

Reports and Notes of Cases.

Dominion of Canada.

EXCHEQUER COURT.

Cassels, J.]

[43 D.L.R.1.

RE LAVERS' HEELS PATENT LTD.

Patents—Old elements—Patentable combination—Elements in previous patents—Validity.

Bringing together all elements in such a way as to be useful and produce a combination which has the essentials requisite to a valid patent entitles an applicant to have patent issue, notwithstanding that each of such elements can be traced in previous patents.

Russel S. Smart, for petitioner.

ANNOTATION ON ABOVE CASE FROM 43 D.L.R.

What are termed combinations form an important class of inventions. The term "combination" has no statutory foundation. Patents are granted in Canada for any new and useful "art, machine, manufacture or composition of matter." The machine or manufacture or composition of matter may be composed of a number of elements co-operating together, and when this is so the term "combination" is often applied to it.

Frequently the word "combination" is used, especially in the specification of a patent to describe any invention made up of parts more or less complex. Technically, however, the word is used to refer to cases where there is some interaction or functional co-operation of the parts, producing a separate entity having a result and characteristics different from the sum of the individual results and characteristics of its elements. Buckley, L.J., in *British United Shoe Machinery v. Fussell* (1908), 25 R.P.C. 631, 657, defined a combination as meaning "a collocation of intercommunicating parts with a view to arrive at a simple result." *Proctor v. Bennis* (1887), 36 Ch. D. 740; *Wood v. Raphael* (1896), 13 R.P.C. 730; *Crane v. Price* (1840), 1 W.P.C. 377, 383, 409; *Murray v. Clayton* (1872), L.R. 7 Ch. App. 570.

Combinations when they produce a new result or a known result in a new way are considered to be patentable inventions. (*British United Shoe Machinery Co. v. Fussell*, *supra*; *Williams v. Nye* (1890), 7 R.P.C. 62; *Wood v. Raphael*, *supra*; *Anti-Vibration Incandescent Lighting Co. v. Crossley* (1905), 22 R.P.C. 441; *Goddard v. Lyon* (1894), 11 R.P.C. 354; *Marconi v. British Radio Telegraph & Telephone Co.* (1911), 28 R.P.C. 181; *British Westinghouse Electric and Mfg. Co. v. Braulik* (1910), 27 R.P.C. 209; *International Harvester Co. of America v. Peacock* (1908), 25 R.P.C. 765, 777; *Gramophone and Typewriter Co. Ltd. v. Ullmann* (1906), 23 R.P.C. 752.)