

Counsel for the Appellants—Dundas,
Agents—Dundas & Wilson, C.S.

Counsel for Assessor—P. J. Blair—
Malcolm. Agents—J. & A. Peddie & Ivory,
W.S.

Saturday, February 17.

(Before Lord Wellwood and Lord Kyllachy.)

FORTESCUE AND ANOTHER v.
ASSESSOR FOR KINCARDINE.

*Valuation Cases—Yearly Value of Sub-
jects Unlet—Question of Detail—Sufficient
Evidence.*

The Court will not interfere with a
determination of the Valuation Com-
mittee on a question of detail where
there is no question of principle in-
volved, and where there is evidence
before the Committee which could
support the determination.

In this case Mr and Mrs Irvine Fortescue
of Kingcausie, Maryculter, brought under
review the determination of the Valuation
Committee, of the County Council of Kin-
cardine, who entered the mansion-house of
Kingcausie in the valuation roll for the
year 1893-94 at the yearly rent or value of
£125, the Assessor having entered the same
at £140. For several years the subjects
had been entered at £110, and the appel-
lants contended that this entry should be
repeated on the ground that the house was
altogether deficient in modern require-
ments and conveniences, and if let un-
furnished in its present state would not
fetch within £20 of the valuation of £110.
The Court refused to interfere with the de-
cision of the Valuation Committee, on the
ground that there was no question of prin-
ciple involved, and that it could not be said
that the Committee had not evidence before
them sufficient to entitle them to hold
that the house, if let from year to year,
would fetch £125.

Counsel for the Appellants—Dundas.
Agents—Philip, Laing, & Company, S.S.C.

Counsel for the Assessor—W. Campbell.
Agent—Party.

COURT OF SESSION.

Tuesday, February 27.

SECOND DIVISION.

[Sheriff of Lanarkshire.]

ROSE'S PATENTS COMPANY, LIMITED
v. BRABY & COMPANY, LIMITED.

*Patent—Anticipation—Want of Ingenuity
and Merit—Want of Novelty—Automatic
Spray Lamp.*

A patent was taken out for the in-
vention of an apparatus for producing
a continuous current of oil spray at the

burner of a spray lamp by a continuous
current of steam generated in the lamp
itself. In his specification the patentee
claimed, as part of his invention, the
combination with other parts of his
apparatus of a pipe having a syphon
bend.

Held that the patent was invalid
on the following grounds:—(1) That
in two prior patents the same ap-
paratus was specified, and specified
to be used in the same way as the
apparatus claimed to have been in-
vented, except that it was intended to
be used with oil alone, and in order to
produce a continuous current of oil
vapour at the burner of the lamp; and
that in one of the said two prior
patents an apparatus was specified
substantially the same, and specified
for the same uses as the apparatus
claimed; and that there was neither in-
genuity or merit in applying the appa-
ratus to the production of a continuous
current of oil spray in the manner
described in the patentee's specifica-
tion; and (2) that there was no
novelty or merit in the syphon bend
claimed in the patentee's specification.

George Rose, engineer, Glasgow, obtained
letters-patent No 18,101 A.D. 1889, for "im-
provements in apparatus for burning
hydro-carbon, or other oils for lighting and
heating purposes." In his provisional
specification the invention is thus de-
scribed—"My invention relates to appa-
ratus for burning hydrocarbon or other
oils in the form of spray for lighting and
heating purposes, and the improvements
are mainly applicable to that class of ap-
paratus wherein steam, generated from water
supplied to a coil-pipe or chamber heated
by the flame, is used to spray the oil or oil
vapour in the burner or combustion box.
My improved apparatus, as constructed in
accordance with my invention under one
arrangement, consists of a tank for holding
oil which is supported on legs or on a pede-
stal or its equivalent, and has secured to its
side or bottom a water tank. Suitable
plugs or screws are provided for filling
these tanks. Projecting out, preferably
from the water tank, is a pipe which is con-
nected to or supports a coil pipe or chamber
and supplies water thereto. In the chamber
or coil pipe the water is converted into
steam by the heat of the flame, which issues
from a burner situated preferably below the
generating coil or chamber. The coil is
connected at its upper end or at other suit-
able part with and supplies steam to a
branch leading to the burner nipple. From
this branch pipe another connection to the
upper part of the water tank is made.
The generating coil or chamber is prefer-
ably enclosed in a metal casing, up through
the bottom of which the steam nipple pro-
jects. Oil from the oil tank is led to the
casing, the lower part of which it fills to
about the height of the burner nipple.
Cocks or valves are provided at suitable
places on the supply pipes to regulate the
water, steam, or oil supply. With this
arrangement, when it is required to start

