

(11

35/1937

ZEMANCHEFF

v

MC EVOY AND FOSTAR'S SHOES LTD

Reasons  
for  
Judgment

Delivered 28 July 1938

ZEMANCHEFF v McEVROY AND FOSTAR'S SHOES LTD

ORAL JUDGMENT

DIXON J.

I agree that the appeal should be dismissed.

It appears to me that claim 9 is clearly anticipated by the shoe exhibit 6, and I think that claim 10 is clearly anticipated by the shoe, exhibit 5. Claim 10 is no doubt wide and would include other constructions of the shoe as well as that illustrated by exhibit 5, but it is invalidated by the existence and sale as at May 1933 of that shoe.

The thirteenth claim does not appear to me to have been infringed. It is very definite in requiring that there shall be three shaped and slitted pieces of material and in the shoe, exhibit 16, there are only two such pieces. Though it is really unnecessary to consider claim 13~~4~~ any further, I agree that it is anticipated.

Claim 15 is of a kind which is always found embarrassing. It refers to the whole specification and drawings and claims a method

of manufacture substantially as described. From the drawings there might be spelled out a very precise combination amounting to a special method of construction which, apart from anticipation, might conceivably present subject matter. I think it is true that a close inspection of the shoe, exhibit 5, shows that even that very distinct and precise method has been anticipated but that possibly involves making an inference which we should hesitate to draw without the assistance of expert evidence. But, however that may be, when you come to apply claim 15 and the drawings to the body of the specification, I think that it at once appears that the specification makes no point of the particular method which might be deduced from the drawings. The drawings themselves fail to bring out that method of construction with clearness and it is evident that it was not considered the point of the invention.

Further, in respect of all four claims, I do not think there is any step really involving subject-matter.

The shoe, exhibit 6, may be taken as forming part of the common

knowledge of the trade. I have very little doubt that the features it embodies were well known at the date when it was manufactured. But, taking the shoe itself as a basis, the alterations and additions and the particular methods which were employed appear to me to be no more than workshop improvements.