

vice-president of the plaintiff company, H. A. Swigert, made a demonstration of the envelope in the witness-box, and, manifestly somewhat to his own surprise, did succeed in opening one without destroying the envelope; but no unskilled person could possibly do so, and no postmaster or post-office clerk, endeavouring to open it in accordance with the regulations, could do so without destroying the envelope, except occasionally and by accident. . . .

The defendants, who manufacture and sell envelopes on a very large scale, submitted a sample of this envelope to the post-office authorities, viz., to Mr. Ross, Chief Post Office Inspector, who condemned the device, and held that the proposed use of that envelope, at the rate of postage for third-class matter, would infringe the Postal Regulations. Apart from any rule of the department, I find as a fact that it does infringe the regulations, for the reasons I have stated above.

A great deal of correspondence ensued, the defendants claiming to rescind the contract altogether; and the plaintiffs made a modification of the envelope above-described, and secured from the post-office department the privilege of enclosing printed matter in it to be mailed at one cent for two ounces. . . .

It is claimed by the defendants that this is not what they bought; and this I find to be the case. It is true that it is easier to get at the contents, but it presents very little, if any, advantage over the old "sealed yet open" envelope, exhibit 10. . . .

This is not what the defendants bought. I doubt very much whether it would be held to be covered by the plaintiffs' patent, although this is not before me for decision, in view of my opinion on the main issue. . . .

I find that the consideration of the contract has wholly failed, and that the plaintiffs cannot recover. Apart from any question of representation or misrepresentation by the plaintiffs' agent, the parties were contracting with reference to an article which would answer the requirements of the Canadian Post-office Department, so as to send the matter enclosed therein at the lower rate of postage; and this article failed to answer them.

There is another element in the case which I am also about to pass over, but it might present a serious difficulty in the plaintiffs' way, if I had otherwise taken a favourable view of their case; and that is, the effect of the license granted by the plaintiffs to the W. Dawson Company on the 10th August, 1911, for the manufacture and sale of the envelope east of Kingston,