1901
Nov. 2.

BETWEEN

WILLIAM MELDRUM.....PLAINTIFF;

AND

DAVID DOUGLAS WILSON AND JOHN A. WILSON..... } DEFENDANTS.

Patent of invention—Cleansing pickled eggs—Claim—Patentability.

The application of well known things to a new analogous use is not properly the subject of a patent.

The defendants employed a solution of hydro-chloric acid to remove from pickled eggs the deposit of carbonate of lime that forms upon them while being preserved in a pickle of lime-water. From the known properties of the acid and its use for analogous purposes it was to be expected that it would accomplish the purpose to which it was put. The purpose was new, and the defendants were the first to use the process and to discover that it could be practised safely and with advantage in the business of preserving and marketing eggs; but there was nothing in the mode of employing such solution demanding the exercise of the inventive faculties.

Held, that there was no invention, and that a patent for the process could not be sustained.

THIS was an action to set aside the Canadian letters-patent numbered 67,813 issued to the defendants for a process of cleansing pickled eggs.

The facts of the case are stated in the reasons for judgment.

June 4th, 5th and 6th, 1901.

The case was heard at Toronto.

C. A. Duclos and *C. A. Masten* for the plaintiff.

A B. Aylesworth, K.C. and *W. C. Mackay*, for defendants.

C. A. Duclos, for the plaintiff, argued as follows:

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First, as regards the utility of the patent in question, I submit it is not useful. The treating of eggs by this process does not in any manner improve their quality. At most it but gives the egg an improved appearance, and so increases the chance of practicing a fraud upon the public. It is improper to protect the process by a patent. (Cites *Langdon* v. *De Groot* (1); *Merwin on Patentability* (2); *Westlake* v. *Carter* (3).

Secondly, there is an absolute want of inventiveness in this process. The properties of the solution used by the defendants to cleanse the eggs were well known. It was common knowledge before the defendants got their patent that muriatic, or hydro-chloric, acid will attack and dissolve lime. The defendants simply applied a well-known principle without devising any new method of application. If the invention is simply the application of a well known principle to an analogous use, although it may be true that it is accompanied by advantages not thought of or practiced before, there is no invention. (Cites *Elias* v. *Grovesend Tin Plate Co.* (4); *Harwood* v. *Great North Western Railway Co.* (5); *Morgan* v. *Windover* (6); *Lane Fox* v. *Kensington Electric Light Co.* (7); *Reg.* v. *Cutler* (8); *Tetley* v. *Easton* (9); *Ralston* v. *Smith* (10).

C. A. Masten followed for the plaintiff:

The defendants placed eggs upon the market treated according to the process covered by this patent long before their patent was obtained. They, therefore, had communicated the nature of their discovery to the public and forfeited their right to a patent.

[BY THE COURT: The sale of the eggs would not necessarily communicate the nature of the process.

(1) 1 Paine 203.
(2) P. 263.
(3) 6 Fish. 519.
(4) 7 R. P. C. 455.
(5) 11 H. L. C. 654.
(6) 7 R. P. C. 131.
(7) 9 R. P. C. 221, 413.
(8) 3 C. & K. 215.
(9) 26 L. J. C. P. 269.
(10) 11 H. L. C. 223.

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The purchaser does not purchase the process when he purchases the eggs.]

Perhaps not, but when coupled with the elementary knowledge supposed to be possessed by all, it may be said that the sale of the treated egg is a sale of the patented article. I say that this may very well be the case under our Patent Act, which seems to make the sale of the product such a use of the invention as would preclude the inventor from obtaining a patent.

But the patent is bad upon a more fatal ground than that, namely, the defendants' claim is too broad. If this, instead of being an action of *sci. fa.* to set aside the patent, were an action brought by the defendants to restrain an infringement of their patent, what process of cleaning the eggs would not be an infringement? A "chemical solution" is so wide a term that it would include almost any process of cleansing known to the trade. (Cites *Edmunds on Patents* (1); *Gadd* v. *Mayor of Manchester* (2); *Re Adamson's Patent* (3).

A. B. Aylesworth, K.C. for the defendants:

It is no objection to the patentability of a discovery or invention that it is simple, or that it consists in the application of well-known principles. (Cites *Bicknell* v. *Peterson* (4); *Dion* v. *Dupuis* (5); *Tilghman* v. *Morse* (6); *Nobles* v. *Anderson* (7); *Penn* v. *Bibby* (8); *Washburn* v. *Haish* (9); *The Queen* v. *Laforce* (10).

