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 May 27  
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RIBBONS (MONTREAL) LIMITED . . . . PLAINTIFF;

AND

BELDING CORTICELLI LIMITED . . . . DEFENDANT.

*Trade-Mark—Industrial design—Industrial Design and Union Label Act, R.S.C. 1952, c. 150, ss. 7, 12(1), 14, 21, 25—Presumption of validity of registration—Onus of proving invalidity—Failure to discharge onus—Proof of ownership—Sufficiency of subject-matter—Publication—Date of first publication—Marking of articles.*

Plaintiff, the registered owner of an industrial design known as a transparent acetate blister used for the ornamental display of its contents consisting in the instant case of bows and ribbons for tying and decorating wrapped articles, brings this action against defendant for the alleged infringement of such design. Defendant admits the infringement and pleads that the plaintiff's registration is invalid. The Court found for the plaintiff.

*Held:* That in virtue of ss. 7(3) and 25 of the *Industrial Design and Union Label Act*, R.S.C. 1952, c. 150 the onus of proving that the plaintiff was not the owner of the design rested on the defendant who had failed to discharge the onus.

2. That the design by virtue of s. 7(3) of the Act was presumed to be validly registered and the evidence adduced confirmed that it had sufficient subject matter for the purpose.
3. That "publication" in s. 14(1) of the Act means the date when the article in question was first offered or made available to the public and the evidence showed that registration had been effected within one year from that date.
4. That the articles had been properly marked as required by s. 14(1) of the Act.

ACTION for infringement of an industrial design.

The action was tried before the Honourable Mr. Justice (Montreal) Kearney at Montreal.

*Cuthbert Scott, Q.C.*, for plaintiff.

*H. Gerin-Lajoie, Q.C.* and *Pierre Bourque* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

KEARNEY J. now (May 27, 1961) delivered the following judgment:

This is an infringement action instituted by the plaintiff pursuant to the provisions of the *Industrial Design and Union Label Act*, R.S.C., 1952, c. 150, s. 15, which reads as follows:

15. If any person applies or imitates any design for the purpose of sale, being aware that the proprietor of such design has not given his consent to such application or imitation, an action may be maintained by the proprietor of such design against such person for the damages such proprietor has sustained by reason of such application or imitation. R.S., c. 201, s. 38.

It is admitted that the plaintiff and the defendant had each a place of business in the City of Montreal, were engaged in the sale and distribution of ribbons and bows of ribbon used for tying and decorating wrapped parcels or packages, and were servicing the same retail outlets. The plaintiff is a jobber who buys and sells ribbons and bows but does not manufacture them; the defendant, while manufacturing these articles, buys and sells some which are not of its own manufacture. As appears by certificate No. 163/22797, dated October 19, 1959, the plaintiff, pursuant to the Act, has caused to be registered a certain industrial design known as a transparent acetate blister, and exemplified by exhibits P-2, P-13, P-17, which is used for the ornamental display of its contents consisting of what is called in the instant case a "Beauti-Bow and Tye Ribbon."

This "Beauti-Bow" consists of ribbon arranged in what appears to be a cluster of bows placed in a semi-spherical shape, used to decorate the top of wrapped gift packages.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORICELLI  
 LTD.  
 Kearney J.

The Tye Ribbon, or hank as it is sometimes called, is made of matching ribbon used to tie the package and to maintain the decorative bow in place. Another feature of this design is the protection it affords bows on packages in transit.

The plaintiff alleged that the design was developed on its behalf by an officer and/or servant in its employ in the normal course of duty; that it thus became the first and true designer of the said transparent display blister; and that the defendant has and continues to apply the said design or fraudulent imitation thereof to its wares and has refused to discontinue such practice although requested by the plaintiff to do so. Two samples of the defendant's infringing design, entitled "Glamour Bow and Matching Ribbon," were filed as exhibits P-12 and P-15. For simplification I will refer to the design in issue as P-2 and the infringing design as P-12.

