

was novelty and merit, and Romer was upset; but as the claim did not mention the words "dilute solution" sufficiently clear, judgment was given on that technical point.

155. *Dr. Fitchett.*] Did you commence an independent action to amend, or was the application part of the original proceedings?—The appeal was in favour of the company. It was the one result.

156. Was the result by virtue of a subsequent action?—As part of the case.

157. *Dr. Findlay.*] The application was made at the time for permission to take it in Chambers. As a matter of law the application must be made to the Judge who heard the case.

158. *Dr. Fitchett.*] I should like the point to be made clear to the Committee?—Application was made at the conclusion of the case for leave to apply to the Comptroller to amend, in view of the fact that the Judges thought the patent was a good one, and that the Chief Judge said, "We regret that this formal defect makes against the company." The following is the judgment:—

But still there remains the question as to what is the true reading of the specification with claim No. 1 in it. Sir Richard Webster argued that claim No. 1, with the words at the end "substantially as hereinbefore described," limited that claim to the quantity of cyanide of potassium to be used in the solution to be applied to the ore in the same way as claim 2 did, and he argued that claim 2 was inserted as being only applicable to the richer ores mentioned in the specification, and that in neither claim was the use of *any* solution of cyanide of potassium at large, claimed. We cannot read the specification in this way. We would if we could; but we cannot do so. It appears to us that claims 1 and 2 are independent claims having application to the whole specification, the first making claim for the use of any cyanide of potassium in solution irrespective of amount substantially as therein described, and the second making claim for the use of a dilute solution containing a specified quantity of cyanide of potassium substantially as therein described. It appears to us impossible to discard either the one or the other, or to hold that both mean the same thing, or that claim 1 applies to one part of the specification and claim 2 to another; for this, in our judgment, is not the true construction of the specification as framed. If the first claim had been disclaimed or omitted, we should not have been faced with the difficulty we are, but as it is in the specification we are unable to read it as the plaintiffs desire to do; and for this reason, and for this alone, we must, with reluctance, give judgment for the defendants and dismiss this appeal with costs.

*Mr. Moulton:* Your Lordships have found for the plaintiffs on the great bulk of the issues. The costs of the issues that you have found in favour of the plaintiffs, will, I presume, be the plaintiffs'.

*Lord Justice A. L. Smith:* You ought to have all the costs about infringement.

*Dr. Findlay:* Technically we have a perfect patent.

159. *Dr. Fitchett.*] Was the application contested?—Yes.

160. And by the same counsel?—Yes.

161. And you say the effect of the amendment is to perfect the patent?—Yes.

FRIDAY, 26TH NOVEMBER, 1897.

DR. FINDLAY examined.

1. *The Chairman.*] Do you desire to supplement anything you have already said in reference to the patent rights of this process?—Yes. I felt what I said last was rather fragmentary, and to some members a little unintelligible. As I have had the litigation before me for the last few years I can place the facts before the Committee as fairly as any one. I do not propose to give any legal opinion, but only the position in which the company is declared to be by the English Court of Appeal. There seems to be a doubt in the minds of one or two members as to what was the real point decided in England, that, of course, being the basis of the company's legal position here. The patent was filed in England in 1888, but on the 19th October, 1887, the MacArthur-Forrest people had filed their provisional specification, and on the 16th July, 1888, the complete specification was filed. In 1893 C. M. Pielsticker and T. G. Bowick erected a cyanide plant in England for the treatment of ores by cyanide; and on the 28th July, 1893, something over five years after the patent was registered, an action was brought by the Cassel Company against these people for infringement. It seemed quite clear last day that the exact nature of that proceeding was not understood by the Committee. I have here a certified copy of the pleadings in the action. The statement of claim of the plaintiffs was that, as the Cassel Company claim that they are the registered proprietors of this patent, the defendants are infringing the process of cyanide in solution for the treating of ores. I propose to show you shortly what was really at issue in the action. The claim sets out that the defendants had infringed the Cassel Company's patent, and the reply made was, first, that the invention was not subject-matter for a patent at all, the specification was not sufficient, the alleged invention was no invention capable of supporting the patent, that the invention was not new, that the invention had not novelty—in other words, the validity of the patent was brought at issue. The whole of the literature known to the world was in vogue for the purpose of upsetting this patent, even William Skey's articles in the "Transactions of the New Zealand Institute" were brought in evidence, and the whole of the information known to chemical science was in vogue to show the patent was invalid. The case passed through the Divisional Court and on to the Court of Appeal, before Lord Justice Smith, Lord Halsbury, and Lord Justice Lindley. It was argued there by all the strongest patent lawyers in the world, the case occupying thirteen days. There was not a chemist of great eminence who was not called to give evidence. A few of these were Lord Kelvin, Professor Austen, Professor Crookes. In fact, the whole knowledge of chemical science was invoked to show whether or not this was a real invention and a meritorious patent. Now, it is impossible to understand the decision in England unless one knows the technical ruling in the Patent Courts. After a man has discovered some new thing he has got to frame a specification embodying his alleged discovery. Now, it is difficult to frame a specification that will stand the test of the ingenuity of the greatest lawyers in England to find a hole in it. It is just as difficult to draw a circle without the aid of a compass. This difficulty, it will be seen, created a great hardship amongst many of the most meritorious patents that were upset on technical grounds, and fifty years ago a rule was introduced permitting the meritorious patentee to amend the difficulty in his specification. That law is the law in England now. It simply means that you may amend your specification if you really only remove the technical objection; you must not extend it, but remove the technical objection by application to the Registrar. Shortly put, supposing a