The subject-matter of our patent is a process which is useful, and a process or art which is new. (*Curtis on Patents* (11). So long as there is a new mode of attaining an old result, or a mode of attaining a new

(1) 2nd ed. p. 94.
(2) 9 R. P. C. 249.
(3) 6 DeG. M. & G. 420.
(4) 24 Ont. A. R. 427.
(5) 12 Q. R. (S. C.) 465.
(6) 9 Blatch. 421.
(7) 11 R. P. C. 115.
(8) L. R. 2 Ch. 127.
(9) 4 Fed. R. 900.
(10) 4 Ex. C. R. 14.
(11) 4th ed. sec. 9.

result in any department of industry there is the exercise of inventive skill which will support a patent. Our patent is for a process for restoring eggs to their natural appearance after the eggs have been pickled or preserved. We obtain a definite result by an original method, and our patent came to us as a matter of right. It cannot be set aside on the ground of want of invention.

Then, with reference to the alleged using of the process by the defendants before the application for their patent, that was no disclosure or publication of the process by which the eggs were cleansed. The authorities all sustain me in that proposition. (*Summers* v. *Abell* (1); *Bentley* v. *Fleming* (2); *Ingall* v. *Mast* (3); *Leonhardt & Co.* v. *Kalle & Co.* (4); *Dick* v. *Tullis* (5).

The specification and claim read as a whole disclose no ambiguity, and contemplate a perfectly patentable matter.

(He cited on this point, *Toronto Auer Light Co.* v. *Colling* (6); *Vickers* v. *Siddel* (7).

C. A. Duclos replied, citing *Smith & Davis Mfg. Co.* v *Mellon* (8).

THE JUDGE OF THE EXCHEQUER COURT now (November 2nd, 1901), delivered judgment.

This action is brought to obtain a declaration that letters-patent numbered 67,813, granted to the defendants on the 21st of June, 1900, for an alleged new and useful improvement in the process of treating eggs, be declared void. The validity of the patent is challenged on the grounds (1) that the defendants were

(1) 15 Gr. 532.
(2) 1 Good. P. C. 42.
(3) 2 Bann. & Ard. 24.
(4) 12 R. P. C. at p. 115.
(5) 13 R. P. C. 149.
(6) 31 Ont. R. 18.
(7) 15 App. Cas. at p. 505.
(8) 66 Off. Gaz. Pat. (U.S.) 173.

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not the true and first inventors of the alleged invention; (2) that it was not the subject matter of valid letters patent; (3) that it was not new, but was well known and used by many persons other than the defendants long before their alleged invention thereof; (4) that it had been in public use with the consent and allowance of the said defendants for more than one year previous to the application in Canada for a patent therefor; and (5) that the specification was not sufficient. In addition to these grounds of objection which are set up in the statement of claim, it was at the hearing argued that after the defendants' alleged invention and before their application for a patent, the public became possessed of a knowledge of the invention without the consent and allowance of the inventors, and that on the true construction of *The Patent Act*, and having regard especially to clause (*d*) of section sixteen, they were not entitled to a patent. I understand that argument (stating it briefly) to be that while the knowledge or use of an invention by other persons, that would under section seven preclude an inventor from obtaining a patent, is a knowledge or use prior to the invention, and while the public use and sale therein mentioned for more than one year prior to the application for a patent must be a public use or sale with the consent and allowance of the inventor, there is another contingency that may happen; namely, that by reason of the invention or discovery of others and without any consent or allowance of the first inventor, and before his application for a patent the public may become possessed of the invention, and that if that happens (as it was contended that in this case it had happened) the inventor is not entitled to a patent; that he has no consideration to offer to the public for the grant he seeks and cannot obtain it; that on that subject the law of Canada is the same as

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the law of England, subject only to this, that the inventor shall not be prejudiced by his own communication to the public of a knowledge of his invention, if he makes his application for a patent within one year thereafter. In the view that I take of another objection on which the plaintiff relies, I shall not have occasion to discuss this question, or to determine whether or not, in this case, there has been such a prior knowledge or use of the invention as would defeat the patent.

