

[HIGH COURT OF AUSTRALIA.

DREW, ROBINSON & CO. APPELLANTS;
 DEFENDANTS,

AND

SHEARER AND ANOTHER RESPONDENTS.
 PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF
WESTERN AUSTRALIA.

Patent—Specification—Construction—Infringement—Essential element of invention H. C. OF A.
claimed not taken. 1914.

Where a patentee by his specification claims a particular element as being essential to his invention, there is no infringement of his patent if that element is not used by the alleged infringer.

ADELAIDE,
 May 26, 27,
 28, 29.
 —
 Barton, Isaacs
 and Rich JJ.

The claim in a specification claimed a ploughshare having a flange turned inwards and attached to it a tongue turned upwards.

Held, that the tongue was an essential part of the claim, and, therefore, that a ploughshare having a flange turned inwards and no tongue was not an infringement.

Decision of the Supreme Court of Western Australia (*McMillan* A.C.J.) reversed.

APPEAL from the Supreme Court of Western Australia.

John Shearer and David Shearer, who were the patentees and registered owners of letters patent for Western Australia for an invention called an “improved share and footpiece for ploughs and other cultivating implements,” brought an action in the Supreme Court for infringement against Drew, Robinson & Co. claiming an injunction restraining the defendants, their servants and agents, from selling, offering for sale or in any manner dealing with any shares or footpieces constructed in infringement of the plaintiffs’ letters patent; damages or an account of profits; delivery up or destruction of all articles in the defendants’ possession constructed in infringement of the letters patent; and

H. C. OF A. 1914. such further or other relief as the circumstances of the case might require.

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By their defence the defendants denied infringement, and said that the letters patent were null and void on the grounds that the invention was not the proper subject matter for a patent; that it was not useful; that it was not new; that it was published prior to the date of the letters patent in *Knight's Dictionary of Mechanics*, vol. II., p. 1748; that it was used in Western Australia prior to the issue of the letters patent by the use of certain ploughshares known as "Ransom's Y.O.H." and "Y.F.L.", "Howard's B.", "Oliver's", "Hornsby's R." and "Clarence H. Smith's P.C.H.S."; and that in the specification the plaintiffs had not sufficiently distinguished between the things which they claimed to have invented and those which they did not claim and admitted to be old.

The specification of the patent was as follows:—

"Hitherto it has been found difficult to make stump jump and other ploughs requiring great strength on the paring or digging system, as a stem or body of the size and shape necessary was too light and too narrow to permit of the attachment of a share and mouldboard or breast of suitable shape.

"This invention is designed to supply with the footpiece described a share which shall be strong and readily applicable to paring and other ploughs and cultivating implements and adapted to varying soils and conditions. The share may be cast or made by stamping or forging iron or steel. In conjunction with the share we employ a specially designed footpiece of novel construction which also may be cast or made by stamping or forging. We prefer, however, to make both the share and the footpiece by stamping sheet or bar steel in suitable dies. In conjunction with our share and footpiece a mouldboard of the usual form is employed.

"In order that our invention may be clearly understood we will describe the same with reference to the drawings accompanying the provisional specification in which

"Fig. 1 is a perspective side view of a stem with our improved footpiece and share. On this figure we have indicated by long and short dotted lines the position of the mouldboard.

" Fig. 2 is a plan from the underside of the stem with foot-
piece and share attached.

" Fig. 3 is a cross section on line a-b of Fig. 1.

" Fig. 4 is a cross section on line c-d of Fig. 1.

" Fig. 5 is a cross section on line e-f of Fig. 1.

" Fig. 6 is a perspective view of the share from the rear.

" The footpiece and the share are preferably made by forging and stamping flat pieces of steel or iron in suitably shaped dies but they may be made of cast metal.

" The shares are made of convenient size and shape to suit different implements and soils and the footpiece is made of a size and shape to carry the share and the breast.

" The special feature of the share is that it has on the land side an inwardly turned portion forming a flange 2 with an upwardly projecting tongue 3 adapted to fit over and upon the lower portion of the specially shaped footpiece.

