

from the time when such tax accrued. No computation of this interest was made at the time of the trial, but it may be made and submitted.

The proof also shows that the defendant paid \$9,629.92 for taxes on clearing-house checks, on which it has been refunded \$2,573.91, leaving a balance yet due of \$7,056.01. As I understand the proof, after this tax had been paid several years the commissioner ruled that the banks were not liable to pay on these checks, and refunded what had accrued within two years, but refused to go further back, leaving this balance of \$7,056.01 unpaid, and defendant now insists that this amount should be set off against the taxes now found due. This is an equitable action, and the inquiry really is how much is justly due the plaintiff; and I think it is conscionable and right to deduct this sum of overpaid tax on clearing-house checks from the tax on capital, as this claim and counter-claim accrued contemporaneously and out of the same business.

SHENFIELD *v.* SCHIRMER and others.

(Circuit Court, S. D. New York. August 7, 1884.)

PATENT—SUSPENDER ENDS.

The suspender ends made conformably to Schirmer's patent of June 27, 1876, do not infringe the patent of Shenfield.

In Equity.

F. C. Reed, for complainant.

Wetmore & Jenner, for defendants.

WALLACE, J. The suspender ends made by the defendants conformably to their patent of June 27, 1876, are not an infringement of the complainant's patent.

The suspender ends of the complainant's patent are described as made of a double flattened cord or strip bent around into a loop or united together, leaving sufficient of the loop open to form the button-hole, and united to a buckle or clasp by the attaching pieces, *d.* The cord or strip is composed of woven, braided, knitted, or crocheted threads of suitable fibrous material, laid up into the form of a complete flat cord or strip, and when the cord or strip is folded to form the button-hole loop, the seam above the loop may be made by sewing, knitting, crocheting, or otherwise; or the knitting or crocheting is commenced at the line where the strips meet and extended at both sides thereof and around the button-hole by the successive ranges of interlocked loops.

The claim is, "the suspender end made of a flat cord or strip of fibrous material bent into a loop laid flatwise, united at the inner edges, and connected to the attaching pieces as set forth."

The latter part of the description relates to the manner of securing the edges of the fabric by re-enforcing or covering them around the button-hole by crocheting or knitting, and is of no materiality for present purposes. There was no novelty in the attaching pieces.

Button-straps for suspenders, made of woven material, were old; flat suspender ends of various materials, with a button-hole cut in them, were old; and suspender ends made of a round cord, with the ends turned back and fastened to form a loop, were old. The complainant's invention was apparently suggested by the latter description of suspender ends, and was designed to remedy the objection against the round cord, which is stated in the description to be "that it does not lie flat against the person or beneath the button." What he did was to substitute a flat cord or strip for the round cords previously used, which may have been an invention, but was an invention of a very narrow kind.

In view of the prior state of the art, and the language of the description and claim of the patent, the complainant's patent is to be construed as one for a suspender end made of a flat cord or strip, bent to form a button-hole, and the ends turned back and united at their inner edges, and connected to attaching pieces.

The defendants' suspender ends are made of flat braid, with a button-hole formed in them, in the process of plaiting the braid. The patent-office regarded them as a different invention from the complainant's, and issued a patent to the defendants upon that theory.

I do not think there was any patentable novelty in leaving a hole in the strap or braid in the process of weaving, plaiting, or crocheting the material, (the crocheted towel-loop described in Harper's *Bazar* shows this,) but I agree with Mr. Brevoort, the defendants' expert, that a suspender end made in this way is not the suspender end of the complainant's patent. The complainant's article may be made by the use of machine-made braid or cord, while the defendants must be made by hand. The complainant's article can therefore be made more conveniently and at less cost; and this, as the complainant states in his affidavit in the interference proceeding, is the reason why he adopted the mode of making his end which he described in his patent. It would seem that this advantage is really the chief merit of the invention, as flat suspender ends were old. The defendants' braid is not united at its inner edges, and is not a double cord or braid like the complainant's.

The bill is dismissed.

WEIR v. MORDEN.

(Circuit Court, N. D. Illinois. August 4, 1884.)

PATENT—IMPROVEMENT IN RAILROAD FROGS.

The second claim of reissue patent No. 8,914 requires the point of the "frog" to be constructed as directed in the body of the patent. The U iron, as a mode of connecting the point and wing rails, was in public use and well known before the complainant claims to have been the inventor thereof.

In Equity.

Wood & Boyd and Banning & Banning, for complainants.

Offield & Towle and H. Harrison, for defendants.

BLODGETT, J. The complainant in this case seeks to restrain the infringement of reissue patent No. 8,914, issued to complainant, September 30, 1879, for "an improvement in railroad frogs," the original patent, No. 215,248, having been dated May 20, 1879. In his specifications complainant describes the mode of constructing his frog to consist in a peculiar mode of combining the rails so as to form the V-shaped point or angle of the frog, and also in connecting the point and the wing rails with channel iron, the upturned sides of which are bolted to the wing rails and the point rails.

The defendant is charged with infringing only the second claim of the patent, which is as follows:

"(2) A frog composed substantially of two center rails, B, B¹, joined to form the V-shaped point, united to outside diverging or wing rails by means of two channel or U irons, D, D, one wing of which channel or U irons is shaped to fit the web of the abutting rails, combined to form the point of the frog, and upon the other side fitting the web of the wing or diverging rail respectively, and secured by bolts or rivets passing through the webs of the rails and the sides of the channel bars, substantially as shown."

The history of this patent, as gathered from the records in this case, seems to be this: In October, 1877, the complainant filed the application for his patent, and on December 2, 1877, the patent was allowed with certain claims; but, as he now insists, by the neglect of his solicitor, the final fee to the patent-office was not paid, and the proceedings to obtain the patent lapsed. Sometime in February, 1879, he renewed his application, and asked that the original specifications and drawings might be considered as part of the renewed application, and the original patent, No. 215,548, was issued May 20, 1879. On June 29, 1879, application was made for a reissue, which resulted in the reissue No. 8,914, now before the court.

Testimony has been put into the record by the complainant, as a witness in his own behalf, tending to show that he made the invention in question previous to June, 1876; but he is unable to define the time with any degree of certainty, except that on June 10, 1876, he exhibited a rough sketch or diagram of his proposed device to Mr. W. H. H. Allison, who affixed his name to said sketch at that date,