

covered this, and made his rakes in the modified form. I do not mean that he was the first or only person who discovered it. Whether this change and simplification of parts was patentable or not,—and I am inclined to think it may have been,—it was a change, and in re-issuing his patent the plaintiff omits all mention of the drum in his first and fifth claims, which are those now said to be infringed.

The plaintiff seeks to avoid the effect of the apparent expansion by arguing that a drum is found in the defendant's machine, and that a drum may be construed into the first and fifth claims of the reissue. Neither of these positions can be sustained. The defendant has no drum, and the plaintiff evidently omitted the drum from the claims of his reissue on purpose to cover such machines as the defendant's; and it cannot be fairly construed into them again. The first claim is: "The combination of a rake-tooth, a holder therefor in which the tooth is pivoted by a horizontal axis, and a spiral spring encircling said holder and axis, and having its ends secured relatively to the tooth to exert a downward yielding pressure upon the tooth, substantially as described." The fifth, though somewhat different from the first, is even more general in its phraseology, and has no reference to the drum. No claim of the original patent covers a machine like that of the defendant.

Under the recent and well-known decisions of the supreme court, this expansion of the claims was unwarrantable. Bill dismissed.

KNAPP and others v. SHAW and others.

(Circuit Court, D. Massachusetts. January 31, 1883.)

PATENTS FOR INVENTIONS—SHADE-ROLLERS—COMBINATIONS—INFRINGEMENT.

Defendants may read the original patent in evidence at the trial, though not put in before the examiner, in order to show that the reissue is for a different invention, in fact, from the original, if the evidence cannot surprise the plaintiff.

In Equity.

John L. S. Roberts, for complainants.

James E. Maynadier, for defendants.

LOWELL, J. The bill alleges the infringement of four letters patent relating to shade-rollers for curtains or shades. The first is reissue No. 6,925, and the question arises as to this: whether the defendants can read the original patent in order to show that the re-

issue is for a different invention, in fact, from the original. That defense is taken in the answer, but by some slip the patent was not offered in evidence. The case was, apparently, tried as cheaply as possible, and the four patents and the assignments were introduced by stipulation. Looking at the original, I find that the subject of the third clause, said to be infringed here, is not mentioned or referred to, or shown or described in any way. I do not see how there can be any surprise to the plaintiffs in permitting this patent to be treated as if it had been formally introduced. I can see no possible question, except such as arises on reading the two papers. I think I ought to receive this evidence, and, of course, it disposes of this part of the case in favor of the defendants. This decree is interlocutory, and if the plaintiffs can show that, by sending the case back for further testimony, they can modify or control the effect of these papers, they may move for such action.

The second patent is reissue No. 7,182, and the defendants do not deny that it was rightly granted. The second claim is: "In combination with the spring of a spring-actuated curtain-roller, a clutch which, upon the removal of the spindle from its bracket, is caused by centrifugal force to engage with the roller so as to prevent further unwinding of the spring, substantially as herein specified." The contrivance here claimed is ingenious and new, and the defense is that the defendants' clutch does not operate by centrifugal force. The expert testifies that it does operate in that way; and, upon the best examination I can give the model, I find that it does so operate, at least in part.

Patent No. 183,809, claim 1, is for a combination in such curtain-rollers as are described in the other patents, of a projection on the spindle, and a projection or stop on the adjacent bracket, arranged and co-operating in such a manner that the spindle will descend into the notch of the bracket only when turned into the proper position to cause the pawl to gravitate away from the stops, or ratchet, projecting on the roller. This claim appears to me to be valid, and to have been infringed.

The remaining patent is No. 154,400, and only the fifth claim is in controversy, which is for a notched pivot shaft, in combination with the bracket. The notching is to prevent endwise thrust. Considering the state of the art, as explained in the evidence, there seems to be nothing new in this claim, and I hold it to be invalid.

Interlocutory decree for complainants upon two of their patents.

WHIPPLE v. MINER and others.

(Circuit Court, D. Massachusetts. February 2, 1883.)

1. PATENTS FOR INVENTIONS—RESTRAINING ISSUE OF PATENT.

The decision of the commissioner of patents is not final on a question of the priority of invention, but the successful applicant will not be enjoined from receiving his patent upon the mere suggestion that the commissioner was mistaken.

2. SAME—JURISDICTION—APPEAL FROM DECISION OF COMMISSIONER.

The jurisdiction of the circuit courts to grant a patent, notwithstanding an adverse decision of the commissioner of patents, is an independent original jurisdiction, and it is not within the mere discretion of the defeated party when and under what circumstances the action of the office shall be suspended.

In Equity.

Browne, Holmes & Browne, for complainant.

George L. Roberts & Bros., for defendants.

LOWELL, J. The complainant alleges that he was the first inventor of a certain improvement in horseshoe nails; that he applied for a patent for the improvement, and, pending his application, the defendant Miner made a similar application, and, upon an interference, the office decided in favor of Miner, and is about to issue to him a patent. The bill prays that the complainant "may be adjudged to be entitled, according to law, to receive a patent for his invention," as provided by Rev. St. § 4915, and that the defendant Miner may be restrained in the mean time from receiving his patent.

I adhere to the opinion given in *Union Paper Bag Co. v. Crane*, 1 Holmes, 429, in which I sat with Mr. Justice CLIFFORD, that the decision of the commissioner of patents is not final on a question of priority of invention, even between those who were fully heard in the interference; but his decision has great weight, and it would be highly improper to enjoin the successful applicant from receiving his patent upon the mere suggestion that the commissioner was mistaken.

The bill contains no allegation of fraud, undue influence, or even of mistake, excepting a mistaken judgment, and the case is put on the simple legal proposition that the statute above cited is intended to give the courts a purely and strictly appellate jurisdiction in cases of interference, and that the appeal suspends the original judgment.

I do not find the law to be so. The statute applies primarily to ordinary cases which are heard *ex parte* in the patent-office, and though the language is broad enough to include a case where there