" Our specially formed footpiece has throughout its length an angular cross section which however alters regularly from the top to the bottom. At the top the limb 5 is much longer than the limb 6 while at the bottom the limb 6 is much longer than the limb 5. The one limb 5 is secured in a vertical position by bolts or rivets to the back of the stem 8 while the other limb 6 passes across the front of the stem and is so curved as to provide at the top a large and suitably shaped bearing surface for the mouldboard and at the bottom it is flattened to receive and support the flat portion 1 of the share. The bottom end of the vertical limb 5 constitutes a downwardly projecting rib which is engaged and fitted on three sides by the socket formed on the flange 2 and tongue 3 of the share. The footpiece is preferably secured to the stem by bolts or rivets 9 and the mouldboard is secured to the footpiece by bolts or rivets 10. When considered necessary the wing is secured to the footpiece by a bolt 4.

" In order to obtain the greatest strength with the least weight and also to provide the necessary support for the mouldboard and the share the proportion of metal in the two limbs of the footpiece and the angle between them is varied to meet the requirements of each part. The vertical portion 5 resists the backward bending strain, the lower curved portion forms a convenient support for the mouldboard and the bottom forms a light

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and strong foot. When the point of the share comes into contact with an obstacle the effect will be to drive the share tighter upon the foot each staying the other.

"We are aware that it has been proposed to use angle iron for plough stems or bodies, but

"Having now particularly described and ascertained the nature of our said invention and in what manner the same is to be performed we declare that what we claim is:—

"1. The combination with a plough or cultivator stem of a metal footpiece of angular cross section having a vertical limb secured to the said stem and a curved limb, the upper portion of the said curved limb forming a bearing to which the mouldboard may be fastened and the lower portion in conjunction with the lower portion of the vertical limb forming a foot having a projecting rib adapted to engage the socket of a share such as herein described and with a bolt or other suitable fastening substantially as described and illustrated.

"2. In ploughs and cultivating implements the combination of a share having on the land side a part turned inward and upward forming a flange and tongue adapted to fit over a corresponding downwardly projecting rib on the foot and with a bolt or other suitable fastening on the wing side substantially as described and illustrated.

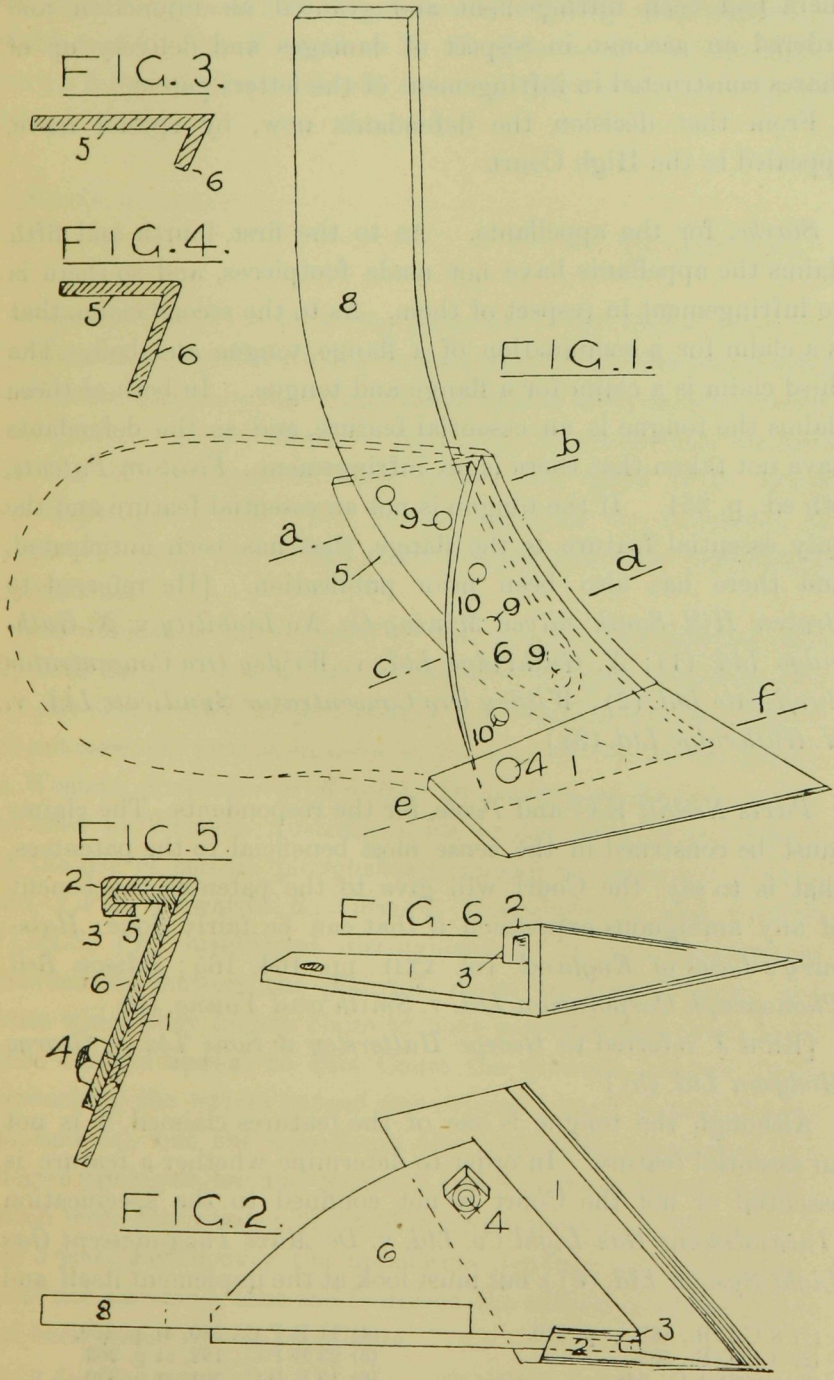
"3. A plough or cultivator share having a flange and tongue turned inwardly and upwardly from the land side adapted to engage a rib on the bottom of the footpiece substantially as described.

