

HIGHWAYS—OBSTRUCTION—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE.

*Morris v. Mayor, Aldermen and Burgesses of the Borough of Luton.*¹

This case is another nail in the coffin of the doctrine of *Baker v. Longhurst*² where Scrutton L.J. laid down the dilemma that if a plaintiff collided with an unlighted obstruction "either he was going at a pace at which he could not stop within the limits of his vision, or if he could stop within the limits of his vision, he was not looking out. In either event, he was guilty of negligence." Lord Greene hoped that the suggested principle might rest peacefully in its grave in the future and not be resurrected with the idea that there is still some spark of life in it. He cited with approval the dictum of Lord Wright in *Tidy v. Battman*³, that "no one case is exactly like another. . . . It is unfortunate that questions which are questions of fact alone should be confused by importing into them as principles of law a course of reasoning which has no doubt properly been applied in deciding other cases on other sets of facts." The view of Lord Wright has usually been accepted as laying down the law, but it is convenient to have the doctrine re-affirmed by a unanimous Court of Appeal.

The other point in the case concerned the duty of the municipal authority with regard to an unlighted air-raid shelter erected on the highway. No difficulty arose, as *Fisher v. Ruislip-Northwood Urban District Council*⁴ had conclusively laid down the law.

1. [1946] 1 All E.R. 1; 62 T.L.R. 145.

2. [1933] 2 K.B. 461.

3. [1934] 1 K.B. 319, at p. 322.

4. [1945] K.B. 584.

A NOTE ON AUSTRALIAN PATENT¹ LAW.

The words "letters patent" derive from the Latin *literae patentes*, the form of the grant being that of an open letter to all who may read it and the term is the name for that chose in action which vests in a successful applicant or his assign a monopoly, granted of grace by the Crown, in the making, use and sale of an invented article. The Australian law is founded on the English, which has had a long and curious history. Patents were originally granted to encourage foreign craftsmen to bring their crafts to England; the crafts were then "novel" only in England. The Stuarts attempted to raise money by granting to favourites monopolies in the sale of common articles; see the *Case of Monopolies*.² The law began to take its modern shape in the Statute of Monopolies³ which authorised the grant of a monopoly lasting fourteen years to the true and first inventor of "any manner of new manufacture"—a phrase repeated in the Commonwealth Patents Act 1903-35, s. 4. In the 18th century, the principle was established that the consideration for the grant is the

1. Oxford Dictionary provides optional pronunciation "patents" or "paytents": it would seem that the former has the greater currency.

2. 11 Co. Rep. 841.

3. 21 James 1c.3 (1624).

disclosure, in a specification, of details of the patent in such manner that on its expiry, the public will be able to make and use it. Lord Mansfield contributed much to this development.

The first and principal Commonwealth Act was passed in 1903 and superseded the State Acts then in force. Apart from the amending Act of 1921, which extended the duration of the grant from fourteen years to sixteen years, the principal Act is substantially still in force. The Act provides for the creation of a Patents Office under a Commissioner, in which the grant of patents is registered. Trusts relating to patents do not appear on the Register, nor will the Commissioner receive notice of them. Persons whose names appear on the Register book, as proprietors of patents, are, subject to the legal rights which are shown in the Register as subsisting in others, deemed absolute owners thereof.

Anyone, whether British subject or not, can make application for a patent. Under the British Act corporations cannot *apply* for a grant of letters, though it may be *granted* them, because there an applicant must make a declaration that he or she is the first and true inventor of the invention claimed. A corporation cannot invent, being without the necessary mental machinery. This qualification does not apply in Australia. Our Act allows the actual inventor, his assign, nominee or legal representative, any of the last three of which can be a corporation, to apply for a grant.

With the application for a grant there must be tendered either a provisional or a complete specification of the nature of the invention, so described as to render its construction, manufacture or use fully comprehensible to the public generally. The question of the "novelty" or "patentability" of an invention is a question of fact and degree, involving such elements as newness, utility to the public, reduced costs for existing products, and practical as compared with abstract value. The decisions on this are numerous and difficult to reconcile.

The application, on being received by the Commissioner, is advertised and referred to an examiner. The examiner reports to the Commissioner, who may make or refuse the grant after hearing any opposition; there is an appeal to the High Court or to State Supreme Courts. The grant must occur and letters be sealed within sixteen months of the application unless extension of that period is judicially granted.

For an infringement of a subsequently granted patent, which occurs between the date of application and the date of presentation of a complete specification, no action will lie. But section 69 of the Act dates the patent back to the date of the complete specification so that an infringement occurring between the date of the complete specification and the date of grant will be actionable unless statute-barred. It may be of course that a complete specification is forwarded with the application, in which case, if letters be granted, the patentee has complete protection. The question of what constitutes an infringement in a particular case is a matter of fact.

The remedy for infringement is an injunction and an inquiry as to profits made by the infringer and loss or damage sustained by the plaintiff.

An application for a patent may, within three months of the date of application, be opposed. The Act, s. 56, lays down the grounds upon which an opposition may be founded.

On the application of a patentee to the High Court or the Supreme Court, the term of a patent may be extended. The 1921 Act provides that upon application a patent may be extended for five years and in exceptional circumstances for ten years. Caveats against the extension may be entered, and the Court is directed to have regard to the nature and merits of the invention to the public, the profits made by the patentee, and all the circumstances of the case. No hard and fast rules can be laid down here. Thus in some cases £20,000 has been held to be insufficient remuneration for a patentee and in others a mere £1,000 has been held to be not insufficient. Provision is also made for extension in cases where war conditions have made a patent unprofitable.

D. S. MURRAY.

VENDOR AND PURCHASER : HOUSING COMMISSION ORDERS.*

The development and crystallization of the law of Vendor and Purchaser occurred during a time when there could have been little activity by State Social Service Departments. It is for this reason that the law relating to the incidence, as between vendor and purchaser, of Housing Commission orders is in a somewhat confused, unsettled and embryonic phase.

The great difficulty lies in reconciling certain conflicting tendencies. It all depends on the angle from which the subject is approached. On the one hand, it might be argued that, once the contract of sale has been executed, there is immediately created as between the Vendor and Purchaser a relationship of trustee and beneficiary in accordance with the equitable principle clearly established in *Lysaght v. Edwards*¹ and flowing from the more general principle developed in the Court of Chancery that equity deems that to have been done which ought to have been done. On the basis of this argument it follows that the purchaser has become the equitable owner with all the benefits and burdens attaching to ownership.

On the other hand, the purchaser might seriously contend that he has contracted with respect to a particular subject matter, and the alteration, deterioration, or destruction of that subject matter is a good ground for the rescission of the contract by him. This argument has been advanced in various guises. Sometimes it is claimed that there has been a failure of consideration insofar as the thing substantially contracted for no longer exists, or that there has been a misdescription of title, or that the contract can be rescinded for impossibility of performance.

These conflicting arguments seemed to be the cause of the great difficulty encountered by His Honour Mr. Justice Lowe in *Re Manton and Fletcher's Contract*² where the learned Judge frankly admitted that hard-

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1. 2 Ch. D. 499.

2. [1940] V.L.R. 374.