Case No. 4,448.

EMIGH v. CHICAGO, B. & Q. R. CO.

{1 Biss. 400; 2 Fish. Pat. Cas. 387; Merw. Pat. Inv. 425.}[1]

Circuit Court, N. D. Illinois. June, 1863.

PATENTS—CLAIM—NEW COMBINATION OF OLD PARTS—LICENSE—EXTENT.

1. Stevens' claim fairly interpreted means the particular combination and arrangement of lever, link-rods and rubbers in a car, as he had described it, so as to produce the described result, viz.: the retarding of each wheel of the car when the brake is applied with uniform force.

{Cited in Sayles v. Chicago & N. W. R. Co., Case No. 12,415.}

2. Though all the parts of a combination be old, a new combination, producing a new result, may be patented.

3. A license to a railroad company extends no further than the road which it used or was authorized to construct at the time of the license; it cannot use the patent on lines afterward built or leased.

{Cited in Lilienthal v. Washburn, 8 Fed. 709.}

{See Belding v. Turner, Case 1,243, note.}

This was a bill in equity filed to restrain defendants {the Chicago, Burlington and Quincy Railroad Company} from infringing letters patent {No. 8,552} for an "improvement in railroad car brakes," granted to Francis A. Stevens, November 25, 1851, and

assigned to complainant. The claim of the patent was as follows: "What I claim as my invention and desire to secure by letters patent, Is the combination and arrangement of the levers, link-rods, and shoes or rubbers, substantially as herein described, whereby each wheel of both trucks of a car is retarded with an uniform force when the brake is put in operation." Stevens' improvement consisted of the addition of an intermediate lever, with which the brake-beam of each truck was connected, the two inner levers of each truck being connected by a link-rod so that a series of levers should be formed, by which the brakes were operated from either end of the car by the brake-wheel, with an equal pressure upon each brake-beam. The defendants denied the novelty of the invention, and relied upon two prior patents, one granted to Charles B. Turner, November 14, 1848, and one to Nehemiah Hodge, October 2, 1849. As a part of the history of the art they also put in evidence the Batchelder & Thompson brake, of 1846, patented to Henry Tanner, July 6,1852, and a brake alleged to have been used by James Milholland, in 1842. The defendants also claimed the right to use the Stevens brake on their whole road, from Chicago to the Mississippi river, under a license granted to the Chicago and Aurora Railroad Company, by F. A. Stevens, dated June 15, 1853, which covered fifty-eight miles of what is now the road of defendants, two hundred and ten miles having since been created, under the new corporate name of the Chicago, Burlington and Quincy Railroad Company, by consolidation and arrangement with other independent railroad corporations under the statute of Illinois.

S. A. Goodwin, for complainant.

J. M. Walker & J. Cochran, for defendants.

DRUMMOND, District Judge. The court is of the opinion that there is something different and distinct in the combination of the Stevens brake from that of Turner, of Hodge, of Tanner, or of any of the other brakes that have been brought before the court during the hearing of this case, in this, viz.: That in the Stevens brake the levers are of the same order, and of similar proportions, so that when operated from either end, without any serious wear or strain on other parts of the machinery, it applies all the brakes of the car with equal force to the wheels, and consequently they are all uniformly retarded.

The parts of the combination—the levers, the link-rods, and rubbers,—are all old, but the combination in the manner described by Stevens, is new, and it, the new combination, producing a new result, is a subject of a patent, and this, irrespective of the fact whether or not it contains a part of the Turner or Hodge combination.

The claim of Stevens, fairly interpreted, means the particular combination and arrangement of levers, link-rods, and rubbers in a car, as he had described it, so as to produce the result, viz.: the retarding with a> uniform force, of each wheel of the car when the brake is applied. This is all he claims, and this claim the court thinks is new and not too broad.

At the time the license was given, June 15, 1853, it was only to the Chicago and Aurora Railroad Company, its successors and assigns, and the reasonable construction of the license is that it extended no further than the road then used, or which the company was then authorized to construct. It did not extend to any and all lines of road which the company, under a new name and organization, might thereafter be authorized to build, to lease, or to use.

An order must be entered referring the case to a master to report the damages, which the plaintiff has sustained, according to the principles here stated.

Upon the coming in of the master's report, at a subsequent term, a decree was entered; for complainant for $10,620.

{NOTE. For other cases involving this patent, see Emigh v. Baltimore & O. R. Co., 6 Fed. 283; Emigh v. Chamberlain, Case No. 4,447.}

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission. Merw. Pat. Inv. 425, contains only a condensed report.}