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BURBIDGE, J.

MARCH 4TH, 1902.

EXCHEQUER COURT OF CANADA.

FINDLAY v. OTTAWA FURNACE AND FOUNDRY CO.

Industrial Design—Manufactured Imitation of—Infringement—Register of Designs—Jurisdiction of Exchequer Court.

Action for injunction to restrain the defendants from infringing the registered industrial design of the plaintiffs in respect of the "Royal Favorite" cooking stove, by applying the said design, or a colourable imitation thereof, to the manufacture of the stove named by the defendants the "Royal National," or by selling or exposing for sale or use the said "Royal National" stoves, or colourable imitations of the "Royal Favorite" stoves, and to have the register of industrial designs rectified by expunging therefrom the industrial designs of the defendants' "Royal National" stoves.

W. D. Hogg, K.C., for plaintiffs.

G. F. Henderson, Ottawa, for defendants.

BURBIDGE, J.—I do not think anything would be gained by reserving this case. It is largely a question of fact that is to be determined, and the question has been very fully discussed. I have no doubt that I have jurisdiction in the matter, and I think it clear that the plaintiffs have a registered design in respect of which they are entitled to protection.

As to the law bearing on the case, it is, I think, to be found in the cases referred to in *In re Melchers*, 6 Ex. C. R. at p. 101—*Harper v. Wright*, *Holdsworth v. McCrea*, and *Hecla Foundry Co.'s case*—and *Oliver v. Thornley*, 13 Cutl. P. C. 490.

Then as to the question of imitation, it seems to me that the stove the defendants are making, the "Royal National," is, as it is now manufactured, an obvious imitation of the plaintiffs' "Royal Favorite," for which the latter have a registered design. I do not think I am called upon to express any opinion as to whether or not the defendants might make a stove similar in dimensions and shape to the "Royal Favorite" that would not be an imitation of the "Royal Favorite." The only question here is whether the