It will, I think, be convenient in the first instance to describe the alleged invention and claim of the patentees, in their own language, as used in their specification, from which the following is extracted:

"Our invention relates to an improvement in a "process for treating eggs, the object being to restore "eggs to their normal appearance after having gone "through the pickling or preserving process.

"Under the old system of preserving eggs by the "use of lime-water, the eggs were placed in the pre-"serving fluid and left either uncovered or covered by "placing cloths on top of them and then placing a "quantity of quick slacked lime on top of the cloths, "which in both instances caused the eggs to become "quickly coated with carbonate of lime or alkali. After "removing the eggs from the preserving fluid, it has "been the practice heretofore, to merely wash them "with clear water. But in so doing the particles of "lime adhering to the shell were not dissolved, thus "leaving them with an unnatural appearance and con-"dition. Added to this is the well known disadvan-"tage that eggs with carbonate of lime left on the shells "are thereby rendered air tight and will not boil with-"out bursting.

"We propose covering the preserving fluid in the "vats or tanks containing the eggs with deodorized oil

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"for the purpose of excluding air, and the carbonic acid "gas contained therein, from the eggs and preserving "fluid, thus preventing to a great extent the formation "and deposit of carbonate of lime on the shells, result- "ing from the action of carbonic acid with the lime "used in the pickling or preserving solution thus tend- "ing to keep the eggs sweet and in their natural con- "dition. After having been thus treated, the eggs are "taken out of the preserving solution, the oil first "having been carefully removed so that no particle "thereof shall come in contact with the eggs. The "eggs are now rinsed in water and they are then "restored to their normal appearance by passing them "quickly into, and quickly removing them from a "solution of hydro-chloric, acetic or sulphuric acid or "equivalent chemical which will dissolve the alkaline "deposit on the shell without affecting the shell itself.

"Upon removing the eggs from the restoring solu- 'tion, they are again thorougly rinsed with clear water 'so as to remove the acid and deposit upon the shell "loosened by the action of the acid and finally the "eggs are thoroughly air dried.

"The two features of our process which we would "particularly impress are, that the eggs are quickly "passed into and out of the acid solution so that the "acid is not given time to attack the shell itself, but "merely acts upon the alkaline deposit upon the shell, "and the other feature consists in the use of a solution "of such strength that this quick passage of the eggs "into and out of the solution accomplishes the result "desired.

"The result of this treatment is that the shells will "be almost, if not quite, restored to their natural bloom "and appearance and the danger of the eggs bursting "when boiled hitherto alluded to is greatly removed. "The danger of the eggs bursting when boiled is not

"only lessened, but the eggs have such an appearance "as to very closely approximate that of a fresh laid "egg.

"Having fully described our invention, what we "claim as new and desire to secure by letters patent "is:

"1. The herein described process of restoring eggs "to their natural appearance after having been through "a pickling or preserving process, which consists in "subjecting the eggs to the action of a chemical solution "of sufficient strength to quickly loosen the deposit "thereon without attacking the shell of the egg, and "thereafter immediately cleansing the eggs, substan- "tially as and for the purpose described.

"2. The herein described process of restoring eggs "to their natural appearance after having been through "a pickling or preserving process, which consists in "subjecting the eggs to the action of a chemical solu- "tion of sufficient strength to quickly loosen the deposit "thereon without attacking the shell of the egg, and "thereafter immediately cleansing the eggs and finally "drying the eggs thoroughly, substantially as and for "the purpose described.

"3. The herein described process of restoring eggs "to their natural appearance after having been through "a pickling or preserving process, which consists in "first rinsing the eggs in water, then subjecting the "eggs to the action of a chemical solution of sufficient "strength to quickly loosen the deposit thereon with- "out attacking the shell of the egg, and thereafter im- "mediately cleansing the eggs, substantially as and "for the purpose described.

"4. The herein described process of restoring eggs "to their natural appearance after having been through "a pickling or preserving process, which consists in "first rinsing the eggs in water, then subjecting the

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"eggs to the action of a chemical solution of sufficient "strength to quickly loosen the deposit thereon with- "out attacking the shell of the egg, and thereafter im- "mediately cleansing the eggs and finally drying the "eggs thoroughly, substantially as and for the purpose "described."