"4. A plough or cultivator footpiece of angular cross section having a downwardly projecting rib adapted to receive and fit into the flange of a specially constructed share as herein described and illustrated.

"5. A plough or cultivator footpiece of angular cross section having a vertical limb of size decreasing from the top to the bottom whereby it is secured to the plough or cultivator stem and a curved limb of size increasing from the top to the bottom the upper portion of the curved limb forming a bearing surface to which the mouldboard may be attached and the lower portion forming a bearing surface for the flat of the share substantially as described and illustrated."

The drawings above referred to are shown in the following copy of the sketch attached to the complete specification :—

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The other material facts are stated in the judgments hereunder. The action was heard by *McMillan* A.C.J., who found that there had been infringement and granted an injunction, and ordered an account in respect of damages and delivery up of shares constructed in infringement of the letters patent.

From that decision the defendants now, by special leave, appealed to the High Court.

Starke, for the appellants. As to the first, fourth and fifth claims the appellants have not made footpieces, and so there is no infringement in respect of them. As to the second claim, that is a claim for a combination of a flange, tongue and bolt. The third claim is a claim for a flange and tongue. In both of those claims the tongue is an essential feature, and as the defendants have not taken that there is no infringement: *Frost on Patents*, 4th ed., p. 351. If the tongue is not an essential feature and the only essential feature is the flange, that has been anticipated, and there has also been prior publication. [He referred to *Broken Hill South Silver Mining Co. No Liability v. N. Guthridge Ltd.* (1); *N. Guthridge Ltd. v. Wilfley Ore Concentrator Syndicate Ltd.* (2); *Wilfley Ore Concentrator Syndicate Ltd. v. N. Guthridge Ltd.* (3).]

Paris Nesbitt K.C. and *Poole*, for the respondents. The claims must be construed in the sense most beneficial to the patentees, that is to say, the Court will give to the patentee the benefit of any ambiguous expression if that can be fairly done: *Halsbury's Laws of England*, vol. XXII., pp. 164, 165; *Edison Bell Phonograph Corporation Ltd. v. Smith and Young*. (4).

[*RICH J.* referred to *George Hattersley & Sons Ltd. v. George Hodgson Ltd.* (5).]

Although the tongue is one of the features claimed, it is not an essential feature. In order to determine whether a feature is essential or not the Court is not confined to the specification (*Incandescent Gas Light Co. Ltd. v. De Mare Incandescent Gas Light System Ltd.* (6)), but must look at the implement itself and

(1) 8 C.L.R., 187, at p. 210.

(2) 3 C.L.R., 583.

(3) (1906) A.C., 548.

(4) 11 R.P.C., 389, at p. 400.

(5) 23 R.P.C., 192, at p. 203.

(6) 13 R.P.C., 301, at p. 330.

the evidence of experts. — The share is intended to fit on a particular kind of foot which we claim, and the appellants' shares are made to fit on a foot so constructed. [They also referred to *Clark v. Adie* (1); *Peacock v. D. M. Osborne & Co.* (2); *Halsbury's Laws of England*, vol. XXII., p. 216; *Frost on Patents*, 4th ed., p. 352.]

