

[HIGH COURT OF AUSTRALIA.]

ROBINSON PETITIONER ;

AND

FORGAN CAVEATOR.

H. C. OF A. *Patent—Extension of term of patent—Application to Court—Advertisement before*
 1917. *presentation of petition of intention to apply—Powers of Commissioner of*
Patents—Patents Act 1903-1909 (No. 21 of 1903—No. 17 of 1909), sec. 84—
 SYDNEY, *Patents Regulations 1912 (Statutory Rules 1912, No. 76), regs. 134, 151.*
 Dec. 13.

Isaacs J.

Sec. 84 of the *Patents Act* 1903-1909 provides that “a patentee may, after advertising in the prescribed manner his intention to do so, present a petition to the High Court or the Supreme Court praying that his patent may be extended for a further term,” &c.

Reg. 134 (1) of the *Patents Regulations* 1912 provides that “a patentee (hereinafter called the petitioner) intending to apply by petition to the High Court, or the Supreme Court, for an extension of the term of his patent under sec. 84 of the Act, shall give public notice, by advertising three times in the Official Journal, once in the *Commonwealth Gazette*, and once, at least, in the capital city of each State, in a daily newspaper published in that city”; and the regulation makes provision as to the contents of such advertisements. Reg. 151 provides that “where under these Regulations any person is required to do any act or thing . . . and it is shown to the satisfaction of the Commissioner that from any reasonable cause that person is unable to comply with the requirement, the Commissioner may, upon the production of such other evidence, and subject to such terms as he thinks fit, dispense with the requirement.”

By virtue of sec. 84 of the Act it is essential that the intention of a patentee to apply to the Court for an extension of the term of his patent should be

notified by advertisement published prior to the presentation of his petition, and it is not competent to the Commissioner of Patents under reg. 151 to dispense altogether with such advertisement.

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The owner of letters patent granted under the Act presented a petition on 4th August 1917 to the High Court of Australia for an extension of the term of his patent without having advertised his intention so to do. The Commissioner of Patents, purporting to act under reg. 151, had made an order on 3rd August 1917 dispensing with the requirements of reg. 134 subject (*inter alia*) to the petitioner publishing certain advertisements, such advertisements to appear at various subsequent dates in August 1917.

Held, that the petition should be dismissed because of the petitioner's non-compliance with sec. 84 of the Act.

PETITION for extension of term of patent.

The petitioner, James Robinson, was the owner of letters patent issued under sec. 7 of the *Patents Act* 1903-1909 for improvements in and relating to shares for scarifiers, cultivators and like implements. The letters patent were dated 1st June 1904, and were for a term of thirteen years, eight months and five days from that date. The petitioner, prior to the presentation of the petition herein, inserted advertisements in various newspapers notifying his intention to apply for an extension of the term of his patent. These advertisements stated his intention to apply to the Supreme Court of South Australia; which Court has no jurisdiction in such a matter—"Supreme Court" in sec. 84 of the Act meaning the Supreme Court of the State in which the Patent Office is situated (sec. 4), which is Victoria. The advertisements also contravened reg. 134 in that they were published within less than one month of the date named by them as the date of filing of the petition. An application was made to the Commissioner of Patents on 3rd August 1917 for an order dispensing with compliance with the provisions of reg. 134. The Commissioner of Patents on that day made the following order:—"I make an order that the requirements of reg. 134 be dispensed with subject to the following conditions:—(1) That the patentee in applying by petition to the High Court for an extension of the term of his patent under sec. 84 of the *Patents Act* 1903-1909 shall give public notice by advertising three times in the Official Journal, the last advertisement not to appear later than 28th August

H. C. OF A. 1917, once in the *Commonwealth Gazette* of 16th August 1917, and
 1917. once in the capital city of each State in the daily newspaper published
 ~~~~~ in that State, the advertisement in any daily paper not to appear  
 ROBINSON later than 30th August 1917. (2) The petitioner shall state in each  
 v. advertisement (a) an address for service within the Commonwealth;  
 FORGAN. (b) the time when the petition was filed, and (c) that the petition  
 — has been filed in the High Court of Australia South Australian  
 Registry. (3) That the applicant undertakes not to proceed with  
 the hearing of the petition before 15th October 1917.”

The petitioner on 4th August 1917 presented a petition to the High Court of Australia in the South Australian Registry praying that an order might be made for the extension of his patent for a further term of fourteen years. Advertisements were duly published as directed by the Commissioner of Patents by the said order. On 30th November 1917 one James Forgan entered a caveat against any extension of the term of the said patent.

The petition came on for hearing before *Isaacs J.* in Sydney on 13th December 1917.

*Clive Teece*, for the caveator, took the preliminary objection that there had not been any advertisement before presentation of the petition to the High Court of the petitioner's intention to present a petition to the High Court for an extension of his patent as required by sec. 84 of the Act. [He cited *In re Frieze-Green's Patent* (1).]

*Weston*, for the petitioner. The Commissioner of Patents has power under reg. 151 to vary reg. 134 so as to allow advertisements to be published after the presentation of the petition, in which case no advertisement would be prescribed within the meaning of sec. 84 of the Act, and the petitioner could present his petition in such a case without prior advertisement of his intention so to do.

ISAACS J. Sec. 84 of the *Patents Act* 1903-1909 is mandatory, and the Court has no power to entertain a petition for extension of the term of the patent without prior advertisement as required by the section. Reg. 151 merely gives the Commissioner of Patents

(1) (1907) A.C., 460.



power to vary the prescribed mode of advertisement, and not to dispense altogether with advertisement prior to the presentation of a petition as required by sec. 84.

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*Petition dismissed without costs.*

Solicitors for the petitioner, *Sly & Russell*, for *Poole, Johnstone & Hicks*, Adelaide.

Solicitor for the caveator, *E. H. Newman*, for *Barwell, Kelly & Hague*, Adelaide.

C. A. W.

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH AND ANOTHER . PLAINTIFFS ;

AGAINST

THE HUON CHANNEL AND PENINSULA }  
STEAMSHIP COMPANY LIMITED . } DEFENDANTS.

*Lighthouses—Light dues—“Sea-going ship”—“Port”—Voyage to or from a port—Ship which “passes a lighthouse”—Lighthouses Act 1911-1915 (No. 14 of 1911—No. 17 of 1915), sec. 13—Commonwealth Light Dues Regulations 1915 (Statutory Rules 1915, No. 96), regs. 2, 3.*

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HOBART,  
Feb. 21, 22.

Sec. 13 of the *Lighthouses Act 1911-1915* provides that “(1) Light dues, in accordance with the prescribed rates or scales, shall be levied and shall be payable with respect to the voyages made by ships or vessels . . . (2) The regulations may prescribe the rates or scales of light dues to be payable by ships or vessels and all matters necessary or convenient to be prescribed to carry this section into effect.”

MELBOURNE,  
March 14, 15,  
21.  
Barton J.

Reg. 2 of the *Commonwealth Light Dues Regulations 1915* defines “sea-going ship” as including “every ship which in the course of its voyage to or from an Australian port passes one or more lighthouses or marine marks