

1895

IN THE  
MATTER OF  
THE PETITION  
OF RAHMAT-  
ULLAH.

*Edge, C. J.  
Banerji, and  
Burkitt, J. J.*

public, including private individuals, and the preservation of the peace. If this order had been one which the Magistrate had power to make under s. 144, we should have had no jurisdiction or power to interfere with it. We may say further that the Magistrate of Benares, in our opinion, acted with the very best intentions, but unfortunately he did exceed his jurisdiction.

Our order is that the orders prohibiting any persons from executing Civil Court decrees in that place and directing Rahmat-ullah to re-build the *baradari* are hereby set aside.

The proceedings which have been instituted under s. 188 of the Indian Penal Code for disobeying the orders we have set aside must be discontinued, otherwise a remedy may be sought by application to this Court.

## APPELLATE CIVIL.

*Before Mr. Justice Know and Mr. Justice Aikman.*

THE ELGIN MILLS COMPANY (OPPOSITE PARTY) *v.* THE MUIR MILLS COMPANY (PETITIONER).\*

*Act No. V of 1888 (Inventions and Designs Act) ss. 4, 30—Invention—Improvement—Combination of known substances to produce a known result—Burden of proof.*

*Held*, that a combination, effected by placing one known material side by side with another known material, not involving the exercise of any special inventive power, and ending in a result which differed from previous results only because the materials so placed produced an improved article, did not amount to an "invention" as defined by Act No. V of 1888.

*Held* further, that it is for the person who claims an exclusive privilege under the Inventions Act to prove that the facts exist which entitle him to the privilege claimed.

THIS was an appeal under s. 10 of the Letters Patent from a judgment of Blair, J. The facts of the case are as follows:—

In the year 1890, one Clarence Noble Cline, then an employé of the Elgin Mills Company, Cawnpore, obtained under Act No. V of 1888 a patent in respect of a particular kind of tent devised by him, which he called "the native cavalry trooper's pal." In the same

\* Appeal No. 80 of 1893, under s. 10 of the Letters Patent, from an order of Blair, J., dated the 27th May 1893.

1895  
April 16.

year the patentee sold his patent to the proprietors of the Elgin Mills Company, Cawnpore. Thereupon the Muir Mills Company, respondents in the present appeal, applied to the High Court under s. 30 of Act No. V of 1888 for a rule calling upon the above-mentioned vendor and his vendees to show cause why it should not be declared that an exclusive privilege in respect of the tent known as the "native cavalry trooper's pāl" had not been acquired under Part I of the said Act, on the grounds—“(i) that the said alleged invention was not at the date of the delivery or receipt of the application for leave to file the specification a new invention within the meaning of the said Act; (ii) that the said applicant, Clarence Noble Cline, was not the inventor thereof; and (iii) that the said Clarence Noble Cline has knowingly included in the application for leave to file the specification and in the specification, as part of his alleged invention, things which were not new and whereof he was not the inventor.” Upon this application a rule was issued as prayed, and an issue was framed by Mr. Justice Straight—“Whether the tent described in the specification was a new invention within the meaning of Act No. V of 1888.”

The rule came on for hearing before Blair, J., who found in effect that inasmuch as no single part of the patented tent was in any sense an invention, a patent could only be sustained for it as for an improvement; but that it was not such a marked deviation from previously existing tents of a similar nature as to warrant the grant of exclusive privileges in respect thereof. He accordingly made an order declaring that the defendants had not acquired any such exclusive privilege as that claimed in respect of the tent in question.

The defendants appealed.

The Hon'ble Mr. Colvin, Mr. W. K. Porter and Pandit Moti Lal for the appellant.

Mr. T. Conlan, Mr. A. S. Strachey and Mr. D. N. Banerji for the respondent.

KNOX, J.—This is an appeal under s. 10 of the Letters Patent. The Muir Mills Company, who were plaintiffs and are now respon-

1895

---

 THE  
ELGIN MILLS  
COMPANY

v.

 THE  
MUIR MILLS  
COMPANY.

---

 Knox, J.

1895

THE  
ELGIN MILLS  
COMPANY  
v.  
THE  
MUIR MILLS  
COMPANY.

*Knox, J.*

dents, prayed this Court to grant a rule under s. 30 of Act No. V of 1888, and to call upon the Elgin Mills Company, the present appellants, to show cause why the Court should not declare that an exclusive privilege in respect of a certain tent known as the "native cavalry trooper's pal" had not been acquired by the Elgin Mills Company aforesaid.

The appellants appeared and showed cause. They claimed that the tent in dispute was at the time of the delivery of the application for leave to file the specification and at the time of the receipt of such application a new invention within the meaning of Act No. V of 1888.