In addition to damages amounting to \$10,000 the plaintiff seeks an injunction restraining the defendant from manufacturing, selling and distributing transparent display blisters of the type in issue, and an order requiring it to deliver up to the plaintiff all such infringing design in its possession or under its control.

The defendant's first two exhibits, A and B, were filed long before its third exhibit and, when the latter came to be filed, it was erroneously marked as exhibit A instead of C, and a like occurrence befell the defendant's subsequent exhibits. This oversight was discovered only after much of the evidence had been taken down in stenography. The designation in the official transcript of the defendant's third, fourth, fifth, sixth and seventh exhibits should therefore be changed to read C, D, E, F and G instead of A, B, C, D, E.

Unusual as it may appear, infringement is not in issue. Far from denying that it applied to its wares a duplication or imitation of the plaintiff's registered design, the defendant in its statement of defence and amended particulars of objection declared that the use by it of the said design had been carried out properly and legally. It alleged that the registration of the design in question is and always has been illegal, invalid, null and void for the following reasons: (1) the plaintiff is not the true owner

thereof; (2) the design lacks subject matter for registration under the Act; (3) it was registered too late; (4) following registration the plaintiff failed to have its name as proprietor and registration number appear on the article to which the said design applied as required by the Act. Accordingly the defendant concludes and asks that the said registration certificate No. 163/22797, dated October 19, 1959, be declared null and void and that it be set aside for all legal purposes.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

In support of point (1) the defendant invoked two grounds: (a) the design in issue was originally developed by Vogue Plastics Limited of Montreal in February 1958, at the instance of J. H. Street & Co. Ltd., Toronto foil specialists, hereinafter designated J.H.S., under the following circumstances. Prior to February 1958, J.H.S., through its salesman, Mr. A. Feller, had been in touch with the plaintiff which desired to secure an improved package for the sale of bows and ribbons. At the request of J.H.S., Vogue Plastics Ltd. designed and manufactured specimens of "Blister Packs," also known as "Transparent Display Blisters," which were submitted by J.H.S. to the plaintiff, together with price quotations dated February 14 and 19, 1958. The plaintiff did not give effect to these quotations, but several months later took advantage of the knowledge thus acquired and unduly appropriated the said design for its own use.

(b) On or about March 25, 1959, Mr. Maurice C. Robinson, president of the plaintiff company, filed an application for registration in his own name of an industrial design for a transparent display blister, identical to the one previously submitted to the plaintiff by J.H.S. and designed by Vogue Plastics Ltd. in February 1958, and an industrial design registration was granted in Mr. Robinson's name on May 19, 1959, under No. 161/22501. Subsequently Mr. Robinson arranged with the plaintiff to have the said industrial design registered in the latter's name. Accordingly the plaintiff instituted an action against its president. On October 1, 1959, judgment was rendered ordering and adjudicating that registration No. 161/22501 be expunged from the Register of Industrial Designs. A

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

new application was filed on behalf of the plaintiff on October 19, 1959, for registration in its name of an identical or similar industrial design under No. 163/22797.

Under 1(a) is to be found the most contentious and most important issue, namely, whether the plaintiff is the true proprietor of P-2. Its determination resolves itself into almost exclusively a question of fact which depends in a great measure on the credibility to be attached to the respective witnesses called by the parties. The plaintiff relies for proof of authorship mainly on the evidence of its president, Mr. Robinson, and its production manager and purchasing agent, Mr. Levy. The defendant, in respect to proof that the rightful owner of the design is J.H.S. is dependent in a large measure on the testimony of Andrew Feller.

In dealing with evidence I will refer to exhibits which have been produced and represent acetate blister designs which are not in issue, and I will refer to them principally to preserve a proper sequence of events, but I think it should be borne in mind that we are here concerned only with the design described in certificate No. 163/22797 and exemplified by P-2.

