
1940
 * May 28, 29
 * Oct. 1.

 NIAGARA WIRE WEAVING COM-
 PANY LIMITED (PLAINTIFF)..... } APPELLANT;

AND

THE JOHNSON WIRE WORKS LIM-
 ITED (DEFENDANT) } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Patent—Action for infringement—Lack of invention.

The action was for a declaration that three patents (two of them for an alleged new and useful improvement in seams for woven wire belts, and the other for an alleged new and useful improvement in belts

* PRESENT:—Duff C.J., Crocket, Davis, Hudson and Taschereau JJ.

for Fourdrinier machines) had been infringed by defendant and for consequential relief. The judgment of Maclean J., President of the Exchequer Court of Canada, [1939] Ex. C.R. 259, dismissing the action, mainly on the ground that, in view of the state of the art, there was lack of invention to support the patents, was affirmed.

APPEAL by the plaintiff from the judgment of Maclean J., President of the Exchequer Court of Canada (1), dismissing the action. The action was brought for a declaration that as between the parties three letters patent owned by the plaintiff were valid and had been infringed by the defendant, an injunction, damages, etc. Two of the patents were for an alleged new and useful improvement in seams for woven wire belts and the other was for an alleged new and useful improvement in belts for Fourdrinier machines. The dismissal of the action by Maclean J. was mainly on the ground that, in view of the state of the art, there was lack of invention to support the patents.

O. M. Biggar K.C. and *R. S. Smart K.C.* for the appellant.

W. F. Chipman K.C. for the respondent.

The judgment of the Chief Justice and Davis J. was delivered by

DAVIS J.—I can see no ground upon which we should interfere with the judgment of the learned President of the Exchequer Court. There was undoubtedly much commercial success but it was the result of a practical improvement in the article that added nothing to it of an inventive nature. A better article was produced by better workmanship.

The appeal should be dismissed with costs.

CROCKET J.—I fully concur in the reasons so clearly stated by the learned President for his decision in dismissing this action for the alleged infringement of the three patents relied on by the appellant, and would therefore dismiss this appeal with costs.

HUDSON J.—I agree that this appeal should be dismissed, with costs, for the reasons expressed by the learned President of the Exchequer Court.

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TASCHEREAU J.—I fully agree with the views expressed by the learned President of the Exchequer Court, and I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Smart & Biggar.*

Solicitors for the respondent: *Montgomery, McMichael, Common & Howard.*
