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GUETTLER ET AL v. CANADIAN INTERNATIONAL  
PAPER COMPANY ET AL.

1928

\*Mar. 12, 13.

\*April 24.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Patent—Invalidity—No patentable invention—Alleged improvements in  
barking drum for stripping logs in making of pulp—Commercial  
success.*

APPEAL by the plaintiffs from the judgment of Maclean J., President of the Exchequer Court of Canada (1), dismissing the plaintiffs' action for infringement of patent, on the ground of invalidity of the patent. The appeal was dismissed with costs.

The patent in question was for alleged improvements in a barking drum used for stripping logs in the making of pulp, the improvements consisting of devices for effecting the required tumbling action, constructed in such a way as to avoid the brooming or splintering of the ends of the logs which is liable to occur when tumbling devices of the usual character are employed.

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\*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.

The judgment of the Court dismissing the appeal was delivered by Duff J. After referring to the appellants' claims in support of the patent, he said:

"The sole question on the appeal concerns the validity of the appellant's patent; and that reduces itself to the question, which is a question, of fact: Have the respondents established the proposition on which their case in the court below was rested that the subject matter of the appellant's patent does not disclose invention?"

He then discussed the subject of the patent, and the claims in regard to it, and discussed a number of earlier patents obtained by others, and concluded as follows:

"\* \* \* It does not seem to be seriously doubtful that Alfsen, Ross, Hussey and Paulson had all conceived and disclosed the idea of a rigid drum composed, in its longitudinal elements, of iron bars so arranged as to lift the pieces of wood, tumble them over one another in such a way as to remove the bark without seriously injuring the wood; nor does it appear to be doubtful that both Ross and Hussey definitely conceived and disclosed the idea of inwardly projecting parts, or that Ross conceived the notion of rounding the projections in order to avoid the brooming and splintering of the logs. Furthermore, in both the Wertheim and the Ehrler patents, the use of the U bar is suggested and disclosed for purposes which, if not in all respects identical with the purposes sought to be obtained by the appellant, were so analogous as to make it impossible to ascribe to his adoption or adaptation of the idea, the character of patentable invention. Nor can it be disputed that Paulson effectively embodied his ideas in a barking machine, which has had a considerable degree of commercial success.

"Mr. Anglin, in his elaborate argument, urged upon us, properly enough, the degree of commercial success which had been achieved by Guettler's drum. Commercial success may be due to many factors, and the learned trial judge was not satisfied that Guettler's drum is more efficient than Paulson's. The evidence of commercial success cannot afford a basis for refusing to give effect to the conclusion necessitated, I think, by the recital itself of the facts already mentioned, that Guettler's improvements were not

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of such a character as to imply invention in the pertinent sense.

“The appeal should be dismissed with costs.”

*Appeal dismissed with costs.*

*A. W. Anglin K.C.* and *W. D. Herridge* for the appellants.

*O. M. Biggar K.C.*, *R. S. Smart K.C.*, and *J. A. Mann K.C.* for the respondents.

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