The following are some facts concerning which Messrs. Robinson and Levy on the one hand, and Mr. Feller on the other, are in agreement. J.H.S. specialized in making aluminum foil bendovers for hanks (Ex. P-5); and during the course of the year 1957 Mr. Feller called on Mr. Levy in an effort to procure an order for this article but at no time was he successful. On one such visit, late in December 1957 or early in January 1958, the question of an acetate blister to house a bow and hank first arose. Although Messrs. Robinson, Levy and Feller agree on when this question was first brought up, in many respects they are poles apart on what occurred on that occasion and subsequent thereto.

According to Mr. Robinson, in 1954 a "Beauti-Bow" and hank enclosed in a container, made partly of cardboard and partly of cellophane, was originated by him with the assistance of Mr. Levy and was marketed very successfully for several years. The container was not registrable as a design, but the name "Beauti-Bow" was

registered as a trade name early in 1954. The cellophane bag, as P-1 was called, while its production cost was low, had two serious drawbacks: it was fragile and had a tendency to dry and crack and take on a puckered appearance. Early in 1957, according to Messrs. Robinson and Levy, they had seen in trade magazines how businessmen, particularly in the hardware trade, were making use of acetate containers and they went to work on devising how they could convert the cellophane bag type into an acetate blister type container. They had drawn sketches of how this best could be attained, and they had gone to several manufacturers with a view to having their ideas put into practice. They could find manufacturers, but the main difficulty with the display blister type was its high cost of manufacture against the moderate cost of the cellophane bag type. They consulted some firms which used the latest method called the "vacuum forming process," and among them were Style Plastics, Monsanto Chemicals, Canadian Chemicals, G.M. Plastics, Quebec Plastics. One firm, namely, Neelack, which manufactured acetate blisters by the injection moulding method, informed them that even to make a small die for an acetate blister would cost over \$20,000. By the end of 1957 they had reached the state of knowing what they wanted but they had not yet given instructions to anybody to make a model of their design. It was at this stage that Mr. Feller raised with Mr. Levy the subject of making an acetate blister, by informing him that the firm of J.H.S. had lately acquired vacuum processing machinery and was interested in making acetate blisters. Mr. Robinson was called in and both he and Mr. Levy led Mr. Feller into the showroom, showed him hand-drawn sketches of an acetate blister designed to house a bow and hank, gave him several samples of their cellophane package (P-1) and asked him to quote prices.

Under date of February 14 they received a quotation from J.H.S. per J. A. Ritchie for the manufacture in large quantities of the "Beauti-Bow" pack, consisting of an acetate circular blister which would house the "Beauti-Bow" alone, together with a quotation for printing a base card for each blister. Similarly under date of February 19

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

quotations were also received for a blister and base card which provided housing for both the bow and the hank, the whole as appears by exhibit A.

According to Messrs. Robinson and Levy, they informed Mr. Feller that the prices quoted were prohibitive and that they could not think of buying the design. Mr. Feller said he would give the information to his principals and about two or three weeks later Mr. Feller returned accompanied by Mr. Street and they interviewed Mr. Robinson and Mr. Levy, promising they would see what they could do with regard to the price; but they did not submit any further quotations and their dealings with Mr. Feller thereupon came to an end.

Not long after a Mr. Cameron of Canadian Decor Products Inc., Montreal, who while with the T. Eaton Co. had purchased for resale the plaintiff's "Beauti-Bows" in the cellophane bags (Ex. P-1), got in touch with the plaintiff and informed it that his company had vacuum processing machines and was anxious to see them in connection with converting the above exhibit into an acetate container. As a result, Canadian Decor Products Inc. made two hand-made samples of acetate blisters—one to house a "Beauti-Bow" and hank (P-8) and a smaller circular blister for a bow without the hank (Ex. P-9). As a result, the price being satisfactory, the plaintiff placed an order, subject to being okayed and checked, on May 5, 1958, with Canadian Decor Products Inc. for 10,000 large circular blisters without the hank and 10,000 smaller blisters of the same type. (See invoice, exhibit P-6).

