

Decision of the Supreme Court of New South Wales (*Long Innes* C.J. in Eq.) affirmed subject to a variation.

APPEAL from the Supreme Court of New South Wales.

H. C. OF A.
1936.
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KAUZAL
v.
LEE.
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In a suit brought in the equitable jurisdiction of the Supreme Court of New South Wales, the plaintiff, Leslie William George Lee, complained of an alleged infringement by the defendant, Gabriel Peter Kauzal, of the plaintiff's patent No. 14463/28 granted on 17th July 1928, for the term of sixteen years, for an alleged invention entitled "Improvements in drenchers for sheep and other stock," and prayed an injunction; delivery up of the alleged infringing articles; that an account might be taken of the profits made by the defendant by the use and sale thereof; an order for payment of such profits to the plaintiff or, alternatively, damages; and an order that the defendant should pay the plaintiff's costs.

The plaintiff's complete specification was as follows:—"This invention relates to improvements in drenchers for sheep and other stock and is especially directed to means whereby a liquid drench may be administered in an effective manner. An object of the present invention is to devise a drencher whereby a predetermined quantity of the drench may be administered under pressure by means of a hand-controlled plunger device in communication with a reservoir in which a thorough mixture of the liquid preparation is assured. A further object of the invention is the provision of a drencher which is easily constructed and is not likely to get out of order. According to the invention the drench is contained in a reservoir which may be cylindrical in shape and has a number of internal baffles or blades extending inwards from the walls thereof, to ensure a thorough mixing of the drench. Preferably, however, the reservoir is of such size and shape that it may be comfortably suspended from the shoulders of the operator by suitable straps in which case baffles or the like may be dispensed with as movement of the operator in administering the drench will suffice to keep the drench thoroughly mixed. A valve at the foot of the reservoir is connected by flexible or other tubing to a control valve mechanism which is adapted to draw the drench into a detachable barrel provided with a nozzle for administering the drench to the animal. An air vent is provided in the top of the reservoir. The control valve mechanism is preferably plunger operated and has a pistol-shaped hand piece which may be adapted to receive barrels of different capacities. But in order that my invention may be readily understood, reference is now made to the accompanying drawings wherein:—Fig. 1 illustrates in perspective a preferred form of drenching apparatus con-

H. C. OF A.

1936.

KAUZAL

v.

LEE.

structed according to my present invention. Fig. 2 is a side elevation of the control valve mechanism employed therein. Fig. 3 is a plan view, and Fig. 4 a central longitudinal section of the control valve mechanism. Fig. 5 is a sectional elevation showing in enlarged scale the preferred construction of the nozzle attached to the end of the barrel of the control valve mechanism. Fig. 6 is an enlarged perspective view of the rotatable stop pin used to limit the travel of the control valve plunger when it is desired to administer a reduced quantity of the drench. The reservoir 6 has a curved rear wall 7 adapted to comfortably fit against the chest of the operator and is provided with shoulder straps 8. A liquid level indicator comprising a glass tube 9 held in a hollow rod 10 is fitted in a recess 11 in the wall of the reservoir. The lower end of the rod 10 is in communication with the reservoir and its upper end protrudes through cover 12 and is fitted with a screw cap 13 having an air vent therein. The cover of the reservoir has a filling hole closable by a screw cap 14 also provided with an air vent. At the foot of the reservoir there is a cock 15 with right and left hand nipples 16 to which a flexible tube 17, communicating with the trigger-operated control valve mechanism 18, may be connected to suit individual operators. The control valve mechanism 18 is in the form of a pistol and has a detachable barrel 19 in which a plunger 20, secured to a stem 21, is adapted to be operated by pressure on a trigger 22. The said trigger has a radial arm 23 formed integral with it; and this arm is connected to the plunger stem 21 through a link 24. A collar 40 mounted on the valve stem 21 normally abuts a gland 25 which is locked by a nut 27 and which serves as an adjustable stop whereby the travel of the plunger may be slightly varied. When it is desired to substantially reduce the quantity of drench ejected from the control valve mechanism at each operation a rotatable stop pin or stud 39 (see fig. 6) may be secured to the stock of the valve so as to limit the travel of the plunger 20 to the desired extent. This pin has a cam-faced collar 41 fast on it adapted to engage with cam 42 secured to the inner face of the control valve casing. A spring 43 (see fig. 3) normally holds the cam faces in contact but, on part rotation of thumb piece 44, the end of the pin 39 may be advanced into the path of the radial member 23 thereby forming a stop to limit backward travel of the plunger, as indicated in fig. 4. Alternatively a shorter barrel may be secured to the valve casing. The outer end of the valve barrel 19 has a nozzle 28 screwed

