

supra, for the court, after commenting upon the supposed difference between the right of subrogation in marine insurance and in fire insurance upon land, say:

"There is, then, no reason for the subrogation of insurers, by marine policies, to the rights of the assured against a carrier by sea which does not exist in support of a like subrogation in case of an insurance against fire on land. Nor do the authorities make any distinction between the cases, though a carrier may, by stipulation with the owner of the goods, obtain the benefit of insurance."

The motion for a rehearing is denied.

PENTLARGE v. NEW YORK BUNG & BUSHING Co. and others.

(Circuit Court, S. D. New York. May 16, 1884.)

1. PATENTS FOR INVENTIONS—RELIEF FOR INFRINGEMENT, WHEN GRANTED.

Relief for the infringement of a patent will not be granted unless the patents interfere.

2. SAME—INTERFERENCE.

When differences in patents are distinct, and neither covers the same things as the other, they do not interfere.

In Equity.

Brodhead, King & Voorhies, for complainant.

Wylls Hodges, for defendant.

WHEELER, J. The orator owns reissued patent No. 10,175, dated August 1, 1882, the original of which was No. 192,386, dated June 26, 1877, granted to himself and Philipp Hirsch, for a vent-bung. The defendants own patent No. 203,316, dated May 7, 1878, and granted to George Borst for an improvement in bungs. This bill is brought under section 4918, Rev. St., to have the latter patent declared void. There were bungs having a hole nearly through them, leaving a thin web of the wood on the inside, to be driven through in venting the cask, as described in the patent of Rafael Pentlarge, No. 148,747, dated February 18, 1874. The orator's patent is for a bung with a hole on each surface, and a web between the holes in the interior of the bung. The defendant's patent is for a bung like Rafael Pentlarge's, with a core left on the web by a groove cut around it, leaving it ready for removal, or for a bung like the orator's with a like core on one or both sides of the web. The orator is not, and is not claimed to be, entitled to any relief here unless his patent and the defendant's interfere. *Mowry v. Whitney* 14 Wall. 434. The patents are each good for the difference only between the bungs described in them and those in existence before. *Ry. Co. v. Sayles*, 97 U. S. 554. The difference between the orator's bung and Rafael Pentlarge's was the having the web in the interior instead of at the inner surface, and

his patent covers that. The difference between the defendant's bung and the others is the having the core to strengthen or protect the web, and their patent covers that. These differences are not the same, but distinct, and neither covers the same thing as the other, and therefore they do not, as now viewed, interfere. The practice of the invention of the latter may infringe upon the former and may not; but if it does, it will not do so because the patents interfere, but because the latter takes the invention of the former to improve upon.

Let the bill be dismissed, with costs.

ARNOLD v. PHELPS and others.

(Circuit Court, S. D. New York. May 16, 1884.)

PATENTS FOR INVENTIONS—INFRINGEMENT.

Where it is shown that one patented process is the application of heat and steam to coffee, in its uncured state, to cure it, and a second is the application of heat alone for the same purpose, the second is not an infringement on the first.

In Equity.

Edmund Wetmore, for orator.

Edward N. Dickerson, for defendant.

WHEELER, J. This suit rests on reissued patent No. 4,479, dated July 25, 1871, granted to John Ashcroft, for an improvement in processes for treating coffee, division A. The process consists, essentially, in subjecting unripe or damaged coffee to the direct action of steam in a close compartment to heat and sweat it, and then to dry heat to complete the curing of it. There are four claims. The first claim is, in substance, for the process of maturing and browning coffee by subjecting it to the direct action of steam; the second, the process of maturing and browning coffee by subjecting it to the sweating and expanding action of steam and the drying action of heat; the third, subjecting it both to the action of steam and heat while in sacks; and the fourth, subjecting a series of sacks to the action of sweating steam and drying heat. The defendants subject the coffee to the action of heat in a close compartment. The heat raises steam from the moisture of the coffee and produces a result similar to that of the process of the patent. The orator's evidence tends to show that this process, taken by itself, is the same as that of the second claim and, in connection with the result, the same as that of the third claim of the patent. The witness giving this testimony is understood, however, to refer to these claims as measured by their own terms, which do not refer to the source of the steam. His meaning, apparently, is that the steam generated from the moisture of the coffee performs the office of steam applied from without. But this does not alter the