It will be observed that four claims are made, but they constitute in reality but one claim. In the second and fourth statements of the claim, part of the process described is to dry the eggs thoroughly after they have been subjected to the chemical solution, and then cleansed by, as appears from the specification, "being thoroughly rinsed with clear water." And by the third and fourth claims part of the process consists in "rinsing the eggs in water" as well before as after they have been subjected to the chemical solution. But these rinsings in water and dryings, however important they may be in the actual business of preparing eggs for the market, are not important in determining whether the alleged invention or discovery is patentable or not. If the patent is not good for the process of restoring pickled eggs to their natural appearance by subjecting them to the action of a chemical solution it will not be good because the eggs are washed before or after their immersion in the solution, or because they are dried, and it will, I think, make no difference whether we regard the alleged invention as an improvement in the process of treating eggs to preserve them and prepare them for the market, or as a process to be applied to pickled eggs in getting them ready for the market. The alleged invention has to do with one step or incident in the process, and not with the process as a whole. The question then is whether one may have a patent for the process of restoring eggs to their natural appearance after having been through a pickling or pre-

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serving process, by subjecting them to the action of a chemical solution of sufficient strength to quickly loosen the deposit thereon without attacking the shell of the egg, no particular way or means of preparing or applying the solution being pointed out? The claim is for the process of subjecting the pickled eggs to a chemical solution of a sufficient strength for the purpose. The specification shows that the solution may be of "hydro-chloric, acetic or sulphuric acid, or an equivalent chemical which will dissolve the alkaline deposit" on the shell of the egg. The adjective "chemical" may in this connection be taken to mean, in accordance with the laws of chemistry, and the expression "chemical solution" used in the claim, means, I think, a solution of hydro-chloric, acetic or sulphuric acid or of any equivalent that will, in accordance with the laws of chemistry, combine with and dissolve carbonate of lime. But the specification does not give any but the most general direction as to the strength of the solution; neither does it disclose any particular way, means or process of applying to the matter in hand the well-known and understood principle or fact of chemistry that certain acids will act in that way on carbonate of lime. We are told that the solution must be strong enough, and the immersion of the eggs therein long enough, to act upon the alkaline deposit on the shells of the eggs, but that such immersion must not be long enough, or the solution strong enough, to attack the shells themselves. Certainly the claim for which the patent in question has issued is a large one, stated in a most general and indefinite way. And one who has to defend the patent does, I think, as Mr. Duclos argued, find himself on the horns of a dilemma.

There is of course no contention that the defendants discovered that the acids mentioned would dissolve carbonate of lime. That had been common knowledge

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for centuries; and use had been made of it in other trades and businesses. The defendants were, so far as the evidence in this case shews, the first to use such a solution to remove from pickled eggs the deposit of lime that forms on them during the process of preserving them in a solution of lime and salt. They found out that that was a good thing to do in the business of preserving and marketing eggs; that it could be done safely, without injury to the eggs; that a pickled egg so treated was less likely to burst open in boiling than one not so treated; and that the appearance of the shell was restored to something resembling somewhat that of a newly laid egg; and that, because of its improved appearance, the egg commanded a higher price in the market. But the defendants are not entitled to a patent simply because they were the first to discover that to subject pickled eggs to an acid solution was a good thing to do, and a safe thing, or because so treating them you get an egg less likely to burst open in boiling, or one that being free from the deposit mentioned, and brighter, took the eye of the market more readily. In addition to all that there must be invention somewhere. Here of course there could be no invention in the sense of a discovery that the acid solution would remove the deposit. That was well known. And if it had not been known, and if the defendants had been the first to discover the fact, or the principle or law of nature upon which the fact depends, they could not have had a patent therefor apart from some particular method, means or process of applying the principle or the fact to some useful purpose But what have we here? What is the method or means pointed out? We are told to subject the pickled egg to a solution of hydro-chloric or other acid. The solution is to be of sufficient strength but not too strong. The eggs are to be passed

into and out of the solution quickly. There is to be strength of acid and time of immersion sufficient to remove the deposit on the shell of the egg without attacking the shell itself. Everything else is left to the judgment of the operator or workman. He must for himself discover what the sufficient strength is, and how the eggs are to be subjected to the solution, what appliances he shall use, and what methods he shall adopt.

