

90.26 of 1940 (4)  
IN THE HIGH COURT OF AUSTRALIA.

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Hume Pipe Company (Australia)  
Limited

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V.

Monier Industries Limited  
(re application No. 104715)

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## REASONS FOR JUDGMENT.

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*Judgment delivered at* ..... Melbourne  
*on* ..... 8th November 1940

re Application No. 104715 by

Monier Industries Ltd.

HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LIMITED

Order :

Appeal allowed. Decision appealed from discharged. Declare that the grant ought not to be made in respect of Claims 1, 2, 4, & 5 and ought not to be made in respect of Claims 3, 6, 7, & 8 unless the Respondent Company within two months applies for, and on such application obtains, leave to amend the specification with regard to them. Declare that, in respect of Claims 9 & 10, the opposition ought not to be sustained. Remit the opposition to the Deputy Commissioner to be dealt with consistently with this Order and according to law. The time for sealing the patent to be extended until one week after the ~~time~~ expiration of the time for appealing from the final decision of the Commissioner in respect of the application to amend, or on the final application for a patent, or after the determination of any such appeal as the case may be. The Respondent company to pay the costs of the appeal.

HUME PIPE COMPANY(AUSTRALIA) LIMITED.

AND

MONIER INDUSTRIES LIMITED.

JUDGMENT.

RICH A.C.J.

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Judgment.

Rich A.C.J.

In the matter of application No 104,715 for Letters Patent I agree in the view of the Deputy Commissioner of Patents that the form of invention disclosed by the specification differs from the prior publications relied upon both No 8561 and No 101,202 and the manifestation of No 8561 described in the diagram marked exhibit CCH6. The difference lies in the fact that the whole chassis is jolted and not merely one drum and that the jolting is done by the movement of the chassis upon a transverse pivot or axis. This conclusion the Deputy Commissioner expresses as follows:- "The feature of a rocking chassis "runs through all the Applicant's claims, and while it may produce an "ultimate result which is the same as that produced by all the machines "of the prior art, it does so by a means which in my opinion has not "previously been disclosed, and furthermore this different means of "attaining that end, to my way of thinking, involves some exercise of the "inventive faculty". As the question whether some exercise of the

inventive faculty is involved it is legitimate to be sceptic but it is enough to say that neither by evidence nor by argument was the question investigated and the ground of opposition being want of novelty such a fundamental difference in the construction of the machine cannot be treated as an obviously material variation. The trouble about the case arises from the claims which do anything but bring out with due prominence<sup>e</sup> the pivot upon which not only the chassis but the fate of this appeal turns. I should be disposed to disallow claims 1,2,3,4, and 5 altogether and to allow claims 6 - 8 only if they are reconditioned by appropriate amendment. Claims 9 and 10 are in a form not to be encouraged but as they claim forms of a machine as described with reference to the drawing they do not seem to be open to the objection upon which the opposition depends. I would make an order giving the applicant an opportunity of applying for an amendment.

LTD.  
HUME PIPE COMPANY (AUSTRALIA)/V MONIER INDUSTRIES LTD.

JUDGMENT.

STARKE J.

The respondent in July 1937 made application No. 104,715 for the grant of Letters Patent for an improved machine for the manufacture of concrete pipes and the like. The application was opposed by the appellant on the ground that the invention was not novel. The Deputy Commissioner determined that Letters Patent should issue, whereupon the appellant appealed to this Court against his determination.

The invention is for an improved machine for the manufacture of concrete pipes and the like. According to the invention, a frame or chassis is mounted on a machine base in such manner that it may be rocked longitudinally. Means are provided to concussionally oscillate the chassis by rocking it from each end alternately, such oscillation affecting a vibratory movement to a rotating mould containing the pipe material. The rocking motion is achieved by an arrangement of cams and springs but electric magnets and the like may be substituted therefor. A modified construction has the rocking means arranged near one end of the chassis, the other end of the chassis being held against a buffer. A cam operating on a shaft rocks the chassis by lifting the end of the chassis against the tension of a spring.

The objection that the respondent's machine was not novel was founded upon proof filed in the Office of the Commissioner that machines had been previously described or used in which the chassis supporting the mould containing the pipe material had been jolted or projected upwards as it was rotated and allowed to fall back again, (Specification 1932/8561 and exhibit C.C.H.6) or had been jolted or projected longitudinally as the mould was rotated (Complete Specification 1935/101,202 and machines constructed in accordance with that specification and Complete Specification 1936/102,892).

The first claim is for "Machines for the manufacture of concrete pipes constituted of a chassis mounted on a base in such manner that it may be rocked; mould supporting and rotating rollers on said chassis, means to rotate a pair of said rollers and means to concussionally rock said chassis".

The chassis may be rocked, according to the specification longitudinally, from each end alternately, or by lifting the end of the chassis against the tension of a spring. The claim is too wide, for it covers the upward jolting or projection of the chassis disclosed in the specification 1932/8561 and by the modified form of that construction disclosed in Exhibit C.C.H.6.

Claim 2 is for:- "Machine for manufacture of concrete pipes constituted of a chassis mounted on a base in such manner that it may be rocked longitudinally, mould supporting and rotating rollers on said chassis, the mould being positioned transversely thereof, means to rotate a pair of said rollers and means to concussionally rock said chassis". The words "in such manner that it (the chassis) may be rocked longitudinally" follow the specification but lack precision. It is not confined to rocking about a pivotal axis but is so framed that it includes jolting or projecting the chassis longitudinally. But the latter movement and the method of obtaining it is disclosed in the ~~x~~ specification 1935/101,202 and machines constructed accordingly and the specification 1936/102,892. Consequently the claim cannot be supported.