thereon and if desired locked by set screws 29 (see fig. 5). Said nozzle houses an inlet valve 30 and a discharge valve 31, both loaded with helical springs 32. The inlet valve controls passage 33 in communication with nipple 34 to which the flexible tube 17 from the reservoir 6 is connected, and the discharge valve 31 controls passage 35 which has in its outer end screwed socket 36 carrying a comparatively long curved tubular extension 37 of small bore, a washer 38 being interposed to seal the joint. In cases where viscous fluids are used a valve may be provided in the reservoir to regulate a supply of air under pressure to assist in forcing the fluid to the barrel 19. Having now fully described and ascertained my said invention and the manner in which it is to be performed, I declare that what I claim is:—1. Improvements in drenchers for sheep and other cattle characterized by a reservoir adapted to be suspended from the shoulders of the operator, and the hand-controlled valve mechanism in the form of a pistol connected to the reservoir by suitable tubing. 2. In drenchers for sheep and other stock of the kind described, a portable reservoir having shoulder straps fastened thereto and having a liquid level indicator, a filling orifice, and a draw-off cock at its base for the purpose explained. 3. In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism having a detachable barrel, a nozzle housing inlet and discharge valves, and provided with a nipple for connection to the reservoir, and a plunger in said barrel actuated by a trigger and adapted to draw a predetermined quantity of the drench into the barrel and force it therefrom through said nozzle. 4. In drenchers for sheep and other stock of the kind described, a portable reservoir substantially as herein described and as illustrated in fig. 1 of the accompanying drawings. 5. In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism substantially as herein described and as illustrated in the accompanying drawings. 6. Improvements in drenchers for sheep and other stock of the kind described, consisting in the combination of a portable reservoir with a hand-controlled valve mechanism in communication with said reservoir for the purpose explained, substantially as herein described and as illustrated in the accompanying drawings.”

Of these six claims the first, second, fourth and sixth were abandoned after issue joined but prior to the hearing, which proceeded in respect of claims 3 and 5 only.

H. C. OF A.

1936.

KAUZAL

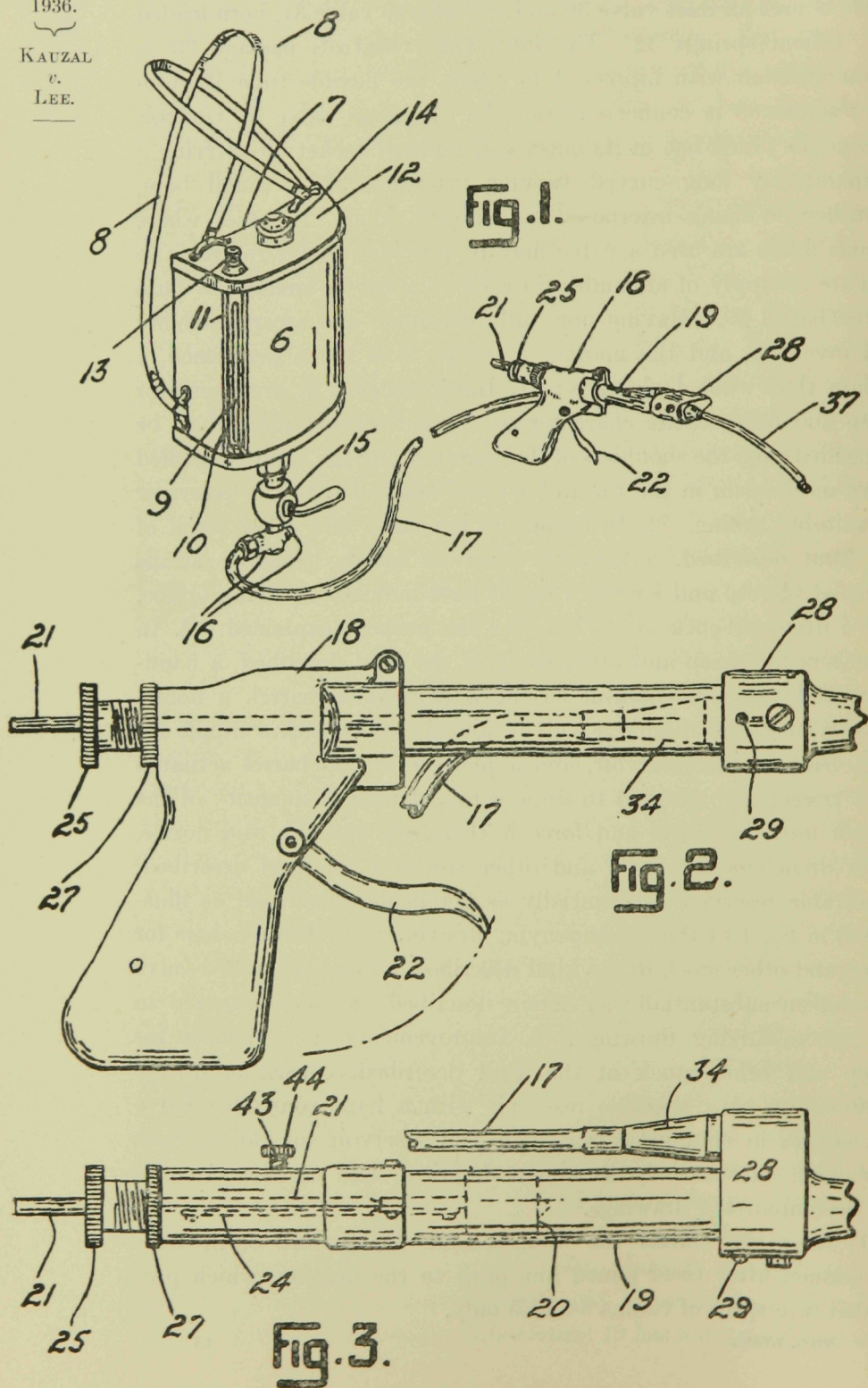
v.
LEE.