Now if any competent workman, starting only with the knowledge that the specification gives, namely that the deposit of carbonate of line mentioned may safely and with advantage be removed from pickled eggs in a solution of one of the acids mentioned—if such a workman could without invention or addition successfully put in use the process for which the patent was granted then of course there is no invention in the method of applying the principle on which the success of the process depends. If on the other hand a competent workman, starting with such knowledge and direction as the specification gives, could not without invention or addition, without considerable ingenuity and experiment, successfully use the process in question, then the specification is insufficient and the patent cannot be supported. My own view is that a competent workman taking the patent and specification as they stand, could without invention, (I will not say without addition) but without invention or any considerable ingenuity or experiment successfully use the process described. The strength of the solution and the length of time of the immersion is left, and must of necessity to a certain extent, and within limits, be left to the person using the process. In use the acid solution is constantly losing its strength, and it is necessary from time to time to add more acid. On some eggs, depending upon the process used in

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preserving them and the manner in which that is carried out, there will be a greater deposit than on others. In that case the solution will require to be stronger, or the time of immersion longer than where the deposit is less. The workman must judge by the result. He must examine the effect produced on the eggs as he goes along; and his eye will, if he be a competent and experienced workman, tell him when his solution is too strong and when it is not strong enough; when the immersion of the eggs therein is not done quickly enough and when it is done too quickly.

The defendants in 1888 first used this process of immersing pickled eggs in an acid solution, as one step in the business of preserving them and putting them on the market. They have since used it largely and with profit in the way of their business; but they took what means they could to keep the process secret. They let two or three other dealers in eggs, friends of theirs, into the secret, but in confidence, and in order that the latter might test and use the process. The latter also used it commercially in a large way, but as secretly as the character of the business and the necessity of employing persons to assist would permit of. Other dealers finding eggs so treated on the market, and that they commanded a higher price than ordinary pickled eggs, set to work to find out how to produce them. Some of such dealers may perhaps have been assisted somewhat by information gleaned in some way from persons who had been employed by the defendants, or by the other dealers who, in confidence, were using the process. But other dealers having no such assistance were able to discover the process and use it successfully in their business. There is evidence of that being done as early as 1896; and by the time the defendants applied for their patent

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the process was in one way or the other in use very generally by those dealers who were preserving eggs for the British market; though each dealer was, as best he could, keeping his secret to himself. But I do not see that there was anything to prevent any dealer who knew what the deposit was, and that carbonate of lime could be removed by using a solution of hydrochloric or other acid, from finding out the process for which the patent issued, and how to use it successfully in his business; and that without invention or any very considerable experiment, unless it were to determine the strength of the solution most suitable for the purpose, as to which, except for the vague and general directions to which reference has been made, the specification is silent.

Now what the defendants, and the other persons who also found out the process in question, did, was to employ a well known agent for a purpose for which it had not before been used. From the known properties of the agent and from its use for analagous purposes, it was to be expected that it would accomplish the purpose to which it was put. The purpose was new, but there was nothing in the mode of employing the agent demanding the exercise of the inventive faculties. That within the meaning attaching to the expression in patent law is not invention. The law is well settled; it has been stated in different terms, but all are agreed that the difficulty is not in knowing what the law is, but in applying it to the case in hand. It is in each case a question of fact to be determined upon a consideration of all the circumstances existing in the particular case. In *Elias* v. *Grovesend Tinplate Company* (1), Lord Justice Lindley, adverting to the difficulty of applying the principle where there is some little ingenuity, though not much, says that in investi-

(1) 7 R. P. C. 467.

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gating the law on the subject one may now start with the cause of *Morgan* v. *Windover* (1), which was decided in 1890. In that case Lord Halsbury, Lord Chancellor, said the result of the examination of the case, as so often happens in a case of this sort, was that it was found really not to turn upon any question of law, for that had hardly been in doubt at the bar and certainly there had been no doubt in any of their Lordship's minds, as to what the law to be applied to a case of the sort was. "It is conceded" he adds "on "the part of those who insist upon the patent that "there must be invention. Whether that invention "is to be ascertained by considering something origi- "ginally discovered, or by considering a combination "producing a new result, still it cannot but be certain "that the statute of monopolies, and the whole "branch of the law founded on that statute make it "an absolute condition to the validity of a patent "that there should be what may properly be called "invention, and the application of well known things "to a new analagous use is not properly the subject "of a patent." And Lord Morris refers to Lord Westbury's well known enunciation of the same principle in *Harwood* v. *Great Northern Railway Company* (2), and which had been accepted by the House of Lords.

