IN THE HIGH COURT OF JUDICATURE AT BOMBAY

DATED: 03.04.1935

CORAM

THE HONOURABLE MR. JUSTICE B.J. WADIA

Lallubhai Chakubhai Jariwala ... Plaintiff

Vs.

Chimanlal Chunilal and Co. ... Defendants

JUDGMENT

B.J. Wadia, J.

1. This is a patent action. Plaintiff is the holder of a Patent No. 18164 dated July 4, 1931, for an improved process of treating dried fruits, the process being particularly applicable to the treatment of dried shell almonds and betel-nuts. Defendants are betel-nut merchants, and the plaintiff's case is that since about April-May, 1933, defendants have been using his process, or substantially the same process, for the treatment of betel-nuts, and have been selling betel-nuts in the market treated by that process. He filed the suit >on April 3, 1934, alleging that the defendants are infringing his patent rights, and prays for an injunction against the defendants and for an account of the profits made by them, or, in the alternative, for damages in respect of the infringement. Defendants deny the validity of the patent on various grounds, and they also deny the infringement. Several issues have been raised. Plaintiff led his evidence first. He was examined and cross-examined in full detail and his counsel closed his case, reserving his right to call evidence in rebuttal, if necessary. Defendants' counsel thereupon argued that even assuming everything else in the plaintiff's favour, plaintiff had failed to prove any infringement on the evidence led by him, and that the defendants had, therefore, no ease to meet, or, as it is said in England, there was

no case to go to the jury. Counsel, therefore, applied that the plaintiff might be non-suited at this stage and his suit dismissed.

2. The onus of proving the infringement is undoubtedly on the plaintiff. It has been held that the question of infringement is a mixed question of law and fact.. Plaintiffs counsel, in his opening, referred to Sowkabai v. Sir Tuttojirao Holkar (1931) 34 Bom. L.R. 6, and argued that this case could not be tried piecemeal, but in my opinion that case has no application here, because no issue has been tried as a preliminary issue. In fact, the plaintiff has led all his evidence on the issues, the burden of proof of which was upon him, and he has closed his case. In order, however, to determine the position arising at this stage of the trial, it is necessary to consider what the plaintiff has got to prove. This being a suit for infringement of the patent, the plaintiff must, under Section 29 of the Indian Patents and Designs Act (II of 1911), prove that during the continuance of the patent acquired by him under the Act in respect of an invention the defendants have made, sold or used the invention without his license or counterfeited it or imitated it. According also to Halsbury, Vol. XXII, para. 426, at p. 210, a patent may be infringed in several ways, one of which is by using the invention or any colourable imitation thereof in the manufacture of articles or by putting the invention in practice in any other way. The plaintiff, therefore, has got to prove that his process has been counterfeited or imitated by the defendants. It is necessary for him to give the particulars of the breaches constituting the alleged infringement of his patent rights, and he has given those particulars in exhibit B to the plaint. It has been stated in paragraph 3 of the plaint that the plaintiff craves liberty to give further and better particulars of the breaches, if necessary, after obtaining discovery, but he has not taken any steps to apply for the same, and the particulars he relies on are only those contained in exhibit B to the plaint. It may be mentioned here that these particulars are not put in proper form as they consist partly of particulars and partly also of comment. But discarding the comment and taking the particulars strictly so called, the plaintiff has alleged that compared to his process the material part of the defendants' process is as

described by him in paras, (a), (b) and (c) of exhibit B. The defendants' process of treating betel-nuts is described by them in exhibit 2 to the written statement in all its component parts. Plaintiff in his cross-examination stated that he did not accept the whole of the description of that process in exhibit 2 as correct. It was, therefore, argued by defendants' counsel that on the ground that plaintiff had not accepted the whole of the description of their process, and also on the ground that exhibit 2 had not been tendered by the plaintiff as an admission by the defendants of what their process was, plaintiff had really failed to prove any infringement, because he could not ask the Court to hold that a process which had not been proved as being the defendants' process was a colourable imitation of his own. In my opinion it was not necessary for the plaintiffs counsel to tender exhibit 2' as the defendants' admission. Exhibit 2 is annexed to the defendants written statement, and it is for the Court to consider whether the description of that process is consistent or inconsistent with the infringement complained of by .^ the plaintiff. It would have been otherwise if the plaintiff had said that exhibit 2 was not the defendants' process at all, but that is not the case here. The plaintiff had also in his attorneys' letter before the date of the suit alleged that the defendants were using his patented process, and the defendants by their attorneys' reply said that their process was different from, and not an imitation colourable or otherwise of, the plaintiff's process.

3. What is the evidence as to the alleged infringement on which the defendants ask the Court that the plaintiff should be non-suited at this stage of the trial? When the plaint was filed and the particulars of the breaches were annexed, a correct description of the defendants' process was not before the plaintiff, and he, therefore, stated the details of comparison on information. Plaintiff treats his goods in a solution of bleaching powder and the defendants do the same. He further alleges that after treating the goods with bleaching powder he treats them in a solution of acetic acid, whereas defendants use a solution of muriatic acid, and that muriatic acid is only a chemical substitute for acetic acid. It is lastly stated that after treating the goods in the manner aforesaid both he and the

defendants treat the same in sulphur dioxide under pressure. These particulars are annexed to paragraph 3 of his plaint. Defendants plead to paragraph 3 in paragraph 19 of their written statement. They say that the particulars are incorrect, but they do not clearly state how they are incorrect. If the defendants had not annexed a description of their process to their written statement, the plaintiff could not have asked the Court to pass a decree in his favour because of the alleged breaches which are stated on information and belief. He could have, however, asked for further inspection in connection with the defendants' process. But that was obviated by the description of the defendants' process annexed to their written statement. The plaintiff has at the end of his examination-in-chief compared the two processes, and stated what difference there is between the two. The plaintiff uses a three per cent, solution of bleaching powder ; the defendants use a four and a half per cent, solution. Plaintiff has stated that any variation between three to six per cent, could not make any material difference. Plaintiff was first using hydrochloric acid from which he changed to acetic acid. Defendants are using muriatic acid, and the plaintiff has stated that acetic acid and muriatic acid have the same chemical effect. On that, he has not been cross-examined, and I take it that there is no difference between the two for the washing away of the calcium deposited on the goods. The plaintiff has stated that he treats the goods finally in sulphur dioxide under pressure, and he alleges in exhibit B that according to his information the defendants did the same. Defendants in part 8 of exhibit 2 say that they treat the goods with sulphur fumes in a closed chamber according to the old method of burning sulphur in a " sigree ", leaving the goods exposed to the fumes for eight hours and more. It was argued on behalf of the defendants that the plaintiff had not specifically stated that the closed chamber used by the defendans was a pressure-tight chamber as used by him but in his examination-in-chief he said that when goods are treated with sulphur fumes in a closed chamber as described in part 8 to exhibit 2, some pressure on the goods would be generated. In his cross-examination on February 28 last he first stated that part 8 to exhibit 2 as described by the defendants