the apparatus, naphtha or other volatile oil is poured into the casing surrounding the generating coil or chamber, and is lighted. After burning for a sufficient length of time to heat up the coil or chamber, water from the water tank is gradually turned on. As the water comes in contact with the heated surface of the coil or chamber, steam is at once generated, and by a proper opening and closing of the valves is passed into the upper or other part of the water tank, thus giving a considerable pressure therein. After this has been done, the steam supply to the water tank is turned off, and the steam supply to the burner turned on so as to maintain the flame by spraying the oil or oil vapour in the oil well of the casing. The pressure in the water tank can be thus maintained by turning on a supply at intervals from the generating chamber or coil. The oil in this arrangement is supplied by gravitation. The water tank instead of being a separate tank fitted below or at the side of the oil tank may be fitted inside the oil tank, or a compartment may be made in the oil tank for holding water. The pipe for supplying water to the steam generator may be made with a syphon bend in it for the purposes of keeping a sufficient water supply in the coil or chamber. . . . The steam supply to the water tank for creating pressure therein may be supplied from a separate coil or chamber arrangement, and it may be supplied continuously, instead of intermittently as aforesaid."

In his complete specification, after a similar description of the invention, he declared that what he considered novel, and therefore desired to secure by letters-patent, was, *inter alia*—"1. In oil spray lighting or heating apparatus working with self generated steam, the method of creating a pressure in the water tank by admitting steam from the self-generating coil or chamber to said tank substantially as hereinbefore described. 2. The combination with the steam generating coil or chamber of the lamp or burner of a pipe connection for conducting steam from said coil or chamber to the water tank substantially as and for the purpose hereinbefore set forth. 3. The combination with the self-generating steam coil or chamber and the water tank or compartment, of the pressure pipe and valve, substantially as hereinbefore described with reference to the drawings annexed. . . . 6. In oil spray lighting or heating apparatus working with self generated steam, the combination with the water tank and a self-generating steam coil or chamber of a pipe having a syphon bend therein for supplying water from said tank to the coil or chamber substantially as hereinbefore set forth.

A popular description of Rose's patent is given in the opinions of the Lord Justice-Clerk and Lord Rutherford Clark.

The patent was acquired in 1891 from George Rose by Rose's Patents Company, Limited.

In November 1891 Rose's Patents Company, Limited, raised an action in the Sheriff Court at Glasgow against Frederick

Braby & Company, Limited, in which they prayed the Court to interdict the defenders from infringing Rose's Patent, and in particular to interdict the defenders, "either directly or indirectly, from making, offering for sale, selling, or using without the consent, licence, or agreement of the pursuers, any oil spray lamps or oil spray lighting apparatus working with self-generated steam in which a pressure is created in the water tank by admitting steam from the self-generating coil or chamber to said tank by means of a pipe connection for conducting steam from said coil or chamber to said tank, according to the method or in the manner described in the said letters-patent and relative specification, or according to any method or in any manner substantially the same, and from making selling, or using any oil spray lamp or oil spray lighting apparatus constructed with or embracing in its construction such method or arrangement as aforesaid," and to ordain them to pay to the pursuers £1000 as damages.

The pursuers averred—"The invention covered by the said letters-patent consists of 'improvements in apparatus for burning hydrocarbon or other oils for lighting and heating purposes,' and the principal improvements, so far as applicable to oil spray lamps or lighting apparatus working with self-generated steam, consist in the method of creating a pressure in the water tank by admitting steam from the self-generating coil or chamber to said tank, and the manner of effecting same by the combination with the steam-generating coil or chamber of the lamp or burner of a pipe connection for conducting steam from said coil or chamber to the water tank, all as described in said specification, and also the general arrangement and combination of parts of the several self-generating steam lamps therein described."

