

LIGHTNING FASTENER COMPANY, }
 LIMITED (PLAINTIFF) } APPELLANT;

1933
 *Feb. 14.
 *April 25.

AND

COLONIAL FASTENER COMPANY, }
 LIMITED, AND G. E. PRENTICE }
 MANUFACTURING COMPANY } RESPONDENTS.
 (DEFENDANTS) }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA (suit
 No. 13674)

Patent—Validity—Prior disclosure

The judgment of the Exchequer Court, [1932] Ex. C.R. 127, dismissing the plaintiff's action for damages for alleged infringement of a patent relating to a locking device for separable slide fasteners, was affirmed, on the ground that the plaintiff's patent was invalid, all its essential points having been already brought out in a disclosure patented in France more than two years prior to the application in Canada for the patent in question.

APPEAL by the plaintiff from the judgment of the Exchequer Court of Canada (1) dismissing its action, which was brought for a declaration that the defendants had infringed certain letters patent and that the said letters patent were good, valid and subsisting letters patent, an injunction, damages, etc. The material facts of the case, for the purposes of the present judgment, are sufficiently stated in the judgment now reported. The appeal was dismissed with costs.

*PRESENT:—Duff C.J. and Rinfret, Smith, Cannon and Crocket JJ.

(1) [1932] Ex. C.R. 127.

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O. M. Biggar, K.C., R. S. Smart, K.C., and H. G. Fox for the appellant.

D. L. McCarthy, K.C. and S. A. Hayden for the respondents.

The judgment of the court was delivered by

RINFRET, J.—This action was brought by the appellant against the respondents for a declaration that a certain patent (No. 288925) granted to the appellant was good, valid and subsisting and that the respondents had infringed the patent. The Exchequer Court of Canada dismissed the action (1) and this is an appeal from the judgment of that court.

The patent relates to a locking device for separable slide fasteners, that is to say: fasteners consisting of two rows of co-operating elements (locking members) which are caused to engage with one another by the passage of a slider along the rows and are disengaged by the movement of the slider in the opposite direction.

The appellant's invention is described as follows in the specification of the patent:

According to this invention, a slider pull is provided adjacent its pivot with one or more fingers or lugs shaped to extend through a recess in the slider wing for direct engagement between locking members on one stringer or the lug may indirectly co-operate with said members through the aid of some other part of the slider. Preferably these lugs are spaced longitudinally and laterally to be engaged between locking members on each stringer.

It is claimed that the finger or lug automatically moves by gravity into position, through the recess, between two of the co-operating fastener elements and thus provides locking means whereby the slider is retained against movement in either direction on the stringer. A feature is that by means of this device the movement of the slider may be prevented at any point along the stringer.

The patent was applied for on the 26th of January, 1928, and was granted on the 16th of April, 1929.

The infringing article is also a locking device for separable slide fasteners; and, in the judgment appealed from, it is described as follows:

* * * the pull or tab has two small lugs on its upper edge, bent at right angles to the face of the pull, one of which is longer than the other,

the longer one being intended to go between the units, the other being intended simply as a support. The pull is not pivoted on the front wing of the slider but travels on a longitudinal slide the full length of the slider, and falls below the slider where the longer lug enters between the units, thus preventing any sliding of the fasteners. There is no hole extending through any portion of the wing of the slider. There are two slight recesses, not holes, at the bottom of the slider, on either side of the longitudinal slide, against which the lugs or fingers rest when in a locking position; it is really at the end of the front wing of the slider that the lug enters between the units.

We agree with the appellant that, for the purposes of the case, no distinction ought to be made between a travelling and a fixed pull. The invention relates to a mode of locking a slider, not to a mode of attaching the pull; and whether the pull has a fixed or travelling pivot is irrelevant, since it operates in the same way and the substitution of the one for the other has no effect upon the operation of the lock.

It is also immaterial whether the finger or lug reaches the fastener elements through a hole or through a recess; both recess and hole fulfill exactly identical functions. At best, one would be the mechanical equivalent for the other. The appellant's patent shows various embodiments of the invention. The specification uses the word "recess"; but the claims may be construed to cover indifferently a hole or a recess.

The respondent Prentice commenced to manufacture his slider lock and put it on the market in the United States in the Fall of 1925. It was shown through Canada early in 1926; but the first definite order for the article in this country was in October, 1926.