indicates that the goods have been subjected to some pressure, but further down he said that if the description of the defendants' process in part 8 to exhibit 2 to the written statement was correct, there would not be pressure. These are inconsistent statements, as they stand. He has, however, after comparing exhibit 2 with his own process, said that the particulars in exhibit B to the plaint contain the whole of his complaint as regards the alleged infringement. It cannot be said that this last statement is on information only, because he has compared the component parts of his process with the component parts of the defendants' process as described in exhibit 2 to the written statement. Plaintiff's description of the comparison between the two may or may not be correct, but the two processes are now before the Court, and it is for the Court to say whether the plaintiff has made out a prima facie case of infringement. In my opinion this is a question which can reasonably be argued, and I cannot hold at this stage that the plaintiff should be non-' suited. I wish to make it clear that I am not deciding on the question of infringement one way or the other. I am not holding that the plaintiff has proved the infringement. All that I hold is that there is some evidence of infringement which the defendants must meet. The case must, therefore/ proceed further on all the issues, and I order accordingly.

4. April 3. I have in my preliminary judgment delivered on March 4, 1935, stated the main points of contention between the parties. The defendants have raised various defences as to the validity of the patent, and these have been crystallised in the different issues raised on their behalf. Before, however, I deal with the contentions of the parties, it is necessary to set out a few introductory facts. Plaintiff is an analytical and consulting chemist. He studied in Germany from 1922 to 1927 and took the degree of Doctor of Science of the University of Frankfort in May, 1927. In the beginning of that year he joined one Girdharlal Shah in partnership under the name and style of Jariwala Shah & Co., and after his return from Germany the firm commenced doing business in drugs, cumin seeds, and heavy chemicals. About the end of the year they began importing dried fruits as well. In March-April, 1928, the firm started a manufacturing

department which was subsequently known as the Jasco Chemical and Allied Industries Company in which they produced liquorice, styrax and other things. The business was carried on in Apollo Street, Fort, where the plaintiff had also a small laboratory. In or about October-November, 1929, the firm of Harakhchand Shivji & Co., who are large dealers in dried fruits, approached the plaintiff, and they asked him whether he knew the process of bleaching almonds and betel-nuts white, as; white almonds and betel-nuts fetched a better price in the market. It was then agreed between them and the plaintiff that plaintiff was to find out a commercially successful process for the purpose, and to use it when found exclusively for Harakhchand Shivji & Co., so long as they paid him at the rate of Rs. 300 per month. Plaintiff thereupon commenced experimenting in his laboratory in order to find out such a process. In or about January or February, 1930, Jasco Co, was sold to the defendants, and one Varmani, who was a chemist in the employ of Jariwala Shah & Co., joined the defendants' service. Plaintiff supervised the work of Jasco Co. at Mazagaon for the defendants, without any remuneration, and he also continued experimenting for the process in his laboratory which was shifted from the Fort to a room near Jasco Co.'s factory at Mazagaon. It was alleged by the defendants' partner Chunilal Nathubhar and by Girdharlal Shah that both Girdharlal and the plaintiff became partners with the defendants after Jasco Co. was sold to the defendants, but this is denied by the plaintiff.

5. In or about April, 1930, Harakhchand Shivji & Co. put up a factory near the factory of Jasco Co. at Mazagaon for the purpose of bleaching almonds and betel-nuts, as the plaintiff had by that time found out a tentative process. He worked that process in the factory of Harakhchand Shivji & Co., from about April-May till July-August, 1930, and they paid him Rs. 300 per month according to his agreement for the months of April, May, June and July, 1930. The tentative process, however, did not prove successful, as the almonds turned mouldy after a time and the taste of the kernel was also affected, with the result that the factory had to be closed. Plaintiff continued experimenting arid found

out a suitable process for bleaching almonds in or about November, 1930, and for bleaching betel-nuts about February, 1931. In or about the month of October, 1930, the firm of Jariwala Shah & Co. was dissolved, as disputes arose between the partners, and Girdharlal Shah left off attending the business. In November, 1930, the factory of Harakhchand Shivji & Co. started working again, and almonds as well as betel-nuts were bleached according to the plaintiff's process, and sold by Harakhchand Shivji & Co. in the market. Thereafter the plaintiff applied for a patent for his process on July 4, 1931, and the application was accepted on October 27, 1931. The patent was sealed on April 27, 1932, with effect from the date of the application. From November, 1930, when the factory was restarted, Harakhchand Shivji & Co. commenced paying Rs. 300 per month to the plaintiff again according to the original agreement, and the plaintiff received this amount till about October, 1931, when he was informed that one Shamaldas Shah, the brother of his former partner Girdharlal, had installed a new plant for bleaching dried fruits according to a process which the plaintiff alleged was an infringement of his. Plaintiff thereupon filed a suit in this Court against Shamaldas, being Suit No. 940 of 1932, in June 1932, for an injunction to restrain him from infringing his patent rights. The suit was heard before Broomfield J., and was dismissed. The plaintiff thereupon filed an appeal, and the judgment of the Court below was reversed by the Appeal Court in March, 1934. It granted the injunction and certified the validity of the patent. The judgment of the Appeal Court is reported in Lallubhai v. Shamaldas (1934) 36 Bom. L.R. 881. Defendant in that suit has filed an appeal to the Privy Council, and the appeal is still pending. The present suit was filed on April 3, 1934. The plaintiff alleges that the process used by the defendants for bleaching betel-nuts is a colourable imitation of his own, and that they are thereby infringing his patent rights.