The defenders lodged answers, in which they averred, *inter alia*—" (1) The alleged invention was not at the date of the alleged letters-patent the subject-matter of a grant within the meaning of the Patent Acts. There is no ingenuity or invention displayed in said invention. . . . (2) There is no sufficient distinction between what was old or was in use and known at and prior to the date of the letters-patent, and what was new. These are claimed as new inventions which were old. In particular, claims 1 and 2 include the inventions of a method and appliances for creating pressure which was anticipated by Doty's Patent, No. 8967, A.D. 1887, and by Robinson's Patent, No. 3696, A.D. 1889. Claim 3 is identical with claim 2, except as regards application of a valve to a pipe which is old and publicly known. Claim 6 is anticipated by Doty's Patent aforesaid. . . . (3) The alleged invention was not new, and was publicly known before the date of the letters-patent. In particular, the invention was published in the following letters-patent:—Doty's Patent, No. 8697, A.D. 1887; Robinson's Patent, No. 3696, A.D. 1889."

As regards Doty's patent, Doty stated in his specification that his invention related

"to the utilisation of mineral and other oils for lighting, heating, and other purposes." One object of his invention was to provide for converting the oil into gas or vapour, and for utilising the heat generated by the combustion for heating the pipe in which such conversion was effected, so that the operation would be continuous without the aid of any separate or extraneous heating apparatus. For this purpose he employed a tank of oil and a coil of pipe connected therewith at its lower end by a feed pipe. The upper end of the coil was connected by a bent pipe with a burner placed in the centre of the circle formed by the lowest winding of the coil. The operation was set agoing by oil being placed in a saucer under the coil and ignited. By this means the oil in the coil became heated and threw off a vapour or gas, which escaping through the burner became ignited by the flame at the base of the coil. On the gas being thus ignited, the flame filled the interior of the cylindrical passage formed by the coil, and thus the combustion continued as long as there was oil supplied to the coil from the tank. To ensure the requisite flow of oil from the tank, notwithstanding the pressure of the expanding gases in the coil and pipes, three methods were specified—(1) The placing of the tank at such height above the coil that the gravity of the oil in the supply pipe would maintain a constant pressure against the expanding gas; (2) placing the tank a few inches above the coil and connecting the upper part of the tank, above the level of the oil, and the upper part of the coil by means of a pipe, "so that when a pressure occurs in the coil from the expanding gases, it will be communicated to the said tank or reservoir, and extended over the surface of the oil, thus rendering the supply more even and the flame more regular;" (3) the employment of an air-pump. Another object of Doty's invention was to provide for the utilisation of a mixture of the gas or vapour into which the oil had been converted with steam or water gas for the production of heat for generating steam, or for use in blast furnaces or other purposes. In this modification there were two tanks, one of oil and one of water, and a coil consisting of two tubes wound side by side, the inlet of the one tube leading to the oil tank, and the inlet of the other to the water tank, and the outlets of both tubes, provided with suitable burners, being situated together in the centre of the circle made by the lowest winding of the coil. In this case, when ignition took place and the coil became heated, the oil-gas and the super heated steam were discharged together, and a fierce combustion followed. In figures attached to Doty's specification there was a bend in the pipe leading from the tank to the coil, but no mention was made of the utility of such a bend in the specification.