H. C. OF A.

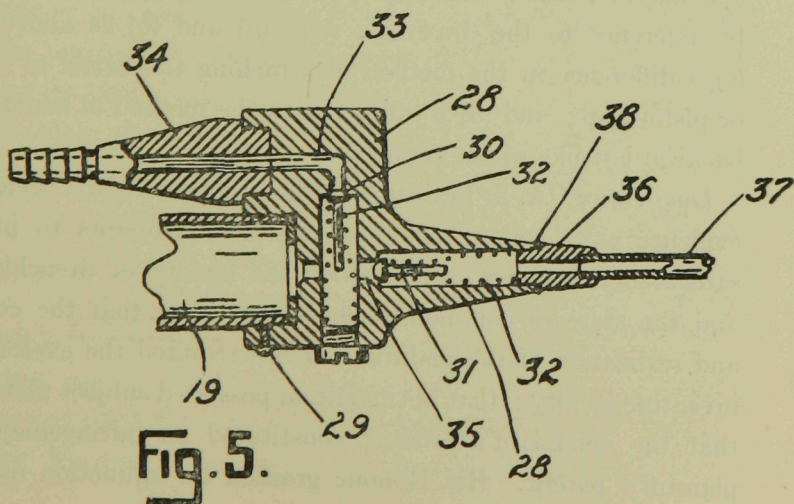
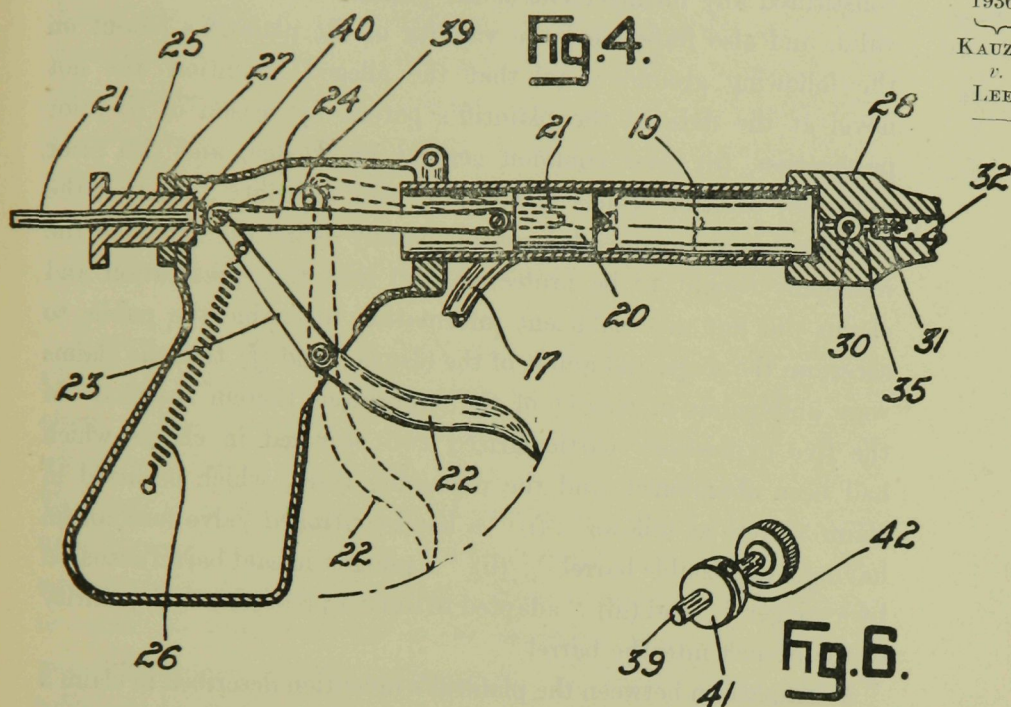
1936.

KAUZAL
v.
LEE.

The drawings which accompanied the specification were as follows:—



H. C. OF A.
1936.
KAUZAL
v.
LEE.



H. C. OF A.

1936.

KAUZAL

v.

LEE.

By his statement of defence the defendant denied that his device constituted any infringement of the plaintiff's invention, if it were valid, and also impeached the validity of the plaintiff's patent on the following grounds:—(a) that the alleged invention was not novel at the date of the plaintiff's patent by reason of (i) prior publication, (ii) prior common general knowledge, and (iii) prior user; (b) want of subject matter; (c) lack of utility; (d) that the specification and claims did not adequately define the extent of the monopoly sought to be protected; (e) that the specification and claims did not give sufficient information to enable the public to ascertain the scope and ambit of the claims; and (f) that the claims were ambiguous in respect of the expressions therein specified—of the five expressions particularized two occurred in claims which had been abandoned, and the remaining three, which occurred in claim 3, were as follows:—(i) “a hand-controlled valve mechanism having a detachable barrel”; (ii) “a plunger in said barrel actuated by a trigger”; and (iii) “adapted to draw a predetermined quantity of the drench into the barrel.”