6. The patent is in respect of a process which has been described in the specification annexed to the grant of the Letters Patent. The specification is headed " Improvements in and relating to the treatment of dried fruits ", and it

particularly describes and ascertains the nature of the plaintiff's invention and the manner in which the same is to be performed. The invention consists in soaking the dried fruits in a one per cent, solution of sulphuric acid for about fifteen minutes, followed by an immersion of the soaked fruit in a three per cent, solution of bleaching powder in which it is frequently stirred for about ten minutes, and subsequently in a two per cent, solution of acetic acid in which it is again stirred for about twenty-five minutes. The fruit is then washed with clean water and subjected to the action of sulphur dioxide fumes or gas in a closed chamber under pressure of 5 lbs. to a square inch for about an hour, The sulphur dioxide fumes are forced into the chamber after being generated in an oven by burning sulphur in it, the oven being located outside the chamber. The chamber is fitted with a chimney in the roof with a valve at the upper outlet. After the fruit is thus subjected to pressure the valve is opened, and the fumes allowed to escape. The fruit is then exposed for about half an hour to hot air blown into the chamber in order to remove the moisture on the fruit. The chamber is then opened, and the fruit removed and placed in the open air for about an hour for being dried before it is filled in bags for the market. At first the sulphur dioxide fumes were injected into the closed chamber by steam, but later on by air. This part of the process is called qasification. The specification also contains a description of the old method which was employed for treating dried fruits with sulphur fumes. The fumes were generated by burning powdered sulphur in ' sigrees' or coal stoves put into a chamber, the door of which was closed and made smoke-tight by applying ' cowdung' to the joints, the almonds remaining in contact with the sulphur smoke thus generated for about eight hours. At the foot of the specification is a statement of the plaintiff's claims, as it is provided by Section 4(3) of the Act that the specification must commence with a title and end with a distinct statement of the invention claimed. There are three claiming clauses at the end of the specification. The first clause describes the process of treating dried fruits by the use of sulphuric acid in solution followed by an immersion in bleaching powder and subsequently in a solution of acetic acid and

finally subjecting the goods to the action of sulphur dioxide gas in a closed chamber for about an hour. The second clause mentions the treatment of dried fruits by the chemical solutions referred to in Claim No. 1 "supplemented by treatment with sulphur dioxide and hot air under pressure in a closed chamber - substantially as herein described". The words, "substantially as herein described " exercise a limiting effect on the claim by tying it more closely to the preceding description in the body of the specification. It may be here noted that the period of treatment inside the closed chamber under the second claiming clause is the same, namely, about an hour. The third clause describes the apparatus used after saturation of the goods in the chemical solutions mentioned in Claim No. 1, consisting of a sealed chamber with a chimney and an outlet valve and a sulphur burning oven and injector. The monopoly is thus denned by the claims, and the monopoly is the consideration which the inventor seeks and secures.

7. The problem before the plaintiff was to find out a commercially successful process for bleaching almonds and betel-nuts white without in any way spoiling the kernel or affecting its taste, and the plaintiff claims that he has found out, and is, therefore, the first and true inventor of, such a process. Is that process, as described in the specification, an invention within the meaning of the Act ? The question was answered in the affirmative by the Appeal Court in Lallubhai v, Shamaldas. That judgment cannot create, an estoppel as against the defendants. But the validity of the patent has to be considered anew, as various additional defences have been taken and materials put forward by the defendants which were absent in the earlier suit. Section 2 (8) defines invention as meaning " any manner of new manufacture", and includes an improvement and an alleged invention. Section 2 (10) provides that' manufacture' includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture. 'Manufacture, therefore, comprehends not only the production of an article but also the means or method of producing it, so that a new process or the improvement of an old process can be a manufacture within the meaning of the Act. The word ' art' is sometimes used as an equivalent

of manufacture. The subject-matter of a patent must be a new manufacture or art, for if there is no new manufacture or art, there is no subject-matter and therefore no invention. The question whether there is an invention is a question of fact in each case. A new and useful application of an old principle may be good subject-matter. An improvement on something known may also afford, subject-matter; so also a new combination of different matters already known. A patentable combination is one in which the component elements are so combined as to produce a new result or to arrive at an old result in a better or more expeditious or more -economical manner. If the result produced by the combination is either a new article or a better or a cheaper article than before, the combination may afford subject-matter for a patent. The mere collocation of two or more things, however, without some exercise of the inventive faculty in combining them is not subject-matter for a patent. In the case of a combination the inventor may have taken a great many things which are common knowledge and acted on a number of principles which are well-known. If he has tried to see which of them when combined produce a new and useful result, and if he succeeds in ascertaining that such a result is arrived at by a particular combination, the combination will, generally speaking, afford subject-matter for a patent.

8. The next question for consideration is, whether the plaintiff claims his patent for a new combination made up of its component parts, sometimes called the subordinate integers, or whether the first claim in the specification is a separate invention by itself which has also been patented and therefore entitled to protection. To use the language of the Lord Chancellor in Clark v. Adie (1877) 2 App. Cas. 315, 321, is the first claim " an invention which is a subordinate integer in the larger invention " ? It is incumbent on the patentee to particularly describe and ascertain the nature of his invention in the specification, as the ambit of his invention is circumscribed by the claims. The construction of a specification is a matter of law and is for the Court. It must be construed as a whole. The claiming clauses are an important part of the specification and they must be fairly -construed in reference not only to the specification but also to the

title. The proper way to read specification is, as was pointed out in Arnold v. Bradbury (1871) L.R. 6 Ch. App. 706, 712, not to read the claims first and then see what the full description of the invention is, but first to read the description of the invention, in order that the mind may be prepared for what it is that the invention is to be claimed, for the patentee cannot claim more than he desires; to patent. Plaintiff's counsel in his closing address argued that the plaintiff claimed patent not only for the combination but for the first claim as a separate invention by Itself. He did not, however, say so in his opening, and that is not the case made out in the plaint, nor does it appear from the plaintiff's evidence. It has been pointed out by Lord Esher, M.R., in Parkinson v. Simon (1894) 11 R.P.C 493 that as far as possible the claims must be so construed as to give an effective meaning to each of them, but the specification and the claims must be looked at and construed together in order to see whether there is a real and substantial difference between the-claims, or whether one is practically a repetition of the other. The specification itself describes one invention only in its separate parts, and the manner in which, it is to be performed. The invention is not described in a way which upon the ordinary rules of construction makes it clear that the plaintiff as the patentee: has had in his mind and intended to claim protection for the subordinate integers also, as being in themselves matters which ought properly to form the subject of a patent of invention : see Clark v. Adie (1877) 2 App. Cas. 315, 321. If that was his intention,, he must, as pointed out by the Lord Chief Justice in Harrison Patents Company Ld. v. W. N. Nicholson & Sons, Ld. (1908) 25 R.P.C. 393, 404, tell the word so on the face of his specification. A specification must be construed impartially, and the Court is generally slow to construe it against the patentee. But the construction must not only be a ' benevolent' but a reasonable one. On reading the specification and the claims together, I cannot say that the first claim has been clearly put forward as a separate invention by itself. It refers to the treatment of dried fruit by means of the chemical solutions mentioned in it and then subjecting them to the action of sulphur dioxide gas in a closed chamber for about an hour. The second claim