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Starke, in reply.

Cur. adv. vult.

BARTON J. read the following judgment :—By special leave the defendants are appellants from a judgment of the Supreme Court of Western Australia, by which an injunction with ancillary relief was granted against them in an action in which they claimed for the infringement of their patent No. 3083 W.A., dated 4th September 1900. The patent describes the invention as “improved share and footpiece for ploughs and other cultivating instruments.”

May 29.

The defence is (1) a denial of the alleged infringement, and (2) that the patent was bad because the alleged invention was (a) not the proper subject matter for a patent, (b) not useful, (c) not new, (d) published prior to the date of the letters patent in Western Australia in *Knight's Dictionary of Mechanics*, and (e) used in Western Australia prior to the issue of the patent by the use of certain ploughshares known as Ransom's Y.O.H. and Y.F.L., Howard's B., Oliver's, Hornsby's R., and Smith's P.C.H.S., (f) insufficient distinguishment in the specification between the matters the plaintiffs claim to have invented and those which they do not claim to have invented and admit to be old. On the appeal to this Court the grounds insisted on in impeaching the letters patent were those I have termed (b), (c), (d) and (e), but the appellants also vigorously contested the alleged infringement, and claims 2 and 3 in the complete specification were the subject of opposing constructions. Claims 1, 4 and 5 were passed over, the appellants denying, and the respondents not asserting, that the footpiece the subject of these claims had been taken by the appellants.

(1) 2 App. Cas., 315.

(2) 4 C.L.R., 921.

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2. In ploughs and cultivating implements the combination of a share having on the land side a part turned inward and upward forming a flange and tongue adapted to fit over a corresponding downwardly projecting rib on the foot and with a bolt or other suitable fastening on the wing side substantially as described and illustrated ; and

3. A plough or cultivator share having a flange or tongue turned inwardly and upwardly from the land side adapted to engage a rib on the bottom of the footpiece substantially as described.

The case therefore mainly turns upon the share. The appellants sell ploughshares. They do not appear to make them. The firm of J. & T. Muir, the manufacturers in Melbourne from whom the defendants have been purchasing the allegedly infringing shares for sale in Western Australia, do not make the footpiece, nor do the appellants sell it. The share is a separate article which is bolted on to the footpiece for use in ploughing, and the footpiece in its turn is attached to the stem. Of the share manufactured by the plaintiffs, now respondents, there is a part turned inward and upward, the inward turn forming a flange and the upward turn forming a tongue, for so these portions are designated in the claim and in the evidence. The shares manufactured by J. & T. Muir have in effect the flange without the tongue ; that is to say, the metal is bent at an angle to make the inward turn, and there is not a further angle to make the upward turn or tongue.

As the respondents used their appliance the flange and tongue fit over and engage the rib of the footpiece, to which the share is bolted on the wing side. The object of the respondents' appliance is obviously to give a better grip than was given by the socket as previously employed.

In the body of the specification the respondents say :—" The special feature of the share is that it has on the land side an inwardly turned portion forming a flange 2 with an upwardly projecting tongue 3 adapted to fit over and upon the lower portion of the specially shaped footpiece." See those numbers as they appear on figures 5 and 6 attached to the specification.

The fair reading of claim 2 seems to me to be that it claims for the combination of a share, containing a flange and a tongue, with a bolt on the wing side attaching it to the rib of the foot-piece, and I take the meaning of claim 3 to be, either that the flanged and tongued share is claimed as an integer, or that the flange and tongue of the share are claimed as a combination. Of these two meanings the former seems to me to be the more consistent with the words of claim 3. Claim 2, in seeking protection for a "combination," uses that word; claim 3 does not: and comparing the two claims, and seeing that *primâ facie* a substantially identical description in each as a matter of sense indicates the same thing, the meaning is confirmed, since in claim 2 the similar terms used to describe the share are used to describe it as an integer in a combination of two things, one being the share and the other the "bolt or other suitable fastening on the wing side" there mentioned. I think, then, that in claim 3 the share is claimed as an integer. If it were not so, probably the consequences to the respondents would not be very different. In claim 2 the flange and tongue are stated to be "adapted to fit over a corresponding downwardly projecting rib on the foot." In the same paragraph the flange and tongue are stated to be "adapted to engage a rib on the bottom of the footpiece." In each case, reading the words in their ordinary meaning, they seem to be a mere description, which cannot extend but may limit the immediately preceding part of the claim. It would be a strained construction to treat them as claiming a combination of the share and the rib.