A comparison between the plaintiff's invention described in claim 3 and the defendant's product showed that the differences were two only: (a) that while the barrel in the plaintiff's invention was detachable, that in the defendant's product was not, or rather, was not so readily detachable; and (b) there was a slight difference in the position of the discharge valve. The differences between the defendant's product and the plaintiff's invention as claimed in claim 5 by reference to the drawings, were (a) and (b) as above stated; (c) a difference in the method of attaching the barrel to the stock or pistol grip; and (d) a difference in the method of restricting the backward stroke of the plunger.

Long Innes C.J. in Eq. came to the conclusion, on a review of the evidence as a whole, including the prior attempts to produce a satisfactory drencher for live stock, the history of drenching sheep and the state of common general knowledge, that the conception and realization of the plaintiff's device required the exercise of the inventive faculty; that his invention possessed subject matter; and that the defendant's product constituted an infringement of the plaintiff's patent. His Honour granted an injunction restraining,

during the term of the patent and of any extension thereof, the defendant, his servants, agents and workmen from manufacturing, using, selling or offering for sale or supplying drenchers constructed in accordance with the invention described in the specification or constructed in a manner differing only colourably from the plaintiff's invention.

H. C. OF A.
1936.

KAUZAL
v.
LEE.

From that decision the defendant appealed to the High Court.

Weston K.C. (with him *Gain* and *McKay*), for the appellant. Claim 1 is not a general claim for a reservoir but is a supplemental claim. Claims 3 and 5 have the same characteristics as the claims which have been abandoned, claim 3 being exceedingly general. The onus is upon the patentee of describing his invention in clear, unambiguous terms. If the difference between the alleged prior anticipations and the respondent's alleged invention was sufficient to constitute subject matter in the secondary sense, this difference was sufficient to prevent infringement. If the difference was not sufficient to prevent infringement, then the respondent had not sufficient difference to constitute subject matter. On the issue of anticipation the judge of first instance over-emphasized the mosaic principle. That principle is more a rule of guidance than a rule of law. As this is not a master patent consistent with the principles laid down in *Shave v. H. V. McKay Massey Harris Pty. Ltd.* (1), the inventor is, in claim 5, pinned down to drenchers for sheep and stock. The respondent, having found out, at the best, one method of obtaining the result, has claimed the benefit from any combination which will obtain the same result (*Mullard Radio Valve Co. Ltd. v. Philco Radio and Television Corporation of Great Britain Ltd.* (2)). There must be a limitation or qualification of the character of the integer so as to give that integer a special quality for inter-relating working in relation to the other integers. The alleged combination is not a combination in the sense in which that expression is used in patent law, and is, therefore, not the proper subject for a grant of letters patent (*British Celanese Ltd. v. Courtaulds Ltd.* (3); *British United Shoe Machinery Co. Ltd. v. A. Fussell & Sons Ltd.* (4)).

(1) (1935) 52 C.L.R. 701.

(2) (1935) 52 R.P.C. 261, at p. 270.

(3) (1935) 52 R.P.C. 171, at p. 193.

(4) (1908) 25 R.P.C. 631.

H. C. OF A.
1936.

KAUZAL
v.
LEE.

Even if it be such a combination the patent is void for obviousness. It does not disclose sufficient exercise of ingenuity to permit of a patent being granted.

W. J. V. Windeyer, for the respondent. The judge of first instance correctly construed claim 3. The expression "of the kind described" was discussed in *Parkinson v. Simon* (1). That expression, as used in claim 3, referred back to the generalized description in claim 1. Although claim 3 may be regarded as wide, it is not so wide as to make it void for ambiguity. Its wide scope does not necessarily make it bad. In its application to the drenching of stock the respondent's patent may be properly regarded as a master patent. It was a patent for an improved drencher and was the first drenching gun produced for sale. Claim 3 should not be regarded as a claim for a minor improvement (*Shave v. H. V. McKay Massey Harris Pty. Ltd.* (2); *Walker v. Alemite Corporation* (3)); it is a new apparatus as far as the "gun" element is concerned. No objection can be raised to claim 3 on the ground of its generality as leading to an insufficient definition of the ambit of the monopoly (*No-Fume Ltd. v. Frank Pitchford & Co. Ltd.* (4)). The expression "substantially as herein described," which appears in claim 5, is discussed in *Terrell on Patents*, 8th ed. (1934), pp. 135, 136. The court will not allow the mere generality of the words used in a specification and claims therein to deprive the patentee of the benefit of his invention (*Natural Colour Kinematograph Co. Ltd. v. Bioschemes Ltd.* (5)). The "prior anticipations" relied upon by the appellant do not affect the respondent's patent. These anticipations were never part of common general knowledge. "Paper anticipation" was dealt with in *Pope Appliance Corporation v. Spanish River Pulp and Paper Mills Ltd.* (6). The "improvement" discovered by the respondent was an inventive step and constituted subject matter sufficient to support a grant of letters patent. The length of time, whether it be short or long, taken in making such a

(1) (1895) 12 R.P.C. 403, at pp. 408, 409.

(2) (1935) 52 C.L.R. 701.

(3) (1933) 49 C.L.R. 643.

(4) (1935) 52 R.P.C. 231, at p. 243.

(5) (1915) 32 R.P.C. 256, at p. 269.

