

BETWEEN :

WILLIAM M. LESTER, LEON REISHER AND COMMERCIAL TRADERS LIMITED,	}	APPELLANTS;
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1946
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 May 28
 └
 Aug. 31
 ───

AND

THE COMMISSIONER OF PATENTS, . . . RESPONDENT.

Patent—Appeal from Commissioner of Patents—Patent Act, 1935 Chap. 32.
Appellant applied for a patent for an invention of a toy plastic pistol.

The toy consists of a representation of a pistol constructed from thermo-plastic material and within the article is an arrangement of walls and passages which form a whistle. The appellant appeals from the decision of the Commissioner of Patents rejecting the application.

Held: That the whistle and pistol were not combined to produce a common result but each part functioned independently of the other and were therefore not a patentable combination.

APPEAL from the decision of the Commissioner of Patents rejecting the application for a patent.

The appeal was heard before the Honourable Mr. Justice O'Connor, at Ottawa.

George H. Riches for appellant.

Respondent not represented.

The facts are stated in the reasons for judgment.

O'CONNOR J., now (August 31, 1946) delivered the following judgment:

This is an appeal from the rejection by the Respondent of an application for Letters Patent for an invention of a toy plastic pistol. The child's toy consists of a representa-

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tion of a pistol, constructed from thermo-plastic material and within the article there is an arrangement of walls and passages which form a whistle.

The pistol and the whistle are not combined to produce a common result. Each part performs its function independently of the other. I reach the conclusion that this is not a patentable combination.

The authorities are quite clear that a combination is not patentable where each part performs its function independently of the other and the parts are not combined to produce some common result.

This was expressed by Lord Tomlin in *British Celanese Ltd., v. Courtaulds Ltd.*, (1), as follows:—

It is accepted as sound law that a mere placing side by side of old integers so that each performs its own proper function independently of any of the others is not a patentable combination, but that where the old integers when placed together have some working inter-relation producing a new or improved result then there is patentable subject-matter in the idea of the working inter-relation brought about by the collocation of the integers.

See also *Terrell on Patents* 8th ed., page 79, and *Robinson on Patents*, Vol. 1, section 154.

The appeal will be dismissed.

Judgment accordingly.