

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Alfred Brown and the Colombo Commercial Company, Limited, v. William Jackson, from the Supreme Court of the Island of Ceylon ; delivered 18th May 1895.*

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**Present :**

The LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Respondent William Jackson, a mechanical engineer carrying on business at Aberdeen, in Scotland, obtained letters patent for the Island of Ceylon, in terms of Ordinance No. 5 of 1889, granting him the exclusive privilege of using an invention relating to "machinery or apparatus" to be employed in imparting the necessary "curl to tea leaf by means of flat or hollow "fluted surfaces," for the period of fourteen years from and after the 1th July 1881.

The present action was brought by the Respondent, in the District Court of Colombo, against the Appellants, one of whom is a Company, registered in England, and carrying on business as estate agents and engineers in Colombo, and the other a merchant in Colombo, who acts as assistant manager of the Company. In his plaint, the Respondent charges both Appellants

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with infringement of his patent, by importing into, selling and using in Ceylon, machinery and apparatus for rolling tea leaves, having substantially the same arrangements with those described in his specification; and he craves an injunction and an account of profits. The main, and the only defence stated which it is necessary to notice, consists in a denial of infringement.

The learned Judge of the District Court found that the patent had not been infringed, and dismissed the action. His decision was reversed, on appeal, by the late Chief Justice Burnside, and Mr. Justice Lawrie, who remitted the case, in order that an injunction might be granted, and an account of profits taken. In pursuance of the remit, the District Judge issued an injunction, and also decerned against the Appellants for Rs. 40,861, at which sum he assessed the profits derived by them from infringement. On appeal to the Supreme Court, that judgment was affirmed; and, thereafter, the Appellants brought the previous judgment of the Appeal Court before that tribunal, by way of review, when it was affirmed by a majority, consisting of Lawrie and Withers J. J., Bonsor C. J. dissenting.

In considering the question raised by this appeal, there are three different apparatus for tea-rolling to which it is necessary to refer. The first of these is the "Standard" machine, which had been used in the Island of Ceylon, without its having been patented, for some time before the date of the Respondent's invention: the second is his patent machine, known as the "Excelsior;" and the third, the Appellants' offending machine, which goes by the name of the "Triple Action Tea Roller." All these machines have precisely the same object—to prepare the leaves of the tea-plant for sale, by imparting to them a curl, which, before the introduction of machinery, was

effected by rubbing the leaves between the palms of the human hand.

The mechanism of all three machines consists of practically the same parts. These may be shortly described as:—(1) two plane surfaces, (one or both of which may be corrugated) between which the leaves are rubbed, technically known as the upper and lower rolling tables, (2) a case or cover, in connection with the upper table, whose function it is to confine the leaves whilst they are operated upon, (3) arrangements, by which the leaves can be fed into the space between the two tables, and are discharged after they have been rolled, and (4) a revolving shaft, to which the two tables are so geared or connected, that, when the machine is at work, they move in opposite directions, the one above the other, and roll or curl the leaves between their surfaces.

Neither the "Excelsior," nor the "Triple Action Tea Roller," is, in any sense, a new machine. They are, both of them, modifications of the mechanism which was employed in the "Standard" machine; and the only point to be determined in this case is, whether the modifications, or improvements, which constitute the Respondent's invention, or a substantial part of them, have been appropriated by the Appellants. The novelty and utility of the Respondent's modifications or improvements are not challenged. They relate exclusively to the upper section of the apparatus; and, therefore, an inquiry into the infringement of which the Respondent complains does not involve any comparison between the parts of his and the Appellants' machine, other than the upper rolling table, the case which has already been generally described, and the mechanism by which these are, more or less directly, connected with each other, and with the actuating shaft. In

all three machines, the upper rolling table, and the case, rest upon, or are in some manner connected with, a stage or framework which is directly geared to, and actuated by the shaft.

In the "Standard" machine, which represents the state of public knowledge in Ceylon at the date of the Respondent's patent, the upper rolling table was rigidly connected with the stage or framework, which was moved backwards and forwards in a line nearly at right angles to the direction in which the lower table was similarly moved. In one respect, the upper mechanism differed materially from the device adopted either by the Respondent or by the Appellants. The case for retaining the leaves during the process of rolling was made to cover the upper table, and was carried along with it by the table when in motion, fresh leaves being introduced through an aperture in the top of the case, which was fitted with a lid.

In the Respondent's patent machine, the case is made open at the top, and is detached from the upper rolling table, being rigidly connected with the stage or framework. The table is placed inside the case, but not connected with it or with the stage, and, within the case, it is allowed an inch or two of free play all round. Accordingly, when the machine is at work, the upper table does not move until it comes into contact with, and is pushed or impelled by the inner surface of the case.

In the Appellants' apparatus, a case, open at the top, is also used, its form being in no material respect different from that of the case which is employed by the Respondent in his patent machine. But the Appellants' rolling table is not detached, and is not allowed to have free play in any direction. It is rigidly connected with the stage or framework, and is directly

actuated by the revolving shaft. It is altogether independent of, and derives no motion or impulse from the surrounding case.

The claim made by the Respondent in his specification, which the Appellants have been held to have infringed, is in these terms:—"The arrangement of transmitting motion to the top rolling surface through the case or jacket surrounding it whereby such rolling surface is left free as regards vertical movement from the mechanism operating it."

The Respondent's patent being, not for a new machine, but for improvements upon the mechanism of an old and known machine, his exclusive right cannot be permitted to exceed the exact terms of his specification.

Assuming that the words "case or jacket," in the claim just quoted, mean the case which their Lordships have already described, it appears to them to be clear that the Appellants' machine does not violate the exclusive privilege of the Respondent. No motion is transmitted to the Appellants' rolling table through that case; and, the table has not free play in any direction, although it may be vertically raised or lowered, when requisite, by means of mechanism introduced for that purpose by the Appellants.

The Respondent, therefore, cannot succeed in this action, unless he can show, that, upon a fair construction of his specification, the words "case or jacket," include, not only the enveloping case already described, but the whole stage or framework of the upper table, directly connected with the shaft. If that were what the Respondent really meant, his claim would hardly cover the Appellants' arrangement; because, in it, the rolling surface is not, in any proper sense, "left free as regards vertical movement from the mechanism operating it." But that the Respondent had no such meaning in view is,

in their Lordships' opinion, clearly apparent from the terms of the specification, taken in connection with the drawings to which it refers.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgments appealed from, and to dismiss the Respondent's suit, with costs in both Courts below. The Respondent must bear the costs of this appeal.

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