Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of John Trotman, for prolongation of his Patent for "Improvements in Anchors," delivered on the 17th day of March, 1866.

Present:

LORD CHELMSFORD.
SIR JAMES COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

THIS is an Application for the extension of the term of a Patent for "Improvements in Anchors."

The Patent in question was taken out by the Petitioner shortly before the expiration of a Patent which had been granted to a Mr. Porter for "Improvements in Anchors," and which Patent had been worked by Porter's Assignee, Mr. Honiball, the uncle of the Petitioner, who assisted him in his business. It was to this anchor of Porter's that the Petitioner's improvements were applied. Porter's anchor had considerably improved upon the anchor in common use, but upon a trial for infringement of his Patent it was found that the principle of his improvement had been anticipated by a person of the name of Logan. That principle was that instead of the arms being fixed as in an ordinary anchor, they moved upon axes, and the flukes were set upon them at an angle. It appears that by this arrangement greater biting and holding powers were obtained, and when the anchor was in the ground, by the upper fluke resting upon the shank it was more out of the way, and less likely to be caught by the cable while the vessel was swinging, and the anchor itself was capable of more compact stowage. The Petitioner, taking this anchor of Porter's as thus described, added the

improvements for which he obtained his Patent. These, according to his specification, consisted in making the horn or toggle for canting the anchor and opening the flukes wider than the arm, in affixing the palm of Porter's anchor intermediate of the breadth of the arms, and at the back of the arm instead of in front (it not being new to place the palm at the back of the arm of ordinary anchors), and in making the angles which the palms make to the shank, and those made by the arms, to be different. These variations from Porter's anchor, however slight and insignificant they may seem, were undoubtedly improvements upon it; and the Petitioner, without the exercise of any great inventive ingenuity, perfected an anchor which has proved highly efficient and useful.

This anchor has been very extensively employed by the mercantile marine, and has invariably been found upon trial to possess holding powers superior to all other anchors. For some unexplained reason it has not been introduced into the Navy. In 1853, an anchor committee appointed by the Admiralty to determine the relative merits of different descriptions of anchors, after submitting them respectively to various tests, reported most favourably of Trotman's anchor. The Report stated that this anchor "proved to have greater holding powers than Porter's," and that when it was subjected "to trials with anchors on the Admiralty plan of the respective weights of thirty, thirty-five, and forty cwt. (stock included), no doubt was left upon the minds of the Committee that in regard to holding power with a steady equable strain, Trotman's anchors were fully equal to Admiralty anchors of at least twenty-four per cent. greater weight."

It was proved in evidence, that after this Report Porter's anchors went entirely out of use, and that the demand was for Trotman's anchors instead of them. Although therefore the merit of the improved anchor was originally due to Porter (or to Logan, who was before him in the field), the improvements introduced by the Petitioner have certainly tended to make the anchor practically more useful, and he has therefore upon this ground a claim to consideration in his present application.

But admitting the merit of the Petitioner, the question to be next considered is the sufficiency of

his remuneration. There is this peculiarity in his case, that instead of becoming himself a manufacturer of his patented anchors, he has preferred to grant licences to iron-smiths to manufacture them on their own account, paying him a Royalty. In all prior applications for the extension of the term of a Patent, the Patentee has himself made and sold the patented article, either exclusively or in common with other persons to whom he has granted licences, or he has assigned away his Patent altogether, so as to substitute his Assignee for himself in all questions respecting his Patent rights. In these cases there is obviously no difficulty in ascertaining the profit which has been derived from the Patent. It is supposed, however, that the unusual manner of working the Patent in this case renders the application of a different principle necessary. This however is clearly a misapprehension. The question in all cases of this description is not what the Patentee has received, but what has been made, or by proper judgment and application might have been made, by the Patent. The Petitioner might, if he pleased, have become the manufacturer of his patented anchor. If he had, it would then have been necessary to ascertain what part of the profits of the manufacturing business ought to be ascribed to the Patent. In arriving at this result the proper course would have been to deduct the original cost of the anchor, the ordinary amount of manufacturer's profits in the particular trade, and probably an allowance for the time and labour of management, and the remainder would then have been the profit due to the Patent. But the Petitioner was unwilling to incur a large expenditure in erecting the proper plant for carrying on the manufacture, and preferred to leave the expense of the new machinery necessary for forging his anchors to the Licensees, being content to receive a royalty as his share of the profits of the Patent business. Under these circumstances, if this royalty alone were to be regarded, it is evident that we should not arrive at a knowledge of the whole amount realized by the Patent, but that the question would be changed from what the Patent had produced to what it had yielded to the Patentee. It was necessary therefore for the favourable consideration of the Petition that the Patentee should bring into ac-

