

Privy Council Appeal No. 129 of 1915.

The Ridd Milking Machine Company (Limited) *Appellants.*

v.

**The Simplex Milking Machine Company
(Limited)** - - - - - *Respondents.*

FROM

THE COURT OF APPEAL OF NEW ZEALAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 22ND JUNE, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
EARL LOREBURN.
LORD SHAW.
SIR ARTHUR CHANNELL.

[*Delivered by LORD SHAW.*]

This appeal is from a judgment of the Court of Appeal in New Zealand, dated the 30th July, 1914. By the judgment appealed against the Court held that the respondents had not infringed the appellants' patent. So holding, the Court found it unnecessary to decide a question raised by the defence as to utility, but an opinion was expressed that the patent was useful. The sole question which is raised on the present appeal is whether there was infringement.

It becomes accordingly necessary to see exactly what is the scope of the appellants' claim. The invention was described generally in the Armstrong specification in this way:—

“This invention relates to milk releasers whereby milk is automatically delivered from the pipes of milking machines without breaking down the vacuum or stopping milking operations.”

The actual claims are four in number. The respondents were not represented at the Bar of the Board; and their Lordships accordingly had not the advantage of any analysis of these claims from the respondents' point of view. A question might suggest itself as to whether the construction put by the appellants' counsel upon the validity and scope of these claims

is correct; but their Lordships find it unnecessary to enter upon this topic, and they confine themselves to the specific argument presented to the Board under one claim, viz., the third. That claim is as follows :—

“Apparatus of the kind described wherein a vacuum formed in an upper compartment is also formed in a lower compartment upon the rising of a float, thereby obtaining equilibrium, the milk then passing from the upper to the lower compartment and escaping through an outlet valve as set forth.”

The view presented was that although the claim is in terms for “apparatus of the kind described . . . as set forth,” yet there was *in gremio* of it something much deeper and more far-reaching, namely, a claim for a principle. This introduces a question much debated in patent law, and their Lordships see no occasion in the present case for canvassing that question. For it appears to the Board that the claim is simply what it appears to be, namely, for the apparatus described.

A certain result is, no doubt, said to be reached by this apparatus. It might be possible in very many cases of a claim for apparatus—if the argument presented were sound—to evolve a claim for a principle from a description given of the results achieved, and to maintain accordingly that it was the principle of the invention in that sense which was the real subject of the claim. This is, in their Lordships’ opinion, a method of construction of patent claims which is accompanied with serious danger, and their Lordships content themselves with saying that they see no occasion in the present case for resorting to such a method.

As the present Master of the Rolls said in *Ackroyd and Best v. Thomas* (21 R.P.C. 737):—

“If a patentee desires to claim a general principle it is his duty to make that intention reasonably clear. The Court ought not to be called upon to spell out such an intention from the use of ambiguous language.”

To which their Lordships would add that if any claim for a principle is made it must undoubtedly appear in the claim as that claim is stated, and must not be left to an inference resting on a general review of the specification, or a general search among the language employed therein for the meritorious element of principle or idea.

The necessity for a clear and definite statement in the claim itself is in the case of an alleged principle all the greater, because whenever it is not the specific apparatus or combination which is claimed, but something underlying or stretching beyond that apparatus, the exact ambit of such a claim would require the strictest scrutiny. Otherwise it is manifest that the scope of the alleged principle might—left nebulous—embrace anything from a law of nature to the most familiar principles of statics or mechanics, and therefore it is clear that the claim said to embrace a principle does especially require articulate and precise statement. If this were not so, the bringing of a

general rule or principle within the scope of monopoly might form a serious hindrance to the development of ideas and the progress of invention.

How is the alleged principle expressed in the claim? The language has already been cited.

