

no equalizing rod at that end of the running gear. That the complainant, when he obtained his patent, regarded two equalizing bars—one at each end of the vehicle—as essential parts of his invention, is apparent (1) from the drawings which he submitted to the patent-office; and (2) from the language of the specifications and second claim of the reissue. In the specifications he says that to secure an equalized action of the springs, “I unite the adjacent ends of the side springs, arranged between the perches, to ears, D, of an equalizing bar, C, turning in suitable bearings, so that any excess of weight upon one spring turning the bar, C, also lowers the other spring to an equal extent and preserves the body horizontal, so that it will not strike the side perches. The arrangement of equalizing bars in combination *with both ends of the springs, as shown*, secures a like effect at each end of the spring platform.” In the second claim there is claimed as part of the combination “an equalizing bar arranged opposite and connected to the adjacent ends of said springs.” From all this it is apparent that the defendants omit from their running gear one of the parts necessary to make the complainant’s combination. And, as the court has already indicated, the field of invention with reference to running gear for vehicles was so covered prior to the complainant’s patents that upon settled principles of patent law his patents cannot have the broad construction to which a patent for a wholly new and original device might be entitled. The defendants make a vehicle with side-springs between the perches, which are as fully shown in the Curtis patent of 1874 as in the complainant’s reissue. They make the Curtis perch and not an endless perch. They omit one of the equalizing rods described and claimed in the complainant’s patent. Upon this state of facts can the defendants be adjudged infringers? The court is clearly of the opinion that they cannot; and upon the ground of non-infringement, without deciding the points made by defendant’s counsel involving the validity of the reissue patent, the bill will be dismissed.

HAYES v. DAYTON.

(Circuit Court, S. D. New York. June, 1884.

1. PATENT LAW—REOPENING CASE ONCE DECIDED FOR TRIFLING REASONS.

Matter having been once decided will not be reheard because it is alleged that certain drawings before court at first trial were defective, and that evidence now proposed will show the structures in the original and the reissue to be the same, unless the new evidence is so clear and positive that an entirely different case is presented.

2 JURISDICTION OF CO-ORDINATE COURTS WITH RESPECT TO EACH OTHER.

One court does not reverse or review judgment of a court of co-ordinate jurisdiction.

In Equity.

James H. Whitelegge, for complainant.

C. G. Frelinghuysen, for defendant.

COXE, J. The bill alleges infringement of six reissued letters patent. The claims in controversy are as follows: Claim 4 of No. 8,597, claims 6 and 10 of No. 8,674, claims 1 and 6 of No. 8,675, claim 1 of No. 8,676, claims 2 and 6 of No. 8,688, and claim 3 of No. 8,689. The decision of Judge BENEDICT in *Hayes v. Seton*, 12 FED. REP. 120, disposes of all these claims with the exception of claim 6 of 8,688, and, possibly, claim 2 of the same patent, and claim 6 of No. 8,675. Reissue No. 8,676 was not before the court in that action. As to the other claims referred to it was decided either that they were void as enlarging the scope of the original patent, or that devices identically or substantially similar to those introduced here did not infringe.

It is urged by the complainant that, as to one of the patents at least, the drawings then before the court were defective, and that the evidence, now for the first time presented, indicates that the structures described in the original and in the reissue are substantially the same. For this reason, and others similar in character, the court is urged to re-examine the questions involved without reference to the fact that they have already been disposed of by the decision in the *Seton Case*. No sufficient reason has been suggested to induce the court to adopt this course. It cannot be said that in that case a different conclusion would have been reached had all the proof now presented been introduced. It is not enough to show that in the original drawings and specifications the disputed structure is described. It must be claimed also. *Manuf'g Co. v. Stamping Co.* 27 O. G. 1131. The claims of the reissues referred to alone were dealt with, and after a careful examination and comparison thereof with the originals a construction adverse to the complainant was placed upon them. So long as this decision is undisturbed by the only tribunal which has a right to review it, it must remain the law governing the case. The spectacle of one court overruling or reversing another court of co-ordinate jurisdiction, in the same circuit, would certainly be an anomalous one. It would be without precedent and would lead to inextricable confusion. The examination here must, therefore, be confined to claims 2 and 6 of reissue No. 8,688, claim 6 of reissue No. 8,675, and claim 1 of reissue No. 8,676.

Regarding claim 2 of reissue No. 8,688, Judge BENEDICT says:

"I am unable, therefore, upon the testimony, to find that this claim has been infringed, unless it be held that the construction of the gutters so as to keep them under cover of the bases is not an essential feature of the invention. But if it be so held, then I must hold the claim void for want of novelty."

