

*Judgment of the Lords of the Judicial  
Committee of the Privy Council on two  
Petitions of Edwin Clark for prolongation  
of the terms of his Patents for Improvements  
in Floating Docks, &c.; delivered the 5th  
December, 1870.*

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Present:

THE JUDGE OF THE ADMIRALTY COURT.  
LORD JUSTICE JAMES.  
LORD JUSTICE MELLISH.

THIS is an application for the prolongation of two Patents, one for "Improvements in machinery, or apparatus for raising ships out of the water for the purposes of examination and repair," the other for "Improvements in floating docks." The invention, however, is substantially one, and is an ingenious idea, skilfully worked out, of applying the power of the hydraulic press to the lifting of ships in deep water, and placing them on a pontoon or float much wider than the ship's keel.

The weight of the ship being thus distributed over a much wider area, the immersion is proportionately reduced, so that a ship of the largest dimensions may be thus lifted and then floated into a bay or basin, or sheet of comparatively shallow water which would serve the purposes of a graving dock.

By increasing the number of pontoons or floats, and the number or area of such shallow bays or basins, or sheets of water, any number of graving docks may be obtained for ships of any size by the use of one of the patented machines.

To the merit, the originality, and value of the invention, engineering evidence of great weight has been adduced, and their Lordships have no reason to doubt this evidence.

The invention, however, has not been wholly nor, indeed, unsubstantially remunerated.

It is in evidence that the Patentee has received or is to receive in money, or in money's worth, the following remuneration, viz. :—

	£
Royalty from Victoria Company .. ..	600
Paid-up Shares in a thriving Company, of the nominal value of .. ..	3,750
Paid by Indian Government .. ..	2,000
Five per cent. on the amount of expenditure on works in course of execution at Malta, the contract price for which is 90,377l.	

Against this the Petitioner has sought to set off very large sums, but sums stated and proved merely as estimates. The largest of them, 2,000l., is stated thus :—

By travelling, office, printing, and incidental expenses, for proposed patent Docks at Portsmouth, Vancouvers Island, Bermuda, Marseilles, Bordeaux, Tarento, Brindisi, Brest, Constantinople, Amsterdam, Rio Janeiro, Melbourne, Liverpool, Falmouth, Lisbon, Genoa, Cuba, Jamaica, Calcutta, Barcelona, Cadiz, &c., in respect of which no separate accounts have been kept, but the total of which exceeds .. ..	£2,000
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Being, in fact, that proportion of the general expenses of the Petitioner's office and staff of assistants in his profession of a civil engineer which he considers fairly attributable to his efforts to establish docks on his system at the several places mentioned.

How far their Lordships would consider this kind of expenditure in attempts hitherto unsuccessful at several places to procure the outlay of large sums of money on the construction of docks on which large commissions or royalties would enure to the Patentee, as legitimately to be set off against the profits actually received, their Lordships do not think it necessary to express any decisive opinion. It is obvious, however, that such an expenditure might be carried to an unlimited extent, or limited only by the means, the activity, and the temperament, more or less sanguine, of the Patentee.

And it is further possible and even probable that in some of the places the Patentee's invention may still be adopted, and that to him as a civil engineer or projector his plans and estimates may yet bring in sufficient remuneration.

But their Lordships have for their guidance principles laid down by their predecessors at this Board, and they conceive it to be of vital importance in dealing with applications of this kind to adhere to any principle once clearly established.

In a recent case, Saxby's case, it was laid down by this Board in a Judgment delivered by Lord Cairns thus:—

“It is the habit of this Tribunal to consider whether the invention brought before them is one of that high degree of merit which, if everything else were satisfactory, would entitle the Patentee to a prolongation. But, in the present case, as I have already stated, their Lordships propose to deal with that which is at the very threshold of the case, the question of accounts.

“Now, it is the duty of every Patentee who comes for the prolongation of his Patent, to take upon himself the onus of satisfying this Tribunal in a manner which admits of no controversy, of what has been the amount of remuneration which, in every point of view, the invention has brought to him, in order that their Lordships may be able to come to a conclusion whether that remuneration may fairly be considered a sufficient reward for his invention, or not. It is not for their Lordships to send back the accounts for further particulars, nor to dissect the accounts for the purpose of scrutinizing what might be their real outcome, if they were differently cast; it is for the applicant to bring his accounts before their Lordships in a shape which will leave no doubt as to what the remuneration has been that he has received.”

Their Lordships entirely concur in and feel themselves bound by this decision, and to hold that the accounts in this case are not presented in such a manner as to enable them to pronounce that the petitioner has not received a sufficient remuneration.

This case is, moreover, stronger than Saxby's case in this—that neither in the accounts nor in the Petition is the profit on the Malta works in any way alluded to. The only reference to the Malta works in the Petition is in the following passage:—“He has every reason to believe that his system is greatly approved, and will very shortly be adopted at Malta and other places,”—that Petition having been presented in May last, and the actual contract for the

works having been made on the 24th day of August, 1869. And in the Petition, having enumerated other receipts, there is the following statement:—  
“That the above particulars comprise the whole of the receipts and advantages derived by your Petitioner by way of remuneration for his said patented invention.”

A Petitioner seeking the grace and favour of the Crown is bound to strict truth and to the utmost candour and frankness, to *uberrima fides*, in his statement.

Their Lordships were so struck with the apparent want of candour in dealing with the Malta contract in the Petition and accounts, although it was opened by Counsel, that they have thought it right to give the Petitioner an opportunity of further examination and explanation. And although their Lordships are willing to acquit the Petitioner of any intention to deceive them, yet they are bound to hold that the Petition and accounts do not contain the full and accurate information which the Crown, the public, and their Lordships were entitled to have.

He has accordingly been this morning examined.

Their Lordships cannot recommend Her Majesty to grant the prolongation asked for, or any prolongation.