It is quite vain to contend that this is a claim of a general principle for producing by a vacuum an equilibrium of pressure in two vessels. Were a principle so general as that argued for, it is in the highest degree doubtful whether it would be the subject of patent right. Again, however, it is unnecessary to decide that general question; and the only point in the case is whether the respondents' milking machine infringes the appellants', because in it also, like the appellants', a vacuum formed "in an upper compartment is also formed in a lower compartment upon the rising of a float, thereby obtaining equilibrium."

Their Lordships have looked at the drawings and specifications of both machines, and they are of opinion that the respondents' machine is essentially different in the very particular, which is the foundation of the appellants' argument, from the appellants' machine.

The appellants' machine consists of a closed can divided horizontally into two parts, which may be called the upper and the lower vessels. These are connected by an opening in the partition capable of being closed from below by a valve which swings on a pivot in the lower compartment. Before milking begins, the lower vessel is in contact with the air through a tube which runs outside the can possessing a slide valve. But the upper, when once the aperture in the partition is shut, is cut off from the air. As soon as the pump proceeds to exhaust the air, the valve which closes the entrance between the upper and the lower vessel is pressed against and seals this aperture, owing to the pressure of the air in the lower vessel. A vacuum is thus created in the upper vessel alone, which causes the milk to flow from the cow into the upper vessel. Owing, however, to the absence of atmospheric pressure, the weight of the milk is not sufficient to open the valve between the two compartments. Thus, the milk rises in the upper vessel alone, and as it rises it lifts a float which by means of a lever closes the aperture through which air finds access to the lower vessel, and at the same time places the upper and the lower vessel into communication through the same pipe which formerly admitted the air. The air contained in the lower vessel is then exhausted; the pressure which kept the valve closing the connection between the upper and the lower vessel in contact is reduced, the valve falls back and the milk flows into the lower vessel. At the same time the float descends once more, opening the lower vessel to the outside air, and thus again closing the connection between the two compartments. The milk consequently flows freely out of the bottom vessel, the exit from which is guarded by a simple valve which is only

shut when the air in the lower vessel is in process of exhaustion. Thus the cycle recommences and the operations are once more repeated.

In the respondents' machine the apparatus is of a totally different character. Instead of the milk rising in the first instance in the upper chamber, the milk coming in at the top of the vessel flows at once to the bottom and the vacuum pump exhausts equally the air in both compartments, but as the milk rises at the bottom of the receptacle, it lifts a float against the opening between the two compartments. A minute aperture in the sides of the lower compartment situated just below the division between the upper and the lower vessel allows air slowly to enter, and the pressure thus obtained upon the surface of the milk tends at once to keep the float fixed against the opening, and provides the necessary pressure to open the valve which closes the exit and to cause the milk to escape. As the milk rises in the upper compartment it in turn lifts a float which exposes an opening in a tube that passes down through the central aperture between the two compartments and thus places the two compartments once more in aerial contact. The result is that a vacuum is again created in the lower compartment, the air being exhausted much more quickly than it can be replenished through the minute aperture; the pressure which sustained the float that closed the main communication between the two vessels is relaxed, the float in the lower vessel falls and once more the milk pours down in the lower vessel and the cycle of operations begins again.

Here and there there may be identity of results, but it is manifest that this apparatus is different in essential particulars from that of the appellants; and their learned Counsel, Mr. Walter, very properly admitted that he could not maintain infringement on the ground of mechanical equivalent.

In their Lordships' opinion, even assuming that there was, as contended, a principle claimed, that principle must be judged of by the words employed in the claim, and if those words are examined and the machines compared it is found that the so-called principle as described by the appellants is quite different from that adopted in the respondents' machine.

Their Lordships do not think it necessary to refer to another machine called Northcott's milking machine, upon the judgment of the Court below with regard to which some criticism was offered. The judgment of the Board is upon the broader ground already stated.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed.

In the Privy Council.

THE RIDD MILKING MACHINE
COMPANY (LTD.)

v.

THE SIMPLEX MILKING MACHINE
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DELIVERED BY LORD SHAW.

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