

*Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Petition of William Phillips Thompson for an Extension of Letters Patent granted to Pieter Van Gelder for (1) an Invention of "Improvements in or appertaining to machines for separating dust or like particles from air or other gases," dated 22nd November 1892, No. 21,218; and (2) an Invention of "Improvements in or appertaining to apparatus for separating dust or other finely divided solid material from air or other gases," dated 13th December 1892, No. 22,919; delivered the 14th February 1907.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD ATKINSON.

[*Delivered by Lord Macnaghten.*]

This was a petition for the prolongation of two patents, Nos. 21,218 and 22,919 of 1892. They were granted to one Pieter Van Gelder. In 1893 Van Gelder assigned them absolutely to Mr. William Phillips Thompson, a Patent Agent. Mr. Thompson was the sole Petitioner, and conducted his case before this Board in person.

At the close of the argument their Lordships intimated that they were unable to recommend His Majesty to grant any extension of the two patents or either of them. And they have so reported. It only remains for them now to state the reasons for their Report.

The invention for which the patents were granted related to improvements in machines for cleansing air by removing dust and other impurities. Some process of the sort seems to be of vital importance in flour mills, and of use more or less in other mills and factories.

The old method was to strain or filter the dust-laden air through cloth or some textile fabric, but the filtering medium, whatever it was, speedily got choked by the stive or dust, and required constant attention and frequent changing.

The original invention, or "Pioneer patent," as Mr. Thompson called it, on which Van Gelder's improvements were engrafted came from the United States of America. It was patented in this country in 1886 as "a communication from abroad by the Knickerbocker Company of Jackson, Michigan, U.S.A." The Knickerbocker machines, which were known as the "Cyclone," consisted of a conical or tapering chamber, into which, near the top, the air was admitted tangentially and so created a vortex. The idea was that the dust would gather on the sides of the cone, fall to the bottom, and pass out into a receptacle below, while the purified air was to escape at the point or apex of the cone. The Cyclone, however, according to Mr. Thompson's statement, though a great advance on the old methods, did its work imperfectly. The air passing out through the cone was by no means free from impurities, and a second apartment or stiveroom was required as a settling chamber before the air became fit to be discharged into the open. But the great objection to the Cyclone, according to Mr. Thompson, was its excessive height in proportion to its diameter at its base. It had to be carried up through several floors or stories,

and so occupied space which otherwise might have been more profitably employed.

Van Gelder's attention was first called to the Cyclone by some millers in Chester who had got the Cyclone and employed him to suggest improvements in it. After several experiments and modifications he came to the conclusion that a cone or tapering chamber was not necessary, and that a better result might be obtained by the use of a polygonal prism. To carry out his ideas, in which Mr. Thompson claims to have assisted him with suggestions as well as with money, he took out several patents. To distinguish his type of machine from the Cyclone without losing such advantage as might flow from the apparent similarity of action, he called his invention "the Tornado." But he very quickly found himself involved in litigation with a Mr. Simon who had acquired the Cyclone patent and was pushing it vigorously. The result was that Van Gelder had to submit to a perpetual injunction with costs. Then Van Gelder with Mr. Thompson's assistance took out the two patents which were the subject of this application. Mr. Thompson insisted in his address to their Lordships that a machine made according to these patents could not possibly be held an infringement of the Cyclone patent. Still he admitted that there was a suspicion of infringement about the Tornado which was one cause of its want of success on the market.

Before anything was done under the patents of 1892 Van Gelder became bankrupt. Mr. Thompson was his principal creditor. He paid off the other creditors and took an absolute assignment. In 1894 he granted an exclusive licence to Van Gelder. That arrangement, however, did not prove remunerative. Van Gelder again got into difficulties. He made an assignment in favour of his creditors and

went to Australia. There he died a bankrupt about three years ago—so it was stated by Mr. Thompson. When Van Gelder was disposed of Mr. Thompson granted an exclusive licence to one Sutcliffe who had been Van Gelder's manufacturer. But he did little better than Van Gelder. Mr. Thompson settled with him on the terms of being paid his advances with 5 per cent. interest, giving up his claim to any money due for licences. Then, on the 26th March 1901, Mr. Thompson granted an exclusive licence to Messrs. T. Robinson and Sons, Limited, a firm of manufacturers and mill furnisbers of high standing. At that time the Cyclone patent had expired and the coast was clear. Simon was no longer to be dreaded. But Messrs. Robinson were very slack in pushing the invention. They never issued a single advertisement, and what was worse in Mr. Thompson's view, whenever they furnished a mill with a Tornado they put their names on it upon a large brass plate, which for some reason or other millers, according to Mr. Thompson, did not like at all. Mr. Thompson did not interfere or even remonstrate with Messrs. Robinson. Their licence, it seems, contained a clause empowering Mr. Thompson to terminate the arrangement with them on a year's notice. But Mr. Thompson never thought of putting pressure upon them or taking the business out of their hands. In fact, as he told their Lordships very candidly, it was not until about two months before the Petition came on for hearing that it occurred to him that he had any power of interfering. He had forgotten all about the clause which he had inserted for his own protection. He was a professional man in a large way of business and had no time to attend to such a matter.

That Mr. Thompson has lost pecuniarily by his connection with Van Gelder, and that his

speculation has turned out badly is plain enough on the face of the accounts.

In these circumstances Mr. Thompson asked for a prolongation of the two patents of 1892 in order to recoup his losses.

It is obvious that there are several objections to the application, any one of which by itself would be fatal.

The principal objection is that the invention as explained by Mr. Thompson has not that exceptional merit which would justify their Lordships in recommending a prolongation. The merit which entitles a patentee who has been insufficiently remunerated to claim an extension is different in kind and degree from that which is enough to sustain a patent. In the present case no new principle is involved. There is nothing that can be called real invention. Indeed it would seem that any workman of ordinary skill having his attention called to a Cyclone machine and being told that its height was a serious inconvenience, might by a few practical experiments, requiring little thought and little expenditure, have arrived at the same conclusion as Van Gelder. It is not perhaps otherwise than significant that Mr. Thompson, who is a patent agent, and does not pretend to be an inventor, claimed at the bar that he was substantially the inventor of the Tornado, and that its final development was due as much to his suggestions as to Van Gelder's inventive faculty.

In the next place, there has been little energy and not much businesslike capacity displayed in pushing the invention, assuming that it was ever worth pushing. It matters little whether the fault lay with Mr. Thompson or the people Mr. Thompson employed. Certainly Mr. Thompson showed himself singularly remiss in his dealings with Messrs. Robinson. Whether the invention

possesses the advantages which Mr. Thompson attributes to it is another question. The conduct of Messrs. Robinson is rather remarkable. So is the fact that Simon, who was represented by Mr. Thompson as a bitter and watchful enemy of the Tornado, never took action in the case of machines made in accordance with the patents of 1892. Then there is the fact that the Company which succeeded to Simon's business showed no inclination to take up the Tornado when Mr. Thompson approached them in reference to the matter, and there is the circumstance that the Cyclone has been so modified in shape that, according to Mr. Thompson, it is rather an infringement of the Tornado than the Tornado of it. These considerations tend to show that, after all, the Tornado is perhaps not quite so valuable or important an invention as Mr. Thompson supposes it to be.

Lastly, so far as their Lordships are aware, there is no case to be found in which a prolongation has been granted when the inventor is dead, and could not possibly have derived any advantage from the extension if he had been alive.

For these reasons their Lordships humbly advised His Majesty that the Petition should be dismissed.

---