

judgment against one wrong-doer does not bar an action against others who are jointly and severally liable, MILLER, J., is careful to distinguish the case from that of a second action against the same defendant. *Lovejoy v. Murray*, 3 Wall. 1, 16.

The plaintiff having elected to take judgment for his profits for the precise infringement which is the subject of this action, which judgment has not been reversed, he cannot now prosecute his action for other damages arising out of the same acts of infringement; and, in accordance with the stipulation, there must be a verdict for the defendant.

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NICODEMUS and another *v.* FRAZIER.

(*Circuit Court, D. Maryland.* January 24, 1884)

PATENTS FOR INVENTIONS—COMBINATION VOID FOR WANT OF PATENTABILITY.

Patent No. 241,405, granted December 27, 1881, to Nicodemus & Weeks, for improvement in apparatus for processing canned goods, *held* to be a combination of old elements, void for want of patentability.

In Equity.

*Sebastian Brown*, for complainants.

*John H. Barnes*, for defendant.

MORRIS, J. Bill of complaint for infringement of patent No. 241,405, granted to complainants December 27, 1881. Complainants' patent is for an improvement in an apparatus for processing canned goods. To enable the goods, after being put in hermetically-sealed cans, to be subjected to a higher degree of heat than 212 degrees Fahrenheit, the complainant provides a vessel, or kettle, with a steam-tight cover in which the cans may be placed, and the steam admitted until the temperature is raised to the required degree. The cans being subjected while in the steam-tight vessel to the pressure of the confined steam are not liable to be burst by the explosive pressure generated within them. The steam-tight processing vessel is substantially the same contrivance described and claimed in patent No. 149,256, granted to Andrew K. Shriver March 31, 1874. Shriver's contrivance is not claimed by him in his patent in combination with any boiler or steam generator, but simply as a steam-tight processing vessel, to be supplied with steam from any convenient steam generator.

The complainant in his patent claims this steam-tight vessel in combination with an ordinary tubular boiler, and it is described and shown as placed upon the boiler with the bottom extending downward a little distance into the boiler itself. The first claim is for the combination of the vessel and the boiler, the vessel mounted upon

the boiler and communicating with the steam drum. The second claim is for the combination of the vessel and boiler, with the vessel resting upon and partially within the boiler. The third claim is for the combination of the same elements in connection with a removable lid for the kettle, a clamp to fasten it, a gage cock and pipe, all of them well known appliances used in connection with boilers and vessels in which steam is confined. It is quite evident, I think, that there is nothing new in the processing kettle, and nothing new in the tubular boiler, and nothing of invention in the mechanical construction by which the complainants unite the two together. The only question then is, are the two when brought together a patentable combination? Do the two as combined by complainants contribute to a new mode of operation or produce any new and common result? I do not see how it can be so contended. The boiler, just as before, produces the steam, and just as before it is conveyed by a pipe into the processing vessel, and being there confined it acts upon the cans just as before, producing the same results by precisely the same operation.

The complainant claims that his contrivance has for its object to economize steam, to facilitate the removal of the cans, and to increase generally the efficiency of the apparatus. It may be that by placing the kettle upon and partly within the boiler he has accomplished these objects, but it seems to me that what he has done are mere details of construction, and do not approach invention. In *Atlantic Works v. Brady*, 107 U. S. 200, [S. C. 2 Sup. Ct. Rep. 225,] the supreme court has declared very plainly that it is not the design of the patent laws to grant a monopoly of the improvements and adaptations which in the progress of manufactures from time to time would occur as the demand for them arises to any skilled mechanic or operator. If, for the use of any class of persons engaged in putting up canned goods, it is more convenient and economical to have the steam processing kettle placed on and sunk partly into the boiler which generates the steam, instead of placed alongside of it, it was an arrangement the virtues of which could not perhaps be ascertained except by experiment, but I cannot see that it required invention to suggest it, or that when so arranged it is a patentable combination of the boiler and the kettle.