According to Messrs. Robinson and Levy, the plaintiff company had some market for the sale of bows alone, and having a large stock of cellophane containers such as P-1, they decided to test the market with the circular blister for the bow alone because, if they placed the bow and hank model (Ex. P-8) immediately on the market, they thought they would be unable to dispose of their large stock of P-1 type of container. No further orders were given to Canadian Decor Products Inc. because it got into financial difficulty and soon after, in August 1958, went into liquidation. Just about this time, Charles Kirchoff of Vogue Plastics Ltd., who, according to Mr. Levy, saw

that the plaintiff was selling bows alone in plastic containers (Ex. P-7), got in touch with Mr. Robinson and Mr. Levy to solicit orders for acetate blisters of the type for the bow and hank similar to exhibit P-2. It turned out that it was he who had made samples of P-2 and P-7 for J.H.S. but had been unable to secure an order from them. As a result of Mr. Kirchoff's visit, the plaintiff gave, subject to checking and approval, an order for 9,000 acetate blisters, called the "Twin Pack Beauti-Bow," which provided housing for two bows and a double length hank. The first sample was unsatisfactory to the plaintiff but Mr. Kirchoff made a second sample which overcame the defects complained of, and the twin pack order was completed in November 1958, in time for the Christmas market. A sample of the twin pack was filed as exhibit P-4. In the meantime a model of P-2 was similarly submitted and, after some alterations were made at the instance of the plaintiff, an order for the finished article was given, and it went on the market in January 1959.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

Mr. Feller's version of his relationship with Messrs. Robinson and Levy is substantially as follows:

Towards the end of December 1957 or early in January 1958, after several preceding visits with Mr. Levy, he found that he was unable to sell aluminum foil bendovers to the plaintiff. He showed Mr. Levy some display work, whereupon the latter took him to the plaintiff's showroom to have a look at the company's products and asked Mr. Feller, if he could come up with any idea that he felt would be of interest to him, he should contact him immediately. Mr. Feller stated that he hit upon the idea of placing the plaintiff's "Beauti-Bow" in an acetate container. He left Mr. Levy, went out to a drugstore on St. Catherine Street and purchased one of the plaintiff's cellophane bags (Ex. P-1). He then went to his own office and procured a sample used by Stetson's (Ex. F) to advertise their hats, which consists of a semi-spherical blister made of acetate. Mr. Feller claims that sometime in 1955 his company conceived this idea, did the actual printing of the card and contracted with a firm in Toronto or Brampton, Ontario, to make the blister package which is part of the display. He brought these articles to Mr. Levy and suggested that the bow in exhibit P-1 would be much better



1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTECELLI  
 LTD.  
 Kearney J.

displayed if it were transferred to a blister such as exhibit F. He asked Mr. Levy if he could go ahead and make him an actual sample of the round blister because exhibit F was only a component part of another product. Mr. Levy replied that he would be interested. Mr. Feller contacted not J.H.S. but Vogue Plastics Ltd. and arranged with that firm to make another acetate blister sample to fit the contour of the bow contained in exhibit P-1. In January 1958 he showed Mr. Levy the new sample which was of a lot cleaner transparency than the Stetson sample. Mr. Levy was very enthused and thought the idea worth considering and asked Mr. Feller at the time if it would be possible to include a hank with the blister. Mr. Feller then obtained for Mr. Levy a striking scarlet sample of the company's "Beauti-Bow" and a hank to match, and he contacted Mr. Kirchoff, asked the latter whether he thought this idea could be carried out, who replied that he foresaw no great difficulties in implementing it. When he had received the sample blister, he enclosed the ribbon and hank in it and sent it to his firm in Toronto to complete by hand the art work consisting of the wording and colour scheme on the card which formed the bottom of the blister, and asked for quotations of the whole, which he received back in the middle of February (Ex. A). He took the sample and the quotations to Mr. Levy who was very enthused about it and Mr. Levy introduced Mr. Feller for the first time to Mr. Robinson. Both were favourably impressed, and Mr. Levy informed Mr. Feller that they were definitely interested in a package of this type and that he, Mr. Feller, should not contact any other manufacturer. I should here interpose that in cross-examination Mr. Feller admitted that he had led Messrs. Robinson and Levy to believe that J.H.S. would manufacture the sample in question.