(6) (1929) A.C. 269, at pp. 275, 276.

discovery is immaterial. The principles applicable are stated in *Terrell on Patents*, 8th ed. (1934), pp. 78-81; see also *Higginson and Arundel v. Bentley and Bentley Ltd.* (1); *Higginson and Arundel v. Pyman* (2); *Henry Berry & Co. Pty. Ltd. v. Potter* (3). Infringement cannot be avoided merely by the substitution of some other well-known integer. The cases applicable to combination were collected in *Benton & Stone Ltd. v. Thomas Denston & Son* (4). A mere scintilla of invention is sufficient (*Terrell on Patents*, 8th ed. (1934), p. 67). A summary of the law relating to subject matter appears in *Canadian General Electric Co. Ltd. v. Fada Radio Ltd.* (5).

H. C. OF A.
1936.
K AUZAL
v.
LEE.

Weston K.C., in reply.

Cur. adv. vult.

The following written judgments were delivered :—

Aug. 14.

STARKE J. Appeal from the judgment of *Long Innes J.* restraining the appellant from infringing the respondent's letters patent 14463/28 "for improvements in drenchers for sheep and other stock."

Long before the respondent's invention, drenches or medicine had been forcibly administered to sheep and other stock by means of an ordinary drenching funnel. The object of the respondent's invention, according to his specification, was to provide a drencher whereby a predetermined quantity of drench might be administered under pressure by means of a hand-controlled plunger device in connection with a reservoir in which a thorough mixture of the liquid preparation was assured. The respondent described his invention in detail. I shall not go through that description. It is enough to say that evidence accepted by the learned trial judge established that the specification described no new mechanical method; that it described no element that was new, either structurally or functionally, unless in respect of a device for limiting the throw of the plunger by means of a stop pin or stud, illustrated in

(1) (1922) 39 R.P.C. 177, at pp. 186,
190, 191.
(2) (1926) 43 R.P.C. 291, at pp. 297,
301.

(3) (1924) 35 C.L.R. 132, at p. 141.
(4) (1925) 42 R.P.C. 284, at p. 298.
(5) (1930) A.C. 97, at p. 101.

H. C. OF A.

1936.

KAUZAL

v.

LEE.

Starke J.

drawings attached to the specification. But it is conceded, or at all events is clear, that the elements of the invention described in the specification had never before been all brought together, and had never before been used in drenchers for sheep or other stock. The apparatus described works well, and is effective in use.

The respondent made six claims, but only two were relied upon at the hearing of the action, namely, the third and the fifth. Claim 3 was as follows :—"In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism having a detachable barrel, a nozzle housing inlet and discharge valves, and provided with a nipple for connection to the reservoir, and a plunger in said barrel actuated by a trigger and adapted to draw a predetermined quantity of the drench into the barrel and force it therefrom through said nozzle." Now claim 3, it must be observed, limits the application of the invention to drenchers for sheep and other stock of the kind described in the specification (See *Morris and Bastert v. Young* (1)). But it is said that the claim is vague and ambiguous. Taken with the specification, a drencher of the kind described is one with a reservoir with a valve at the foot thereof connected by flexible or other tubing to a control valve mechanism adapted to draw the drench into a detachable barrel. The elements of the hand-controlled valve mechanism are then set forth. The main features of the mechanism are concisely stated in the claim, and are plain enough when read in conjunction with the specification of which they form part. But the words in claim 3, "and adapted to draw a predetermined quantity of the drench into the barrel and force it therefrom through said nozzle," occasion some difficulty. It is not important, I think, whether these words attach to "a hand-controlled valve mechanism" or to "a plunger in said barrel actuated by a trigger." But how is the mechanism or plunger adapted? And in what manner and by whom is the quantity of the drench predetermined? The specification itself contemplates barrels of different capacities in the mechanism. The specification and the claim rather point, I think, to the user determining the dose, and the specification contains and describes a mechanical contrivance whereby he can so predetermine it. The claim is not limited to that contrivance, but

covers generally any means of adaptation for predetermining the dose. But that does not involve ambiguity or vagueness. An inventor is entitled to assume competence and ordinary skill in the person to whom the specification is addressed. And, given the methods suggested in the specification, any competent person would, I am satisfied, perceive and understand how adaptations to predetermine the dose might be made.

Claim 5 I shall deal with shortly. It is as follows :—“ In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism substantially as herein described and as illustrated in the accompanying drawings.” This claim is limited to the particular mechanism illustrated in the drawings, and so limited, can, I think, be supported. But for this limitation, the claim would have been hopelessly bad, for there would have been no precise statement of the monopoly claimed.

It follows that claims 3 and 5, though without much originality, are not wanting in subject matter. *Long Innes J.* held that these claims had been infringed, and in this conclusion I agree and have nothing to add.

The appeal should be dismissed, subject, as was agreed, to a variation of the decree limiting the injunction to an infringement of claims 3 and 5.

DIXON AND McTIERNAN JJ. The decree under appeal, although drawn up in general terms, establishes two only of the claims comprised in the patent put in suit. The claims relate to portion of an apparatus for dosing sheep with a drench, especially an oil drench. The apparatus consists of a tank or reservoir for the liquid slung on the shoulders of the operator, of a flexible tube leading to a pistol-shaped implement held in the hand and of that implement, which draws off the dose and ejects it through a nozzle into the sheep's mouth and down its gullet.