Robinson's patent, as he stated in his specification, was for "improvements in lamps burning hydrocarbon oils under pressure for lighting or heating, also applic-

able to other lamps." In carrying out his invention Robinson employed an oil tank and an oil-gas generator. The generator shown in the plans annexed to the specification, but which was no part of the invention, consisted of a succession of horizontal tubes connected by vertical tubes, closed by screw stoppers. From the bottom of the reservoir a pipe was taken to the lowest part of the generator, and from the highest part of the generator a pipe led to a space left over the oil in the reservoir. From the highest part of the generator a pipe was also taken to the nozzle of the burner, which was placed in such a position that the flame issuing from the burner played on or was close to the generator, so as to keep the generator hot enough to vapourise the oil contained therein, and send it forth at the burner in the form of oil-gas. The combustion was started by a piece of oil waste being placed between the valves of the generator and set on fire. Robinson did not bind himself to any mechanical arrangement or construction of parts of his lamp or to any form of generator or burner, so long as the feature constituting his invention was preserved, "namely, conducting the pressure evolved in the gas generator to the upper part of the oil reservoir, so as to balance the pressure between the generator and the oil reservoir and secure the efficient working of the light without the use of hand pumps or other auxiliary means at present used for creating pressure in the oil tank." Robinson claimed as part of his invention the maintaining of a pressure in the oil reservoir automatically by the oil vapour from the generator, so as thus to dispense with the use of pumps and other auxiliary modes of obtaining pressure.

The Sheriff-Substitute (GUTHRIE) allowed parties a proof of their averments. The pursuer led evidence, *inter alia*, to show that oil vapour lamps were unsatisfactory, because the heating of the oil caused a deposit of carbon to be formed on the inside of the coil and passages, and thus the pipes became choked up.

On 29th June 1892 the Sheriff-Substitute pronounced the following interlocutor—"Finds that the pursuers are owners of the letters-patent condescended on, and that the defenders have failed to establish the objections to the validity thereof pleaded in the defences: Finds that the defenders have infringed the said letters-patent: Therefore repels the defences, and interdicts, prohibits, and restrains, as prayed for, and decerns," &c.

The defenders appealed to the Sheriff (BERRY), but on 6th March 1893 the Sheriff adhered to the interlocutor appealed against.

On 18th October 1893 the Sheriff-Substitute assessed the damages at £270, for which sum he decerned against the defenders.

Against these interlocutors the defenders appealed to the Court of Session, and argued—The pursuers' patent was invalid. This invention was not proper subject-matter for a patent. It had been anti-

cipated by both Doty and Robinson. The pipe connections and coil fittings were indicated in Doty and Robinson's patents. A mode of working the lamp automatically by means of pressure on the liquid in the upper part of the tank was also shown in both the prior patents. It was said that oil vapour choked the pipes, but that did not matter if the patent contained the patentable idea. One could not patent a simple set of pipe-connections because one used water instead of oil. The employment of steam in order to create pressure could hardly be described as a novel invention. One could not get a patent for ingenuity in applying means which were identical to subjects which were analogous. If a known article was applied to analogous purposes it was not patentable because it produced advantages not produced before—*Morgan & Company v. Windover & Company*, March 11, 1890, 7 P.O.R. 131. The adaptation of a well-known idea in a well-known manner for a well-known purpose, and not involving any invention, was not the subject of a valid patent—*Longbottom v. Shaw*, March 19, 1891, 8 P.O.R. 353. If a man of science having Doty and Robinson's patents before him, and acquainted with the principle of the steam spray lamp, could without any exercise of inventive ingenuity have constructed a lamp like that of Rose, then Rose's patent was bad—Lord Chancellor Halsbury's opinion in *Anglo-American Brush Electric Light Corporation v. King, Brown, & Company*, April 5, 1892, 19 R. (H.L.) 26. Under Doty's specification a machine dealing with the agent steam could be constructed getting over the difficulty of back pressure in the same mode as that specified in Rose's patent. The syphon bend claimed in the 6th article of Rose's specification was also old, and was plainly delineated in figure 1 of Doty's patent. This claim being bad the whole patent fell—*Murchland v. Nicolson & Gray*, July 19, 1893, 20 R. 1006. On all these grounds the patent was invalid.

