The defendant should have an opportunity to answer and reduce the recovery claimed.

It is ordered that the case be remanded to the district court, with directions to affirm the judgment, with costs, unless the defendant pays the costs of the demurrer and writ of error, withdraws the demurrer, and answers within 30 days.

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## COLLINS COMPANY *v.* COES and others.

(*Circuit Court, D. Massachusetts.* July 30, 1884.)

PATENT—COES WRENCH — COLLINS COMPANY *v.* COES, 5 BAN. & A. 548, OVERRULED.

The application to the bar of the Coes wrench, for the purpose of securing and supporting the step and resisting the strain, of a nut already in use for the same purpose on the Hewitt or Dixie wrench, lacks the novelty of invention requisite to support a patent, within the decisions of the supreme court at the last term, which, in effect, overruled the decision of this court in the suit of the *Collins Company* v. *Coes*, 5 Ban. & A. 548.

In Equity.

*Thomas H. Dodge*, (of Worcester, Mass.,) for defendants.

*W. E. Simonds*, (of Hartford, Conn.,) for complainant.

Before GRAY and NELSON, JJ.

GRAY, Justice. This is a bill in equity for the infringement of the first claim in the specification of the second reissue to the complainant, dated February 25, 1873, of letters patent originally issued to Lucius Jordan and Leander E. Smith, on October 10, 1865, for an improvement in wrenches.

The wrench, as described, both in the original patent and in the reissue, has the following parts: The wrench-bar, A, the upper part of which is of the usual shape, and has attached to it the movable jaw, B, and the lower part of which is of convenient form to receive upon it the wooden handle; a screw-rod, C, parallel to the main bar; a rosette, D, at the lower end of the screw-rod, by means of which the movable jaw is worked; a ferrule or step, E, having a hole through it for the admission of the bar, and a recess in its upper face as a bearing for the lower end of the screw-rod; a nut, F, screwed on a thread in the bar, under the step, and having a recess in its under face to receive the top of the wooden handle, G; and the wooden handle secured at its lower end to the main bar by a nut in the usual way.

Both the original patent and the reissue state that the object of the invention is to make the strain come upon the nut F, instead of coming upon the wooden handle. The original patent states that the nut F is, and the reissue states that it may be, screwed up firmly

against the step E. The reissue affirms and repeats that the distinguishing characteristic of the invention is that the step can be readily removed and replaced at pleasure. There is no hint of such a distinction in the original patent.

The first claim in the original patent is for "the step E, made substantially as described, and for the purpose set forth." The corresponding claim in the reissue is for "the step, combined with the wrench-bar, and supported by the nut F, or its equivalent, at the place where the step is connected with the bar, in such manner that the step can be removed from the bar without cutting or abrasion of parts."

The parallel screw-rod, with a rosette thereon to work the movable jaw, and resting upon a ferrule or step, had been introduced in the original Coes wrench, patented in 1841; and, long before the issue of the patent to Jordan and Smith in 1865, large numbers of the Hewitt or Dixie wrench had been made and sold, in which there was no separate screw-rod, and the screw that worked the movable jaw revolved on the main bar, but that screw rested on a ferrule or step, which was secured sometimes by driving it on under heavy pressure, and sometimes by a nut screwed under it on the bar.

The application to the bar of the Coes wrench, for the purpose of securing and supporting the step and resisting the strain, of a nut already in use for the same purpose on the Hewitt or Dixie wrench, lacks the novelty of invention requisite to support a patent, within the decisions of the supreme court at the last term, which have, in effect, overruled the earlier decision of this court in the suit of this complainant against Loring Coes and others, reported in 5 Ban. & A. 548. *Pennsylvania R. R.* v. *Locomotive Engine Safety Truck Co.* 110 U. S. 490; S. C. 4 Sup. Ct. Rep. 220; *Bussey* v. *Excelsior Manuf'g Co.* 110 U. 131; S. C. 4 Sup. Ct. Rep. 38; *Double-pointed Tack Co.* v. *Two Rivers Manuf'g Co.* 109 U. S. 117; S. C. 3 Sup. Ct. Rep. 105; *Phillips* v. *Detroit*, 111 U. S. 604; S. C. 4 Sup. Ct. Rep. 580.

The complainant's patent being void for want of novelty, it becomes unnecessary to consider the other defenses.

Bill dismissed, with costs.

## THE FIRE-EXTINGUISHER CASE.

GRAHAM, Adm'r, etc., and another *v.* JOHNSTON and another.

(*Circuit Court, D. Maryland.* July 26, 1884.)

PATENTS FOR INVENTIONS—GRAHAM FIRE-EXTINGUISHER—SPECIAL ACT OF CONGRESS OF JUNE 14, 1878, GRANTING PATENT TO HEIRS—CONSTITUTIONALITY—EFFECT OF—PATENT SUSTAINED.

The act of congress approved June 14, 1878, relieving the heirs of William A. Graham from all disabilities preventing them from renewing or reviving an application filed by Graham in 1837 for a patent for a novel method of extinguishing fires, *held* to be a constitutional exercise of the power of congress; and *held*, that the patent No. 205,942, granted July 9, 1878, to Graham's administrator, was properly issued in pursuance of the authority given by that act of congress. *Held*, that the intention of congress was to allow the original application of Graham to be revived, and that this intention is sufficiently expressed in the act, and that the novelty of the invention for which the patent was granted is to be tested as of the date of original application filed in 1837. *Held* that, at the date of his application, Graham was the first discoverer that carbonic acid gas and water, when condensed in a sufficiently strong vessel, would propel itself by its own elasticity in a sufficient stream to a sufficient distance to be a useful agent for extinguishing fires, and that he described both a portable and a fixed apparatus by which his method could be applied with beneficial results. *Held*, that the claim in the patent granted to his administrator for this method or process of extinguishing fires is valid. *Held*, that the defenses set up against the patent—that it was granted for several distinct inventions, that the specifications are deceptive and misleading, and that it covers a different claim from that set forth in the application—are not valid objections.

In Equity.

*Rufus W. Applegarth* and *L. L. Bond*, for complainant.

*I. F. Williams*, *Abraham Sharp*, and *R. K. Evens*, for respondents.

MORRIS, J. This is a suit in equity for alleged infringement of patent No. 205,942, granted July 9, 1878, to Archibald Graham, administrator of William A. Graham, deceased, for a new method and an improved apparatus for extinguishing fires.

The claims are as follows:

"I do not claim to have discovered a new element in nature, nor do I claim to have discovered the abstract principle that carbonic acid gas will not keep up combustion. What I claim as new, and desire to secure by letters patent, is (1) the method or process of extinguishing fires by means of a properly directed stream of mingled carbonic acid gas and water projected by the pressure or expansive force of the mingled mass from which the stream is derived; (2) the combination of a strong vessel for containing the mixture of carbonic acid gas and water under pressure, with a stop-cock, flexible hose-tube, and a nozzle, substantially as and for the purpose specified; (3) the combination of fixed pipes or tubes, arranged by or through a building, with a stationary or fixed fountain or tank, for forcing mingled carbonic acid gas and water, by its own elasticity, through such pipes, substantially as specified; (4) an improved method of extinguishing fires, consisting—*First*, in condensing carbonic acid gas by artificial pressure or in generation; *second*, controlling it by a suitable vessel; and, finally, in directing its flow to the desired place, substantially as specified."

The original application of William A. Graham, of Lexington, Virginia, was filed in the patent-office, November 23, 1837, over 40 years