The need for such an apparatus arose not long before the patent was applied for. It was found that carbon-tetrachloride was a remedy both for fluke and for worms in sheep and paraffin oil proved a suitable vehicle for administering it. It was natural to look for

H. C. OF A.

1936.

KAUZAL

v.
LEE.

Starke J.

H. C. OF A.

1936.

KAUZAL

v.

LEE.

DIXON J.
McTiernan J.

some better and less wasteful means of drenching sheep with such a mixture than the funnel commonly used for water drenches.

The claims that have been upheld deal with the implement held in the hand.

The liquid is drawn from the flexible tube into the barrel of the pistol. The tube is fixed to a nipple leading to a valve in the nozzle. It is an inlet valve through which the dose is drawn. A plunger moves in the barrel and when it is pulled back it draws the liquid in through the valve which opens, that is to say, the atmospheric pressure forces the liquid into the barrel where otherwise a vacuum would be formed by the receding plunger. It is drawn back by a helical spring the resistance of which is overcome on the forward movement of the plunger by the pressure of the fingers on a lever corresponding in position to the trigger of a pistol. The upper part of the lever is attached by an arm to a rod which moves the plunger backwards and forwards in the barrel. The spring is fastened to the lever between its fulcrum and the arm and thus pulls the plunger back when the trigger is released. The forward movement of the plunger expels the charge or dose of liquid. It expels it through another valve in the nozzle, an outlet valve. The outlet valve opens with the pressure of the liquid and, of course, at the same time the inlet valve is kept closed. It is apparent that the amount of liquid thus administered must depend primarily upon the size of the barrel. But it also depends upon the distance to which the plunger retreats upon its backward movement. For the throw of the plunger determines how much of the chamber provided by the barrel is actually used for the intake of liquid. By means of a pin the extent to which the plunger may be drawn back can be limited and the dose thus diminished.

There is no difficulty in picking out the essential features of such an implement. It necessarily possesses separate orifices for the intake and expulsion of the liquid. For the chamber could not be automatically recharged from the reservoir through its outlet. The orifices must be sealed and opened in turn and are, therefore, provided with valves. The valves are both placed in the nozzle so that the chamber may be filled and emptied by the two opposite strokes of the plunger. The maximum dose is determined by the

size of the barrel but, by checking the retreat of the plunger, it may be lessened to another definite amount.

An additional feature, which does not seem essential to its working, is given to the implement in the form adopted by the patentee. The barrel is made detachable. No doubt it is easier to clean if the barrel can be removed. But apparently the purpose of constructing the implement with a detachable barrel was to allow the use of barrels of different capacities.

The device contains no feature that is not in itself familiar. Its operation depends upon old principles. But nothing has been found anticipating the particular combination of elements which produces the implement and makes it effective. The search for anticipations seems to have been taken into every field where for some purpose or another devices for drawing liquid of any sort from a reservoir and expelling it might find a place. The citations not only relate to drenchers for administering liquids to animals but they range over things as diverse as hypodermic and surgical syringes, lubricating grease guns, fruit tree sprayers, paint sprayers, water pistols and even strange weapons for police use devised to throw chemical fluids or gases upon or over men or beasts in the hope of incapacitating, drugging or indelibly marking them. But not one of these devices, when examined, discloses the same means of attaining its purpose as the combination made by the patentee. Accordingly there appears to be nothing in the way of prior publication to destroy the validity of the patent.

The attack on its validity is put upon other and more substantial grounds. The specification and, in particular, the two claims on which the patentee now relies are said to be insufficient and avoidably ambiguous. It is denied, too, that the claims disclose any invention possessing subject matter.

The body of the specification states the object of the invention to be to devise a drencher whereby a predetermined quantity of the drench may be administered under pressure by means of a hand-controlled plunger device in communication with a reservoir in which a thorough mixture of the liquid preparation is assured. When the specification comes to the pistol-shaped hand piece,

H. C. OF A.
1936.

KAUZAL

v.
LEE.

Dixon J.
McTiernan J.

H. C. OF A.
1936.

KAUZAL

v.
LEE.

DIXON J.
McTIERNAN J.

which it calls the control valve mechanism, it says that it is “preferably plunger-operated.” But the specification gives no other means of operation. It then describes the invention by reference to detailed drawings, but again it speaks of the drawings as illustrations of “a preferred form” of drenching apparatus. The lever which, under pressure from the fingers, drives forward the plunger is called a trigger, a name which, although perhaps incorrectly used of what has no releasing action, nevertheless cannot be misunderstood if the drawings are examined. The description of the drawings includes an explanation of the manner in which the pin may intercept and limit the back stroke of the plunger. The principle employed is made clear enough, if to so simple a thing the word “principle” can be applied. But the exact way in which the pin is inserted is stated somewhat confusedly. We do not think obscurity upon such a detail could be fatal to the patent. For the invention does not depend upon the exact way in which the patentee would carry out this commonplace step, the mechanical nature of which is sufficiently indicated.