Argued for pursuers—The patent was good. If something remained to be ascertained necessary for the useful application of a discovery, that afforded room for another patent. Opinion of Lord Chancellor Westbury in *Hill v. Evans*, January 29, 1862, 4 De G. F. and J. 300. Of the usefulness of Rose's patent there could be no question. There was no necessity for a pump; it worked automatically. It could be worked at less expense than those of Doty and Robinson's, as the oil was not under pressure, and thus there was no necessity to put out the light in order to replenish the lamp with oil. Very crude oil could be burned in it. There was no choking of the pipes as in Doty and Robinson's lamp. There was here no application of the same machinery to analogous purposes. Water was different from oil, and it required inventive ingenuity to adapt to water the mechanism which was formerly applied to oil. The same result might be obtained, but it was by different means, and it was a useful development beyond what was shown in former patents. An

invention might consist in a combination of known elements. Even an apparatus of such a simple character as a syphon bend would be patentable if combined with other useful and patentable features. The judgment of both Sheriffs was in favour of the pursuers, and should be adhered to—*Cannington v. Nuttall*, June 12, 1871, L.R., 5 English and Irish Appeals 205; *Stewart & Briggs v. Bell's Trustee*, December 5, 1883, 11 R. 236; *Gosnell v. Bishop*, March 13, 1888, 5 P.O.R. 151; *Thomson v. American Braided Wire Company*, June 3, 1889, 6 P.O.R. 518; *Vickers, Sons & Company v. Siddell*, August 7, 1890, L.R., 15 App. Cases 496, Lord Herschell's opinion, p. 502.

At advising—

LORD JUSTICE-CLERK—The pursuers in this case desire to have the defenders interdicted from "selling or using without the consent, licence, or agreement of the pursuers any oil-spray lamps or oil-spray lighting apparatus working with self-generated steam, in which a pressure is created in the water tank by admitting steam from the self-generating coil or chamber to said tank by means of a pipe-connection for conducting steam from said coil or chamber to said tank," as described in the pursuers' specification, or from making, selling, or using any lamp or apparatus embracing such method or arrangement.

The pursuers' apparatus as described in the specification consists of two tanks, one containing water and the other containing oil. From the water tank a pipe is led which is coiled into a vertical coil set above the orifice from the oil tank. The pipe of the coil is at the top divided into two branches, one of which is brought down to the burner nipple of the branch, and the other is carried into the water tank above, so that when steam is generated a pressure is produced on the water in the tank to counterbalance the back pressure produced by the steam in the coil pressing back and preventing the flow of the water into the coil by gravitation. When the apparatus is set going, by heat artificially applied to the coil, the steam which is conveyed to the lamp nozzle forcing itself out in a jet carries with it oil-spray from the oil orifice, and a large luminous flame is thus produced.

The defenders' lamp is, as regards the obtaining of the back pressure, substantially the same as the pursuers', but the defenders plead that the pursuers, in so far as there may be any invention in their lamp, were anticipated, and that their alleged invention does not show any novelty which can be held to have any merit or ingenuity such as would entitle the pursuers to the privilege of a patent. It is maintained that the specifications of Doty and of Robinson both disclose the equivalent of what is claimed by the pursuers. Doty in his specification describes an arrangement by which the pressure of the vapour of oil on the top of the oil tank is produced in a similar manner to that used by the pursuers in the case of the water tank, and for the purpose of neutral-

ising the back pressure. He also describes as a modification of his invention an arrangement whereby he uses two coils, wound side by side, one for oil and another for water, in the same manner as the single coil for oil. It is true that the purpose he has in view in this arrangement is the production of heat rather than light; but this does not, as it appears to me, make any difference, the end to be attained in both cases being the production of continuous flame by steam carrying oil vapour, and its utilisation, whether for heating or lighting purposes, in no way affecting the process by which the flame is obtained and kept up. It is true also that in his figure of the double coil he does not show the arrangement for pressure on the upper surface of the liquid in the tank. But that has been already described, and he indicates that the oil and steam are discharged from their respective vessels in the same manner. If this be so, then Doty had in his specification already described the use of a coil with water, in which by a pressure on the surface produced by part of the steam generated, the back pressure on the feed pipe of the coil might be neutralised. Having given the matter as careful attention as I can, I hold that Doty does disclose in his specification the use for flame-producing purposes of a water tank, provided with a coil, and the use of a branch steam pipe for the purpose of producing or neutralising pressure on the water in a water tank so as to secure the flow of water into the coil.