Claim 3 is:- "In a machine for the manufacture of concrete pipes as claimed in Claims 1 & 2, means to concussionally rock the chassis from each end alternately". If "to concussionally rock the chassis" here means to rock about a pivotal axis, the prior publications and machines relied upon do not disclose that form of construction. But if it covers jolting or projecting from each end of the chassis alternately then Specification 1936/102,892 discloses that method of

rocking. The construction ~~of~~ the claim is doubtful enough to warrant the issue of Letters Patent. *McGlashan v Rabett* 9 C.L.R. at p.228. But **it** would require amendment, for claims 1 & 2 should be rejected.

Claims 4 & 5 are tied to Claims 1 & 2 and cannot therefore be supported. Claim 6 is possibly open to the same objection as Claim 1 but is doubtful and so are Claims 7 & 8, which are tied to Claims 6 & 7 respectively. Claims 9 & 10 are limited to machines constructed, arranged and adapted to operate according to the drawings. As so limited, the anticipation and prior user relied upon do not disclose these claims.

The result is that the appeal should be allowed as to Claims 1,2,4 & 5, disallowed as to Claims 9 & 10, and <sup>allowed</sup> as to Claims 3,6,7 & 8 subject to amendment approved by the Commissioner.



re Application No. 104715 by  
Monier Industries Ltd.

HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LIMITED

JUDGMENT

DIXON J.

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HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LIMITED

This is an appeal from a decision of the Deputy Commissioner of Patents dismissing an opposition to the grant of letters patent in respect of an alleged invention for an improved machine for the manufacture of concrete pipes and the like.

It has been found that by vibrating, or transmitting some concussion to, the moulds containing the damp concrete as they rotate and so throw the concrete into the form of a pipe, a denser, stronger and better pipe is produced.

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The purpose of the invention claimed is to provide a machine which will at once spin the mould and vibrate or jolt the mould whilst in rotation. Other machines for this purpose have been made and the applicant's device must depend for its title to a patent not upon ~~the~~ its aim but upon the novelty and inventiveness of the particular means forming the combination.

The grounds of the opposition are want of novelty and prior publication. Substantially the question depends upon a comparison of the applicant's machine with one or both of ~~the~~ two types already made public. One of these types operates by raising, by means of an eccentric or cam wheel,

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one of the wheels or rollers on which the mould spins or rotates and then letting the roller descend. The other type of machine imparts not a vertical but a horizontal movement to the whole frame or "chassis", as it is called, which carries the two rollers that spin the mould and so shakes or vibrates the rotating mould on a horizontal plane.

The applicant's machine deals with the whole "chassis" and not one roller and in this resembles the latter type, but it gives a vertical and not a horizontal concussion to the frame and its rotating burden. It differs from both types in relying on a pivot upon which the "chassis" rests

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and about which it moves or turns through a small arc. In one form the pivot is in the centre of the chassis, so that the whole apparatus, rollers and mould in rotation, see-saw up and down about this axis. In another form the pivot is rather towards one end, so that the frame or "chassis" rises and falls from the other end about the pivot as the axis. In both forms the rocking is done by an ~~eccentric~~ which revolves at one end while a spring at the other ensures that contact with the cam is maintained. It is evident, I think, that the applicant's combination ~~shows~~ discloses a clear mechanical difference of operation and construction. It may be doubted whether the variation exhibits the quality of inventiveness,

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but this question is not one that is directly raised by a plea of want of novelty. It is true that it sometimes indirectly arises because where the invention claimed cannot be distinguished from what was already in the possession of the public except by differentiae which contribute nothing to the result or to the means for producing it or clearly involve no ingenuity or inventive step, the plea of want of novelty must be considered as established in substance. See *McGlashan v. Rabett* 1909 9 C.L.R. 223; *Linotype Co. v. Mounsey* 1909 9 C.L.R. 194; *May v. Higgins* 1916 21 C.L.R. 119; *Gum v. Stevens* 1923 33 C.L.R. 267 : *William Arnott Ltd. v. Peak Frean & Co. Ltd.* 1935 9 A.L.J. 73; *Griffin v. Isaacs* 1938 12 A.L.J. 169.

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But in the present case, though the elements in the applicant's combination may all be engineering commonplaces and the purpose is admittedly old, the variations from what preceded it do contribute a different means of producing the result and affect the working of the entirety and, without a direct challenge and proper investigation on evidence, cannot be said plainly to be destitute of invention or to be mere mechanical equivalents. The real difficulty lies in the vagueness and possible width of the claims put forward by the applicant. It is unnecessary to discuss them in detail. It is enough to say that, unless by a process of construction or interpretation the language of the first and second claims,

which are incorporated in the third, fourth and fifth, was restricted to, or by reference to, the drawings, they would cover horizontal vibration or concussion of the "chassis."

For I do not think that the word "rock" is confined to oscillation upon an axis or pivot. Moreover these claims do not, and in fact none of the claims does, make a clear point of the rocking upon a pivot being the essential or material feature of the invention. The sixth claim goes nearest to doing so.

It appears to me to be unsafe to disallow the opposition unless the claims are amended so as to make clear,

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if not prominent, that feature which has proved the salvation of the application. If the claims are rewritten in such a way that the rocking of the entire chassis on a pivot or axis is made the basal feature, it may remove the objection that, except by an artificially restrictive interpretation, the claims cover combinations or devices already in the possession of the public. But the invention alleged is not capable of supporting any very wide claim.

In Griffith v. Neilson 1911 13 C.L.R. at p. 151  
an order was made setting aside a dismissal of an opposition  
and declaring that certain claims ought not to be made the  
subject of a grant at all and that others ought not to be

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included in the specification unless leave to amend was applied for and obtained. The order extended the time for sealing.

I think that such an order would meet the present case.

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