My conclusion, therefore, is that a share containing a flange turned inward and a tongue turned upward is claimed in each instance, in the first in combination with a bolt or other fastening on the wing side as described and illustrated, and in the second as of itself a substantive integral invention. As *Wills J.* says in *Incandescent Gas Light Co. Ltd. v. De Mare Incandescent Gas Light System Ltd.* (1), in the passage quoted by the learned Judge who tried the present case, "What the thing invented is must be gathered from the specification alone, and the patentee cannot escape from the thing he has claimed as the standard, and

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(1) 13 R.P.C., 301, at p. 330.

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the only standard with which to compare the alleged infringement so as to see if it constitutes substantially the appropriation of the thing claimed." In the task of construction I have, as *Wills J.* thought to be the right course, "avoided any reference to the relative importance of different parts of the invention." But, as he further points out, "in dealing with the question of infringement, it is impossible not to consider them." It is when that question is reached—when we consider what has really been done—that the question arises, not what has been taken from the specification, but what has been taken from the thing patented, and whether the thing taken is the substance of the invention.

Having regard to the "previous state of knowledge" (in the sense of Lord *Alverstone's* judgment—also cited by *McMillan A.C.J.*—in *Presto Gear Case and Components Co. Ltd. v. Orme, Evans & Co. Ltd.* (1)), it is clear that in 1900, when this patent was taken out, the share with an inward flange, but not with an upward tongue, was well known. It existed in several of the socket shares, as they have been called, such as the Y.O.H., Y.F.L., and others of those already mentioned. A certain degree of grip was given by the inward flange, varying no doubt with its width inwards, as such variations are found in the specimens produced. No doubt the grip was assisted on the other side of the socket. But that does not alter the fact that the inward flange was a well known expedient to help the grip. It is undeniable that the grip was increased substantially by the respondents' addition of the upward tongue, and reading the claim as applied to the subject matter I cannot doubt that the addition of the tongue is the real substance of the invention. I come to that conclusion on a fair consideration of the evidence and the exhibits.

Now, the appellants have never touched the tongue. What they have done may not exhibit much advance in view of the state of knowledge in 1900. They have practically put in operation the flange as then understood and used. The grip in the share made by the Muirs exists also in the Y.O.H., Y.F.L., &c. If the upward tongue be left out, there is no essential difference in the grip between the respondents' share and any of the then

(1) 18 R.P.C., 17, at p. 23.

known socket shares. Without the tongue I do not think they would have had an invention at all, so far as claims 2 and 3 are concerned. Now, if the respondents' view were accepted that the tongue is not of the substance of the invention they would be left, as to combination, in a position not much better than if they had claimed the combination of a share, having merely the then well known inward flange, with an ordinary bolt or other "suitable fastening" on the wing side, as they describe it. On the other hand, apart from combination they would be left in no better position than if they had claimed as a separate integer a share with the well known inward flange and no more, except that in either case the share would have to fit over and engage the rib at the end of the footpiece. I cannot but think, therefore, that by establishing that the tongue is not the substance of the invention the respondents would place themselves in a hopeless position.

If, on the other hand, the tongue is the substance of the invention, as I think it unmistakably is, how is it possible to say that the appellants have pirated the substance when they have not touched the tongue? There, again, the position seems to be hopeless. If they have not taken the new thing without which this was not an invention, how can they be said to infringe?

I cannot answer these questions so as to affirm the judgment under appeal. His Honor who tried the case thought the "pith and marrow" of the invention, looking at the specification as a whole, was "a rib capable of being gripped effectively by a share, and a share capable of effectively gripping the rib"; and he put it that the essential feature of the invention was a combination of these parts. As the subject matter is necessarily referable to the claim, it seems to me, with all respect, that there is no claim of any such combination. His Honor thought that the substance is to be found in the "downward and inward" flange. There is no question of credibility, and upon the oral evidence and exhibits we are in as good a position to judge of the questions of fact involved as was the Court below, and from what I have already said it can be gathered that I cannot agree that the substance of the invention is anywhere if not in the tongue. That has not been taken, and I cannot agree that the "downward and inward flange" was devised by the plaintiffs at all.