If I were wrong in this opinion, it would still remain to be considered whether, if the pursuers' process were not anticipated by any apparatus in which water and steam were used in the apparatus itself, it was not anticipated otherwise. It is certain that both Doty's and Robinson's specifications disclose a closed chamber for oil, a feed into a coil, and a branch pipe for producing a pressure on the surface of the oil. Doty, while describing his tank as placed high above the burner, or a pump arrangement employed to give pressure, distinctly describes as another mode the maintenance of pressure by connecting the upper part of the tank with the pipe carrying the vapour from the heated coil, and gives this as one modification of his invention. Robinson claims as part of his invention the maintaining of an automatic pressure in the oil reservoir by vapour from the coil, as a means of dispensing with the use of a pump or other auxiliary means for obtaining a pressure on the surface of the liquid. It is thus certain that an apparatus whereby, in an exactly similar manner to that used by the pursuers, vapour was generated and used to put pressure on to the surface of liquid in an enclosed tank to counteract back pressure, was in existence and publicly known before the pursuers obtained their patent. It is therefore essential to the validity of the pursuers' patent that there should be in it some merit and ingenuity in particulars different from those above described. Are there any such in this case? I can

find none suggested, except this, that the pursuers apply the arrangement to water and not to oil. That does not, as it appears to me, constitute any patentable invention. That pressure could be applied to water by steam in a closed vessel, just as it could be applied by oil vapour to oil was a fact well known, and the purpose for which it was applied in both cases was the same, to neutralise a back pressure which would stop the feed into the apparatus. Therefore, even if the pursuers' apparatus using water was not anticipated by Doty, I hold that the pursuers' specification does not display any such ingenuity in producing an invention not already known, as to give validity to their patent.

I have only to add that had my opinion been different upon the patent generally, I should still have been unable to sustain it, as there is a claim made in it which could not possibly, as it appears to me, be held good. In the sixth head of the claim the pursuers set forth as one of the claims "the combination with the water tank and a self generating coil or chamber of a pipe having a syphon bend therein for supplying water from said tank to the coil or chamber, substantially as hereinbefore set forth." Now, on referring to the description, I find that the water supply pipe has a "syphon bend which is for the purpose of keeping a supply of water in the generating coil." I am unable to understand what there is in this that can be claimed. It is certainly not a syphon, and it is also certain that the same purpose could be fulfilled equally well by a horizontal bend, or by a bulb, or by having the piece of pipe between the tank and the coil of a larger size. I can see nothing of the nature of invention or ingenuity in this head of claim which could make it the subject of a patent. But if this claim is not tenable, then it renders the whole patent bad, even if it were otherwise good.

On the whole matter I have come to the conclusion that the interlocutors pronounced in the Court below are not well founded, and that the defenders are entitled to have them recalled, and to be absolved from the conclusions of the action.

LORD RUTHERFURD CLARK—The pursuers are the assignees of a patent taken out by George Rose and others. It is for a combination which may in general terms be called an automatic spray lamp. Before it was taken out, lamps which consumed the spray or vapour of oil were well known and in frequent use. But they were not automatic. They required a separate means—such as a pump, or steam raised in a separate boiler—to maintain the necessary current. The pursuers claim that their invention has satisfied a felt want, and produced a spray lamp which, dispensing with the use of pumps and other equivalents, furnishes a continuous supply of oil spray at the burner.

The defenders contend that the patent has been anticipated. They rely chiefly on the patents of Doty and Robinson. They

also contend that in so far as the pursuer's patent differs from these patents it has no merit or ingenuity. There are some other subsidiary objections to which I shall hereafter refer.

