

RAYER & LINCOLN SEAMING-MACHINE CO. v. AMERICAN PRINTING CO.

(Circuit Court, D. Massachusetts. February 18, 1884.)

PATENTS—REISSUE—SEWING-MACHINE.

The third claim of original letters patent No. 108,827 was for the combination of an annular plate with the stitching and feeding mechanism of a sewing-machine, for the purpose of guiding the fabric. The first and third claims of the reissue, No. 9,176, were for a wheel to feed as well as guide the fabric. *Held*, that the reissue, being more than a mere reproduction of the original patent, was invalid as against intervening rights.

In Equity.

T. W. Clarke, for complainant.

J. L. S. Roberts, for defendant.

Before LOWELL and NELSON, JJ.

NELSON, J. The plaintiff sues for the infringement of reissue patent No. 9,176, granted to Rayer & Lincoln, assignors by mesne assignments to the plaintiff, April 27, 1880. The original patent, No. 108,827, was dated November 1, 1870. In the original patent the invention is described as "a new and improved sewing-machine attachment." In the specification, the invention is said to consist in certain improvements by which sewing-machines may be adapted to sew the ends of pieces of goods of the same width, one pair after another continuously, and to stitch all kinds of goods where long, continuous seams are required. The invention is described with reference to any sewing-machine of suitable construction and size. D is an annular plate supported in a vertical position by rollers hung in a frame, and so set that its upper edge is behind the presser-foot and needle-bar of the sewing-machine. In front of the plate there is affixed to the frame a shield, covering all but the upper part of the plate. A toothed ring is secured to the back of the plate, and meshes into the teeth of a gear-wheel mounted on an arbor, which derives motion from the driving-shaft of the sewing-machine. Upon the edge of the plate are hung a series of hooks or points, which can be shifted to conform to the width of the fabric. The pieces to be sewed together are hung upon the hooks, and rest upon a shoulder projecting from the plate, and upon the upper edge of the shield. A winged wheel working in front serves to throw the sewed fabric off the hooks. When in operation, the plate is designed to move correspondingly with the feed of the sewing-machine. As the plate revolves with the action of the sewing-machine, the pieces are carried along to and past the sewing-devices, and when sewed are thrown off as they arrive at the winged wheel, the process being capable of continuous repetition indefinitely.

The third claim of the original patent is thus stated:

"(3) The combination with stitching and feeding mechanism, substantially such as described, of a continuously revolving annular fabric-guide, D, as and for the purpose set forth."

In the reissue patent the invention is called "an improvement in sewing-machines." In the specification it is described with reference to a Wilcox & Gibbs sewing-machine having the usual rotatable hook-shaft and needle-bar, with needle attached. In describing its advantages the inventors state:

"In sewing-machines containing the usual intermittingly rotated wheel-feed, variations in speed affect, through momentum, the length of stitch, and the power required to run such a feed, and wear of machinery, and the cost of mechanism, are all greater than in this, our plan, wherein the feed is continuous, which always insures an equal length of stitch, and a substantially uniform expenditure of power. With an annular feeding-plate, as described, provided with points or hooks to penetrate and hold the fabric as it is moved along under the needle, we have combined the well-known Wilcox & Gibbs class of machine, the hook or looper of which, as is well-known, rotates continuously in one direction, and may be run at the highest speed."

The first and third claims, to which alone the controversy relates are as follows:

"(1) The within-described apparatus for sewing together the ends of pieces of fabric for factory use, it consisting essentially of the stitch-forming mechanism shown and described, the rotatable annular feeding-wheel provided with hooks to penetrate, carry, and present the fabric positively to the action of the said stitch-forming mechanism, and means to operate the said feeding-wheel continuously as described.

"(3) The combination, with stitching mechanism substantially such as described, of the continuously revolving annular baster plate or wheel to feed the fabric, and mechanism to continuously revolve the baster-wheel, substantially as described."

The position of the plaintiff is that the third claim of the original patent is substantially reproduced in the first and third claims of the reissue. It is obvious, from the description given in the original specification, that the thing patented was a device to be attached to a sewing-machine having a feeding mechanism of its own, and was designed to carry along the pieces of cloth to be stitched together by a movement to correspond with the movement of the feeding mechanism of the sewing-machine. It is called "a sewing-machine attachment," and its object was to serve as a guide and support to the pieces of cloth as they were carried along by the sewing-machine. It is apparent that the first and third claims of the reissue, taken in connection with the specification, cover a combination different from this. The combination, with the stitching and feeding mechanism of a sewing-machine, of the annular plate, D, to guide the fabric as it is carried along by the feeding mechanism of the sewing-machine, which was in substance the original claim, has been expanded into a combination with the stitching mechanism alone of a sewing-machine, of a feeding-wheel to feed as well as to guide the fabric, working independently of, and in substitution for, the feeding mechanism of the sewing-machine. A new function has been added to the plate, D. It is no longer a mere attachment to a complete sewing-machine, and a guide and support to the cloth as it is moved along in the ma-

chine. It has become itself a feeding apparatus for a sewing-machine,—a thing quite different from the original invention. Under the rule established by the recent decisions of the supreme court, the plaintiff's reissue patent was taken out too late, and must be held to be invalid.

Bill dismissed, with costs.

THE MANHASSET.

(District Court, E. D. Virginia. February 24, 1884.)

1. ADMIRALTY PRACTICE—LIBEL—AMENDMENT.

In a case in admiralty where the *res* is the same, and the tort and the contract for which damages are claimed are the same, and where the original libel sets out matter enough by which to amend, a libel may be amended as to parties by changing the character in which the libelant sues, and dismissing as to the parties who have no right to sue.

2. SAME—ACTION FOR DEATH CAUSED BY NEGLIGENCE—CONTRIBUTORY NEGLIGENCE.

Where, in a libel for damages for the killing of a husband and father, the ferry steamer inflicting the injury was in fault, but the deceased had violated rules of the managers, forbidding passengers to step over guard-chains and passing off to the wharf before the boat was drawn up and made fast at the landing, in doing which deceased received fatal injuries, but in doing so only did what men and boys habitually and constantly did on the ferry, without restraint or remonstrance from the management, *held*, that this was not such contributory negligence on the part of deceased as to exonerate the claimants from responsibility in damages, the managers of the ferry having, by neglecting to enforce their rules, held out to passengers that there was no practical danger in violating them, and thereby put the deceased off his guard as to the danger attending the practice, which was habitually permitted.

In Admiralty, in a Libel for Damages.

After the decision rendered in this case on the question of jurisdiction, on the fifth of January, 1884, (18 FED. REP. 918,) the libelant moved for leave to dismiss the original libel as to herself, as administratrix of William H. Black, and to file an amended libel in her individual character as widow of Black, and in her character as guardian of the two minor children of the deceased. This motion was granted, on the ground that the *res* was the same, the *tort* and contract on which the claim for damages was leased was the same, and that the original libel contained all the facts as to parties that were necessary to amend by.

William H. Black, whose widow, Frances Black, brings this libel, was a colored man, 64 years old, who had irregular employment at \$2.50 a day in the carpenter-shop of the United States navy-yard, at Gosport, opposite Norfolk, and lived on the Norfolk side of Elizabeth river, some distance westward of Norfolk, where he had a farm of about 120 acres of land. Returning from the navy-yard, after fail-