

All of the elements of a combination may be old, but the combination may itself constitute an invention. (*Lister v. Leaker* (1858), 8 El. & Bl. 1004, 120 E.R. 373; *Bovill v. Keyworth* (1857), 7 El. & Bl. 725, 119 E.R. 1415; *Crane v. Price* (1842), 1 W.P.C. 383.)

The leading Canadian case of *Smith v. Goldie* (1882), 9 Can. S.C.R. 46, deals with this point. The headnote reads:—

"An invention consisted of the combination in a machine of three parts, or elements, A, B and C, each of which was old, and of which A had been previously combined with B in one machine, and B and C in another machine, but the united action of which, in the patented machine, produced new and useful results. Held (Strong, C.J., dissenting), to be a patentable invention."

In the judgment, Ritchie, J., said, p. 50:—"Where the patent is for a combination, the combination itself is the novelty and also the merit."

And Henry, J.:—"The result in this case is produced by the combined and simultaneous action of the draft upwards created by the fan, and the continuous operation of the brush or brushes worked by the machinery as described in the specification. It was the simultaneous action which produced the result. . . . By the co-operation of the constituents, a new machine of a distinct character and function was formed, and a beneficial result produced by the co-operating action of the constituents, and not the mere adding together of the separate contributions."

For other Canadian authorities on combinations see *Toronto Telephone Mfg. Co. v. Bell Telephone Co. of Canada* (1885), 2 Can. Ex. 495; *Robert Mitchell v. Hancock Inspirator Co.* (1886), 2 Can. Ex. 539; *Griffin v. Toronto R. Co.* (1902), 7 Can. Ex. 411; *Mattice v. Brandon Machine Works* (1907), 17 Man. L.R. 105; *Danereau v. Bellemare* (1889), 16 Can. S.C.R. 180; *Barnett McQueen v. Canadian Stewart* (1910), 13 Can. Ex. 186.

A new combination may be formed by the omission of an element from, or by the addition of an element to, the elements of an old combination, provided there is a new result produced by a different interaction of the elements. (*Pneumatic Tyre Co. v. Tubeless Tyre Co.* (1897), 15 R.P.C. 74; *Wallington v. Dale* (1852), 7 Exch. 838; *Russell v. Cowley* (1834), 1 W.P.C. 459; *Morris v. Bransom* (1776), 1 W.P.C. 51; *Vickers v. Siddell* (1890), 15 App. Cas. 496.) The substitution of a new element in an old combination, if the element substituted is not obviously and demonstrably an equivalent of the one for which it was substituted, may involve invention. (*Unwin v. Heath* (1855), 5 H.L. Cases, 508, 522, 1 W.P.C. 551; *Badische Anilin und Soda Fabrik v. Levinstein* (1885), 2 R.P.C. 73.)

For American cases on combination see *San Francisco v. Keating*, 68 Fed. 351, 15 C.C.A. 476; *Von Schmidt v. Bowers*, 80 Fed. 140, 25 C.C.A. 323; *American v. Helmstetter*, 142 Fed. 978, 74 C.C.A. 240; *National v. Aiken*, 163 Fed. 254; *Hoffman v. Young*, 2 Fed. 74; *National v. American*, 53 Fed. 369; *Green v. American*, 78 Fed. 110, 24 C.C.A. 41; *Gill v. Wells*, 89 U.S. 1; *Electric v. Hall*, 114 U.S. 87; *Prouty v. Ruggles*, (1842), 16 Pet. 336; *McCormick v. Talcott*, (1857), 20 How. 402; *Vance v. Campbell* (1861), 1 Black 427; *Dunbar v. Myers*, 94 U.S. 187.

It is necessary to distinguish combinations from mere aggregations. Aggregation is not invention either in processes, machines or manufactures. (*Hailes v. Van Wormer* (1873), 20 Wall 353.) The elements which are col-