In the present case it seems to me that the plaintiff is entitled to succeed and that the letters patent in question should be declared void on the ground that the alleged invention was not the subject matter of valid letters patent. That being my view and finding on the question of fact presented by that issue, it is not necessary for me to discuss other grounds on which the validity of the patent is challenged.

I think, however, that I should add that it is no fault of the defendants that they are compelled to

1) 7 R. P. C. 131. (2) 11 H. L. C. 682.

defend the patent and specification in the form in which it is before the court. As has been stated, they found in 1888 that the deposit occurring upon the eggs while preserved in pickle could be safely and with advantage removed by using for that purpose an acid solution. That, as has been already mentioned, was only one step in the process, or as I think one should say, in the business of preserving eggs during the summer months and of putting them on the market later. And although the defendants, and others, have since then used such solutions for that purpose many times, and of many different and varying strengths, there has, I think, been nothing added to the knowledge that the defendants then possessed, though it is probable that there has been some increase in skill arising from greater experience. But all that time the defendants and their friends, the dealers to whom in confidence they communicated what they had found out, have been experimenting, in a large way, as was no doubt necessary in such a case, with the composition of the preserving pickle and the manner of covering it to exclude the air. Some of the experiments as to the composition of the pickle were unsuccessful and involved heavy losses. With reference to the mode of covering it the defendants when they first commenced to subject the pickled eggs to the acid solution covered the pickle in the manner described in the specification by placing cloths on the top of the eggs and then covering the cloths with slacked line, or as some of the witnesses called it, putty of lime. Later they covered with oil the pickle that came up over the coating of lime on the cloths. Then William Richardson, of Walkerton, Ontario, one of the egg dealers whom the defendants had taken into their confidence in respect of dipping the pickled eggs in an acid solution, abandoned the use of cloths and putty of lime for

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a covering to the pickle and used oil only. He was the first to do that, and he found it to be better than the other way. The deposit of carbonate of lime on eggs preserved in the pickle so covered was less and more uniform; and the eggs could be more successfully treated with the acid solution than could eggs preserved in a pickle covered in the old way. In 1894, he communicated his discovery to the defendants who, however, continued to use the cloths and putty of lime and oil for a covering down to the year 1897. In that year Richardson persuaded the defendants to adopt his method of covering the pickle with oil only, and they have since used that method. In 1896 Richardson had, he thinks, perfected the process as a whole. The defendants, however, do not appear to have been fully satisfied with it until after the business operations of the year 1898, unless it is thought that they were taking their chances and depending for protection, as they no doubt had a right to do, to their ability to keep the knowledge of their process from the public. Anyway it was not until June or July of 1899 that they applied for a patent. The application then made was for the process as a whole then used by them and William Richardson. But there was difficulty about the specification first presented, and they were, I understand, refused a patent for a process in which one step was to cover the pickle with oil only. Then a new specification appears to have been prepared to meet the objections of the examiner at the patent office. It bears date of the third of May, 1900, and is in terms already set out. The grant of letters patent for the alleged invention therein described was objected to by the plaintiff and others; but their objections were overruled and the patent was granted on the ground substantially that the defendants did not broadly claim as their inven-

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tion the washing of pickled eggs in a solution of hydro-chloric or other acid to remove the deposit of carbonate of lime that forms thereon while the eggs are in the pickle. It is true that the defendants did not claim that broadly as their invention. Their idea of their invention or discovery which they thought they had perfected through years of business experience no doubt was that this was one step in the process, and that they had been the first to make use of it. But it seems to have been overlooked that by eliminating the other steps or incidents of the process that the defendants claimed, except the simple ones of washing the eggs before or after their immersion in the acid solution, or both, and of drying them thoroughly thereafter, no special or particular means of washing or drying being suggested, the alleged invention and claim were greatly enlarged and made broader and more general than the defendants intended. So at least it appears to me. Whether if a patent for the defendants' process as a whole could, if granted, have been sustained or not is not now in question. The question is whether or not the patent as granted can be sustained, and for the reasons that I have given. I do not think it can be.

There will be judgment for the plaintiff, and the declaration prayed for will be made.

Judgment accordingly.

Solicitors for the plaintiff: *Atwater & Duclos.*

Solicitor for the defendant: *W. C. Mackay.*