

that, inasmuch as that form of envelope could not be used for sending matter at the lower rate of postage, the consideration for the agreement would have wholly failed; but that was not the only form of envelope covered by the patent which the respondent acquired the right to manufacture and sell. An envelope of the form of exhibit 9 is, I think, covered by the patent, and there is no question that it could be used for sending third-class matter by post. There are, as it appears to me, as wide differences in the form of the hook between exhibits 7, a and b, and exhibit 7, c and d, as there are between exhibit 9 and any of these exhibits.

There is also uncontradicted evidence that millions of envelopes of the same form as exhibit 9 have been and are in use in Great Britain and the United States; and, according to the testimony of Mr. Dawson, his firm has made a sale of 150,000 of these envelopes, and no complaints have been made by purchasers that there was any difficulty with the post office; and his firm has also sent a few of them through the post office, and there has been no difficulty with them.

There is, therefore, in addition to the testimony of the appellant's vice-president that the envelopes are safe, secret, and secure, the corroboration of it by the evidence to which I have just referred, which is, in my opinion, more to be relied on than the theories propounded by Mr. Maybee, the respondent's expert witness; and I cannot think it possible that such large numbers of the envelopes would be used in Great Britain and the United States, or such large numbers of them would have been sold by Mr. Dawson's firm, if they were open to the objection made by the respondent that they were not safe, secret, and secure.

My conclusion is, that the respondent has wholly failed to prove that envelopes made in accordance with the specifications and claim of the letters patent cannot be used without contravening the postal regulations of Canada, and that the respondent also failed to prove that envelopes of the form of that marked exhibit 9 are not "safe, secret, and secure," and that the contrary is the proper conclusion on the evidence.

It is, I think, open to grave question whether, if the respondent had fairly presented the case to the post office authorities, it would not have obtained a favourable ruling as to the envelopes marked 7, a, b, c, and d.

The postal regulations of the United States as to third-class matter do not substantially differ from the Canadian regulations; and I cannot think that millions of these envelopes would