# IMPORTANT APPEAL CASE.

## CURTIS & ANOTHER, APPELLANTS, *v.* PLATT & OTHERS, RESPONDENTS. ET E CONTRA.

## JUDGMENT FOR THE RESPONDENTS.

HOUSE OF LORDS, *Tuesday, August 7*, 1860.

This was an appeal by plaintiffs from the judgments of Lord Westbury and Vice-Chancellor Wood, in the Court of Chancery. The question involved being whether the defendants had or had not infringed Wain's patent for improvements in spinning mules. Their Lordships unanimously confirmed the judgments, and it became unnecessary to go into the cross-appeal presented by the defendants impeaching the validity of Wain's patent.

The Lord Chancellor said the suit in this case was instituted for the purpose of restraining the respondents from infringing a patent granted to John Wain, and assigned to the appellants for "Improvements in certain machines for spinning and doubling cotton and other fibrous substances of the kinds commonly known as mules and twiners." Upon a motion for an injunction before Vice-Chancellor Wood, His Honour ordered certain questions of fact to be tried before the court without a jury; namely—1st. Whether the invention for which letters patent were granted was new? 2nd. Whether it was any manner of new manufacture? 3rd. Whether the specifications particularly described and ascertained the nature of the invention? 4th. Whether the invention was of any utility? And 5th. Whether the defendants had infringed the privileges granted by the letters patent? After a trial before the Vice-Chancellor, in which witnesses were examined on both sides, His Honour found in the affirmative upon the first four issues for the plaintiffs, and for the defendants upon the fifth issue. Both parties appealed to the Lord Chancellor against these findings, and moved for a new trial of the respective issues which were found against them. The arguments upon the appeal were confined to the question of infringement, and His Lordship being of opinion with the Vice-Chancellor, that there was no infringement, he considered that the whole case was substantially disposed of, and that it was unnecessary to discuss the questions found in favour of the plaintiffs, as to the validity of the patent. His Honour, therefore, made a decree upon all the questions relating to the validity of the patent in favour of the plaintiffs, and in favour of the defendants as to the alleged infringement. Cross appeals were presented by both parties against this decree. The appeal against that part of the decree which declared that there was no infringement was fully argued at their lordships' bar, and it was thought that before entering upon the cross appeal it would be more convenient to consider this question separately, because if, upon consideration, their lordships agreed with the Lord Chancellor that there was no infringement, the argument as to the validity of the patent would become unnecessary. In entering upon the consideration of the question of infringement of the patent, which was almost, although not altogether, a mere question of fact, it was difficult to avoid being powerfully influenced by the opinion of those who had previously decided the case. They were quite as competent as their lordships, and the judge who tried the issues was in some respects more competent than their lordships could be to form a correct judgment upon it. Unless, therefore, he was completely convinced that both the Vice-Chancellor and the Lord Chancellor had fallen into some error in the conclusion at which they had arrived, and even if he entertained a doubt as to the correctness of their opinion, he should be very much disposed to follow the course ordinarily taken in courts of law, where the judges generally acquiesced in the verdict of those to whom the decision of questions of fact properly belonged, although they themselves might not be entirely satisfied with their finding. When he called the question of infringement a question of fact, he was aware that it must be always in some degree a mixed question of law and fact. To ascertain what was the invention which the patentee complained had been infringed, his specification must necessarily be referred to, and the construction of that specification, like that of every written document, must be the office of the court, assisted by any explanatory evidence which might be necessary. The alleged infringement by a defendant must be a pure question of fact, because it altogether depended upon whether what had been done amounted to an invasion of the plaintiff's patent. In what he had to say he intended to confine himself strictly to the patented machine of the plaintiffs, and to a comparison of it with the machine actually used by the defendants, which was alleged to be an infringement. With the view which he had taken of the limitation of the inquiry, he would proceed to examine the descriptions given of the clutch-box four times during one rotation of the cam shaft. By these means four changes were produced during the running out and in of the carriage, or in the course of one stretch, as the journey of the carriage and back again was called. Was this a different machine from the plaintiffs', or was it so like in its material features that the difference might be regarded as a mere colourable evasion? It was strongly contended on the part of the plaintiffs that the changes in the relative action of the defendants' machine were mere evasions, and that there was no substantial difference between the plaintiffs' vertical movement of the plane and inclines and the rotatory movement of the pin, and the rotatory movement of the plane and the vertical motion of the pin in the defendant's machine, as these parts of the two machines were brought, no matter by what process, into precisely the same relations to each other. It was extremely difficult in questions of this description for an unscientific person to arrive at a satisfactory conclusion, as he was sure to be perplexed with the contradictory opinions which the skilled witnesses on both sides invariably opposed to each other. But having had an opportunity of examining the models and of receiving explanations of their different parts from experienced persons called by each of the parties, and having carefully considered the specifications in the evidence of the witnesses, he had satisfied himself that the judgments of the Vice-Chancellor and of the Lord Chancellor were correct, and there had been no infringement by the defendants of the plaintiffs' patent. Comparing both machines together as entire combinations, it appeared not only that the several parts of the defendants' machine were different from the plaintiffs', but that the combined action of these several parts was different. This was exhibited in a very striking manner in the working of the two machines. The defendants' machine was framed so as to operate four changes during the course of one stretch, resulting from the running out and in of the carriage, all these changes being essential to the peculiar character of the machine. The plaintiffs' own witnesses said, and those of the defendants, of course more strongly, that the plaintiffs' machine could not effect more than two changes without a considerable alteration of or addition to it. Upon a question of combination, the action of two machines with differently disposed parts—differing so materially from each other in their different effects—almost necessarily led to the conclusion that there must be a substantial difference between them. Such was the conclusion that was forced upon his mind by a long and anxious examination of this case, and he must therefore recommend to their lordships that the decree appealed from should be affirmed, and the appeal dismissed, with costs.

