

W. E. DANNER PLAINTIFF;
 AND
 THE UNITED DRUG COMPANY DEFENDANT.

1924
 May 23.

Patents—Retroactive effect—13-14 Geo. V, c. 23.

The Patent Act 13-14 Geo. V, c. 23, was assented to on the 13th of June, 1923, and came into force on the 1st September, 1923. Under the provisions of section 17 a patent may not be granted for certain products therein mentioned, but only for the process.

D's patent was granted under the old Act on the 3rd July, 1923, upon an application made in 1921. Motion was made to dismiss the action on the ground that the patent, having been granted after the new Act was assented to, notwithstanding that it was before the Act came into force under proclamation, was invalid.

Held, that as the provisions of section 17 of the Patent Act, 1923, only came into force on the 1st September, 1923, and have no retroactive effect, the patent was properly issued and the motion should be dismissed.

MOTION to dismiss on the ground that the patent sued on was invalid.

May 7th, 1924.

Motion heard before the honourable Mr. Justice Audette at Ottawa.

C. C. Robinson, K.C. for the motion.

R. S. Smart contra.

The facts and questions of law involved are stated in the reasons for judgment.

AUDETTE J., now (May 23rd, 1924), delivered judgment.

This is an action in infringement of a Canadian Patent, which comes on by way of motion, on behalf of the defendant, for the dismissal of the action on the ground that the Letters Patent sued upon are invalid as being in contravention of section 17 of The Patent Act (1923) 13-14 Geo. V, ch. 23.

Under the provisions of such section a patent may not be granted for certain products therein mentioned but only for the process. The patent in question in the case, which was granted under the old Act is for the product and is now attacked and the question for determination is whether or not that patent issued under the old Act has become invalid as being in contravention of section 17 of the new Act.

1924
 DANNER
 v.
 THE
 UNITED
 DRUG
 COMPANY.
 Audette J.

The application for the patent was made on the 9th December, 1921. The patent was granted and bears date the 3rd July, 1923. Under the English law a patent bears the date of the application for the same and not the date of issue, as under our Canadian Act. Frost, Patent Law, 2nd ed. 166 and 331.

The Patent Act, 1923, was assented to on the 13th June, 1923, but, under the provisions of section 70 thereof, only came into force on the 1st September, 1923, under proclamation published in the *Canada Gazette*, and the present action was instituted on the 2nd October, 1923.

It must first be borne in mind that the application for the patent, which is valid under the old Act, was made as far back as the 9th December, 1921, and came within the class of patents allowable under the Act in force at the time, when there was no notion, imparted to the public, of any change to be made in the law in respect of the same. When the patent was issued and granted it was so issued and granted under the only provisions of law existing and in force at the time.

The Commissioner of Patents could do nothing else but issue the patent as applied for and did so. While the Patent Act of 1923 had passed both houses and had been assented to, it had not come into force and might have been kept in abeyance for months and perhaps for years, as was done before respecting the Copyright Act.

While the new Patent Act attaches a new disability in respect to the issue of certain patents, it does not enact that this new provision is retrospective. *Manufacturers' Life Ins. Co. v. Hanson* (1). As said by Lindley L.J. in *Lauri v. Renad* (2):

It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.

See also Craies, *On Statute Law*, 3rd ed. 321 to 325. A statute is not to operate retrospectively, except when there is to the contrary a clear indication either from the subject-matter or from the wording of the statute. The words of

(1) [1924] 2 D.L.R. 692.

(2) [1892] 3 Ch. 402 at 421.

the statute must be read in their natural and grammatical sense.

Not much help will be found upon the subject from the Interpretation Act, except perhaps that subsection (c) of subsection (e) of section 19 enacts that the procedure, established by substituted provision shall be followed as far as it can be adapted.

The right of action in the present case accrued under the plaintiff's title of the 3rd July, 1923, his patent, which is good and valid for the whole life of the same.

Great privileges may be given by early Crown grant, such as exclusive right of fishing given to Seigniors in certain part of Canada, which could not be given to-day and which are contrary to laws subsequent to the granting of the same; but these privileges, notwithstanding subsequent legislation to the contrary, remain no less valid, extant and enforceable by law.

The plaintiff's patent is only subject to impeachment under the provision of the Patent Act which has provided legal proceedings in that respect.

The provisions of section 17 of the Patent Act, 1923, only came into force on the 1st September, 1923, and have no retroactive effect.

Moreover sec. 68 of that Act provides, in clear and unambiguous language, that nothing in this Act contained shall be construed . . . to avoid any patent that was valid at such time.

That is any patent issued under the old Act.

The defendant's motion is dismissed with costs.

Judgment accordingly.

1924
DANNER
v.
THE
UNITED
DRUG
COMPANY.
Audette J.