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As to combination, I add a passage from Mr. *Frost's* well known work, which seems to me to put in clear terms the position which a defendant occupies in such a case as this. At p. 352 in the fourth edition he says:—"In order to answer a charge of infringing a patent for a combination of several parts by the omission of one of them, it is not necessary for a defendant to prove that the part omitted was an essential element in the combination in the sense that the machine would not work without it; but he must at least show that it is a material element and not a mere detail which may be varied or omitted altogether without serious detriment to the successful working of the combination."

I think that the appellants have more than discharged that onus, even if a *prima facie* case of infringing the respondents' combination was made. I need add nothing as to the third claim. It is with hesitation and diffidence that I differ at any time from the opinion of the learned Judge who tried this case, and who is now the Chief Justice of Western Australia; but upon the best consideration at my command I cannot avoid coming to the conclusions expressed.

It becomes unnecessary to deal with the remaining defences.
The appeal must therefore be allowed.

The judgment of ISAACS and RICH JJ. was read by

ISAACS J. The determination of this appeal involves the consideration of the following questions:—(1) What the patentees claim as their invention; (2) the validity of their claim; and (3) whether the appellants have in fact infringed the patentees' rights.

(1) *The Patentees' Claims.*—Claims 2 and 3 are the relevant claims. On the question of construction it is necessary, in view of the argument addressed to us, to remember in the first place that this is a question for the Court as a matter of law, and not for a jury as a matter of fact. Certain necessary and preliminary facts, as the meaning of terms of art, the state of knowledge, and surrounding circumstances, may be found as facts either by the jury or the Court in its capacity of jury; but after that the construction is a matter of law in the sense that it is the office of the

Judge as such to construe the language of the instrument: See *Neilson v. Harford* (1), and *Di Sora v. Phillipps* (2). Then, it is definitely laid down—as by Lord Blackburn in *Dudgeon v. Thomson* (3)—that the specification is not to be widened in the interest of the patentee so as to include an alleged infringement, however unhandsome the defendant's conduct may be, or in the same interest narrowed for the purpose of excluding an old thing fairly within it, in order to avoid invalidity. The Court must construe the document fairly and truly—without bias one way or the other, of course recollecting in case of real ambiguity the doctrine as to so construing a document *ut res magis valeat quam pereat*. These doctrines are really common to all written instruments.

But there is one further consideration specially applicable to patents, because the grant of a patent is a grant of a monopoly, and is upon certain well known conditions affecting the public generally. This further consideration is clearly stated in the judgment of *Fletcher Moulton* L.J. in *Vidal Dyes Syndicate Ltd. v. Levinstein Ltd.* (4) in the following words:—"By his specification, and the claim with which it concludes, the patentee delimits the area of his monopoly. If the validity of his patent is challenged, he has to show that all within that area is novel and useful, and if he does so his patent is valid, assuming, of course, that he has duly performed his other obligations. But, on the other hand, he cannot complain of the public doing anything which is outside of the area so limited. What they thus do is not within his monopoly. If, then, he has made a step an essential step, he cannot be required to prove that the invention without that step is either novel or useful. It is not within the area of his monopoly. It follows, of course, that he cannot complain of the public doing anything in which that step is not used. But if he has described that step as merely optional (however advantageous it may be) he has extended the area claimed by him to cases where it is not used, and the public do not get outside the area of his monopoly by non-user of that step. But the patentee must then show that the invention is novel and useful without it."

(1) 8 M. & W., 806, at p. 823.

(2) 10 H.L.C., 624, at p. 639.

(3) 3 App. Cas., 34, at p. 53.

(4) 29 R.P.C., 245, at pp. 268, 269.

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That passage has an intimate bearing on both the questions of construction and infringement.

Bearing all those principles in view, we have no doubt that what the patentees have delimited as their area of monopoly is the ploughshare with the inward flange and the upward tongue as a united characteristic. They have, to quote the expression of the learned Lord Justice, made the step of upward tongue "an essential step," with the consequence that, so far as the claims in question are concerned, they cannot complain of the public doing anything in which that step is not used.

That delimitation sets up what *Wills J.* in the *Incandescent Gas Light Co.'s Case* (1) calls the "standard" which the patentee has set up as the thing invented, and which that learned Judge there says "must be gathered from the specification alone."

We would add that though we do not refer to the evidence to lead us to the construction of the specification it is satisfactory to note that John Shearer in his evidence says that the invention which is useful as regards the share is the portions marked 2 and 3 in figure 5 in the plan and figure 6—that is, the inward flange and the upward tongue. On further being asked the question, "Is your invention, the portion 2" (the flange) "without the 3" (the tongue)? he finally answers, "I should say it is the portion 2 combined with the portion 3."