Lord Cranworth, having entered into a lengthened consideration of the two machines, said the question was whether that of the defendant was an infringement of the plaintiffs' patent right. The argument of the appellant was that the means by which the proposed object was attained were substantially the same in both machines. In both, the shaft to which the cams were fixed was made to revolve, and to cease to revolve by the closing and opening of a clutch-box: in both, the closing and opening of a clutch box were effected by means of a disc faced with inclines, and brought into contact with a pin: in both, the clutch-box operated directly on the cam shaft. In spite, however, of the resemblances, he had satisfied himself, in conformity with the judgments of Vice-Chancellor Wood and Lord Westbury, that the appellant had failed to establish his ground of complaint. In the first place neither of the parties could claim against the other the right to an exclusive use of the clutch-box as the means of communicating intermittent action to a rotating shaft. This was done by Lakin & Rhodes, whose patent was granted in 1849, and he collected that the clutch-box had long been a well-known mechanical contrivance for effecting such an object. No question arose in this case as to any infringement of the patent of Lakin & Rhodes, but he thought it right shortly to state the nature of their invention, because between Wain and Platt that might be treated as common property, which each of them might use or improve upon without complaint from the other. That being so, it remained to be considered how far in the improvements adopted by Platt he had infringed on those for which Wain had obtained his patent. It might be assumed that for certain improvements on the machine of Lakin & Rhodes Wain was entitled to obtain, and did obtain, a valid patent. The question new. That object was to attain occasional pauses in the action of certain parts of the machinery without interfering with the continuous action of the motive power. To attain this object various plans had been long in use, and Wain did not claim more than the peculiar mode whereby he was able to arrive at the desired result. What he claimed was the construction of mechanism which he (Lord Cranworth) had endeavoured to describe, and both the hollow shaft and the moveable disc, with its two inclines, were essential parts of what had been claimed. But not only did the moveable disc form no part of Platts' machine, but it was inconsistent with it. One object of the defendants was to enable the machine to make four or even more changes in one rotation. Wain's disc, with its up and down motion, could not produce that result. It was said that by easy mechanical contrivances a lateral cross motion might be given by Wain to his disc, in addition to the vertical motion, which would give four pauses in every rotation, as in Platts' invention, instead of two. This, however, would be a new invention, and not that for which he had specified. Again, it was said that the substitution of a pin or finger at the end of the lever, for the purpose of opening and closing the clutch box, so as to arrest from time to time the revolution of the cam shaft, was in principle the same mechanism as the moveable pin used by Wain; but he did not think this was so. Both contrivances had, it was true, the same object in view, but the means of accomplishing that object were different. Besides, Wain's mode of opening and shutting the clutch box by means of a moveable pin was not new, nor indeed did he claim its application to a cam shaft as new; but as the object was not new he could only obtain a patent for the mode by which he proposed to attain that object; and that mode was by the mechanism, that was the whole mechanism or combination of mechanism which he had previously described as his invention. So as to the hollow shaft. This was an essential part of his mechanism. It might be, as was argued at the bar, that looking at the question theoretically the wheel with the disc and clutch-box connected with it was a sort of hollow shaft; but even if that were admitted, its operation was very different from Wain's. The solid shaft, which in Platts' machine was the only shaft, carried the cams, and was subject to the intermittant rotation by means of the revolving disc and the pin or finger acting upon it. It was said that Wain claims not only his own specific mechanism, but also any mechanical equivalent; therefore, and every part of Platts' machine was, it was said, if not identical with, at all events only a mechanical equivalent for, Wain's machinery. There were, however, two answers to this argument. In the first place the claim as to mechanical equivalents according to the fair construction of the specification obviously related only to the clutch-box; but, secondly, the principle which protected a patentee against the use by others of mechanical equivalents was inapplicable to a case like the present; where the whole invention depended entirely on the particular machinery by means of which a well-known object was attained. If indeed the mechanical equivalent used was a merely colourable variation of that for which it was substituted, the case might be different, but here his Lordship saw no ground for holding that any part of Platts' contrivances were merely colourable variations from those patented by Wain. On the whole (concluded his Lordship), my opinion is that both Wain and Platt have made inventions which, I daresay, are great improvements on the old machinery. They have both aimed and arrived at the same result; but I cannot say that the means by which they have done so have been the same. And this being the conclusion at which, first, Vice-Chancellor Wood, and afterwards Lord Westbury, have arrived, I am of opinion with my noble and learned friend on the woolsack, that the appeal must be dismissed with costs. I ought also to say that when my noble and learned friend, Lord Westbury, left the house he intimated to us that he could not attend here when the case was considered, but that he had attended during the whole of the argument, and that he had heard nothing which had tended to shake the view which he had previously entertained of the case.

Mr. Rolt: Do your Lordships dispose of the other appeal—the appeal of Mr. Platt?

The Lord Chancellor: We have not heard it.

Mr. Giffard: There was a stay of proceedings upon it.

Mr. Rolt: In the court below, before Lord Westbury, it was exactly in similar circumstances, and