refers to the treatment of dried fruit by means of the chemical solutions mentioned in Claim No. 1, " supplemented by treatment with sulphur dioxide and hot air under pressure in a closed chamber substantially as herein; described". It was argued that the closed chamber contemplated in Claim No. 1 is distinct from the closed chamber contemplated in Claim No. 2, and" that the chamber in Claim No. 1 may or may not be pressure-tight, whereas the chamber in Claim No. 2 is such. If that was so, it ought to appear clearly from the specification, but in the specification the plaintiff's invention has been described as consisting in treating dried fruits by means of chemical solutions and then placing the fruit in a closed chamber and treating it under pressure with sulphur dioxide and hot air. That closed chamber is the chamber referred to in Claim No. 2. In my opinion Claim No. 2 is the real claim and the-real object of the plaintiff's patent. This also appears from Claim No. 3 which-describes the apparatus for treating dried fruit in a closed chamber which is pressure-tight. In the plaint the plaintiff speaks of one invention only and complains of its infringement by a colourable imitation. The breaches complained of in exhibit B to the plaint are the particulars of the alleged infringement of that process. That infringement is his definite cause of action against the defendants. Having specified it, he is bound to prove it, and it is by that cause of action that he must stand or fall. Plaintiff refers in paragraph 3 of the plaint to the " pith and essence " of his process but he has not described what it is. He has, however, in his cross-examination stated that the pith and" essence of his process is the combination of the use of bleaching powder and sulphur dioxide under pressure, and to make his .meaning still more clear he has also stated that his whole process is a bleaching process in two parts, viz., treatment with bleaching powder, and with sulphur dioxide under pressure. Further down in his cross-examination he stated that the merit of his process consisted in reducing the gasification to one hour, and this shortness of time he attributed to the use of pressure. In my opinion it is not enough to say that each one of the claims is a separate invention by itself because there are three claiming clauses ; nor can it be said that the plaintiff has

definitely and clearly alleged in the plaint that Claim No. 1 is a separate invention merely because the whole specification is annexed to the plaint. It is also not enough in order to make Claim No. 1 a separate invention, to say that the use of bleaching powder in combination with sulphur dioxide was not known in British India for treating almonds, betel-nuts, etc. It is not this combination that is claimed as a new invention and patented, but the combination of bleaching powder and sulphur dioxide under pressure. The specification was also construed in the earlier suit, Lallubhai v. Shamaldas (1934) 36 Bom. L.R. 881, and both the learned Judges of the Appeal Court pointed out that the plaintiff's ingenuity and skill consisted in combining substances more or less previously known in a particular manner and in a particular sequence so as to prepare and produce an article which had not been produced before, and in overcoming the difficulties which existed even after a crude application of some of those substances previously. In arriving at my conclusion I do not rely merely on the judgment of the Appeal Court, but upon the specification itself and the claims, and the plaintiff's case as made out, both in the plaint and in his evidence. It was not put to the plaintiff, nor did he suggest in his evidence, that Claim No. 1 was a separate invention by itself. It is the combination that is claimed as an invention, and it is the combination that in my opinion was patented.

9. The two features necessary to the validity of a patent are novelty and utility, but the real test is the novelty of the invention. Novelty is essential, for otherwise there would be no benefit given to the public and consequently no consideration moving from the patentee. The plea of want of subject-matter is included in the plea of want of novelty. Under Section 38 of the Act an invention shall be deemed a new invention (a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India or made publicly known in any part of British India, and (b) if the inventor has not by secret or experimental user made direct or indirect profits from his invention in excess of what the Court may deem reasonable in consideration of all the

circumstances of the case. There must, therefore, be an absence of prior publication or of prior public user ; and if the user is secret or experimental, the profits made by the inventor from his invention must not be excessive. These are the points which are covered by issues 8 to 11 in the suit. According to the decision of the Appeal Court in Lallubhai v. Shamaldas there is a distinction under the section between public user and private user only, but the Appeal Court has not distinguished between public user of the invention by working it commercially and public user of the invention from the point of view of publication. The prior public user of the invention for the purposes of trade may, in certain cases defeat a patent for want of novelty quite apart from the question of publication. It is pointed out by the Appeal Court at page 886 that if the patentee treats the almonds or betel-nuts by his process openly so that anybody can come and see what the process is, there will be a public user of the process which will disentitle him from applying for Letters Patent. That is a public user of the invention from the point of view of publication or making it publicly known. There is an issue in this suit as to open manufacture by the plaintiff before the date of his application for the patent in July, 1931. Plaintiff was cross-examined, and defendants have led some evidence, about it. It was argued on behalf of the defendants that the plaintiff had made his process publicly known by working it in the presence of persons who were in the position of outsiders qua the process and under no injunction as to secrecy, that the evidence showed that no special precautions were taken by the plaintiff, nor was any watchman engaged for the purposes of keeping persons out, that various persons walked in and out of the factory of Harakhchand Shivji & Go. whenever they wanted, and that even as against Varmani there was an injunction as to secrecy only after December, 1930, when the plaintiff went out of Bombay for his marriage, whereas the plaintiff had even before then revealed the process to him. Defendants also rely on a statement made in the affidavit of Premji Khetsey, who was an assistant manager of the factory. The affidavit was made in the other suit on June 27, 1932, and I held the statement to be relevant as the plaintiff stated