The respondents pleaded, amongst other things, that the appellant's patent was invalid because the invention was patented or described in printed publications more than two years before the application for the patent; and, at the trial, reference was made to the fastener of M. Gabriel Fontaine, a patent for which was applied for in France, on the 14th of November, 1923, and granted on the 5th of March, 1924. A copy of the patent was produced, as also an enlarged model of the slider used in connection with that fastener. As described in the patent, in the Fontaine device, the pull of the slider is provided with two spaced lugs adjacent its pivot. When the stringers are drawn up through the channels of the slider, as soon as the pull is

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released, it comes down by force of gravity and the lugs are pressed against the fastener elements, immediately above the conical edges of the slider, where the fasteners are in engagement, thus offsetting the fasteners, retaining them against movement and preventing the slider from working in any direction.

The Fontaine fastener was primarily intended for use on footwear. But we can conceive of no reason why it could not equally be used on any number of other articles where fasteners are employed; and the point is that, in the Fontaine patent, the locking device disclosed is substantially similar, is designed for exactly the same purpose and the disclosure gives the same knowledge as the appellant's patent. Fontaine, in his patent, begins by describing the invention, first in a general way, and then by way of reference to each of the drawings. On the drawings, the slider is marked as number 7, comprising the coupling member 8 and the pull or tab 9. The fastener elements are indicated by No. 6 and the lugs on the pull by Nos. 10 and 11. Other numbers are used to indicate other parts of the device; but we think that if the above numbers are borne in mind, it will be easy to understand the following quotation from the patent:

Le rapprochement des bandes en vue de leur emboîtement est obtenu par une pièce 7 formant coulisse. Cette pièce particulière comporte deux parties 8, 9 dont l'une peut pivoter autour de l'autre. La partie 8 qui est creuse, aplatie et cylindro-conique coiffe les extrémités opposées des lamelles 6 qui font légèrement saillie à cet effet de sorte que lorsqu'on tire la pièce 7 dans un sens d'une façon quelconque les lamelles passant successivement par la partie conique sont rapprochées lorsqu'elles arrivent dans la partie cylindrique et s'emboîtent. La partie 9 porte deux ergots 10, 11 et vient se rabattre, après fermeture de la chaussure, sur la pièce 8, sa fenêtre 12 recevant la saillie 13 de la pièce 8. Les ergots 10, 11 viennent alors obturer les sorties 14, 15 de la partie conique de la pièce 8 en coinçant les lamelles 6 s'y trouvant à ce moment et empêchant ainsi le décrochage des bandes, tant que la pièce 9 reste appliquée sur la pièce 8.

Pour défaire la chaussure il suffit de relever la pièce 9, de tirer les extrémités des bandes en les écartant et le décrochage a lieu, la pièce 8 coulisant le long des bandes dans le sens inverse de l'accrochage.

Il reste d'ailleurs entendu que l'invention n'est pas strictement limitée aux dispositions décrites qui peuvent varier de forme, de dimensions, de matière constitutive, etc.

"Résumé.

Fermeture pour chaussures remplaçant le lacet et autres caractérisée en ce que les bords du soulier à réunir portent des bandes composées de lamelles métalliques distinctes dont l'extrémité libre forme saillie d'un

côté et un creux de l'autre pour permettre leur emboîtement lorsque les bords du soulier sont rapprochés.

Ce rapprochement est obtenu par une pièce constituée en deux parties dont l'une creuse, plate et cylindro-conique coiffe les saillies opposées des lamelles et dont l'autre qui porte deux ergots vient se rabattre sur la première pour coincer les lamelles et empêcher le mouvement des bandes.

It will thus be seen that all the essential points in the appellant's patent were already brought out in Fontaine's disclosure. This would be made still clearer by reference to the drawings accompanying the patent.

The lugs described by Fontaine have complete identity of function with those claimed by the appellant; and they perform that function substantially in the same way. Nor does it matter whether the appellant's article is a modification of the Fontaine device, which it is not necessary to discuss. (*Panyard Machine & Mfg. Co. v. Bowman* (1); *MacLaughlin v. Lake Erie & Detroit River Ry. Co.* (2)). In Fontaine's, as well as in the appellant's and the respondent's devices, the idea is the same and there is substantial identity in the means of carrying it out. In our view, the difference is a mere variation of details. In Fontaine's, the lugs engage the fastener elements immediately above the conical sides of the slider. In the appellant's, the lugs reach the elements through a recess or a hole in the central part of the slider; in Prentice's, they reach the elements immediately below the slider. The appellant alleged and brought evidence to show that Prentice's was an infringement of its patent. We may assume that the contention is right. But what amounts to infringement, if posterior, should, as a general rule, amount to anticipation, if anterior. Fontaine's disclosure having been patented in France on the 5th of March, 1924, or more than two years prior to the application of the appellant in Canada, this affords sufficient ground for displacing the appellant's patent (*Patent Act*, sec. 7), which must therefore be declared invalid.

Without discussing the other matters involved herein, it follows that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Harold G. Fox.*

Solicitors for the respondents: *McCarthy & McCarthy.*

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