

June 25. 1821. fection, unless there was some other act; because these acts applied to the case of seed from flax raised from Scotland, as well as seed imported from abroad; but no seed was allowed to be crushed into oil, unless it had received damage at sea, and it might receive damage from other causes. The Board of Trustees, therefore, appear to have been driven into an irregular course, which was not authorized by the acts of Parliament, of allowing seed to be crushed into oil.

Another circumstance was, that if there were to be such proceedings upon these acts of Parliament, which were to endure for such a period of time as had happened in the present case, seed which might be fit for use at the period of a first seizure, might be unfit for use at the period of a second; not to mention that the season might be lost for sowing at a time when the seed was fit for it.

His Lordship, therefore, submitted it to the consideration of the Trustees, whether some general act should not be brought into Parliament, combining all these acts, and providing for all the difficulties that had arisen in the present case, because otherwise the present acts might be used as instruments of oppression.

A. MUNDRELL,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 30.*)

No. 17.

JOSEPH ASTLEY, Appellant.—*Warren—More.*

JOHN TAYLOR, Respondent.—*Romilly—Forsyth.*

Patent.—The Court of Session having found that the specification of a patent was not sufficiently expressed to entitle the patentee to pursue an action for violation of it, a remit made to ascertain this and other facts by a jury.

June 25. 1821.

2^D DIVISION.
Lord Meadow-
bank.

ASTLEY, conceiving that he had made a discovery of an improved mode of manufacturing sal ammoniac, obtained a patent, of which the specification was in these terms: ‘ I, the said Joseph Astley, do hereby declare, that the nature of said invention is described in manner following: That is to say, I prepare the salt called muriate of magnesia, or the muriate of alumine, or one or other of the metallic muriates, or any of the combinations of muriate acid from which the acid is capable of being disengaged by heat. What I commonly employ is the muriate of magnesia, which may be procured in different ways, and very easily and economically from the mother liquor of salt-pans, called bittern or salt oil. The other salts contained in this being separated by evaporation and crystallization, I use

Jun 25. 1821

‘ the muriate of magnesia, prepared by this or by any other pro-
‘ cess, or any of the other articles above mentioned, either in a
‘ liquid or in a solid form. In the former way, I cause animal
‘ substances of all kinds, or such vegetable or animal substances
‘ as afford ammonia or volatile alkali by distillation, to be im-
‘ pregnated with liquor, holding any of the said salts in solution,
‘ which liquor I use in proportions, varying according to the par-
‘ ticular kinds of salt employed, the degree of concentration of
‘ the liquor, and the nature of the animal or other substances
‘ to be impregnated, the object being to obtain the acid and al-
‘ kali developed in the subsequent operation, in proportions ap-
‘ proaching as nearly as possible to mutual saturation. I after-
‘ wards dry the animal or other substances thus impregnated on
‘ a heated floor or otherwise, and either distil them by the heat of
‘ a furnace, in a retort or still, with one or more receivers adapt-
‘ ed to collect the products, or else burn them in a kind of fur-
‘ nace or kiln (which may be variously constructed,) the products
‘ of the combustion being collected in chambers or receivers
‘ adapted to the purpose, which chambers or receivers must have
‘ an opening or vent to maintain the current of air necessary for
‘ the combustion. The previous drying is not an essential part
‘ of the process, and in some cases may be dispensed with, though
‘ it will generally be found expedient. When I use the salt in
‘ a solid form, that is, either crystallized or dried by evaporation,
‘ the process is merely to mix it in such state with the animal or
‘ other substances, and proceed as above; but I find that the
‘ object is effected more easily and completely by using the salt
‘ in the state of solution, or, instead of impregnating the animal
‘ or other substances themselves with any of the saline matters
‘ above described, I cause substances of any description what-
‘ ever (provided there be nothing in their nature rendering them
‘ chemically or mechanically unfit to serve as vehicles for such
‘ purpose) to be impregnated with such saline matter, and treated
‘ as above described, along with the animal or other substances,
‘ the fundamental object of all these processes being to present
‘ the acid and alkali to each other in their nascent state, as they
‘ are respectively developed from the said saline matter, and the
‘ animal or other substances by heat, by which means we obtain,
‘ on the one hand, a more complete decomposition of the said
‘ salts, by help of the divellent affinity of the ammonia, and we
‘ prevent, in a great measure, on the other hand, the destruction
‘ of the alkali by combustion, which would otherwise occasion
‘ great loss in the burning of the materials. In all the processes
‘ here described the product is the same, being muriate of am-