The apparatus of Rose consists of a vessel containing a tank of oil and a tank of water. From the former a pipe is conducted to the burner. A pipe is led from the bottom of the water tank, which is carried in several coils round the burner, and thence passes to the tank above the level of the water. From this pipe, and at a point near the top of the coil, another is taken off, which joins the oil pipe near the burner. The water flows by gravitation and stands in the coil. Some waste steeped in grease or oil is placed in the coil and set on fire. Steam is thus generated, which passes partly to the top of the water tank and partly to the burner. The former portion serves to produce a pressure on the water so as to balance the back pressure in the lower part of the pipe, and thus enables the water to be supplied by gravitation to the coil. The other pressure produces a current through the oil pipe near the burner, and when the oil is allowed to flow from the tank, it forces the oil through the burner in the form of spray. The spray is lighted, and from its heat continues the process which the burning waste began. In this way the lamp needs no extraneous aid, and contains in itself the means of producing a continuous light.

The merit of the invention seems to consist in the apparatus by which this continuity is maintained. Accordingly the patentee claims—"In oil spray lighting or heating apparatus working with self-generated steam, the method of creating a pressure in the water tank by admitting steam from the self-generating coil or chamber to said tank substantially as hereinbefore described." The problem was to construct as a part of a lamp an apparatus capable of producing a continuous current at the burner. The difficulty was in overcoming the back pressure in the pipe leading from the tank, and it was successfully overcome in the manner I have described.

I see considerable merit in the apparatus, but unfortunately for the pursuers Rose was not the first and true inventor of it. An apparatus of the same kind was indicated in Doty's specification, and probably it was sufficiently indicated to a person possessing ordinary skill. But it is not necessary to dwell on this. For Robinson's patent precedes that of Rose, and it describes an apparatus identical with that set out in Rose's specification. There are some slight differences in detail. But to my mind it is not doubtful that the two apparatuses are the same. In particular, they both contain that bifurcation of pipe which overcomes the back pressure and enables a continuous current to be maintained at the burner.

The pursuers hardly deny that their apparatus is the same as Robinson's. Their case is that it is applied to a different use. For the lamp constructed by Robinson is an oil vapour lamp, and consequently his

apparatus is intended to vaporise the oil and to produce a continuous supply of oil vapour. The pressure which it creates is in the oil tank and not in the water tank, and it is created by the admission of oil vapour and not of steam. The pursuers contend that there is no identity, inasmuch as the apparatus of Rose is used for generating a continuous current of steam in order to produce a continuous oil spray.

The merit of Rose, in these circumstances, comes to be the application of an old apparatus to a new use. But there cannot be a good patent unless there is ingenuity or merit in the application. Accordingly, the pursuers bring evidence to show that their apparatus has been alone successful, and makes it possible to use any kind of oil; whereas the apparatus of Robinson is liable to choke from the deposit of oil distillates, and from that cause the finest oils can alone be used.

I have come to be of opinion that the pursuers' patent cannot be supported, because there is, I think, no merit or ingenuity in the new use of the apparatus. When the system of producing a continuous current is known, there is no merit in producing it from steam and not from oil, nor is there any merit in applying a current of steam to produce oil spray. It was done in the spray lamps which had theretofore been in use. That the spray lamp has, in the automatic form, advantages over the vapour lamp is not material. For the claim of the patentee is not for those advantages but for the new use.

The 6th claiming clause of the pursuers' specification is in these terms:—"In oil spray lighting or heating apparatus working with self-generated steam, the combination with the water tank and a self-generating steam coil or chamber of a pipe having a syphon bend therein for supplying water from said tank to the coil or chamber, substantially as hereinbefore set forth." It is maintained that what is thus claimed has neither novelty nor utility.

The syphon bend is "for the purpose of keeping a supply of water in the generating coil." It does not act as a syphon, nor is it maintained that it does, although the bend "is for the purpose of keeping a supply of water in the generating coil." If the water is allowed to flow from the tank there is no use of the bend. But if it be shut off, it is true that the water in the bend of the syphon nearest the coil will flow to the coil, and thus a larger quantity of water will reach it. But that is nothing more than saying that a bent pipe being longer than a straight pipe, will contain more water, and if the bend be upright, gravitation will act. It was contended that by this contrivance the steam had to pass for a shorter distance from the coil to the water tank. But there is no novelty or merit in that. It is not a new thing to increase the length of a pipe between two fixed points by bending it, nor is it new that the water will flow down if the curve be upright. I see nothing more than this in the 6th claim of the patent. I think

that it is a bad claim, and if it be, it voids the entire patent.

