

(1871), 18 Gr. 437) is to the same effect. In this case it was held that if the patentee's invention had never before been applied to the same class of machines, but had been applied to other machines he can claim invention. (For Canadian authorities see also *Meldrum v. Wilson* (1901), 7 Can. Ex. 198; *Rolland v. Fournier* (1912), 4 D.L.R. 756).

In *Penn v. Bibby* (1866), L.R. 2 Ch. 127, 36 L.J. Ch. 455, the patent related to "an improvement in the bearings and brushes for the shafts of screw and submerged propellers."

It was objected against the patent that it was a case of mere analogous use of bearings known in connection with grindstones and water-wheels. Lord Chelmsford, L.C., to whom there was an appeal for a new trial, in reference to the question of invention said (L.R. 2 Ch. 135): "I was objected that the finding was erroneous, because the alleged invention was merely a new application of an old and well-known thing. It is very difficult to extract any principle from the various decisions on this subject which can be applied with certainty to every case; nor indeed is it easy to reconcile them with each other. The criterion given by Lord Campbell in *Brook v. Aston*, 8 E. & B. 478, 485, 120 E.R. 178, has been frequently cited (as it was in the present argument), that a patent may be valid for the application of an old invention to a new purpose, but to make it valid there must be some novelty in the application. I cannot help thinking that there must be some inaccuracy in his Lordship's words, because according to the proposition, as he stated it if the invention be applied to a new purpose, there cannot but be some novelty in the application."

In every case of this description one main consideration seems to be whether the new application lies so much out of the track of the former use as not naturally to suggest itself to a person turning his mind to the subject, but to require some application of thought and study. Now, strictly applying this test to the present case, it appears to me impossible to say that the patented invention is merely an application of an old thing to a new purpose."

*Thomson v. American Braided Wire Co.* (1889), 6 R.P.C. 518, was a case near the border line, but the patent was upheld by the House of Lords on the ground that there was quite sufficient invention in the mode of application. Lord Herschell's judgment contains the following passage (6 R.P.C. 527): "It cannot be denied that both the prior patents to which I have referred afford some colour to the defendant's contention that the patentee has done nothing more than apply a known substance in a manner and to a purpose analogous to that in and to which it had been already applied, and that the patent therefore cannot be supported. If I thought that the patentee had claimed the mere use of tubular sections of braided wire as a bustle, however fastened or secured, I should arrive at the conclusion that the defendants' contention was well founded, but I do not thus construe the specification. I have already stated that in my opinion it is the combination alone for which protection is sought, and that the method of fastening the ends by clamping plates is an essential part of that which is claimed. Taking this view of the patent, I think that, even with the state of knowledge which existed at the time the patent was applied for, some invention was required