The first in order of the two surviving claims is the third in the specification. It is as follows:—“In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism having a detachable barrel, a nozzle housing inlet and discharge valves, and provided with a nipple for connection to the reservoir, and a plunger in said barrel actuated by a trigger and adapted to draw a predetermined quantity of the drench into the barrel and force it therefrom through said nozzle.”

This claim presents some difficulties because of the generality of the language used to describe each integer of the combination. It is important in considering its effect to notice the limiting operation of the introductory words, “in drenchers . . . of the kind described.” The reference is to a hand-operated drencher fed by a tube or pipe from a portable reservoir. The claim is restricted to an implement connected with such a tube. Moreover, the limitation explains the purpose of the nipple and of the inlet valve, afterwards mentioned in the claim. The integers in combination forming the “hand-controlled valve mechanism” are then enumerated. As we interpret the claim, it specifies eight features the combination of

which forms the invention :—(a) the barrel is not fixed but removable ; (b) its nozzle contains the inlet and the outlet ; (c) these are valves ; (d) the inlet has a nipple for connection with the reservoir ; (e) there is a plunger in the barrel ; (f) it is actuated by a lever used like a trigger ; (g) the plunger is adapted to draw a predetermined quantity of liquid into the barrel ; (h) it is adapted to force that quantity out through the nozzle.

In so stating the elements of the combination, we have attached grammatically to the word “ plunger ” the qualifying phrase “ and adapted to draw a predetermined quantity of the drench into the barrel and force it therefrom through said nozzle.” No doubt it is capable of qualifying the earlier expression “ hand-controlled mechanism.” But we think in both sense and form it is attached to the later word “ plunger.” It is the nearer noun. The conjunction “ and ” seems to couple the “ actuated ” and the “ adapted.” It is the plunger which forces the fluid through the nozzle. As appears from the description in the body of the specification and drawings, it is the plunger that draws in the drench. The whole phrase provides the chief ground for attacking the claim as insufficient and avoidably ambiguous. The construction we have given to the phrase in what we have said does not remove the main complaint against it. It deals only with one matter. But it is a matter which when resolved should be put on one side and no longer treated as tending to make the ambit of the monopoly uncertain. Vagueness of description, want of particularity and evident indistinctness of thought may be the source of so much uncertainty as to the scope of the monopoly that the claim fails to fulfil the requirement of stating with definiteness to what the patentee is exclusively entitled. In such a case the grammatical construction of the language may present no difficulty. Such indefiniteness has a deeper cause than an accident in the formal arrangement of a sentence which leaves it open to attribute an expression to either of two possible antecedents. When that happens a true question of construction arises. The language is open to two meanings. Each may be as definite as the other. The only doubt is which of the two was meant and the doubt springs from verbal order, position, or the like. In such a case, it is not likely that the scope of the claim would be so obscure

H. C. OF A.

1936.

KAUZAL

v.

LEE.

DIXON J.
McTIERNAN J.

H. C. OF A.

1936.

KAUZAL

v.

LEE.

Dixon J.
McTiernan J.

as to disentitle the patentee to protection for what he meant to claim. But, in the present case, the imputation of ambiguity depends on more than a verbal equivocation. It is said that the claim does not state by whom or by what means the quantity of drench is predetermined, or how the plunger is adapted to draw the quantity. This criticism obtains its force from the generality of the language used in the phrase now in question. The specification gives two considerations upon which the size of the dose depends, viz., the size of the barrel and the stroke of the plunger. The size of the barrel and the stroke of the plunger may each be varied. It is obvious that the maker will decide the length to which the plunger may recede and the point where the pin to check it will be placed; he will decide what barrels he will supply. The user will decide which barrel and which stroke he will use.

The claim, instead of alluding to the size of the barrel and the travel of the plunger, covers the determination of the quantity by general words ascribing to the plunger a capacity to govern the matter. It is important to keep steadily in view the operation of such a qualification in the claim. It limits the ambit of the claim. Given a rival device containing every other feature stated in the claim, it would not amount to an infringement unless it could be said of the *plunger* that it was adapted to draw a predetermined quantity of the fluid. Now, so understood, the generality of the words used in the limitation means simply that the patentee is saying that his plunger does draw off a previously ascertained quantity, i.e., in the manner indicated in the specification, and he claims the combination of other features in conjunction with any plunger by which a previously ascertained quantity is drawn off, even although it is not done in the same manner as he has indicated.

The specification or claim cannot be accused of insufficiency. The patentee is not undertaking in the claim to describe a mode of predetermining the quantity. He has shown such a mode or modes. Nor is he undertaking to describe how the plunger may be controlled. This too he has done. Nor is there really any ambiguity. He states a general proposition. It is meant to be wide in one sense. But it is a limiting proposition. It requires that the quantity drawn off by the plunger should be predetermined. It is too obvious to

need stating that the quantity must be settled by the capacity of the chamber when the plunger is drawn back to the full extent that is for the moment permitted to it. The claim seeks to avoid limiting the monopoly by confining it to one mechanical mode only of defining in advance the size of that chamber, or by allotting to the user and maker the parts to be played by them respectively in setting it. By failing to do this and so narrow the claim further, the patentee may have made his combination too wide. Its greater width has not in the event resulted in his encountering an anticipation. But, on the question of subject matter, it is, of course, true, in general, that the greater the number of limitations upon the area of a combination claim, the less danger there is to the patent.

