

proprietor is of no or little importance. Thus the Banks Committee<sup>16</sup>, on whose recommendation s.68 was passed, said:<sup>17</sup>

5 “Clearly it is most important for the proper functioning of the patent system that information concerning ownership of, and other interests in, patents should be as readily available as possible.”

And

10 “We think it [i.e. the requirement to register] should be supplemented by more effective encouragement to the registration of changes of ownership of patents and the grant of exclusive licences in respect thereof. Ownership of a patent or the holding of an exclusive licence confers the most important of all patent rights, that of bringing an action against an infringer, and it follows that in these respects the register should always be complete and up to date.”

15 The whole emphasis is on getting the true proprietor on the register as such. That is what the parties here tried to do.

Indeed the only case suggested where the means by which a man became proprietor might matter is that someone might be deprived of a defence under s.68. However s.68 is not  
20 intended to be for the benefit of a defendant - a true exception to liability such as, for instance, the defence of innocence or experimental use. Section 68 is aimed at patent holders, providing a sanction if they fail to register assignments. It only provides a benefit to defendants adventitiously.

25 I would only add two points in relation to discretion. The effect of leaving the register unrectified so far as a defence under s.68 is concerned was not argued before me. I say nothing about what the consequence on that defence would have been if the case had come to an exercise of discretion only.

30 Secondly I have considered whether or not there would be no room for discretion. The argument here is that A2 is a nullity and the court cannot have a discretion to leave a nullity on the register. I regard this as overlogical. The fact is that the registration of A2 did get Stena on the register as proprietor. That it should be on from an even earlier date is, in the circumstances, a mere irregularity.

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<sup>16</sup> Report of the Committee to Examine the Patent System and Patent Law, 1970 Cmnd 4407

## Conclusion

I reach my conclusion without intellectual satisfaction. But there is some rough justice. It was an attempt to comply with the Stamp Act which caused the trouble and it is the  
5 Stamp Act which saves the position. I get no satisfaction because, apart from the Stamp Act, s.68 sets a trap for a patentee who registers a short form assignment following a much longer agreement which is expressed to be an assignment.

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<sup>17</sup> para 560