that the affidavit was made on his behalf and he had adopted the statements in the affidavit as his own. The particular statement relied on was that it was part of Premji's duty to supervise the bleaching work in the factory under the plaintiff's directions. He has, however, not been called, and I do not attach much value to such a statement. Moreover, it is not clear as to what part of the bleaching work was supervised by him. Neither he nor any of the other workmen in the factory was a chemist. Varmani was a chemist, but he was really helping the plaintiff, and the process was shown to him in confidence, so that he stood in confidential relationship with the inventor. The inventor is entitled to ask his friends confidentially to help him to advise him, provided they are not so many that they may be regarded a portion of the public. Chunilal Nathubhai, one of the defendant's partners, who was called, said that he used to go almost every day to the factory of Harakhchand Shivji & Co. for a few hours and saw the plaintiff working at his process. He saw the plaintiff throwing in some sort of acid in the vats in which the goods were treated, but he could not say what acid it was, nor had he any idea of the chemical solutions used. Girdharlal Shah, who was once the plaintiff's partner in Jariwala Shah & Co. and is now in the employ of Chunilal Nathubhai, seemed to me to be a prejudiced witness, and I do not rely on his evidence. I do not believe him when he said that he learnt the whole of the plaintiff's process when he went to see the plaintiff at the factory. In para 15 of the written statement the defendants alleged that the plaintiff made known and published his process to the persons and employees of Jasco Co. and to the partners and servants of Harakhchand Shivji & Co, before the date of his application for the patent. No one of them has been called, nor has anyone been called to say that he learnt the plaintiff's process by going to or working in the factory of Harakhchand Shivji & Co. The workmen under the plaintiff were ordinary coolies paid from day to day, and none of them has been called to prove that he knew of the plaintiff's method. It is quite a different thing if, as in Tie Adamsons Patent (1856) 6 De G.M. & G. 420, thousands of persons have had the opportunity of seeing a new apparatus at work for a period of four months, in

which case there is a Clear dedication to the public. Plaintiff, however, stated that the chemical solutions and mixtures were prepared by himself, that he. alone knew the weight of the bleaching powder he used for the purpose of the solution, and that no one was allowed to be present during the part of the process known as gasification. The fact that Harakhchand Shivji & Co. took steam, water and electric energy from Jasco Co. which was sold to the defendants is immaterial. There is not, in my opinion, sufficient and cogent evidence to establish that before the application plaintiff had made his process ^ publicly known, nor any reason for doubting the plaintiff's word that secrecy was observed. Nor has it been shown that betel-nuts were treated "by other merchants according to the plaintiff's process before the date of the application.

10. The next point to consider is whether the plaintiff's invention has been anticipated by prior public knowledge, for it is clear that if the public has once become possessed of the knowledge of the invention before the date of the application, no patent subsequently granted will be valid. Has the patentee, therefore, added to the stock of public knowledge, or is what he has done a mere development of pre-existing knowledge relating to the subject-matter of the patent, such as a man skilled in a particular art or craft or trade to which the invention is related might be expected to make ? Plaintiff had to perform numerous experiments in order to arrive at the result he has obtained, and if such experiments were necessary for the purpose, the inference in his favour would be strong that such result was not obvious but constitutes a real addition to public knowledge. The inference is, however, rebuttable, for it is possible that in spite of the experiments an inventor may have done nothing more than rediscover what was old. It is, therefore, necessary to consider the state of the prior or pre-existing knowledge on the subject-matter of the patent. , Plaintiff has admitted that bleaching powder is a well-known bleaching agent and was used for bleaching jute, hemp and paper pulp, but not for bleaching dried fruits, before. He also stated that sulphur dioxide in gaseous form without pressure was also in use for bleaching dried fruits, and it was used under pressure for bleaching

woollen and cotton fabrics and paper pulp. A combination of bleaching powder and sulphur dioxide in solution was also in use for bleaching paper pulp. Defendants, on the other hand, say that the use of bleaching powder as a bleaching agent in the case of dried fruits was known long prior to the plaintiff's application and so also was the use of bleaching powder in combination with sulphur dioxide, and for that purpose they want to rely on certain earlier publications in documents as a form of anticipation which invalidates the patent subsequently granted. Two questions thereupon arise for consideration in connection with those earlier publications. Was there in the first place sufficient publication, and did the document or documents so published and relied upon furnish sufficient knowledge ? As to the sufficiency of the publication it is necessary that the publication of the knowledge must be within the realm, and so far as we are concerned, it must be a publication in British India. We have got to ascertain whether the public had access to these publications in British India in order to learn the knowledge they contained. It may not be necessary that members of the public should have actually read it. it is enough if the publication is accessible to the public without much trouble, e.g., if the document is to be found in the library of the Government Patent Office in Calcutta, or on the shelves of a public library in any known place in India, or of a library appertaining to an educational or scientific institution and easily accessible. With regard to the sufficiency of the knowledge, the earlier publication must give the requisite knowledge clearly, and it is not enough that it merely gives the means pi attaining such knowledge. It must give sufficient information to a workman skilled r in the particular art or craft in order to enable him to carry out the invention. How far that knowledge anticipates the new invention is again a question of fact depending on the facts and circumstances of each case. Even where the prior document and the present specification are identical or nearly identical in language, it does not necessarily follow that the Court must conclude that the first is an anticipation of the second, and often expert evidence is necessary to help the Court to consider what knowledge the prior publication

could have conveyed to the mind of a person who had not the knowledge given by the invention in dispute.

11. Defendants rely on the publication of a treatment of bleaching nuts, e.g., walnuts and other nuts, which is to be found in the right-hand corner of the second column at page 946 of a volume of over a thousand pages which was produced by one Robert Peters, the Superintendent of the Patent Office in Calcutta, in his de bene examination, and taken back. It is not certain, however, whether there was any index to the volume at all. The same treatment is mentioned at page 79 of volume 20 of the Chemical Abstracts for January to May, 1926, a bi-monthly American journal. The volume was produced by the Librarian of the Royal Institute of Science, and an extract was put in as exhibit 8A. He said that the library could be used by a bona fide research student or by anyone interested in science or a scientific publication on obtaining the permission of the Principal of the Institute. The be-monthly gives the summaries of all new important chemical processes all over the world. This particular treatment consists of immersing the nuts in a solution from which nascent chlorine is liberated, which is the same as using bleaching powder in solution, and then immersing the nuts in a solution of sulphur dioxide. Defendants have also annexed to their written statement an extract from volume 25 of the Chemical Abstracts for May 10 to August 10, 1931, for bleaching almonds. This volume was also produced by the same librarian, and the extract put in as exhibit 10. It refers to the Agricultural Gazette of New South Wales, and a copy of part 2 for February, 1931, from volume 42 of that Gazette was produced by the librarian of the Agricultural College, Poona. The original bound volume is missing from the library, but there is no doubt as to the genuineness of the copy that was produced and of the pages from it that were put in. This extract shows three methods by which almonds badly stained can be successfully treated. Defendants have also annexed an extract from the Journal of the Textile Institute for 1928 containing the precis of a specification of the English Patent No. 316265. Mr. Peters produced the entire specification in the de bene, and it was

