

(1889), 6 R.P.C. 554; Edmund's Law of Patents, 2nd ed. (1897), p. 427; Moody v. Tree (1892), 9 R.P.C. 333; Holden v. Hodgkinson Brothers (1904), 22 R.P.C. 102; Dover Limited v. Nürnberger Celluloidwaren Fabrik Gebrüder Wolff, [1910] 2 Ch. 25.

No specific case of deception or passing off had been proved. The stove was of a common form or type, long in use, to which the plaintiffs could not, by such an industrial design as theirs, and by making slight changes in external appearance and using a different form of grate, acquire an exclusive right under the Act.

So far as outward design was concerned, and apart from the general features of similarity in cylindrical form and colour, the two stoves appeared to the learned Judge to be substantially different in appearance; and he could not think that an intending purchaser of the plaintiffs' stove, who knew what he wanted, could be deceived by the appearance of the defendants' stove into buying it instead.

While, by sec. 45 of the Act, every certificate that an industrial design has been duly registered in accordance with the provisions of the Act shall be received in all Courts of Canada as prima facie evidence of the facts therein alleged, the prima facie case may be rebutted by shewing that there has been no legal registration: Partlo v. Todd (1888), 17 S.C.R. 196, 199.

The part of the description in the plaintiffs' design on which they lay stress is hardly the subject of an industrial design at all; and it certainly lacks novelty.

There has been no deceptive imitation or passing off, and no infringement of the plaintiffs' design.

The action, as against the T. Eaton Company Limited, who were charged only with selling, was dismissed at the trial, on the ground that, under secs. 31 and 35 of the Act, there was no remedy by action against them—the only remedy, if any, would be under sec. 36, the penal clause.

*Action dismissed with costs.*

---

MILLS V. FARROW AND LAZIER—SUTHERLAND, J.—JULY 10.

*Fraud and Misrepresentation—Purchase of Land—Failure to Prove Misrepresentations—Reliance on Opinion rather than Allegations of Fact—Action for Rescission of Contract or Damages for Deceit.*—Action to rescind a contract for the purchase by the plaintiff of land near Winnipeg, Manitoba, on the ground of misrepresentations, or for damages for deceit. The action was tried without a jury at Toronto. SUTHERLAND, J., in a written judgment, set