The finding of the Court was to the effect that the invention was not the result of such skill and ingenuity as to deserve the protection of a patent. It was held that, having regard to the common use of every single material and device used in the tent in dispute and to the way in which they had been previously used, it was not a new combination within the meaning of the law. It was neither more nor less than an aggregate of colorable deviations from perfectly well-known existing types, and in its combinations it produced no result that could be called a new result under the terms of the Patent Law. It was accordingly declared that an exclusive privilege in the invention, the property of the appellants, had not been acquired by them, and the rule granted on the application of the Muir Mills Company was made absolute.

In appeal it is contended that the tent, the subject-matter of the appeal, is a new invention within the meaning of the Act No. V of 1888. It is claimed for it that it combines cheapness, portability and adaptability to service requirements; a further contention is that it was for the Muir Mills Company, Limited, to prove that the tent was not properly the subject-matter of a patent, and not for the appellant to prove the contrary.

There is not in Act No. V of 1888 any definition of the term "invention." All that the Act says is to be found in s. 4, clause (1), where it is laid down that the term "invention" includes an

improvement. Nor is much help to be derived from English Patent Law. In s. 46 of the Patent Designs and Trade Marks Act of 1883 "invention" is defined to mean any manner of new manufacture the subject of letters patent and grant of privilege within s. 6 of the Statute of Monopolies, and includes an alleged invention. Great stress was laid by the learned counsel for the appellants upon the concluding words "includes an improvement," and upon the fact that those words occur in the Act of 1859 and have been produced again under the definition of "invention" in Act No. V of 1888. He maintains that as he can show that the tent, the subject-matter of this dispute, is an improved tent as compared with other tents, it must be taken to come within the term invention as used in Act No. V of 1888. He clears the ground by expressly alleging that his clients do not claim anything new in the component parts of the tent, but they claim a combination, which from the points of portability, cheapness, accommodation, lightness and general suitability is far in advance of other tents of the same class hitherto known. He called our repeated attention to evidence in the case, particularly that taken by commission of Lieutenant-General Sir Charles Gough, as showing that his clients had satisfied what was wanted by the Military Department at that time, where others had made similar tents and failed. Thus, as his clients had brought into existence an improved tent and no identical tents had been proved to be in existence or used before, he claimed that the terms set out in the Act had been satisfied and that his tent was an "invention."

For the nature and description of the subject-matter of this litigation no better evidence can be cited than the evidence of Mr. Cline, the gentleman who claims to be the inventor. This will be found set out in the judgment from which this appeal has been filed. From a perusal of it, it is abundantly evident that the result at which Mr. Cline arrived was not arrived at by any act or process of welding into one new manufacture substances which had previously been known and in common use in the manufacture of tents. What Mr. Cline did is summed up, and justly summed up, by my brother Blair in his judgment when he says that the result attained was

1895

---

 THE  
 EGIN MILLS  
 COMPANY

 v.  
 THE  
 MUIR MILLS  
 COMPANY.

---

 Knox, J.

1895

THE  
ELGIN MILLS  
COMPANY

v.  
THE  
MUIR MILLS  
COMPANY.

Knox, J.

“neither more nor less than an aggregate of colorable deviations from perfectly well-known existing types.” In support of his argument that the “combination,” as the learned counsel would term it, of these perfectly well-known types is recognized as a proper subject for a grant of Letters Patent, we were referred to the case of *Hill v. Thompson and Foreman* (1), and particularly to the passage where Lord Eldon lays down that there may be a valid patent for a new combination of materials previously in use for the same purpose or for a new method of applying such materials. This is perfectly correct; but the case before Lord Eldon was one concerning the use or application of slags or cinders thrown off by the operation of smelting to the production of good and serviceable metal, and the combination of which the Lord Chancellor spoke, and spoke with some doubt as to its being a good subject for a patent, was a method of producing a more beneficial and effectual result from the adhibition of materials previously known. The next case to which we were referred was that of *Crane v. Price* (2), wherein it was laid down that if the result produced by a combination of a particular kind were either a new article or a better article or a cheaper article to the public than that produced before by the old method, such combination is an invention or manufacture intended by the statute and may well become the subject of a patent. The combination here under consideration was the application of anthracite or stone coal combined with hot air blast in the smelting or manufacture of iron from ironstone, &c. It was, as pointed out, a combination which fell within the principle exemplified by Abbott, C. J., in *Reg. v. Wheeler* (3) as a new process to be carried on by known implements or elements acting upon known substances and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner or a better or more useful kind. In that case a number of instances are given in which patents were granted where the invention consisted in no more than in the use of things already known, and acting with them in a manner already known, and producing effects already

(1) 3 Mer. 622; 1 Web. P. C. 229.

(2) 1 Web. P.C. 303.

(3) 2 B. and Ald. 345.

known, but producing those effects so as to be more economically or beneficially enjoyed by the public. All the instances given are, however, instances not of producing a result by the mere juxtaposition of materials already known but of producing a result by welding or fusing into one substance two or more materials already known.

