

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The International Harvester Company of
America v. Walter Chamberlain Peacock,
from the High Court of Australia ; delivered
the 25th June 1908.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR J. H. DE VILLIERS.

SIR ARTHUR WILSON.

[Delivered by Lord Collins.]

This is an Appeal by special leave from a Judgment of the High Court of Australia reversing the Judgment of A'Beckett J., of the Supreme Court of Victoria, who, in an action for infringement of a certain patent, had held the Plaintiff's (the Respondent's) patent bad for want of subject-matter, and ordering judgment in the said action to be entered for the Plaintiff.

The patent in question related to certain improvements in "Rotary Disc Plows." The only points discussed in the Courts below arose on claims 1, 2, 5, and 7.

The only claim in respect of which infringement was alleged was claim 7, and the Appellants did not dispute it, but they relied on want of utility, and also upon anticipation by the lodging at the Victorian Patent Office of the United States Official Gazette of the 7th July 1896, some days before the date of the Respondent's patent, disclosing the invention claimed in claim 7 of the Respondent's patent.

The question whether this document could be relied on as an anticipation depended upon section 56 of the Victorian Patents Act of 1890.

A'Beckett J., with regard to this claim, held that it was new and useful and good subject-matter, and that section 56 of the Statute was an answer to the suggested anticipation, but, inasmuch as he was of opinion that claims 1, 2, and 5 were bad for want of subject-matter, he dismissed the Plaintiff's action.

On appeal by the Plaintiff to the High Court the case was heard on six days, and a very elaborate judgment dealing minutely with each point raised was delivered by Griffith C.J., with whom Barton, O'Connor, and Higgins JJ. concurred, adding some additional reasons. Cases turning on subject-matter often involve questions of considerable nicety, and this one is certainly near the line, but the elaborate and detailed judgments of the learned Chief Justice and his colleagues have removed all doubt from the minds of their Lordships, and they cannot but concur in their conclusions. They are quite satisfied that the several combinations claimed by the Plaintiff were a real advance upon anything that had been before attempted. It would be a mere waste of public time to state over again in other language reasons which have been so fully set forth in the Judgments already given, and on claim 7, the only one which raised a point of law, viz., the construction of section 56, both Courts were agreed. Their Lordships, therefore, will humbly advise His Majesty that the Appeal be dismissed. The Appellants will pay the costs.