June 25. 1821. ‘ monia or sal ammoniac, partly dry and partly in solution, which
 ‘ is afterwards to be crystallized and sublimed according to the
 ‘ ordinary processes, or which may be used for some purposes
 ‘ without undergoing these subsequent operations. It may be
 ‘ proper to state, that I do not here lay claim to the exclusive
 ‘ privilege of procuring muriatic acid from the salts above men-
 ‘ tioned by distillation, as it has been long known to chemists
 ‘ that several of them are decomposable by heat. My claim is to
 ‘ the modes of effecting this decomposition, as here explained,
 ‘ which will be found to possess, besides the advantage already
 ‘ mentioned, that of avoiding the inconveniences with which the
 ‘ operation of distilling the muriate salts in question (particularly
 ‘ the muriate of magnesia) by themselves is always attended.’
 Astley, alleging that Taylor had clandestinely discovered his
 mode of operation, and had violated his patent, brought an ac-
 tion of damages and of interdict against him. In defence, Taylor
 stated, 1. That he had not violated the patent. 2. That the spe-
 cification was insufficient; and, 3. That the alleged invention was
 not valuable, because it consisted of a mere *modus operandi*,—well
 known materials being used for the production of a well known
 commodity. After allowing a condescence and answers, the
 late Lord Meadowbank found ‘ nothing correctly or relevantly
 ‘ stated, on the part of the defender, to impede the pursuer’s
 ‘ right to the exclusive use of the process for manufacturing sal
 ‘ ammoniac, as described in the specification protected by the
 ‘ patent, and particularly such use of the muriate of magnesia
 ‘ contained in the bittern or refuse produced in the preparation
 ‘ of common salt from sea water;’ and allowed to Astley a proof
 of his allegations as to the violation of his patent. Taylor hav-
 ing reclaimed, the Court appointed Dr. Hope to visit the works
 of the parties respectively, and to report. Dr. Hope having re-
 ported that the process was original and useful, but that the spe-
 cification was inadequate, the Court, on the 27th of November
 1813, ‘ sustained the objection to the title of the pursuer, in re-
 ‘ spect of the want of due specification in his patent; and there-
 ‘ fore alter the interlocutor reclaimed against, dismiss the action,
 ‘ and decern; but find no expenses due.’ Against this judgment
 Astley reclaimed, and offered to prove, by the evidence of men
 of skill, that the specification was sufficient to enable them to
 perform the operations for which the patent was granted. The
 Court having allowed him to prove accordingly, he, in support
 of this allegation, adduced Dr. Murray, Professor Leslie, Mr.
 Charles Macintosh, and Mr. Charles Tennent of Glasgow, Dr.
 Thomas Thomson, Mr. Tilloch, Mr. Nicholson, Mr. Accum,

June 25, 1821.

and Professor Brande of London, all of whom deponed that the specification was sufficient to enable them to conduct, or direct the conducting, of the processes by which the improvements were to be carried into effect. On the other hand, Taylor adduced several operative chemists, who deponed that the specification was insufficient to enable them to carry the improvement into effect successfully. The Court having ordered a hearing in presence, Taylor contended that the evidence of operative chemists was, in a question of this nature, to be preferred to that of scientific men; that the specification was obscure and vague, because it neither contained a reasonable account of the proportions in which the materials ought to be mixed up, nor such a description of the apparatus as could disclose the nature of the improvement, so as to carry it into effect; that no rules were given for regulating the heat; that a variety of processes were confusedly mentioned, and that such a multitude of substances were to be used, as to convey no precise instruction. To this it was answered, that the accuracy of a specification ought to be judged of by the opinion of men of science, who alone could judge whether it was consistent with general principles, and capable of being carried into execution; that it was not addressed to the ignorant, but to those whose previous skill enabled them to apprehend it from perusal; and he contended that the evidence he had adduced established that the specification was sufficient for the purpose. The Court were at first equally divided; but Lord Pitinilly being called in, they altered their interlocutor, and ‘repelled the objections stated to the pursuer’s title, in so far as they are founded on the alleged defects in the specification.’ Thereafter, Taylor having reclaimed, the Court was again equally divided; but Lord Craigie having subsequently become one of the permanent Inner-House Judges, they altered their interlocutor on the 19th of November 1816, ‘sustained the objections to the pursuer’s title, in respect of the want of due specification in his patent,’ and assoilzied Taylor, with expenses; and to this interlocutor they adhered on the 3d of June 1817.*

Astley having appealed, the House of Lords ‘Ordered that the cause be remitted back to the Court of Session, and that the said Court do direct the following issues to be transmitted to the Commissioners of the Jury Court, for the purpose of being tried by a jury, in manner directed by the statutes in that behalf made and provided; namely, whether the respondent has, in the manufacture of sal ammoniac, made use of all or any, and

* Not reported.

June 25. 1821.

‘ which of the improvements in the manufacture of sal ammoniac,
 ‘ described in the specification enrolled by the appellant, in pur-
 ‘ suance of the letters patent obtained by him for the sole use of
 ‘ sundry improvements in the manufacture of sal ammoniac; and
 ‘ whether any, and what part or parts of that which is described
 ‘ in such specification, and therein alleged to be an improvement
 ‘ or improvements in the manufacture of sal ammoniac, invented
 ‘ by the appellant, was or were known or used before the date of
 ‘ the said letters patent; and whether the said specification con-
 ‘ tains a particular description of the nature of the appellant’s in-
 ‘ vention, and in what manner the same is to be executed, accord-
 ‘ ing to the true intent and meaning of the said letters patent :
 ‘ And it is further ordered, that in trying of the said issues, the
 ‘ appellant shall be the pursuer, and shall be bound to bring the
 ‘ same to trial within twelve months from this date, otherwise the
 ‘ respondent shall have leave to apply to this House for the af-
 ‘ firmance of the said interlocutors; and if the Jury Court shall
 ‘ find for the appellant on the first issue, then the jury shall upon
 ‘ that issue be required to find what are the sundry improvements
 ‘ alleged in the said specification to have been invented by the
 ‘ appellant; and whether all such improvements have been used
 ‘ by the respondent, or only some, or one, and which of such im-
 ‘ provements; and if the Jury shall find for the appellant on the
 ‘ second issue, then the Jury shall upon that issue be required to
 ‘ find in what particular or particulars the said improvement or
 ‘ improvements, or invention or inventions, consist: And it is fur-
 ‘ ther ordered, that thereafter the said cause be proceeded in, in
 ‘ such manner as shall be just.’

Appellant's Authorities.—Collyer on Patents, 56; Davies, 213. 279. 316. 398.

Respondent's Authorities.—Collyer, 75. 127. 131; Davies, 434.

J. RICHARDSON,—A. GRANT,—Solicitors.

(*Ap. Ca. No. 31.*)