

Case No. 6,573. HOE ET AL. V. TUTHILL ET AL.
[3 Ban. & A. 206;¹ 13 O. G. 500.]

Circuit Court, S. D. New York.

Feb., 1878.

PATENTS—IMPROVEMENT IN PRINTERS' GALLEYS—INFRINGEMENT.

The first claim of reissued letters patent No. 6,326, granted to complainants March 9, 1875, for an improvement in printers' galleys, namely: "The combination of the edge-rail and its metallic facing or lining by means which secure their union, and leave the metallic facing or lining smooth or free from perforations or similar interruptions, substantially as and for the purpose set forth:" *Held* valid, and to be infringed by the use of an L-angle metal facing for ledges with smooth unperforated face, supported by a wooden rail attached to it by screws through the bed-plate and the bottom part of the L.

[This was a bill in equity by Richard Hoe and others against Theodore Tuthill and others for infringement of plaintiffs' patent.]

Munson & Philipp, for complainants.

Daily & Perry, for defendants.

WHEELER, District Judge. This cause has been heard on pleadings, proofs and argument. The orators own a patent originally issued to Alexander T. De Puy, in letters No. 60,151, dated December 4th, 1866, and reissued to them in letters No. 6,326, dated March 9th, 1875, for an improvement in printers' galleys for holding type set up in them for use, which they claim the defendants infringe, and they pray appropriate relief for infringement.

Among other defences, the defendants allege that De Puy was not the original and first inventor of the device described in the patent, and that they do not infringe upon the patent. The issue made upon the pleadings and proofs, the decision of which is decisive of the case, is well stated in the concluding paragraph of the defendants' brief to be "Whether Alexander T. Du Puy was the original and first inventor of improvements in printers' galleys, which were and are being made and sold by these defendants."

It appears that such galleys are oblong, of various sizes, with metal bottoms, and with ledges on each side and at one end, high enough to hold upright and in place set-up type. That it is necessary to make them strong, desirable to have them light, and essential to their convenient use that the inner surfaces of the ledges next to the type be smooth.

The earliest style shown was made with wooden ledges having metal facings, with screws or nails through the facings extending into the wood. This afforded lightness and strength, but the nail or screw heads and their sockets made the faces of the ledges rough and troublesome.

The next style was a ledge of metal without wood. This obviated the roughness, but made them heavy. In 1859 De Puy invented the style, described in his patent, of galleys with wooden ledges faced with metal, secured by fastenings back of, and not interfer-

ing with, the smooth faces of the ledges. This afforded permanently smooth faces to the ledges combined with lightness and strength as far as has been shown to be practicable. This is the first, so far as has been made to appear, that any one has accomplished these combined results. In the specification of the patent he described the mode of applying his invention and its advantages, and in doing so he stated: "It is obvious that this invention may be embodied in various forms without departing from the gist or spirit of it." Then he described a particular method of fastening the metal face of the ledges to the wood by extending the metal back at the top and bottom, and turning flanges on the extensions to be forced into corresponding grooves in the wooden rail; and added: "The ledges may be attached to the bed-plate in any well-known manner."

The first claim in the patent is for: "The combination of the edge-rail and its metallic facing or lining by means which secure their union and leave the metallic facing or lining smooth or free from perforations or similar interruptions, substantially as and for the purpose set forth."

The defendants use an L-angle metal facing for ledges, with smooth unperforated face, supported by a wooden rail attached to it by screws through the bed-plate and the bottom part of the L. This is a mode of fastening the metal face to the wooden rail different in form from that which De Puy specifically described in his patent, but his leading idea, as set forth in the patent, of fastening the face-plate to the rail by an attachment back of the plate without perforating the face, is followed. The screws through the L into the wood take the place of the lower flange, and the upper one is dispensed with. The screws were well-known substitutes for flanges in such fastenings, and that change was one of form and not of substance.

According to the rules of law relating to this subject, De Puy was the original and first inventor of the invention described in the patent, and of the device made use of by the defendants, and the question stated as being decisive of the case must be answered in the affirmative. This makes it unnecessary to make any decision upon the questions made by the orator's counsel with reference to evidence bearing upon the question.

Let a decree be entered for a reference and accounting, and an injunction, according to the prayer of the bill.

¹ [Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.]