

1927
*June 9.

DURABLE ELECTRIC APPLIANCE CO., LTD. v.
RENFREW ELECTRIC PRODUCTS, LTD.

DURABLE ELECTRIC APPLIANCE CO., LTD. v.
SUPERIOR ELECTRICS, LTD.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ONTARIO

*Patent—Invalidity—Absence of novelty—Combination of old elements—
Combination not involving inventive ingenuity.*

CONSOLIDATED APPEALS by the plaintiff from the judgment of the Appellate Division of the Supreme Court of Ontario (1) which (reversing judgment of Mowat J.) held that the patent in question (relating to improvements in portable electric heaters) and the industrial design in question were invalid, and that the plaintiff's actions for infringement should be dismissed.

O. M. Biggar K.C. for the appellant.

G. F. Henderson K.C. and *Harold G. Fox* for the respondents.

On the conclusion of the argument for the appellant, and without calling on counsel for the respondents, the judgment of the Court was orally delivered by

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Rinfret and Lamont JJ.

(1) (1926) 59 Ont. L.R. 527.

ANGLIN C.J.C.—We are all of the opinion that this appeal must be dismissed.

The ground on which the Court of Appeal has rested its judgment is, we think, sound. As the case appears to us, there is nothing new in the appellant's device; no novelty is disclosed, notwithstanding the ingenious argument of appellant's counsel to the contrary. Admittedly all the elements of the plaintiff's heater are old. The combination of them effected by him may be new in one sense—that is, precisely such a combination may not have been made before—but it is a combination the making of which did not involve any inventive ingenuity. Any competent and well-informed mechanic could readily have effected it.

The appeal fails and must be dismissed—and with costs.

Appeals dismissed with costs.

Solicitor for the appellant: *S. W. Burns.*

Solicitors for the respondents: *Fetherstonhaugh & Fox.*

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