

baser metals as a residue; and yet the defendants' witness, Mr. Vautin, as also Mr. Mactear, cite Dixon's paper as possibly the best publication they have to show what they want to establish as regards prior general knowledge. In our opinion, this paper of Dixon is cogent evidence in favour of the plaintiffs, and equally so against the defendants." This shows that the Court found that the patent had the merit of novelty and utility. Says the Judge: "Novelty and utility being established, it goes some way, at any rate, towards carrying invention. To see if there was invention, we turn to Mr. MacArthur's evidence (it is the first time we have alluded to it, simply because it is a party to the cause, though it is most important upon many parts of the case), where he describes the researches he made before he hit upon that for which he was seeking. Professor Dewar points to the fact that in nature the conditions are so complex that the question could only be solved by experiment and trial; and Lord Kelvin gave evidence to the like effect. Mr. Mactear, called by the defendants, under cross-examination as to the properties of cyanide of potassium, said: 'Cyanide-of-potassium solution is of such a peculiar nature that I do not think any chemist in the present day knows its composition or knows the reactions taking place within it, and the knowledge of it is purely experimental,' which is entirely in accordance with the plaintiffs' evidence upon this point. We would point out that the invention consists not merely in discovering that cyanide of potassium can be used to extract gold from its ore, but in showing the public the best practical method of doing it by leaving the baser metals behind, which had never occurred to any one before. We cannot doubt that, upon the evidence given in his case, of which we have only given typical extracts, if the plaintiffs' specification is to be read as contended for by them, there is ample novelty and meritorious invention in the discovery." I think I have previously mentioned the troubles which had beset Mr. MacArthur, and I think the whole thing may be summarised in the words of the Judge: "In our judgment, the plaintiffs' invention as claimed by his second claim has novelty, invention, and utility; it has not been anticipated, and it has been infringed." It may be asked, if the Court found all these things in favour of the plaintiffs, why it is that they were defeated; the reason is found in the fact that a technical defect saved the defendants in this action for infringement. The reasons are explained in quite a few lines: "But there still remains the questions 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 only inserted as being 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 be 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." Well, that was the position in England. Leave was given to the company to apply to amend. This then went to the Comptroller-General, and after a strong contest he granted the amendment on the day of 1895. On the 1st February, 1888, we filed our specification in New Zealand. After we obtained our amendment in England we immediately applied to amend in this colony, and thirty days after our application the Government intervened, and prevented a grant of the amendment in the usual course by filing a petition for the revocation of the patent. We applied to the Chief Justice, and he suspended the petition until we had applied to the Registrar for leave to amend. The Registrar refused us leave to amend, and an appeal was then made to Mr. Justice Edwards. The case was really fought over again, as the whole matter was at issue. Mr. Justice Edwards reserved judgment, and then found us entitled to our amendment. If Mr. Justice Edwards's opinion stands, we are in exactly the same position as in England. It is two years last May since this litigation began in New Zealand, and the costs of the company have been £3,000, and the costs of the Government not much less. And then we have only got to the amendment; the petition for revocation is still unheard. If the Government are going to appeal against Mr. Justice Edwards's decision, that appeal cannot be heard till April next. If they succeed they have still got to go on with the petition for revocation, which would have to be heard in the Supreme Court, and could not be heard before next June. In that case it would be finished at the end of the year. The appeal from that action to the Court of Appeal would not be heard till April, 1898. Then, the appeal would have to go Home to the Privy Council, and it is known that the average time to get a decision of the Privy Council in England is from eighteen months to two years. The result would be we would get our final judgment in 1901, and by that time probably £15,000 would have been spent in costs. As Mr. Allen puts it to Mr. Greenway, it is plain till this is settled we cannot expect to obtain our royalties, because infringers will take shelter behind the Government. If we maintain our present legal position against the Government it would be fully four years before we could assert our rights. We have had to find money for the appeal, and if the Government are going to allow this litigation to go on, it will cost the Government as much as they are going to pay for the patent now. It is a matter for the Law Officers of the Crown to say whether the legal position I take up is correct. We have got our legal position absolutely established in England, and in New Zealand it is the same if Mr. Justice Edwards's judgment stands.