

[No. 6]

Patents Court

Jacob J.

Mr. Miller's submission also covered the case where the original sale agreement itself constituted an assignment. He said many people entering global deals would have little concern whether their agreement was an actual assignment or merely an agreement to assign. He may be right. I do not know whether there  
 5 are in fact many global sale agreements which are in themselves assignments. Nor did Mr. Pumfrey. He said that if there were such documents then they are within section 33 and so section 68. He submitted that parties who enter this kind of arrangement know there are local formalities to be complied with in  
 10 various countries. Here the formality is that the assignment must be registered and failure to do so results in the section 68 sanction. If people enter into a short form after the patent has already been assigned, they have not done that which is required by section 33. So that may be an unintended consequence of section 68, but it is the consequence all the same. Mr. Pumfrey, if he is otherwise right, must  
 15 be right about this too. Whether that in practice could create problems in a large number of cases I do not know.

I turn to the points argued by Mr. Miller.

(1) *The Stamp Act point*

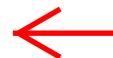
20 Before proceeding with this further I note that this cannot be a general solution to the problem. It depends for its validity on section 14(4) of the Stamp Act.

25 The argument is that neither the Comptroller nor the court can take any notice of A1 by virtue of section 14 of the Stamp Act. Even if the document is effective between the parties to vest the patents in Stena, that fact is not receivable in evidence and should be ignored. It should be ignored for the purposes of this application and should presumably likewise be ignored if and when section 68 falls to be considered. Stena's argument is supported by the Comptroller, whose  
 30 assistance by way of a written submission from Mr. Silverleaf of counsel I requested at a directions hearing. He put it thus:

35 "[The registration of A2] can only be challenged on the basis that A2 was a nullity. To establish that proposition requires proof of A1, which would require A1 to be stamped."

Now section 14 is not a "voiding" provision. And notwithstanding the wide words of the section, there are cases where the courts or others have considered an unstamped document and given effect to it. The court must, for instance, look  
 40 at a document to see whether it is stamped either at all or "duly". And there is a well-recognised practice of the court acting on an unstamped document where the party concerned undertakes to get it stamped. But the former use of the document is clearly implied from the statute and the latter is really no more than a way of avoiding an adjournment for the document to be stamped. I turn to the  
 45 authorities to see whether wider use of an unstamped document may be made.

In *R. v. Fulham, Hammersmith & Kensington Rent Tribunal ex parte Zerek* [1951] 2 K.B. 1 the jurisdictional issue before a rent tribunal had been, were the premises the subject of a furnished letting or not? The landlord relied upon an  
 50 unstamped document which said the premises were furnished and the tenant had given evidence that he had taken the premises unfurnished but that the landlord had made him sign the document before giving him possession. The tribunal had



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