LORD TRAYNER—I have nothing to add to what your Lordships have said. I entirely concur with the opinions expressed.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

“Recal the interlocutors of the Sheriff-Substitute and Sheriff dated 29th June 1892 and 6th March and 18th October 1893: Find that the petitioners are assignees of letters-patent granted to George Rose and others: Find that in the specifications lodged in connection with said letters-patent the patentees claim to have invented an apparatus for producing a continuous current of oil spray at the burner of a spray lamp by a continuous current of steam generated in the lamp itself: Find that in the specification lodged in connection with prior letters-patent granted to Doty and Robinson, numbers 8697, A.D. 1887, and 3696, A.D. 1889, the same apparatus was specified, and that it was specified to be used in the same way as the apparatus claimed by George Rose and others, except that it was intended to be used with oil alone, and in order to produce a continuous current of oil vapour at the burner of the lamp: Find that in the specification lodged in reference to the prior letters-patent granted to Doty, an apparatus is specified substantially the same as the apparatus claimed by George Rose and others, and specified for the same uses: Find that there was neither ingenuity nor merit in applying the said apparatus to the production of a continuous current of oil spray in the manner described in the said specification of Rose and others: Find that the said George Rose and others are not the first and true inventors of the said apparatus: Find that there is no novelty or merit in the syphon bend claimed in the sixth claim of the specification of George Rose and others for the purposes therein set forth: Find in law that the said patent is invalid. Therefore assoilzie the defenders from conclusions of the petition,” &c.

Counsel for the Pursuers—Ure—Greenlees. Agents—Young & Roxburgh, W.S.

Counsel for the Defenders—Graham Murray, Q.C.—Salvesen. Agents—J. & J. Ross, W.S.

Tuesday, February 27.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

BLACKWOOD AND OTHERS (MITCHELL'S MARRIAGE-CONTRACT TRUSTEES) v. GLADSTONE.

Assignment of Moveables—Delivery—Possession.

In December 1883 M entered into a deed of arrangement with his creditors, whereby, *inter alia*, he assigned his household furniture to a trustee for their behoof. The trustee, without taking possession of the furniture, assigned it in 1884 to M's marriage-contract trustees for behoof of M's wife in liferent exclusive of the *jus mariti* of her husband, and for behoof of the children of the marriage in fee. The furniture was allowed to remain in the house then occupied by M and his wife, and was subsequently transferred by them to another house to which they removed. In 1890 M sold the furniture to G. In an action by the marriage-contract trustees to have G interdicted from removing the furniture, *held (aff. Lord Kyllachy)* that since the date of the assignation in their favour the marriage-contract trustees had been in civil possession of the furniture through M's wife, that the assignation in their favour was therefore effectual, and interdict *granted*.

Thomas Sawers Mitchell was sequestrated in 1883, but before a trustee was appointed a deed of arrangement, under section 38 of the Bankruptcy Act, was entered into in December 1883 between Mitchell, his creditors, and his father-in-law Mr Blackwood, whereby, *inter alia*, Mitchell assigned and made over his household furniture in No. 24 Merchiston Park, Edinburgh, to Blackwood for behoof of his creditors, Blackwood undertaking to pay a composition of 1s. 6d. per £ to Mitchell's creditors, and the creditors undertaking to apply to have the sequestration declared at an end. The deed of arrangement was subsequently approved by the Sheriff, and the sequestration brought to an end.

Blackwood did not take possession of the furniture under the deed of arrangement, but by assignation dated 15th January and 1st and 3rd May 1884 he assigned it to himself and others as the trustees under the antenuptial marriage-contract of Mr and Mrs Sawers Mitchell (who had been married in 1871), declaring that the said trustees were to hold it for behoof of Mrs Mitchell, “and exclusive of the *jus mariti* and right of administration of her husband . . . but that only in liferent, for the liferent use of the said Mrs Mitchell and for behoof of her children, or such of them as she may prefer thereto by any writing under her hand, in fee, with power to the second parties (the trustees) to sell the same and apply the proceeds in like