Mr. Feller declared that both Mr. Levy and Mr. Robinson took exception to the price and that he suggested that the price might be brought down by substituting staples by a "flange" on the blisters; and, instead of printing it in two colours it could be printed in one; and finally, by reducing the cardboard's thickness from 15 point to 12. It all ended, said Mr. Feller, with Mr. Robinson going on a trip and asking to take with him two blisters: a semi-spherical blister

to house only the bow and another blister with provision to house a bow and hank, as he wanted to test the reaction of the various buyers to the acetate packs and he suggested that Mr. Feller contact him in a few weeks on his return. Mr. Feller contacted Mr. Robinson again on the latter's return, early in March 1958, who reported that there was an enthusiastic response from some while others were not so keen on the idea; and he asked Mr. Feller to return at the end of March or beginning of April; and, as Mr. Street happened to be in Montreal, both he and Mr. Feller called on Mr. Robinson and Mr. Levy and again discussed the idea of this blister pack. The result of the discussion, he said, was that Mr. Robinson thought it would be taking a gamble on completely changing to this package. He wanted to consider it further, and it would help if something on the price could be done. Mr. Feller stated he saw Mr. Robinson once more in the fall of 1958. Beyond saying that this was his last meeting with Mr. Robinson, Mr. Feller said nothing about what occurred on this occasion. Mr. Feller said he dropped in occasionally to see Mr. Levy and, though he was not sure, he thought he submitted quotations such as those in exhibit B, bearing the date of March 15, 1958, which are in his own handwriting and about half the amount of his original quotations. Mr. Robinson declared that he never previously saw exhibit B.

Mr. Levy who was heard in rebuttal stated that the discussions about the acetate blister with Mr. Feller began at the end of December 1957 and ended in early March 1958. He testified that at no time did Mr. Feller show him the Stetson blister (Ex. F) and the first time he saw it was in court. He also declared that J.H.S., in their quotations for "Beauti-Bow" blister packs (Ex. A), was asking four and a half to five times more per unit than Vogue Plastics Ltd. charged the plaintiff for making P-2, P-13 or P-17. When asked in cross-examination why he did not mention to Mr. Feller during their discussions in December 1957 that prior and subsequent thereto Mr. Robinson and himself were discussing with other manufacturers the production of acetate blisters, Mr. Levy replied that the plaintiff in the ordinary course of business, is often in touch with several manufacturers at the same time in order to get the lowest

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

quotation on the article which they wish to produce and they never give one manufacturer information which they have received from another.

The sample blister packs which Mr. Feller had made by Vogue Plastics Ltd. were not produced at trial and were the subject matter of considerable evidence. Messrs. Robinson and Levy said that to the best of their memory they had been returned to Mr. Feller and that at no time had Mr. Feller or J.H.S. asked for their return. Mr. Feller was not sure what happened to them.

What conclusions are to be drawn from the evidence submitted on behalf of the plaintiff and the defendant, which in so many important respects is contradictory?

If the version of what occurred, as given by Messrs. Robinson and Levy on the one hand and Mr. Feller on the other, were considered separately, each might be regarded as not only possible but plausible. It is when contrasted that they become subject to suspicion. Thus one may query whether it was only coincidental that both the hand-made sample of the blister for a bow alone and the other for a bow and hank (Exs. P-8, P-9) were made by Canadian Decor Products Inc. not long after Mr. Feller's visits to the plaintiff's office during February 1958 and after he had placed in the hands of Messrs. Robinson and Levy similar samples which they thought J.H.S. had made but which they later learned were manufactured by Vogue Plastics Ltd. Nevertheless I consider that the actions of Messrs. Robinson and Levy were more consistent with their testimony of what occurred than were the actions of Mr. Feller with his testimony regarding the same visits, and that the weight of evidence favours the plaintiff.

