

within the jurisdiction of the United States, is contained in section 5280, Rev. St., whereby, upon demand of the resident consul, etc., and by procedure as therein indicated, such foreign seamen are arrested and delivered, upon extradition process, to the consul, to be sent back to the dominions of such foreign power, etc.

When the provisions of this statute (section 5280) are exhausted, the government of the United States has fulfilled its obligations with foreign powers under the commercial treaties providing for extradition of deserting seamen; it has not contracted in any such treaties to punish the harbinger on this soil, nor has it so provided in its own statutes.

It is therefore ordered that the demurrer be sustained and the information dismissed.

MANNY v. OYLER.*

SAME v. ST. LOUIS MALLEABLE IRON CO.*

SAME v. FURST & BRADLEY MANUF'G CO. and another.*

(Circuit Court, E. D. Missouri. June 4, 1883.)

1. PATENTS—ROTARY COULTERS FOR PLOWS—PFEIL PATENT, No. 4,533.

At the date of the Pfeil patent and its reissue, the mere change of form or position in a collar and spindle connected with a standard from a plow-beam, the rotary motion of which was limited by a pin through a slot at one or other foot of the collar and spindle, was not a patentable device, whether the pin was inserted at the lower end of the spindle with or without a slot, or inserted through the collar and spindle with a slot, or inserted through the spindle above or below the collar with or without lugs, or whether the pin was used to strike the arms of the coulters or not, and the Pfeil patents upon said devices are invalid for want of novelty.

2. SAME—SHERMAN PATENT, No. 67,222—INFRINGEMENT.

The invention covered by the Sherman patent for an improvement in rolling coulters consists in a combination in which the cutting wheel is hung in a triangular frame separate from the standard, but attached thereto by means of sockets, or a socket through which the standard passes, and which from their form allow the frame to have a lateral play, while the standard is clamped fast to the plow-beam. *Held*, in a suit for an alleged infringement of said patent, that it was not infringed by a device in which the cutting blade is hung in a yoke differing from the Sherman yoke in shape, and the upper end of which is perforated so as to allow the lower end of the standard to fit into it, and also differing from the Sherman patent in being provided on the under side with a peculiar projection against which a pin at the lower end of the spindle strikes and regulates the vibration.

*Reported by B. F. Rox, Esq., of the St. Louis bar.

This is a suit to recover for the alleged infringement of patent No. 67,222, granted to J. H. Sherman, July 30, 1867, and patent No. 4,533, reissued to J. C. Pfeil, August 29, 1871, and originally granted April 7, 1868, and numbered 76,343. Both patents are for improvements in rolling coulters, and both are held by plaintiff as assignee. The Sherman letters patent state that the patentee's invention "consists in hanging the cutting-wheel or blade in a frame separate from the standard, but attached thereto by means of sockets, or a socket through which the standard passes, causing the cutting-wheel or blade to follow behind the standard, and, from the form of the sockets, to have a lateral play while the standard is clamped fast to the beam of the plow or other implement; and they contain the following claims:

"(1) The frame, B, B', separated from the standard, but attached to it by means of sockets or socket, allowing a lateral play of the frame about the standard, substantially as set forth. (2) The form of sockets, C, C', filling the standard at its front edge, but sufficiently open at the back part to allow a lateral swing of the frame, substantially as and for the purposes set forth."

The original Pfeil patent contains the following claims, viz.:

"(1) The peculiar arrangement and combination of the spindle, B, on cutter-arm, A, and collar, M, with pole, B, therein, for the purpose of forming a caster-joint for cutter, E, substantially in the manner and for the purposes herein specified. (2) The slots, L, L, in the cutter-arm, A, whether said arm be for a rotary or any other kind of cutter, where said slots are used to allow of vertical adjustments of said cutter, substantially in the manner and for the purposes herein specified. (3) The pin, C, when said pin serves both to secure the collar, M, on the spindle, A, and to limit the rotary caster motion of the cutter, E, in the manner and for the purposes herein specified."

The claims in the Pfeil reissued letters patent are as follows:

"(1) The combination of the slotted spindle on the arm of the coultter, the yoke slotted to receive the spindle, and the locking-pin, limiting the vibration of the coultter,—all these members being constructed and operating as hereinbefore set forth. (2) The combination of the plow-beam, the clamping-bolts, the vertical slotted arm, its slotted spindle, the yoke slotted to receive the spindle, and the locking-pin,—all these members being constructed and operating in combination as hereinbefore set forth. (3) The combination of the coultter, its slotted yoke turning on a fixed spindle, and the spring-pin passing transversely through the spindle, and serving to limit the vibration of the coultter, as well as to connect the spindle and coultter,—all these members being constructed and operating in combination as hereinbefore set forth. (4) The combination, in a plow-coultter, of a vertically adjustable arm, the downward tapering spindle thereon, and the coultter-yoke, having an upwardly flaring hole or socket therein to receive the spindle,—all these members being constructed and operating, as hereinbefore set forth, to compensate wear of

the spindle or socket, to secure a snug joint, and to prevent the wobbling of the coultter-yoke upon the spindle. (5) The combination of the tapering spindle of the coultter-arm with the spring locking-pin passing transversely through it parallel with the face of the arm,—these members being constructed and operating as hereinbefore set forth.”

