
CANADIAN RAYBESTOS COMPANY, LIMITED v. ¹⁹²⁷
BRAKE SERVICE CORPORATION, LIMITED, *June 2, 6, 7.
ET AL. *June 17.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Patent—Action for infringement—Invalidity of patent—Anticipation—
Lack of invention*

APPEAL by the plaintiff from the judgment of Maclean J., President of the Exchequer Court of Canada, dismissing the plaintiff's action for infringement of patent on the ground of invalidity of the patent, holding that it had been anticipated by one Cady, and also that it was invalid for lack of invention (1). The patent had been granted to plaintiff as the assignee of one McBride, and was for an alleged new and useful improvement in brake band lining machines.

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

(1) [1926] Ex. C.R. 187.

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CORP., LTD.Duff J.
—

The appeal was dismissed with costs. The judgment of the court, delivered by Duff J., said in part as follows:

“It is not disputed that Cady’s machine is the mechanical equivalent of McBride’s. The learned trial judge has found as a fact that Cady’s machine was completed in 1918, and that McBride’s work did not pass beyond the experimental stage until the 1st of July, 1919; in other words, that McBride had not reduced his ideas to definite and practical shape until after Cady’s invention was completed.”

“There appears to be no satisfactory ground for disagreeing on these points with the learned President of the Exchequer Court, but I have come to the conclusion also that McBride’s action must fail on the second ground, namely, that there was no patentable invention. There is nothing new, either in McBride’s devices or in the end he sought to attain, except that these devices were applied by him to a new material. Machines had been constructed for boring and countersinking in one operation, and devices were well known for guiding the operation so that the axis of the hole bored in the blind side of the material should correspond with the axis of the existing hole. Then the stop for limiting the depth of the countersink was a perfectly well known device; indeed, the uncontradicted evidence is to the effect that every commercial press operated by power contains that element.”

Appeal dismissed with costs.

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

W. L. Scott K.C. for the respondent.
