. [as amended] Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the same be applied for within one year from the date of the issue of the first foreign patent for such invention; and, if within three months after the date of the issue of a foreign patent, the inventor gives notice to the Commissioner of his intention to apply for a patent in Canada for such invention, then no other person having commenced to manufacture the same device in Canada during such period of one year, shall be entitled to continue the manufacture of the same after the inventor has obtained a patent therefor in Canada, without the consent or allowance of the inventor.

* * * * *

No. 8.

REVISED STATUTES OF CANADA.

1906, Cap. 69, Sections 7 (part), 8 (part), 10, 17, 22 (1) and 29.

APPLICATIONS FOR PATENTS.

7. Any person who has invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter, which was not known or used by any other person before his invention thereof, and which has not been in public use or on sale with the consent or allowance of the inventor thereof, for more than one year previously to his application for patent therefor 10 in Canada, may, on a petition to that effect, presented to the Commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property in such invention. * * * * *

8. Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the patent is applied for within one year from the date of the issue of the first foreign patent for such invention.

(2) If within three months after the date of the issue of a 20 foreign patent, the inventor gives notice to the Commissioner of his intention to apply for a patent in Canada for such invention, then no other person having commenced to manufacture the same device in Canada during such period of one year, shall be entitled to continue the manufacture of the same after the inventor has obtained a patent therefor in Canada, without the consent or allowance of the inventor. * * * * *

10. Every inventor shall, before a patent can be obtained, make oath, or, when entitled by law to make an affirmation instead of an oath, shall make an affirmation, that he verily believes that he is the 30 inventor of the invention for which the patent is asked, and that the several allegations in the petition contained are respectively true and correct.

(2) In the event of the inventor being dead, such oath or affirmation shall be made by the applicant, and shall state that he verily believes that the person whose assignee or legal representative he is, was the inventor of the invention for which the patent is solicited, and that the several allegations in the petition contained are respectively true and correct.

(3) Such oath or affirmation may be made before a minister, plenipotentiary, *chargé d'affaires*, consul, vice-consul or consular agent, a judge of any court, a notary public, a justice of the peace, or the mayor of any city, borough or town, or a commissioner for taking affidavits having authority or jurisdiction within the place where the oath may be administered.

* * * * *

REFUSAL TO GRANT PATENTS.

10 17. The Commissioner may object to grant a patent in any of the following cases :—

(a) When he is of opinion that the alleged invention is not patentable in law;

(b) When it appears to him that the invention is already in the possession of the public, with the consent or allowance of the inventor;

(c) When it appears to him that there is no novelty in the invention;

20 (d) When it appears to him that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public;

(e) When it appears to him that the invention has already been patented in Canada, unless the Commissioner has doubts as to whether the patentee or the applicant is the first inventor;

30 (f) When it appears to him that the invention has already been patented in a foreign country, and the year has not expired within which the foreign patentee may apply for a patent in Canada, unless the Commissioner has doubts as to whether the foreign patentee or the applicant is the first inventor.

GRANT AND DURATION OF PATENTS.

* * * * *

22. (1) Every patent shall be issued under the seal of the Patent Office and the signature of the Commissioner or of the Deputy Commissioner, and, when duly registered, shall be good, and shall avail the grantee and his legal representatives for the term mentioned in the patent. * * * * *

IMPEACHMENT AND OTHER LEGAL PROCEEDINGS IN RESPECT OF PATENTS.

29. A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading: Provided that if it appears to the court that such omission or addition was an involuntary error, and if it is proved that the patentee is entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described, as the patentee is so found entitled to. ¹⁰

(2) Two office copies of such judgment shall be furnished to the Patent Office by the patentee, one of which shall be registered and remain of record in the office and the other of which shall be attached to the patent, and made a part of it by a reference thereto.

* * * * *

STATUTES OF CANADA.

1921, 11-12 Geo. V. cap. 44, Sec. 7 (1).

7. (1) A patent shall not be refused on an application filed between the first day of August, 1914, and the expiration of a period of six months from the coming into force of this Act, nor shall a patent granted on such application be held invalid by reason of the invention having been patented in any other country or in any other of His Majesty's Dominions or Possessions or described in any printed publication or because it was in public use or on sale prior to the filing of the application, unless such patent or publication or such public use or sale was issued or made prior to the first day of August, 1913. * * * * *

No. 10.

REVISED STATUTES OF CANADA.

1927, Cap. 150, Sections 7 (part), 8 (part), 19, 25, 31, 66, 67 and 68.

APPLICATIONS FOR PATENTS.

7. Any person who has invented any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvements thereof, not known or used by others before his invention thereof and not patented or described in any printed publication in this or any foreign country more than two years prior to his application and not in public use or on sale in this country for more than two years prior to his application may, 10 on a petition to that effect, presented to the Commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property in such invention. * * * * *

8. Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada if the patent is applied for within one year from

(a) The earliest date on which an application for a patent for the invention was filed in any foreign country, or 20

(b) The thirteenth day of June, One thousand nine hundred and twenty-three, if no patent has been issued on a foreign application for the invention for more than one year. * * *

REFUSAL TO GRANT PATENTS.

19 The Commissioner may object to grant a patent whenever he is satisfied that the applicant is not by law entitled thereto, and when it appears to him that the invention has already been patented, unless the Commissioner has doubts as to whether the patentee or the applicant is the first inventor and the application was filed within two years from the date of the patent. 30

GRANT AND DURATION OF PATENTS.

* * * * *

25. Every patent shall be issued under the Seal of the Patent Office and the signature of the Commissioner and, when duly registered, shall be good, and shall avail the grantee and his legal representatives for the term mentioned in the patent.

IMPEACHMENT AND OTHER LEGAL PROCEEDINGS IN RESPECT OF PATENTS.

31. A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading.

2. If it appears to the court that such omission or addition was an involuntary error, and if it is proved that the patentee is
10 entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described, as the patentee is so found entitled to.

3. Two office copies of such judgment shall be furnished to the Patent Office by the patentee, one of which shall be registered and remain of record in the office, and the other of which shall be attached to the patent, and made a part of it by a reference thereto.

OFFENCES AND PENALTIES.

* * * * *

20 66. Any patent issued prior to the thirteenth day of June, One thousand nine hundred and twenty-three, which could successfully have been impeached for violation of or non-compliance with any provision of the Acts in force prior to that date, may with like effect be so impeached after the said date, and in any action for the infringement of any such patent any such violation or non-compliance which could have been set up as a defence may with like effect be so set up after the said date.

30 67. No relief, right or privilege granted to or acquired by any patentee or other person in respect of any patent or application for the same under chapter forty-four of the statutes of the year One thousand nine hundred and twenty-one shall be affected by the repeal of said Act but such relief, right or privilege shall continue as if said Act had remained in force.

68. Whenever an appeal to the Exchequer Court from the decision of the Commissioner is permitted under this Act, notice of his decision shall be mailed by the Commissioner by registered letter addressed to the interested parties or their respective agents, and the appeal shall be taken within three months from the date of mailing of such notice unless otherwise extended in the discretion of the
40 Minister and unless herein otherwise expressly provided.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN :—

CANADIAN GENERAL ELECTRIC
COMPANY LIMITED (Plaintiff)
Appellant

— AND —

FADA RADIO LIMITED (Defendant)
Respondent.

Joint Appendix

— OF —
STATUTES.

LAWRENCE JONES & Co.,
Lloyd's Building,
London, E.C.3,
For the Appellant.

BLAKE & REDDEN,
17, Victoria Street,
London, S.W.1,
For the Respondent.