Moss, C.J.O.:—I am unable to perceive any ground upon which, consistently with what was said as well as what was actually decided in Lellis v. Lambert, 24 A. R. 653, the judgment now in appeal should be disturbed.

The appellant's counsel referred to a number of cases decided by Courts of some of the States of the American Union. Some of these decisions tend to maintain the opinion that an action such as is sought to be maintained here lay at the common law, and relying on others the learned counsel contended that, even if the action was not maintainable at common law, the effect of the legislation concerning the rights of married women now in force in this province is to give the right. But little or no assistance is to be derived from these decisions in the face of the decisions of our own and the English Courts which clearly point to the opposite conclusion.

I think the defendant's case may well rest, as it was rested by Mr. Phelan in argument, upon Lellis v. Lambert.

I would dismiss the appeal with costs.

The other members of the Court concurred, OSLER and MEREDITH, JJ.A., giving reasons in writing.

NOVEMBER 15TH, 1909.

OVEREND v. BURTON STEWART AND MILNE CO.

Patent for Invention—Infringement—Novelty—Utility—Burden of Proof—Findings of Fact—Appeal—Simplicity of Invention—Former Patent—Failure to Keep on Foot—Disclosure of Invention—Failure to Manufacture—Patent Act, sec. 38—Failure to Mark Articles—Patent Act, sec. 55—Penalty under sec. 69—Damages—Costs.

Appeal by the defendants from a judgment of ANGLIN, J., at the trial, awarding the plaintiff an injunction restraining the defendants from infringing, in the manufacture and sale of curry-combs, the plaintiff's patent, number 53318, and the sum of $20.80 as and for damages and the costs of the action.

The plaintiff's patent was granted to him on the 24th August, 1896, and purported to be for certain improvements in curry-combs, the invention of one F. H. Burke.