# Reports and Notes of Cases.

## Dominion of Canada.

### EXCHEQUER COURT

Audette, J.] NORTHERN SHIRT CO. *v.* CLARK. [38 D.L.R. 1.

*Patents—Invention—Combinations.*

The application of a well-known contrivance to an analagous purpose is not invention and is not good ground for a patent.

*T. J. Murray* and *E. K. Williams*, for plaintiff; *Russel S. Smart*, for defendant.

ANNOTATION ON ABOVE CASE FROM 38 D.L.R.

This case turned principally on the question of invention which is a difficult one to determine.

The question of whether a given application or new use of an old contrivance is of such a character as to amount to invention is a familiar one to the Courts.

The mere application of an old contrivance to an analogous use without novelty in mode of application is not invention (*Losh* v. *Hague* (1838), 1 W.P.C. 200; *Kay* v. *Marshall* (1841), 2 W.P.C. 71, 8 Cl. and Fin. 245), and this may be so even if the commercial success is met with (*Thermos, Ltd.* v. *I. da, Ltd.* (1910), 27 R.P.C. 388).

An old principle applied in a new way, however, or by new means may involve invention. (*Proctor* v. *Bennis* (1887), 36 Ch.D. 740; *Gadd* v. *Mayor etc., of Manchester* (1892), 9 R.P.C. 513; *Brooks* v. *Lamplugh* (1898), 15 R.P.C. 33; *Cassel Gold Extracting Co.* v. *Cyanide Gold Recovery Syndicate* (1895), 12 R.P.C. 23[illegible]; *Bush* v. *Fox* (1856), 5 H.L.C. 707, 10 E.R. 1080, *Harwood* v. *G.N.R.* (1865), 11 H.L.C. 654, 35 L.J.Q.B. 27; *Siddell* v. *Vickers, Sons & Co.* (1888), 5 R.P.C. 416; *Curtis* v. *Platt* (1863), 3 Ch.D. 135; *Lister* v. *Leather* (1858), 8 E. & B. 1004; *Saxby* v. *Clunes* (1874), 42 L.J. Ex. 228; *Dudgeon* v. *Thomson*, 3 App. Cas. 34; *Nordenfelt* v. *Gardner* (1884), 1 R.P.C. 61; *Hocking* v. *Hocking* (1888), 6 R.P.C. 69 H.L.; *Osram Lamp Works* v. *Z-Electric Lamp Co.* (1912), 29 R.P.C. 421.

Lindley, L.J., in *Gadd* v. *Mayor, etc. of Manchester, supra*, at p. 524, thus states the law:—

"1. A patent for the mere new use of a known contrivance, without any additional ingenuity in overcoming fresh difficulties, is bad, and cannot be supported. If the new use involves no ingenuity, but is in manner and purpose analogous to the old use, although not quite the same, there is no invention: no manner of new manufacture within the meaning of the statute of James. 2. On the other hand, a patent for a new use of a known contriv-