

1929
 *Nov. 6, 7, 8.
 1930
 *June 11.

GRISSINGER v. VICTOR TALKING MACHINE CO.
 OF CANADA LTD.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Patent—Action for alleged infringement—Utility of plaintiff's device—
 Lack of the improvement alleged to have been achieved—Anticipation.*

APPEAL by the plaintiff from the judgment of Audette J. in the Exchequer Court of Canada (1) dismissing his action, which was brought for an injunction, damages, etc., by reason of the alleged infringement of letters patent issued to the plaintiff for an invention relating to sound projecting apparatus and methods.

After hearing argument of counsel, the Court reserved judgment, and on a subsequent day delivered judgment dismissing the appeal with costs. Written reasons were delivered by Duff J., with whom the other members of the Court concurred. After dealing with the evidence at length, he concluded that the advantages, the plaintiff alleged, found in the invention described in claim 2, were not to be found in a horn constructed according to the description contained in his patent, nor were they to be found in other horns closely resembling his, nor in the horns produced by the defendant which the plaintiff said were infringements on his invention; it did not appear, therefore, that in the plaintiff's invention there was the improvement which he alleged he had achieved. As to plaintiff's contention that his horn as described in claim 2 presented advantages in the reduction of expense and facility of packing, the attainment of which amounted to invention in the pertinent sense, his Lordship was "unable to perceive, in view of the Catucci and Gustafson produced, anything in the nature of invention here."

Appeal dismissed with costs.

G. Wilkie K.C. and T. D. Delamere for the appellant.

O. M. Biggar K.C. and R. S. Smart K.C. for the respondent.

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.