

[HIGH COURT OF AUSTRALIA.]

IN RE CAMERON'S PATENT.

H. C. OF A. Patent—Extension for further term—Practice—Petition—Advertisement before
 1928. presentation of petition of intention to apply—Compliance with regulations—
 ~~~~~ Condition precedent to jurisdiction—*Patents Act* 1903-1921 (No. 21 of 1903—  
 MELBOURNE, No. 24 of 1921), sec. 84\*—*Patents Regulations* 1912 (*Statutory Rules* 1912,  
 Oct. 12. No. 76), reg. 134.\*

Starke J.

On the presentation of a petition for the extension of a patent under sec. 84 (1) of the *Patents Act* 1903-1921, proof of strict compliance with the requirements of the *Patents Regulations* 1912, reg. 134, as to advertisements is a condition precedent to the exercise of the jurisdiction conferred by that section.

## PETITION.

Clark & Fauset Ltd. of 71 Eagle Street, Brisbane, machinery merchants, petitioned to the High Court under sec. 84 (1) of the *Patents Act* 1903-1921 for the extension of a patent granted to one Edward Cameron for improvements to milking machines. The patent, after having passed through several hands, had finally been assigned to the petitioner. The Simplex Baltic Machinery Co. and other machinery merchants opposed the petition, and at the hearing took the preliminary objection that reg. 134 (1) of the *Patents*

\* *Patents Act* 1903-1921, sec. 84 (1), provides: "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, but such petition must be presented at least six months before the time limited for the expiration of the patent."

Reg. 134 of the *Patents Regulations* 1912 provides:—"(1) 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 section 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. (2) The petitioner shall state in each advertisement . . . (b) a time, not being more than three months, or less than one month, within which the petition is to be filed"



*Regulations* 1912 had not been complied with, in that the advertisement prescribed by that regulation appeared in the *Commonwealth Gazette* on 19th March 1928 and in the *West Australian* on 20th March 1928, which dates were less than one month before 16th April 1928, the date on which the advertisements stated the petition would be filed and on which it was in fact filed.

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*Owen Dixon* K.C. and *Fraser*, for the petitioner.

*Dean*, for the opponents.

*Herring*, for the Commissioner of Patents.

*Dean*. There is a preliminary objection to the hearing of this petition in that the advertisements in the *Commonwealth Gazette* and in the *West Australian* do not comply with the *Patents Regulations* 1912, reg. 134, as they do not state "a time, not being . . . less than one month, within which the petition is to be filed," and compliance with the regulations is a condition precedent to the presentation of a petition under sec. 84 (*Robinson v. Forgan* (1)). In *In re Lumière's Patent* (2) it was held by the Full Court of the High Court, at Melbourne, on 5th March 1924, that the advertisement must precede the petition. The English Order 53A, r. 3, on the other hand, contemplates that the Judge shall give directions as to the advertisements to be inserted. This, however, does not apply to proceedings by petition under sub-sec. 1 of sec. 84, but only to procedure by way of originating summons.

*Owen Dixon* K.C. Reg. 134 is not mandatory and there has been substantial compliance with the regulations. The opponents have waived their right to object by appearing on a summons for directions and by filing affidavits in opposition. In *Robinson v. Forgan* (1) there had been no advertisement whatever.

*Herring* referred to *In re Frieze-Green's Patent* (3).

(1) (1917) 24 C.L.R. 382.

(2) Unreported.

(3) (1907) A.C. 460.

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STARKE J. It is admitted that the advertisements did not conform to the provisions of the *Patents Act* and the regulations thereunder. Advertisements in accordance with the regulations are, I think, a condition precedent to the exercise of the jurisdiction given by sec. 84. The petition must, therefore, be dismissed. I make this order without prejudice to the right of the petitioner to present another petition if it be so advised. The opponents waived, so far as it was possible for them to do so, any right to object and will get no costs. The applicant must pay the Commissioner's costs.

*Petition dismissed accordingly.*

Solicitor for the petitioner, *G. A. Prendergast*, Sydney, by *Stewart & Dimelow*.

Solicitors for the opponents, *Arthur Robinson & Co.*

Solicitor for the Commissioner of Patents, *W. H. Sharwood*,  
Crown Solicitor for the Commonwealth.

H. D. W.