put in as exhibit 5. Plaintiff's counsel complained that it had not been alleged that this entire specification was public knowledge, nor whether the Journal of the Textile Institute for 1928 was available to the public. Moreover the treatment is for bleaching jute, and hemp, and consists inter din in using a weak solution of chlorine and sulphur dioxide in solution or " other reducing agent containing sulphur and oxygen." Defendants lastly rely on an extract at page 3919 of volume 17 of the Chemical Abstracts for June to October, 1923. This was also produced ,by the Librarian of the Royal Institute of Science and the extract put in as exhibit 9. It deals with the treatment of paper pulp. The defendants called two scientific experts, one Dr. Korde who is a Doctor of Science with a German degree, and one Mr. Bamji who is a research student of chemistry in Bombay. Neither of them has worked out any of these processes which have been annexed to the defendants' written statement, and Dr. Korde admitted that it does not necessarily follow that merely because the use of bleaching powder as successful with jute or hemp it would be equally successful in the treatment of dried fruits, though he said he would make an attempt. It did not also according to him necessarily follow from the successful use of a chemical for one vegetable fibrous matter that the same chemical will be equally successful for another, nor is the effect of sulphur dioxide in solution necessarily the same as that of sulphur dioxide in gaseous form. The plaintiff called Dr. Kamat who is also a Ph. D. of Berlin in rebuttal, and he impressed me much more favourably by his answers than the expert witnesses called on behalf of the defendants. Dr. Kamat stated that he had performed experiments according to the processes relied on by the defendants and annexed to their written statement except where no working data were given. The samples of goods treated by these processes were produced by him in Court and exhibited, and he said that the results were not at all satisfactory, as the betel-nuts turned brownish after a time. According to him a method applied successfully to almonds may not be equally successful for betel-nuts. In his opinion the processes on which the defendants rely are not workable, and all that they showed was that efforts were made to bleach nuts and almonds,

jute, hemp and paper pulp with bleaching powder and sulphur dioxide in solution, A competent chemist who had ascertained the state of the existing knowledge from the publications could not have found out the plaintiff's process which was patented. It has been held in Hills v. Evans (1862) 31 L.J. Ch. 457, 468 that whatever is essential to the new invention must "be read out of the prior publication. If further information and further discovery are required and difficulties have to be overcome before the desired result is finally arrived at and embodied in a form which would serve the uses of mankind, it cannot be said that the prior publication is an anticipation of the new invention.

12. In my opinion, therefore, the defendants cannot rely upon these earlier publications as an anticipation. We have it in evidence that the plaintiff laboured long and almost continuously in his laboratory first in the Fort and then at Mazagaon. He performed sixty-five experiments on almonds and sixteen on betel-nuts, and kept a note of each of them in two note books written in German. The notes were made after completing each particular experiment. An attempt was made to discredit the notes by suggesting that they were subsequently made up for the suit, but there is no foundation for that suggestion. It is true that the note of the last experiment dated November 13, 1930, on 100 lbs. of betel-nuts is not accurate, for the plaintiff said that he started with 100 lbs. and ultimately experimented on 6 lbs. only, filling three bags with betel-nuts weighing 2 lbs. each. He said that there may be other small inaccuracies in his notes; but taking them as a whole their accuracy has not been seriously challenged. The experiments are spread over a year and show how the plaintiff varied the treatment from time to time and ultimately arrived at his final process, in November, 1930, with regard to almonds, and by the end of February, 1931, with regard to betel-nuts. In my opinion it cannot r be said that his process is a mere adaptation of known materials to uses analogous to those which have been applied before, involving no ingenuity, and therefore not capable of being the subject-matter of a patent. There was sufficient invention in the combination, and the combination has not been anticipated by prior publication.

13. The next question is, whether the plaintiff's invention has been anticipated by prior public user. Has it been publicly used by the plaintiff and/or by others before the date of the application ? Public user does not mean a user or exercise of the invention by the public, but a user or exercise in a public manner; and it is in every case a question of fact. If the invention is being put into practice before and at the date of the grant, the grant will not be for a new invention or manufacture, and this applies equally whether the invention is being practised by the patentee himself or by others. A use of the invention for the purposes of trade may constitute a prior user which invalidates the patent, and it has been held that the prior public sale of goods or articles treated according to the invention is a public user of the invention, for the sale is strong evidence that the user was really commercial and not experimental. In order, however, for the sale to constitute sufficient evidence of public user it should be open and in the ordinary way of business. Counsel argued that there was a prior public user by reason of the plaintiff allowing the firm of Harakhchand Shivji & Co. to put goods treated by his process on the market for sale as a part of their business. No record of these sales is forthcoming, and no one has been called by the plaintiff from Harakhchand Shivji & Co. ; but plaintiff stated in his evidence that his process was used for that firm in the ordinary course of their business, and he believes it is being used even now. The firm bleached on an average ten tons of almonds per month after November, 1930, and about one and a half tons of betel-nuts per month from March, 1931, which increased to four and a half tons per month from and after May, 1931. Plaintiff also said that he bleached as much as he was required to do, and he would have bleached even more, but did not, as Harakhchand Shivji & Co. were awaiting the results of the sales in the market. It was pointed out by the Appeal Court in the same judgment to which I have referred before that in numerous cases a sale of articles treated by the plaintiff's new process in open market might amount to a public user of the process, because the article might be of such a character that the secret of its manufacture could easily be ascertained and its sale would involve a disclosure of that secret

and thus amount to a public user of the process. That is, however, only a way of making the process publicly known, for a publication may take various forms, but the publication of the invention by sale of the. articles treated by it for the purposes of trade by the patentee or by others may constitute a prior user even if there is no publication. In Hudson, Scott & Sons, Ld. v. Barringer, Wallis and Manners Ld. (1905) 23 R.P.C. 79 rough and incomplete samples or specimens of tin-plate boxes were used, to obtain orders from intending customers, and though the method of the manufacture was not apparent from the samples, and there was therefore no publication, it was still held that there was a prior public user before the date of the patent. That is the English law, and, with due respect, I do not agree with the Appeal Court that on this point there is a difference between the law in England and Section 38 of our Act. But as that is the view of the Appeal Court, I am bound to follow it; and I must, therefore, hold that the sales of the betel-nuts in public did' not amount to a public user of the invention on account of the nature of the article treated by it. I may point out that in the earlier suit which went up to the Appeal Court there was no evidence of the quantities of almonds that were treated by the plaintiff's process and then sold in the market, but accord-rag to the view of the Appeal Court, the quantity of the goods sold may be immaterial, as the secret of the process cannot be detected, whatever may be the quantity of the goods sold.

