

1897
 Mar. 22.

THE AUER INCANDESCENT LIGHT
 MANUFACTURING COMPANY } PLAINTIFFS;
 (LIMITED)

AND

HERMAN DRESCHER AND MARY } DEFENDANTS.
 VAIL MELICK.....

Infringement of patent—Actions taken in different courts—Dismissal of application for interim injunction—Nemo bis vexari debet pro una et eadem causâ.

Where the Judge of the Exchequer Court was asked to grant an *interim* injunction to restrain an infringement of a patent of invention, and it appeared that similar proceedings had been previously taken in a provincial court of concurrent jurisdiction, which had not been discontinued at the time of such application being made, this court refused the application upon the principle that a defendant ought not to be doubly vexed for one and the same cause of action.

THIS was an application for an *interim* injunction to restrain an alleged infringement of a patent of invention.

The plaintiffs had taken an action in the Superior Court of the Province of Quebec against the same defendants, in which, amongst other grounds of relief, they asked for an *interim* injunction similar to that asked for on the present application. It is not necessary for the purposes of this application to set out the facts of the main case.

The application came on for argument before the Judge of the Exchequer Court, at Montreal, on the 15th day of March, 1897.

C. A. Duclos, in support of the application: We contend that as the validity of the plaintiffs' patent had been determined recently in the Exchequer Court, and that the affidavits upon which the present application was based showed that the defendants in this case had been guilty of infringement, the court should have no

hesitation in granting the *interim* injunction asked for.

J. E. Martin, contra, cites 55-56 Vict. c. 24, sec. 1; 15 and 16 Vict. (Imp.) c. 83; and sec. 4787 of *The Revised Statutes of the United States*.

C. B. Carter, Q.C., followed, contending that the plaintiffs, having taken proceedings in the Superior Court of the Province of Quebec in which they sought the same relief as that which they asked on this application, should have discontinued such proceedings before they came into this court seeking to obtain an injunction. Furthermore, he contended that there had been an unusual and unreasonable delay since the institution of the action in the Superior Court before they took any steps to obtain an injunction. An unreasonable delay to prosecute an infringer after having acquired information of the infringement will induce the court to refuse an *interim* injunction. (Cites *Am. & Eng. Ency. Law*, Vol. 18, pp. 81-82.)

Mr. *Duclos*, in reply: The decree of the Superior Court will only extend to the Province of Quebec, whilst the process of the Exchequer Court will run all over the Dominion. An injunction of the Superior Court would not stop the defendant in Ontario.

THE JUDGE OF THE EXCHEQUER COURT now (March 22nd, 1897) delivered judgment

In this case, I think that the objection taken by Mr. Martin and Mr. Carter for the defendants, that there is an action pending in the Superior Court of the Province of Quebec against the same defendants, in which the plaintiffs seek an injunction against the defendants on the same grounds as are now put forward, ought to prevail. It is true, of course, that the process of this court runs farther than a writ of the Superior Court, but I do not see that that makes any difference in the principles on which this application should be decided.

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THE AUER
INCANDESCENT LIGHT
COMPANY

v.
DRESCHEL.

Argument
of Counsel.

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THE AUER
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v.
DRESCHEL.

Reasons
for
Judgment.

I think the application should be dismissed, and with costs; but the plaintiffs have liberty to renew the application if the action in the Superior Court of the province is discontinued. The plaintiffs should, it seems to me, elect either to prosecute the matter in the Superior Court or in this court. To allow both suits to proceed at the same time would contravene the principle that a defendant ought not to be doubly vexed for one and the same cause of action.

Judgment accordingly.

Solicitors for plaintiffs: *Atwater, Duclos & Mackie.*

Solicitor for defendants: *J. E. Martin.*