A grave weakness in Mr. Feller's evidence which casts doubt on the veracity of the remainder of his testimony is the fact that, without offering any justification or excuse for so doing, he was driven to acknowledge that he had deceived the plaintiff into believing that J.H.S. would manufacture the acetate blisters mentioned in the quotations it sent to the plaintiff, as it had recently acquired the vacuum process machinery necessary for the purpose.

It was submitted on behalf of the defendant that there was evidence from which it could be inferred that the plaintiff never intended to place an order with J.H.S. which, while putting off giving a definite answer to Mr. Feller, was making use of his idea on the conversion of its cellophane bag into an acetate display blister; that, while taking advantage of the trustfulness of Mr. Feller, the plaintiff was negotiating with one company or more to put this idea into practice, thus appropriating to itself the resulting design which rightfully belonged to J.H.S. Even were there some evidence which would lend colour to this conclusion, it was negated by the actions of Mr. Feller. It was proven that, in making enquiries regarding an acetate blister, the plaintiff had previously contacted concerns capable of manufacturing it and its witnesses testified that, had they known that J.H.S. did not manufacture acetate blisters and was only a middleman, they would never have dealt with this concern. By having recourse to a deliberate misrepresentation, Mr. Feller, I think, provided the plaintiff with a just and reasonable cause for breaking off negotiations, on the grounds of excessive price alone, more particularly as it was proven that Vogue Plastics Ltd. undertook to manufacture display blisters on speculation and had quoted J.H.S. a price nearly five times less than the latter had quoted to the plaintiff for the same work. Under the circumstances there is little justification to question the truth spoken by the witnesses called for the plaintiff when they stated excessive charge was their only cause for discontinuing relations with J.H.S.

Although it is claimed that J.H.S., and not the plaintiff, is the rightful owner of the design in issue, I do not think that the former acted in the manner expected from such an owner. No officer of the company came forward to testify that it claimed ownership of the design. Mr. Street who, it is proved, had gone to see the plaintiff's officers to discuss prices was not heard as a witness, possibly because at the time it occurred he did not know of the deception practised by Mr. Feller who was simply a salesman. In any event, if negotiations between the plaintiff and J.H.S. were, as it is claimed, unduly prolonged, one would have expected that an officer of the company would have

1961

RIBBONS  
(MONTREAL)  
LTD.v.  
BELDING  
CORTICELLI  
LTD.Kearney J.  
—

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 ———  
 Kearney J.  
 ———

brought them to an end and tried to interest one of the many other concerns which sells bows and ribbons in a design of which it claimed to be the rightful owner.

Mr. Feller also admitted that what he called his saleable idea consisted of placing a "Beauti-Bow" in a semi-spherical blister and that the idea of adding the hank came from Mr. Levy.

For the reasons stated earlier the plaintiff has discharged the burden of proving infringement, and for good measure I might add that Mr. Homer H. Bland, president of the defendant company, when examined on discovery, admitted that his company knew that the plaintiff's exhibit P-2 was on the market and that it knowingly sold P-12 which is practically a duplicate thereof. As a consequence, in my opinion the burden of proving that the plaintiff is not the proprietor of P-2 rests on the defendant by reason of ss. 7(3) and 25 of the Act, which read as follows:

7(3) The said certificate, in the absence of proof to the contrary, is sufficient evidence of the design, of the originality of the design, of the name of the proprietor, of the person named as proprietor being proprietor, of the commencement and term of registry, and of compliance with the provisions of this Act. R.S., c. 201, s. 30.

25. Every certificate under this Act that any industrial design has been duly registered in accordance with the provisions of this Act, which purports to be signed by the Minister or the Commissioner of Patents shall, without proof of the signature, be received in all courts in Canada as *prima facie* evidence of the facts therein alleged. R.S., c. 201, s. 48; 1932, c. 38, s. 61.