14. There still remains the second part of Section 38 which deals with secret or experimental user. I have already held that there was no prior public user, and that the user by the plaintiff was not made known publicly and openly to the outside public, so that it might have formed an addition to the stock of public knowledge. The only person who really came to know of it was Varmani, and it was communicated to him in confidence. The user was therefore secret. The next point for consideration is whether the prior user was, under the circumstances, of an experimental nature, or was it more than what was genuinely necessary for the inventor to satisfy himself as to the practicability of his invention ? If it exceeds such limit and is carried on for profit, such a user will defeat the

subsequent patent. But a distinction is drawn between the use of an invention for profit and the carrying out of experiments which turn out successful and only incidentally bring in profit to the inventor. It is not strictly correct to speak of "experimental user for profit", but only to consider whether the inventor has made any profit incidental to the experimental user. In my opinion, the user was experimental, and I believe the ..plaintiff when he said that he was still awaiting the results of the sales in the market before treating even larger quantities by his process. Defendants' counsel, however, contended that it was not necessary for the purposes of an experimental user to enter into an agreement under which the plaintiff was to receive Rs. 300 per month so long as he continued to work his process for Harakhchand Shivji & Co., and as this amount was the maximum profit which the plaintiff could get out of his process, it must, under the circumstances of the case, be deemed to be excessive. There is no test nor any authority which lays down the limit beyond which the profits made by the inventor out of his invention are deemed excessive. It is the inventor's profit alone that has to be considered. Having bound himself down to Rs. 300 per month irrespective of any profits that would be made by Harakhchand Shivji & Co., so that he could not get more under any circumstances, I cannot say that the amount of Rs. 300 per month received by him from March till July, 1931, when he applied for the patent:, is really excessive. The patent had sixteen years to rah and the only payment made to the plaintiff was for those few months only. In the result I hold that the plaintiff's invention is a new invention within Section 38 of the Act. There is evidence about a demand by the public for dried fruits treated by it, and I accept that evidence. The invention is also practically useful for the purposes indicated by the inventor at the date when the patent was granted, and thus fulfils the test of utility also. The patent is, therefore, valid, and its validity has already been certified by the Appeal Court in the other suit.

15. A point made against the plaintiff was that the title of the specification " Improvements in and relating to the treatment of dried fruits " is false and misleading on the ground that the claim is too wide, the process not being

applicable to all kinds of dried fruits, e.g. dried figs and dates, nor to fruits with hard shells which have cracks or openings. That, however, is not a material defect as the plaintiff has stated that he has not claimed that his process applies to each and every kind of dried fruits, but only to almonds, betel-nuts, ginger and fruit with hard shells, which require bleaching. Moreover, it has not been shown by the defendants that the process is not suitable for those dried fruits which have been particularly mentioned in the specification.

16. This brings me to the real and crucial question in the suit, namely, the issue of infringement. The onus is on the plaintiff, and it is for him to show that the two processes, namely, his own and that of the defendants, are substantially the same. It has been said that it is seldom that the infringer does the thing, the whole thing and nothing but the thing described in the specification. Slight variations here and there may be immaterial; the Court has to see whether what is done takes from the patentee the substance of his invention According to Terrell on Patents, 8th edition, p. 152 :-

> It may be stated as a general proposition that the Court will in every case inquire as to what constitutes the essence of the invention as claimed, and will hold the defendant to have infringed if he has taken the ' pith and marrow' of the invention as claimed .

17. We have it from the mouth of the plaintiff himself that the pith and essence of his process is the combination of the use of bleaching powder and sulphur dioxide under pressure, and in order to show the infringement he must prove-that the defendants have pirated the substance of his invention. Taking the two processes together, one finds that the defendants do not use sulphuric acid in solution but a hot solution of washing soda instead ; the effect of both is to clean or remove the dirt from the goods, though according to the defendants washing soda helps to extract a red liquid from the betel-nuts which contains tannin and gives a whitish colour to the nuts. The defendants use a four and a half per cent, solution of bleaching powder as against the three per cent, solution of the plaintiff ; this difference is not material according to the plaintiff, and I accept

that. Plaintiff uses acetic acid while the defendants use muriatic add, but the two acids serve the same purpose, namely, removing the calcium deposit on the goods. Both the plaintiff and the defendants use sulphur dioxide fumes or sulphur dioxide in gaseous form. The plaintiff admittedly uses the same under pressure, and the only question is whether there is any pressure created in the process which is followed by the defendants. Pressure is an essential part of the plaintiff's process ; its absence from the defendants' process would constitute a material difference between the two. To use the plaintiff's own words :-

> If defendants have used any combination of bleaching powder and sulphur dioxide, but not under pressure, I have no complaint against them.

The chamber used for carrying out the plaintiff's process has been described by him in his specification as one built entirely in cement concrete and coated on the inner side with lead sheets, with a lead coated door used to close the chamber and keep it air and gas tight. The sulphur fumes are generated from an oven located near but outside the chamber and forced into the chamber through a lead pipe. According to the old process described in the specification the chamber used had a single door which was "closed and made smoke-tight by applying cow-dung to the joists ", and the goods were kept for about eight hours in contact with the sulphur fumes generated by sprinkling powdered sulphur on the lighted coal in the " sigrees " or coal stoves kept in the chamber. The last part of the process followed by the defendants consists of "treatment with sulphur fumes in a closed chamber according to the old method of burning sulphur in a ' sigree' and leaving the goods exposed to the fumes for eight hours and more". The door of the defendants' chamber is also, according to the old method, covered with cow-dung after the goods are put in, and the important question is whether in such a chamber pressure is really generated and held. The plaintiff has alleged in the particulars of breaches annexed to his plaint that the defendants treat the goods with sulphur dioxide under pressure, and his counsel contended that that allegation was not denied by the defendants either specifically or even by necessary implication in the written statement. The defendants have, however,