(2) *The Validity of the Claims.*—If construed as we have construed them, we are not by any means prepared to hold the upward tongue non-inventive. It is not necessary, however, to decide that point. But if construed so as to make them apply to the inward flange without the upward tongue, we should say, upon the patentee's own evidence already quoted, that the claims included matter that was old and not patentable in 1900. We say nothing about the footpiece in this connection, because it is not sold by the appellants, and because the reference to the rib in the claims is one of descriptive limitation, and not of combination.

(3) *As to Infringement.*—Here the second part of the judgment of *Wills J.* comes into play, and we have to examine the alleged infringement by the side of the "standard" already ascertained from the specification. Clearly, there is no upward tongue, and,

(1) 13 R.P.C., 301, at p. 330.

as that is "an essential step," the appellants have not infringed. The case is thus clearly within the latter part of the quotation from the judgment of *Fletcher Moulton* L.J. in the *Vidal Dyes Syndicate Case* (1). We should add that the contention that in fact there was an upward tendency given to the flange in the alleged infringements, equivalent to an upward tongue, is not sustained. Inspection discloses nothing appreciable of that nature, and, as inward flanges were old in 1900, it is a proper deduction from Mr. Fry's evidence, if evidence indeed were necessary, that as long as such flanges were made, exactitude of angle could never be attained with certainty. Of course, if it were seen that advantage was being taken to manufacture a real bend so as to be in effect and substance an equivalent for the upward tongue, including in one curved piece the substantial equivalent of the flange combined with the tongue, nothing in this decision would protect it. The tribunal—Judge or jury—would be ready to detect an act of that nature, and prevent it. But that has not so far occurred. Something was said about the purpose for which the ploughshares were intended, namely, to be used by purchasers from the appellants as fittings to their patent footpiece. Assuming, but certainly without deciding, that the mere use of the share upon the footpiece would constitute an infringement, it is clear that the sale of an article, not in itself an infringement, does not constitute an infringement, even if sold with the knowledge that the purchaser intends to use it for the purpose of infringement (*Dunlop Pneumatic Tyre Co. Ltd. v. David Moseley & Sons Ltd.* (2)). We are strongly persuaded that failure to bear this point in mind has led to much of the misconception in the present case, because all that has been said about the purpose of the share, and the object of using it in combination with the rib of the respondents' footpiece, appears to be referable to the idea negatived by the case mentioned.

The appeal should be allowed.

Appeal allowed. Order appealed from discharged. Action dismissed with costs, including any reserved costs.

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(1) 29 R.P.C., 245.

(2) (1904) 1 Ch., 612.

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Respondents to be at liberty to apply within three weeks for a variation of this order as to reserved costs, they undertaking to pay the costs of such application in any event. Respondents to pay costs of appeal.

Solicitors, for the appellants, *Parker & Parker*, Perth, by *Varley & Evan*.

Solicitors, for the respondents, *James & Darbyshire*, Perth, by *Bakewell, Stow & Piper*.

B. L.

Appl R v Coldham; Ex parte Fitzsimons (1976) 137 CLR 153	Appl Ludeke, Re; Ex parte QEC (1985) 60 ALR 641	Appl Caledo- nian Collieries v Asian Coal & Shale Employees Fed (No2) 42 CLR 558	Foll Waterside Workers Fed v Gilchrist Watt & Sanderson Ltd (1924) 34 CLR 482	Dismissed Jones v Cth Court of Concil & Arb; Ex parte A-G (Cth) (1917) 24 CLR 396
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THE KING

AGAINST

THE COMMONWEALTH COURT OF CONCILIATION
AND ARBITRATION AND THE PRESIDENT
THEREOF AND THE AUSTRALIAN BUILDERS'
LABOURERS' FEDERATION.

H. C. OF A.
1914.

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SYDNEY, EX PARTE G. P. JONES AND OTHERS.
April 16, 17,
20, 21 ;
May 15. EX PARTE W. COOPER & SONS AND OTHERS.

Griffith C.J.,
Barton, Isaacs,
Gavan Duffy,
Powers and
Rich JJ.

Industrial Arbitration—Industrial dispute extending beyond the limits of any one State, meaning of—Award, validity of—Compensation for injuries—Board of reference to determine claims for compensation—Prohibition to Commonwealth