BETWEEN

JUDSON M. GRIFFIN AND WILLIAM E. BRINKERHOFF... } PLAINTIFFS;

1902
April 21.

AND

THE TORONTO RAILWAY COMPANY AND MICHAEL POWER. } DEFENDANTS.

Patent of Invention—Infringement—Improvements in truing up car wheels —Combination—Invention—Utility.

The plaintiffs were owners of Canadian letters patent numbered 63,608 for improved abrading shoes for truing up car wheels. The improvement consisted in the use of an abrading shoe in which there were a number of pockets filled with abrading material. Between the pockets were spaces or cavities to receive the material worn from the wheel, the spaces having openings in them to facilitate the discharge of such material. Prior to the alleged invention abrading shoes had been used in which there were similar pockets filled with abrading material; and other shoes had been used in which there were similar spaces or cavities. The plaintiffs' abrading shoe, however, was the first in which these two features were combined, or used together.

Held, that there was invention in the idea or conception of combining these two features for the purpose of truing up car wheels.

2. That the invention was useful.

THIS was an action for infringement of Canadian letters patent No. 63,608 for improvements in abrading shoes for truing up car wheels.

The defendant company before trial withdrew its defence and suffered judgment to be entered against it.

March 24th and 25th, 1902.

J. G. Ridout, for plaintiffs;

W. Cassels, K.C., for defendant Michael Powers.

1902

GRIFFIN v. THE TORONTO RAILWAY COMPANY.

Statement of Facts.

J. G. Ridout, for the plaintiffs, cited *Frost on Patents* (1); *Toronto Auer Light Co.* v. *Colling* (2); *American Dunlop Tire Co.* v. *Goold Bicycle Co.* (3); *Smith* v. *Goodyear Dental Vulcanite Company* (4); *Consolidated Brake-Shoe Co. v. Detroit Steel and Springs Co.* (5); *Webster on Patents* (6).

W. Cassels, K.C., for the defendant Power cited *Hill* v. *Wooster* (7); *Wisner* v. *Coulthard* (8); *Burt* v. *Evory* (9); *Hunter* v. *Carrick* (10); *Curtis* v. *Platt* (11); *Carter* v. *Hamilton* (12).

J. G. Ridout replied.

THE JUDGE OF THE EXCHEQUER COURT now (April 21st, 1902) delivered judgment.

This action is brought for the infringement of letters-patent number 63,608 for improvements in abrading shoes for truing up car wheels. The defendant, the Toronto Railway Company, has withdrawn its defence, and judgment has, with its assent, been given against it. Of the defences set up by Michael Power, the other defendant, only three were relied upon at the hearing of the case, namely (1) that there was no invention; (2) that the alleged invention was not useful; and (3) that the defendant had not infringed.

The alleged improvement consisted in the use of an abrading shoe adapted for truing up car wheels in which there were a number of pockets filled with abrading material, and between such pockets so filled, spaces or cavities provided with openings to facilitate the discharge of such material.

(1) 2nd Ed. pp. 469, 470.
(2) 31 Ont. R. 18.
(3) 6 Ex. C.R. 223.
(4) 93 U.S. 486.
(5) 47 Fed. Rep. 894.
(6) Vol. I. p. 30.
(7) 132 U.S. 693.
(8) 22 S.C. R. 178.
(9) 133 U.S. at p. 357.
(10) 11 S.C. 302.
(11) L.R. 3 Ch. 134.
(12) 23 S.C.R. 172.

Prior to the alleged invention abrading shoes had been in use in which there were such pockets filled with abrading material; and other shoes had been used in which there were spaces or cavities similar to those mentioned. But the plaintiffs' abrading shoe was the first in which these two features were combined or used together. It is argued that there was no invention in combining or using these two features in the same shoe, and I am ready to concede that when one had once grasped the idea or conception that that was an advantageous and useful thing to do, and that in that way a better abrading shoe could be secured, no invention would be required to carry out the conception. But that does not conclude the matter, and in my view there was invention in becoming seized of the idea or conception mentioned.

I am also of opinion that the invention was useful. On the question of infringement one is not to overlook the fact that in such a case as this the construction of the patent is not in any way to be extended. But construing it narrowly, the defendant has, I think, infringed it.

There will be judgment for the plaintiffs against the defendant Michael Power, and the costs will follow the event.

Judgment accordingly.

Solicitor for plaintiffs: *John G. Ridout.*

Solicitor for Defendant O'Brien: *James Bicknell.*