The reference in the present claim to the plunger removes one difficulty arising from the body of the specification. It removes the uncertainty created by the use of the words "preferably" and "preferred" in referring to the apparatus illustrated in the drawings and describing it as "plunger-operated."

In our opinion the claim is not void for ambiguity.

The question whether the claim discloses subject matter is the final and not least difficult of the matters upon which its validity depends. It is a combination the inventive merit of which can lie only in the exact association of features which leads to the achievement of its purpose. These eight features we have already enumerated. No doubt the utility of the implement depends upon them all. But its decisive characteristics seem to be the choice of the position of the valves and the use of a plunger moved by the trigger-like lever so that it would draw in and expel a fixed quantity of the drench. Because of the position of the valves, the plunger need not carry a valve itself, and yet can fulfil the double purpose by alternate strokes. The manual ease with which the implement may be operated depends on the trigger-like lever. Although the principles relied upon are old and simple and the features, separately considered, are used in daily practice for all sorts of purposes, the production of a new implement by their judicious use may involve an inventive step or display inventive ingenuity, if the integers are so combined and related that they work in co-operation to effect a purpose or provide an appliance which is new.

H. C. OF A.

1936.

KAUZAL

v.

LEE.

Dixon J.
McTiernan J.

H. C. OF A.

1936.

KAUZAL

v.

LEE.

Dixon J.
McTiernan J.

In the present case the appliance is a new one. The drenching of sheep is not a new purpose. But the use of oil drenches was a recent practice and former appliances do not seem to have been suitable. On the whole, we think that subject matter for an invention was involved in the patentee's mode of turning familiar principles to the purpose of producing a new drenching appliance and combining well-known elements in an arrangement resulting in the construction of an efficient automatic implement. There is more than one analogy to the present case in *Higginson and Arundel v. Bentley and Bentley Ltd.* (1). Lord *Sterndale* said that no argument is required to show that the application of a well-known thing like a suction pump in a different manner and with a different object is not in itself subject matter of a patent. But he thought the idea was to make use of a pump to supply petrol to a carburettor, a thing not before successfully done, and for that purpose to make of the pump and other matters an apparatus which would produce the result. The main idea was in fact novel in the relevant connection, and was carried into effect by a particular combination devised for the purpose of known mechanical appliances, and the combination *prima facie* afforded subject matter.

The generality of the patentee's final limitation upon his monopoly does not appear to us to detract from the inventive steps which the combination involves.

The second of the two surviving claims is number five in the specification. It is as follows :—"In drenchers for sheep and other stock of the kind described, a hand-controlled valve mechanism substantially as herein described and as illustrated in the accompanying drawings."

We think this claim fails for ambiguity and vagueness. We are unable to ascertain from it what exactly is the combination of features claimed. If every substantial feature disclosed by the drawings goes to make up the invention claimed, perhaps a definite combination can be spelled out from them. But the words "as illustrated" seem to us to show that the drawings cannot be regarded as disclosing the only form of the invention. If the text of the specification is to be read as, so to speak, possessing equal or greater

(1) (1922) 39 R.P.C., at pp. 186, 187.

authority, then it seems to us that the indefiniteness arising from the use of the words “preferably” and “preferred” is fatal to the claim.

The third claim, however, is clearly infringed by the appellant’s appliance and, in the view we take of the case, the fifth claim becomes immaterial. We think the decree should be amended to limit it to the third claim in the specification. Subject to this variation, the appeal should be dismissed with costs.

*Subject to a variation in the decree appealed from,
appeal dismissed with costs.*

Solicitor for the appellant, J. J. Lynn.
Solicitors for the respondent, W. A. Windeyer & Co.

J. B.

Appl Doh- meier v Eisen-Und Drahtwerk Erlau Aktien- gesellschaft 13 IPR 131	Appl Kwan v Queensland Corrective Services Commission (1994) 31 IPR 25	Refd to Winnerv Haigh & Associates (Australia) Pty Ltd (1996) 33 IPR 215	Refd to Genentech Inc v Celtrix Pharmaceu- ticals Inc (1995) 34 IPR 162	Appl Innovative Agricultural Products v Crawshaw & Atkinson 35 IPR 643
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[HIGH COURT OF AUSTRALIA.]

ACME BEDSTEAD COMPANY LIMITED. . . APPELLANT ;
PLAINTIFF,

AND

NEWLANDS BROTHERS LIMITED . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

*Patent—Validity—Subject matter—Obvious addition to existing device—Application
of well-known mechanism to obvious use—Prior publication.*

In 1929 the plaintiff obtained letters patent for improvements to hospital beds, the object of the patent being to allow one end of the bed to be raised and to facilitate the moving of the bed. The elevating means consisted of a hollow member attached to the end of the bed between the legs and having an opening therein, a telescopic post (with teeth) non-rotatably mounted in this member and having castor feet, and a pawl and ratchet device for elevating

H. C. OF A.
1936.
KAUZAL
v.
LEE.
Dixon J.
McTiernan J.

H. C. OF A.
1937.
SYDNEY,
Sept. 1-3 ;
Nov. 24.
Latham C.J.,
Starke and
Dixon JJ.