Looking at the evidence as a whole, I think that the testimony given by the plaintiff's witnesses is entitled to at least as much credence as that adduced by the defendant, and I consider that the defendant has failed to discharge the burden of proof which rests upon it.

I think the grounds invoked by the defendant under 1(b) lack merit. Mr. Robinson testified on discovery that the proceedings therein mentioned were taken on the advice of counsel, and s. 21 of the Act provides the only way to expunge a registration which should not have been made, which is by means of an action. The amended statement of claim filed in case No. 157454 of this court states that, although he originated it, he did so for good and valid consideration paid him by the plaintiff; he was a salaried

employee whose duties included the designing and styling of new articles and the ornamentation thereof for marketing by the plaintiff; and that he was acting within the scope of his employment, on the plaintiff's time, on the plaintiff's premises and with material supplied by the plaintiff. The record also shows that Mr. Robinson acknowledged the correctness of the allegations contained in the statement of claim and consented to judgment. Under the above circumstances I think that it was by error that the design was registered in Mr. Robinson's name in the first place, by reason of the provisions of s. 12(1) of the Act which states:

12(1) The author of any design shall be considered the proprietor thereof unless he has executed the design for another person for a good or valuable consideration, in which case such other person shall be considered the proprietor.

The defendant, if it were attempting to prove that Mr. Robinson is not the true owner of the registered design, might, I think, with justification invoke the above proceedings, but they cannot, in my view, be validly invoked against the plaintiff, since the purpose and effect of the above-mentioned action was to put the registration of the instant design in the name of the plaintiff where it rightfully belonged.

In respect of the question of invalidity due to lack of subject matter referred to under (2), counsel for the defendant did not raise this point in argument. This is quite understandable, I think, firstly since, in the absence of evidence to the contrary, the design is presumed, under s. 7(3), to possess the necessary qualities for valid registration and, secondly, because of the testimony given by the defendant's own witnesses, Messrs. Feller and Kirchoff. Mr. Feller, speaking of newness or novelty and originality, stated that he considered the idea he conceived of applying acetate design blisters to ribbon bows was something original and saleable. This evidence, in my opinion, far from rebutting the presumption in favour of sufficient subject matter, only serves to confirm it. In addition to the foregoing, the plaintiff in my opinion offered sufficient proof in respect of the adequacy of subject matter, but under the circumstances I think it unnecessary to refer to it.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 Kearney J.

1961  
 RIBBONS  
 (MONTREAL)  
 LTD.  
 v.  
 BELDING  
 CORTICELLI  
 LTD.  
 —  
 Kearney J.  
 —

The third reason given by the defendant to prove the invalidity of the registration in issue is that the plaintiff registered the design on October 19, 1959, which was more than one year after its date of publication, thus contravening s. 14(1) which reads as follows:

14(1) In order that any design may be protected, it shall be registered within one year from the publication thereof in Canada, and, after registration, the name of the proprietor shall appear upon the article to which his design applies by being marked, if the manufacture is a woven fabric, on one end thereof, together with the letters *Rd.*, and, if the manufacture is of any other substance, with the letters *Rd.*, and the year of registration at the edge or upon any convenient part thereof.

“Publication” means the date on which the article in question was first offered or made available to the public and, since the evidence shows that this occurred in January 1959, it disposes of the above-mentioned objection.

In respect to lack of proper markings, which is the last reason advanced by the defendant for invalidity, this also falls under s. 14(1) (*supra*). All the exhibits exemplifying the plaintiff’s registered design show that they were marked in accordance with the Act; and the defendant has failed to make proof of any instance in which the plaintiff offered such articles for sale, which did not bear the required inscriptions, and I do not think that anything more need be added under this heading.

For the foregoing reasons I consider the plaintiff’s action should be maintained with costs and that it is entitled to an injunction and a surrender by the defendant of all infringing articles in the manner sought in the conclusions of its action. As to its claim for damages amounting to \$10,000, this will be referred to the learned registrar of this court for assessment.

*Judgment accordingly.*