The complainant contends that this defense should not be considered by the court, because it is not set up by the respondent in his answer, but that the defense disclosed by the answer, and to support which the testimony by respondent was pertinent, was that the respondent and not the complainants was the real inventor of the patented combination, and that the complainants by fraud had procured the patent to be granted to them. Respondent in his answer "denies that the complainants were the first inventors of the invention patented to them as alleged, but that this respondent is the true, first,

and original inventor of the said device, or so much thereof as is patentable." The answer also contains this statement:

"*Fourth*, this respondent charges that said complainants are not the original and first inventors of the processing apparatus patented as aforesaid by them, but charges that the same was well known and publicly exhibited by said Frazier (the respondent) in Baltimore city, Maryland, 132 Thames street, before the date of complainants' alleged invention or discovery of the same, *which is but an aggregation of old and well-known devices, and producing no new and useful result*, and that the following persons of Baltimore city had knowledge of the existence of the said invention in said city, and will testify in behalf of respondent, to-wit, etc.:

"*Fifth*, and this respondent charges that the complainants, well knowing this respondent to be the true, just, and original inventor of said device, sought to deprive him of the just fruits of his invention, and did, surreptitiously and fraudulently, obtain from respondent a knowledge of said invention, and secretly, and without the knowledge or consent of this respondent, obtain a patent therefor by falsely and deceitfully representing themselves to be the first inventors thereof. And this respondent charges that as soon as he was advised of the issuing of said patent No. 251,456 to complainants he proceeded to the city of Washington and instituted at the United States patent-office proceedings in interference, and accordingly interference was declared, under which the questions of priority of invention will be adjudicated and determined."

The answer, it will be seen, claims that the respondent is entitled to a patent, and is striving to obtain a patent, for the very thing patented to the complainants; and although, in a parenthetical and indirect fashion, the respondent does intimate that the alleged invention is but an aggregation of old and well-known devices, producing no new results, the substantial defense in the answer, and attempted to be established by respondent's proof, is that the invention and the patent of right belong to him, and that the complainant stole it from him. Indeed, the copy of the Shriver patent was not put in evidence by respondent until the very last sittings for taking testimony, and more than a year after the first testimony was taken. I think, however, that this is a case in which the want of patentability is clear, and that, as ruled by the supreme court in *Slawson v. Grand Street R. Co.* 107 U. S. 652, [S. C. 2 Sup. Ct. Rep. 663,] the court may, *sua sponte*, without looking into the answer, dismiss the bill on that ground, and that it cannot be the duty of the court to render a money decree for the infringement of a void patent, even though that defense is not properly made by the respondent. In the case before the supreme court they held that a mere inspection of the Slawson patent showed it to be void on its face. It may be that such an inspection merely of complainant's patent would not show it to be void on its face; but reading it, as it is proper it should be read, with some knowledge of the state of the art, and particularly with a knowledge of the contrivances made known to the public by Shriver's patent nearly eight years prior to complainant's patent, it then becomes evident that there is nothing new in any of the elements of the combination, and,

indeed, it is not claimed in the patent that there is, and it is plain on the face of the patent that, as a combination of old elements, there is nothing patentable in the combination.

Bill dismissed, without costs.

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McARTHUR v. BROOKLYN RAILWAY SUPPLY Co. and others.

(Circuit Court, S. D. New York. January 2, 1884.)

PATENTS—VALIDITY OF REISSUED LETTERS, No. 2,568.

Reissued letters patent No. 2,568, granted upon the surrender of original letters patent No. 59,733, for an improved broom, were properly reissued. The invention therein described is the same as that described in the original letters, and if the claim is enlarged the reissue was, nevertheless, proper in the absence of intervening rights.

In Equity.

*Eugene N. Elliot*, for orator.

*H. D. Donnelly*, for defendants.

WHEELER, J. The right to a decree in this cause depends upon the validity of reissued letters patent No. 2,598, dated May 14, 1867, granted to William H. Cory, assignee of Thomas Wright, upon the surrender of original letters patent No. 59,733, dated November 13, 1866, for an improved broom. The questions made are as to novelty; and the propriety of the reissue. The broom is for out-door work, and made by doubling small bundles of splints for the brush in the middle and inserting the ends through pairs of holes in a wooden head, astride the wood between the holes, by which and by a back of wood, with a groove for the loop in one or the other, they are held in place. Brushes made of looped bristles drawn through single holes and held in place by wires through the loops, and by grooved backs, and other similar devices, and patents for similar devices, had existed before, but no broom with a head like this had been known or used before. The original patent showed a double socket for a handle to be inserted on either side to secure even wear, and described only metallic splints, and the claim was for simply a wire broom made substantially in the manner set forth. The reissue describes metallic or other suitable splints, and the claim is for such splints inserted in bundles through apertures formed in pairs, in the base plate of the broom, by looping them as described, said apertures being connected by a groove or recess to accommodate the loop and the latter held to its place by a back or upper plate substantially as shown and described. The substitution of other suitable splints for wires would occur to any mechanic with skill for making the brooms, and required no invention. There is nothing described as invented in the reissue that was not in the original, and therefore the invention described in