The defendant's coultter is substantially the same as the one attempted to be covered by the Pfeil patents.

Taylor & Pollard, for complainant.

West & Bond, for defendants.

TREAT, J. It is not the purpose of the court to give a detailed analysis of the testimony, or of the various patents submitted. It may be that all claimed by the plaintiff under the Sherman and Pfeil patents, essential to the issues now under consideration, can have no force, because both of said patents were anticipated or not infringed. Whether this be correct or not, it is evident that so far as the Sherman patent is concerned the defendants do not infringe the same. The mode of attaching and limiting the vibration of the coultter is essentially different; and if not, it is apparent that the device therefor was well known before Sherman obtained his patent, unless his peculiar frame and yoke at the end of the standard constituted his invention. If his invention rests solely on his frame and yoke in combination, then the defendants do not infringe.

A close research into the state of the art at the date of the Pfeil patent and its reissue, shows a very narrow limit for invention. The many contrivances patented and well known, whereby coultters could be attached to plow-beams, and adjusted vertically to single or gang-plows, and limited in vibrations or lateral motion, establish definitely that there was no novelty in Pfeil's patent, within the meaning of the patent laws of the United States. The mere change of form or position in a collar and spindle connected with a standard from a plow-beam, the rotary motion of which is limited by a pin through a slot at one or the other top of the collar and spindle, was not a patentable device. Whether a pin is inserted at the lower end of a spindle, with or without a slot, or is inserted through the collar and spindle with a slot, or is inserted through the spindle above or below the collar, with or without lugs; or whether, as Pfeil originally claimed, the length of the pin is used to strike the arms of the coultter,—they are the same, substantially, and had been suggested by others, and were well known to the art.

The court can discover nothing patentable in the Pfeil patents, and no infringement of the Sherman patents. Decree dismissing the bill, with costs, respectively.

WASHBURN & MOEN MANUF'G Co. and ELWOOD v. FUCHS.*

SAME v. SIMMONS HARDWARE Co. and others.*

SAME v. GATES.*

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(Circuit Court, E. D. Missouri. June 4, 1883.)

1. PATENTS—REISSUE MUST NOT BE BROADER THAN THE ORIGINAL.

The reissue of a combination patent must be confined to the original combination, and cannot be expanded to make a new combination by the introduction therein of devices not included in or suggested by the original.

2. SAME—BARBED-WIRE FENCE—KELLY REISSUE—INFRINGEMENT.

The original Kelly patent on barbed-wire fences, numbered 74,379, and issued February 11, 1868, was for a combination by which a plate of iron or steel was strung on a wire and fastened by a blow or compression so as to flatten the opening and fasten it to the wire. The patent contained the following clause, viz.: "I can, where it is desirable to increase the strength of the wire, lay another wire of the same or different size along-side of a thorn wire, and can twist the two by any suitable mechanism. Figure 2 is referred to. It tends to insure a regularity in the distribution of the points in many different directions." The reissue of the same patent, No. 6,902, granted February 8, 1876, suggests in its specifications that the twisted wire will lock the thorns and insure a regularity in the distribution thereof. Prior to the Kelly reissue other constructions of barbs, and their connection with a second and twisting wire to lock barbs of different construction, had been patented or applied for. *Held*, in a suit to recover against alleged infringers who manufactured a fence in which the barb is of wire coiled around one of the strands of the fencing, and locked in position by a second wire twisting around the first: (1) That the wire fence manufactured by defendants neither infringed the original nor the reissued Kelly patent; (2) that the Kelly reissued patent was void because for a combination not included in or suggested by the original, and because, if there had been inadvertence, etc., on his part, he had forfeited his right to have his mistake corrected by his laches.

3. SAME—GLIDDON REISSUE.

The original Gliddon patent, No. 150,683, on wire fences, was for a combination of two wires not twisted, but looped by spurs at intervals, connected with a slotted tube and springs to regulate expansion. In the reissue No. 6,913 the looping of the wires, the use of the spurs with respect thereto, the slotted tube and spring disappear, and the close twisting of two wires, with spurs interjecting at stated intervals, and locked in position by the second or twisting wire, is claimed. *Held*, that the reissue is void because for a new combination.

*Reported by B. F. Rex, Esq., of the St. Louis bar.