

below, the register shall be prima facie evidence of anything required or authorised by this Act or rules to be registered and in Scotland shall be sufficient evidence of any such thing.”

The rules require that the proprietor be registered and it follows that the entry on the register of Nutrinova is to be taken as prima facie evidence of their title.

Mr. Birss says suppose for a moment there is something wrong with Assignment No. 3 (or the third document), the one that was actually registered? It is for the defendants to show that the prima facie position is bad. That they can only do that by looking at the document which, they say, was not duly stamped and that they cannot be by virtue of section 14.

I do not agree with that submission. If it were right, it would mean that once anybody had ever got a document which had not been stamped, or had not been stamped properly, as a basis of title and given it to the Comptroller, who had acted upon it, no one could ever challenge that act of the Comptroller.

It is said that I decided the contrary in **Coflexip**. Mr. Birss relies on what I said at page 187 of [1997] R.P.C 179. I said: “ Suppose that were wrong, however. [That is to say, the valuation that had been placed upon it for assignment.] Given that it is accepted that A2 was prepared in good faith, can a third party complain if the Comptroller enters it on the Register of Patents? There is nothing in the Stamp Act which leads to this conclusion. Indeed the Act points the other way. Section 17 provides: ‘ If any person whose office it is to enrol, register, or enter it in or upon any rolls, books or records, any instrument chargeable with duty, enrolls, registers, or enters any such instrument not being duly stamped he shall incur a fine of ten pounds.’

It does not provide that any enrolment etc, so made is a nullity. I do not see why the court should add a sentence to that effect. I was, incidentally, told that the Commissioners of Inland Revenue have been kind enough to tell the Comptroller that provided he acts in good faith in making entries on the Register they will not attempt to levy the £10 if in error he enters a document which is not duly stamped. I am sure the Comptroller was glad to have this pressing worry removed.”

That was dealing with the question of complaining about the Comptroller having entered a transaction. Here the defendants are trying to do something rather different. They are not seeking rectification. They are seeking to rebut the prima facie presumption, which is a different thing. It is technical. It may be that you cannot rectify the register, but they are doing no more in this defence than seeking to rebut a presumption which the Act itself, far from making irrebuttable, treats as only a prima facie position.

I turn then to the question of whether the attack on the registered assignment itself is good.

Section 14 says that an instrument, which is not duly stamped, may not be given in evidence which is what, according to the defendants, the patentees are seeking to do. That throws one back on to the question of: is it or is it not duly stamped? It bears a stamp of 50p. Mr. Birss says that is the proper stamp and his reasoning runs as follows.

The original transaction did not produce a clear effect in law. Its owner merely transferred equitable title rather than both legal and equitable title. The parties were not sure which it was and all they were doing in the following documents of a year later was sorting out the position preparatory to suing some other defendants.

He says that actually the original transaction, if it had been presented for adjudication, would have attracted no stamp because it was effectively an inter-company transfer. The details do not matter. It is said that it would fall within section 42. He may be right, he may be wrong, but the Stamp Office has never seen the document.

He says that there is uncertainty about the legal effect of the document and the actual transactions that took place, namely a transfer back to Hoechst and then a re-transfer from Hoechst necessarily meant that the last document was for no consideration. The earlier document may have been for consideration, but the last document was not.

So, he says, if the matter had been fully explained to the Stamp Office, they would have been told that there was an earlier transaction which may or may not attract stamp duty, but whether it did or did not, this document was truly for nothing. Therefore, the appropriate stamp was 50p.