count the profits obtained by the licensees in respect of the Patent. He has however not furnished any information upon this point; for although he has proved that the licensees paid him royalties amounting to £15,000, being five per cent. upon the £300,000, the gross amount of their business, he has not enabled their Lordships to ascertain how much of this large sum is applicable to the cost of the manufacture, and what percentage of it belongs to the Patent monopoly. In the course of the argument for the Petitioner, a case was supposed of a person patenting an invention of a particular kind of bread, and granting licences for the sale of it to a very large number of bakers, and it was asked whether in such a case it would be necessary for him, in applying for a prolongation of the term of his Patent, to prove the amount of the profits made by all the licensees in respect of the patented article. The answer is, that he would undoubtedly be bound to furnish this proof. It must always be borne in mind that the extension of the term of a Patent is matter of favour, not of right; and that it is essential to the favourable consideration of the Patentee's application, that he should distinctly prove how much the public have had to pay, or, in other words, how much has been received on account of the Patent. If, therefore, the Patentee has dealt with his Patent rights in such a manner that when the time arrives for asking for a renewal of his term, he has put it out of his power to give the requisite evidence upon which his application must to a great extent be founded, his petition must fail, because it wants the proof which is essential to its success. This is the case with the present Petitioner. He has left in complete obscurity the actual amount of profits realized by the Patent, which may, for anything that appears, be more considerable than in any former case in which a Patent has been extended.

The uncertainty in which the Petitioner has left this part of his case, would be fatal to his application, even if he were entitled to all the deductions for his own share of the profits which he has claimed in his accounts. But their Lordships cannot forbear expressing their dissatisfaction with the manner in which these accounts have been prepared. The Petitioner was in the situation of a

person receiving a rent or royalty, having nothing whatever to do with the manufacture of the article from which this rent or royalty was derived. He had a right under the licences (a specimen of which has been furnished) to visit the works of the licensees at any time, "to view and inspect the method there used and employed in manufacturing anchors, and the quantities and values thereof." This power was reserved to enable him to ascertain from time to time the nature and amount of the business carried on, so as to provide him with a constant check upon the accounts of the royalties. It is very doubtful whether his journeys to the different works, for the purpose of watching over his interests, and seeing that the anchors were properly made, ought to be debited to the Patent; and there are annually questionable items introduced into the accounts, for many of which there are no vouchers. But these sums are insignificant in comparison with the item for "Patentee's allowance and subsistence-money for fourteen years at £350 per annum, £4900." The Patentee, in his examination before their Lordships, at first gave them to understand that this sum partly represented the expense of his maintenance which he claimed to charge against the Patent, but he afterwards stated that it was an assumed sum which he considered himself entitled to for his trouble and labour in generally superintending the manufacture of his anchors by the different licensees. Taking it for granted that this is the correct meaning of this large item, it is difficult to understand upon what principle it can be maintained. It was no part of the covenant with the licensees that the Petitioner should superintend their operations; and if they required his assistance to instruct their workmen, they should have engaged him, and paid him for his services. If they had done so, this would have constituted a fair deduction out of the profits of the licensees, and would have properly entered into the Patent account. But if an allowance for management were to be deducted from the royalty in ascertaining the amount of profit received by the Patentee, as the licensees, in estimating their profits from the Patent, would be entitled to the deduction of an annual sum on the same account, the Patent would be debited

twice with the same item of expense for management.

In the absence of all proof of the portion of the profits received by the licensees, which the Petitioner was bound to adduce, and from the unsatisfactory nature of his accounts, their Lordships think that the Petitioner has not placed himself in a position which entitles him to their favourable consideration, and they cannot recommend any extension of the term of his Patent.