The third case quoted was that of *Cunnington v. Nuttall* (1). This was the case of a combination obtained by the applying of a well-known principle in the mode of manufacturing glass, a combination which involved the mechanical action of several materials so as to result in a perfectly new and distinct result.

The cases of *Murray v. Clayton* (2) and of *Sykes v. Howarth* (3) were also cases of combinations involving mechanical processes, and in this respect differ from the combination for which a patent is claimed in the present case. In short, we have not been referred to a single case either in English or Indian law where a patent has been the subject of litigation and held valid in which the combination was merely the result of placing one known material side by side with another known material and ending in a result which differed only from previous results because the particles or materials thus placed in juxtaposition produced a result which might be considered an improvement or better adapted for a particular purpose.

We agree, therefore, with the view which was taken in the judgment under appeal and find in the subject-matter of this appeal no invention such as would entitle it to be protected by a patent.

As regards the contention that the burden of proof has been wrongly laid, we are of opinion that this too fails. Under s. 30 of Act No. V of 1888 any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention has not been acquired. Upon trial of questions of fact arising upon such an application, such as arose in this case, whether or not the tent was a new inven-

(1) L. R. 5 E. and I. A. 205.

(2) L. R. 7 Ch. App. 570.

(3) L. R. 12 Ch. Div. 826.

1895

---

THE  
ELGIN MILLS  
COMPANY  
v.  
THE  
MUIR MILLS  
COMPANY.

---

Know, J.

1895

THE  
ELGIN MILLS  
COMPANY

THE  
MUIR MILLS  
COMPANY.

tion, it seems to us that it is for the person who claims an exclusive privilege and is in possession of the facts which, in his opinion, entitle him to that exclusive privilege, to show that those facts exist.

No authority to the contrary was shown to us.

AIKMAN, J.—I concur with my brother Knox in thinking that this appeal must be dismissed. In my opinion the tent devised by Mr. Cline is not a new invention within the meaning of the Act and cannot therefore form the subject-matter of a valid patent. The word "invention" is nowhere authoritatively defined in our law. Subsection (1), s. 4 of the Inventions and Designs Act, 1888 ("invention includes an improvement") is not a definition. The learned counsel for the appellant company contended strenuously that as the new tent was approved of by the military authorities, it was evidently an "improvement" on pre-existing tents and was therefore an "invention" with reference to the above quoted subsection.

But although an "invention" includes an improvement, it does not by any means follow that every improvement is an invention. It is impossible, I consider, to lay down any hard-and-fast rule as to what improvements should be considered to be inventions.

To justify the grant of the exclusive privilege of a patent, there must be a certain amount of invention or inventive faculty displayed.

It will be a question for the Court to determine whether the amount of inventive power displayed is such as to justify the grant of a patent. What the inventor here claimed as the subject-matter of a patent is, to use his own words, "a new general combination of a tent." By this I presume he means a combination of various features found in previously existing tents so as to form what is practically a new tent. Although every invention may be said to be a "combination" of some kind, it by no means follows that every "combination" deserves to be called an invention. The question we have to ask in this case is, "did the combination in question require

(to employ the words used in *Saxby v. Gloucester Wagon Co.* (1) an exercise of such an amount of skill and ingenuity as to entitle it to the protection of an exclusive grant? ”

This question must, I hold, be answered in the negative. How was the tent in question evolved? The military authorities wanted a tent with a certain amount of accommodation within certain limits of price and weight, and Mr. Cline devised a tent with which the military authorities professed themselves satisfied. How was this result attained? Not by the employment of any novel material in the construction of the tent, or by the adoption of any new time-saving or labour-saving process, but simply, as is clear from Mr. Cline's evidence, by cutting down the quantity of material employed. The first advantage which is claimed by the appellants for their tent is its cheapness. But this cheapness can only result from one of two causes; either from the appellants being content with a smaller margin of profit, or from less material being employed; and neither of these reasons would supply an adequate ground for a patent.

The greater portability claimed for the tent is in like manner due simply to less material being employed in its construction. And an inspection of the tent has satisfied me that this advantage has been gained by the sacrifice of comfort and practical utility.

That the so-called invention has no real claim to novelty is in my opinion proved. It was at the instance of Sir Charles Gough that the patent was applied for, and yet he is compelled to admit that, except in one trifling detail, the number of tent pegs, “it would require a very expert person to notice any difference ” between the patent tent and the old bell tent (see his cross-examination on p. 3 of respondent's paper-book).

I concur in thinking the appeal should be dismissed with costs.

*Appeal dismissed.*

(1) L. R., 7 Q. B. D., 305, at p. 312.

1895

---

 THE  
ELGIN MILLS  
COMPANY

 v.  
THE  
MUIR MILLS  
COMPANY

---

 Aikman J.