In the case at bar the complainant in his testimony mentions no infringing device, and there are no such devices opposite the marginal

Nos. 23 and 24. Upon the argument, however, other devices elsewhere represented were pointed out, which, it was insisted, contained all the elements covered by the claim.

With the claim construed as above I am unable to find any testimony sufficiently definite and certain to base thereon a finding that the defendant has infringed.

Claim 6 of this reissue is clearly void as an expansion of the original patent. The movable sashes sought to be secured are not even mentioned in the claims of the original.

Of claim 6 of the reissue No. 8,675, Judge BENEDICT says:

"The subject-matter of the sixth claim of this reissue is not found in the structures claimed to be infringing structures. In those structures there is but one set of openings, and those from the gutter directly to the outside."

The claim is as follows:

"(6) In the base or base-frame of a metallic skylight, the combination of outlet-apertures, *f* and *g*, arranged to break-joint, as it were, or form an indirect escape for the water accumulating in the bar-gutters, *c c*, and base-gutter, *C*, without permitting the passage inward of wind, dust, rain, snow, etc., substantially as described and set forth."

I have looked carefully through the proofs to find any satisfactory evidence of infringement. The complainant testified that in some of the structures which he examined the apertures were directly opposite each other, and he was not sure that this was not true of all. The witness Campbell testified positively that he found none that were not direct. As the break joint or indirect escape is an essential element of this claim it cannot be said that one who uses a direct escape with the openings opposite each other is an infringer.

Claim 1 of reissue No. 8,676 is as follows:

"(1) The combination of an internal angle-piece having one or more laterally extending flanges, ribs, or wings with a sheet-metal bar or casing, essentially as and for the purposes described and set forth."

If this claim is construed to cover the device shown in the drawing attached to the patent and described in the specification it must be said that the defendant does not infringe. His bar is flat upon the top. The upper edges are not bent upward in juxtaposition to each other. There is no cap plate. There is no metal cap at the bottom. It is said that the cap at the bottom is not part of the invention, but it will be observed that there would be nothing to hold together the two pieces of the bar, as shown in the drawing, if the cap-plate to which the bar is riveted and the metal cap at the bottom were both omitted. The defendant uses neither. If, on the contrary, the claim is construed to cover broadly the combination of an angle-piece having two laterally extending flanges inclosed in a sheet-metal bar, it must be held void for want of novelty.

For these reasons the bill is dismissed, with costs.

THAYER v. HART, Jr., and others.

*(Circuit Court, S. D. New York. June, 1884.)***PATENT LAW—PRIOR PATENT—PRIOR INVENTION—BURDEN OF PROOF.**

Where the defendant, in an infringement suit, proves that he invented the patented device before the date of the plaintiff's application, the burden is transferred to the plaintiff to satisfy the court beyond a reasonable doubt that he first conceived the invention.

In Equity.

Josiah P. Fitch, for complainant.

Frederic H. Betts and *C. Wyllys Betts*, for defendants.

COXE, J. The complainant is the owner of letters patent No. 202,673, dated April 23, 1878, for an "improvement in neck-tie shields." The application was filed December 20, 1877. The defendants are owners of letters patent No. 220,610, dated October 14, 1879, for a similar invention. Their application was filed August 28, 1879. Both patents are designed to secure a pin formed with a shoulder, and so constructed that it may be conveniently and firmly attached to a neck-tie shield without using any device for the purpose of fastening except the pin itself. The only difference so far as the pin in question is concerned, irrespective of the method of attaching it, is, that in complainant's device the upper end of the pin is turned away from the point, and in defendant's it is turned towards the point. The principal controversy relates, therefore, to the question of prior invention. The complainant's patent antedating the defendants', it was incumbent upon them to prove beyond a reasonable doubt that theirs was the prior invention. This they have done by proof so positive that the complainant's counsel conceded on the argument that the date of their invention was January 15, 1877; 11 months prior to the filing of the complainant's application. This date being fixed the burden was transferred to the complainant to satisfy the court by proof as convincing as that required of the defendant that his invention preceded theirs. The rule in such cases is very strict. It is so easy to fabricate or color evidence of prior invention and so difficult to contradict it, that proof has been required which does not admit of reasonable doubt. Where interests so vital are at stake, where intervening years have made perfect accuracy well nigh impossible, where an event, not deemed important at the time, has been crowded from the memory and obscured by the ever varying incidents of an active life, it is not difficult to imagine that even an honest man may be led erroneously to persuade himself that the fact accords with his inclination concerning it.

The evidence of prior invention is usually entirely within the control of the party asserting it, and so wide is the opportunity for deception, artifice, or mistake, that the authorities are almost unani-