denied that they began to use or were using the plaintiff's process or substantially the same process for the treatment of betel-nuts or for dried fruits, and they also say that the particulars annexed to the plaint are incorrect. Taking these statements and reading the written statement as a whole, I do not agree with the plaintiff's counsel that the defendants must be deemed to have admitted that they use pressure in their process. On the face of it the defendants' process as described in exhibit 2 to the "written statement does not suggest that any pressure is used. The plaintiff himself was not consistent in his answers on this point. In his examination-in-chief he said that when goods were treated with sulphur fumes in a closed chamber, some pressure on the goods would be generated, but in his cross-examination he said that the old process of burning sulphur in 'sigree' and gasifying the goods in a chamber covered with ' cow-dung' was not gasifying under pressure as no special precaution was taken to make the chamber perfectly air-tight. The door of the chamber used by the defendants is also, as I have said before, covered with ' cow-dung,' and all that the plaintiff could suggest was that he thought that the defendants' chamber was pressure-tight, which means that he was not sure but that it was his belief. It is admitted that he has not seen the chamber used by the defendants, nor has he made any test or experiment according to the defendants' process with 'sigrees' in any chamber similar to the chamber used by them, that is a chamber the door of which is covered with ' cow-dung'. Defendants' counsel suggested before the commencement of his closing address that the Court might call in the aid of an assessor under Section 35 of the Act and if necessary get him to make an experiment to find out whether any pressure is in fact created in the defendants' chamber according to their process, but the plaintiff's counsel did not agree to the suggestion, and said that he would rely on the pleadings and the evidence in the suit.

18. I have stated before that two expert witnesses were examined on behalf of the defendants, Dr. Korde and Nariman Bamji. Dr. Korde visited the defendants' factory three or four times between June and August, 1934, in order to supervise

certain experiments performed on almonds and betel-nuts by the defendants' witness Hansraj Valji under his supervision. The experiments, were performed according to the defendants' process, and also according to the plaintiff's process minus the pressure. The experiments were, therefore, practically useless for the purposes of comparison, as pressure is admittedly an essential part of the plaintiff's process. The most important of all the experiments was the last one in which Dr. Korde assisted by Mr. Bamji tried to ascertain whether any pressure was exercised on the goods treated according to the defendants' process when put in the chamber used by them. I do not believe these two witnesses when they said that they did not know nor that they were not told beforehand that the difference between the two processes was that pressure was used by the plaintiff, and that the defendants alleged that it was not used by them. But I have no doubt that the experiment was performed, and that Bamji brought a ' U' shaped manometer made by himself for the purposes of enabling Dr. Korde to gauge the pressure. Dr. Korde made rough notes in his diary, but the diary is not forthcoming now as it has been lost, and the notes he made from the diary last September in order to help him in giving his evidence when the suit was about to be called on for hearing at the time are neither complete nor accurate, being meant only for his own use in Court. After the first, two or three experiments Dr. Korde expected that there would be pressure in the chamber after the ' sigrees' were lighted on account of the rise in the temperature. Mr. Bamji said that he was almost sure that there would be none. Both, however, were agreed that in fact no pressure was registered by the manometer. The reason according to Dr. Korde was that either the door of the chamber was a " mis-fit", that is, it was not pressure-tight, or because the goods put in the chamber were moist and the fumes were dissolved in the moisture, or for both these reasons. According to his theory the sulphur fumes, when they come in contact with the moisture on the goods, form sulphur dioxide in solution or sulphurous acid which really acts as the bleaching agent. Mr. Bamji said that pressure could only be generated if the door of the chamber was an iron door and rubber-lined. In my opinion, the

experiment was not conducted as satisfactorily as it should have been. Whilst speaking from memory, Dr. Korde did not seem to be quite accurate about the details he deposed to, and his assistant Bamji did not carry the matter any further. But it was for the plaintiff to prove that pressure was used in the defendants' process and not for the defendants to prove the negative. Dr. Kamat who was examined in rebuttal on behalf of the plaintiff stated in answer to the Court that pressure would be generated in a chamber like the one used by the defendants if it was ' leakage-free, that is, if it was pressure-tight; but there is no evidence that the defendants' chamber was in fact pressure-tight beyond what the plaintiff thought or possibly conjectured. It was also argued on behalf of the defendants that if there was any pressure generated in the kind of chamber used according to the old method, or used by them, the use of pressure by the plaintiff for a shorter period of time than under the old process would not be a new invention. I am, however, not satisfied on the evidence that the use of pressure is an essential part of the defendants' process Moreover, it is necessary that pressure should not only be generated in the defendants' chamber, but held, and there is no proof that, even if it was temporarily generated, it was held and that it reacted on the goods in the same way as it reacted in the plaintiff's process. In any event, the evidence on the point' leaves the matter in considerable doubt, and the onus of proving the issue as to infringement being upon the plaintiff, I cannot hold that it has been discharged. There is no evidence in this case that anyone communicated the plaintiff's process to the defendants, nor has anyone been called on his behalf to show that the defendants' process is in all its essential features identical with that of the plaintiff.

19. A patent may sometimes be infringed by taking a part only of the invention, but that depends on whether the part for which protection is asked is a new and material part, especially in the case of a combination. If it is not new and material, the Court must consider what is the substance of the invention, and to do so it has to consider the relative importance of all the parts of the invention. The essential part or the substance of the plaintiff's invention is, in his own

words, the use of pressure, and therefore there could be no infringement unless the use of pressure by the defendants in their process was proved.

20. There is one other point to which I would briefly refer in conclusion. It may be arguable, in the event of its being held that Claim No. 1 in the specification is a separate invention by itself, whether the defendants have committed an infringement of the same. According to them, if Claim No. 1 is an invention, the patent will be defeated for want of novelty on the ground that the process followed by the firm of Cooverji Raghavji & Co. before the date of the plaintiff's application is an anticipation of the invention. But I do not wish to deal with this question at length. The Court has in each case to consider whether or not the infringement comes within the fair meaning of the claims. I have already held that the plaintiff's rights are, according to his specification, in the whole combination for which alone he has made a claim, that is a combination of bleaching powder and sulphur dioxide under pressure, and a patent for a combination is not infringed by taking separately the integers comprised in it. The use of pressure by the defendants in their process has not been satisfactorily proved, and there is therefore no infringement of the combination...

21. In the result the suit will be dismissed, but I make no order as to costs.