FADA RADIO LIMITED (DEFENDANT)....APPELLANT; 1927

AND *Nov. 9, 10, 11.

CANADIAN GENERAL ELECTRIC COMPANY, LTD. (PLAINTIFF)..... } RESPONDENT. 1928 *Feb. 7.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Patent—Invalidity—Anticipation—Radio art

APPEAL by the defendant from the judgment of Maclean J., President of the Exchequer Court of Canada (2), in which he held that claims 1, 2, 3 and 7 of the Canadian letters patent no. 208,583, issued to the plaintiff as assignee

(1) See judgment of Orde J. (1927) 61 Ont. L.R. 334, allowing the appeal (that is, approving of the security upon the appeal) to the Supreme Court of Canada, under s. 71 of the *Supreme Court Act,* although the same was not brought within the time prescribed, in which he refers (at p. 338) to the suggestion that the question involved was one of procedure merely, and to the question of the jurisdiction of the Supreme Court of Canada.

(2) [1927] Ex. C.R. 134.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Lamont and Smith JJ.

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of one Alexanderson, were valid and had been infringed by the defendant.

The plaintiff's patent had to do with radio art, and covered a device by which it was claimed a higher degree of selective tuning could be obtained in a receiving set than had been previously obtainable, while at the same time the desired signal could be received at its maximum effect.

The appeal was allowed, on the ground that the plaintiff's patent was invalid, having been anticipated by Schloemilch and Von Bronk.

The judgment of the court was delivered by Lamont J. After discussing Alexanderson's device, he said:

"* * *. That this device gave a high degree of selectivity is not denied and if the patent issued for it be valid there would not seem to be much doubt that the appellants infringed the patent.

"The main defences relied upon by the appellants are:

"1. That Alexanderson's device does not constitute invention, and, 2. That if it does, he was anticipated by other inventors, particularly Wilhelm Schloemilch and Otto von Bronk, in Germany."

He then proceeded to deal with the latter of these defences, and, in regard thereto, discussed the devices in question, and the evidence, at length.

In the course of his discussion of the question, he said:

"A comparison [of certain diagrams] shews that the invention of Schloemilch and von Bronk is very similar to that of Alexanderson. It is, however, argued, and it was held by the court below, that the inventions differed in two material respects: (1) That the input circuit of the invention of Schloemilch and von Bronk was not tuned, and that tuning of that circuit was necessary to obtain as high a degree of selectivity as was obtained by Alexanderson, and (2) That their invention was not for the purpose of securing selectivity at all, but simply for securing amplification.

"The first question, therefore, is: Did Schloemilch and von Bronk intend the input circuit of their invention to be tuned?"

As to this point, after discussing the evidence thereon, he found that in the patents of Schloemilch and von Bronk

(no. 293,300 in Germany, and no. 1,087,892 in the United States of America) the input circuit was tuned as well as the others; that " the grid circuit was intended to be, and was in fact, tuned to the same frequency as the other circuits."

He then proceeded:

" It was also contended that the two inventions differed in the objects to be attained; that Alexanderson sought selectivity, while Schloemilch and von Bronk sought amplification only, and that no claim for selectivity is made in any of their patents. That they made no claim for selectivity, the appellants admit, but the reason for that, they say, was because the securing of selectivity by means of tuned circuits arranged in cascade was, to their knowledge, already old in the art and their invention added nothing to the prior art as far as selectivity was concerned."

After dealing with the evidence as to the prior art, and discussing further the inventions of Schloemilch and von Bronk and of Alexanderson, he said:

" That Alexanderson stressed selectivity and made provision for amplification, while Schloemilch and von Bronk stressed amplification only, is, in my opinion, of little moment for although they made no claim that their invention secured selectivity—that having been obtained by prior inventors—the object of both devices was to eliminate undesired signals and secure and strengthen the desired signal and bring it within the compass of the human ear. Had Alexanderson, in February, 1913, possessed their knowledge of the prior art, it seems to me very doubtful if he would have claimed selectivity as he did.

" I am therefore of opinion that during the last months of 1912 and the early months of 1913, Schloemilch and von Bronk, in Germany, and Alexanderson, in America, working independently, produced devices for securing selectivity and sensitivity in a receiving set by precisely the same means."

Dealing next with the question as to which device was prior in time, he found, on the evidence, that Alexanderson's device was anticipated by Schloemilch and von Bronk. He then concluded as follows:

" Having reached this conclusion it is unnecessary to consider whether or not either of the inventions added any-

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thing to the prior art, for Alexanderson's device, having been anticipated by Schloemilch and von Bronk, Patent no. 208,583 cannot be upheld as valid, and the appellants are therefore not liable for infringing it.

"I would allow the appeal with costs, set aside the judgment below and enter judgment for the appellants with costs."

Appeal allowed with costs.

W. D. Herridge for the appellant.

O. M. Biggar K.C., R. S. Smart K.C., and *F. C. Macfarlane* for the respondent.