

penalties denounced by sections 10, 11, and 12 of said act. The vessel—the instrument, or the *res*—employed in unlawfully bringing the party into the United States, as well as its master, is held responsible as a participant in the unlawful act. In case it is made to appear, by the return of the marshal, that the vessel has departed, I have no doubt of the authority of the court, under the provisions of section 12 of the act, by its writ or order, to empower the marshal to remove the petitioner remanded to the country whence he came, by any other vessel conveniently available for the purpose, at the expense of the United States, as being a person “found to be one not lawfully entitled to be or remain in the United States.” The direction contained in the statute, “cause to be removed,” involves the power to use the necessary means to accomplish the required object. We so substantially held in *In re Chon Goo Pooi*. And the district judge also so held in the case of *In re Chin Ah Soocy*, 21 FED. REP. 393. This power existing in the court, I can perceive no good reason why the order remanding the petitioner may not, in the first instance, be in the alternative, commanding the marshal to return him to the custody of the master of the vessel on which he came, and, in case it shall be found by the marshal that the vessel is gone, that he place him on board on the return of the vessel; or, on the direction of the court, that he remove him to the country whence he came, upon any other vessel conveniently available for the purpose, at the expense of the United States, to be afterwards recovered from the parties liable therefor under the statute.

In my judgment, the petitioner must be remanded, and in case it shall prove to be impracticable to return him on board the vessel on which he came, by reason of the departure and probable non-return of the vessel at an early day, that the marshal be directed to return him to China, whence he came, on some other vessel available for the purpose, at the expense of the United States, which expense may be recovered, under section 12, from the parties responsible for bringing him hither.

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WELLING and others v. CRANE and others.

(Circuit Court, D. New Jersey. September 23, 1884.)

PATENTS FOR INVENTIONS—COMPOSITION FOR ARTIFICIAL IVORY—NOVELTY.

Patent No. 89,531, granted April 27, 1869, to William M. Welling, for an improved composition for artificial ivory, is void for want of novelty, and because it does not disclose an advance in the art.

On Bill, etc. Suit No. 3.

*Betts, Atterbury & Betts*, for complainant  
*Rowland Cox*, for defendants.

NIXON, J. This suit is brought to recover profits and damages for the infringement of letters patent numbered 89,531, dated April 27, 1869, and granted to William M. Welling, for an "improved composition for artificial ivory."

The defendants contend that the patent is void (1) because it is wanting in novelty; (2) because the specification is fatally defective; and (3) because the patent does not disclose an advance in the art. The patent is for a composition. The patentee claims that he has invented and made a new and useful compound resembling ivory. In the specifications he states that he uses of kaolin, in fine powder, about ten parts, by weight, to one part, by weight, of shellac, also finely ground. After intimately mixing these powders together, by sifting or otherwise, and adding, if desired, a small portion of gum camphor, he passes the product through heated rollers that melt the shellac and produce a plastic mass, which renders the union of the shellac and kaolin so intimate that the mass is homogeneous, and when pressed into molds, while still warm, has the appearance of ivory. Different colors of the article may be secured by adding any desired coloring matter with the kaolin and shellac.

The new composition, for which the patent was granted, consists of a mechanical mixture of kaolin and shellac in certain definite proportions,—the kaolin to give it body, and the shellac to effect an adhesion of the parts. The testimony shows that the use of these ingredients, in combination, was not new. A number of patents were exhibited to prove this. In some of them, kaolin is specifically mentioned as a desirable body-giving agent, in connection with shellac, to impart adhesiveness. In others, "all earths, dried and powdered," "finely powdered porcelain, or other baked earths," "argillaceous earths," and like descriptions of inert materials, are designated, and it will hardly be disputed that all of these substances are equivalents of kaolin. It was no more invention to substitute kaolin for any of these, than to make door-knobs of clay or porcelain, instead of iron, brass, wood, or glass, which has been previously used. See *Hotchkiss v. Greenwood*, 11 How. 248; *Smith v. Goodyear Co.* 93 U. S. 486.

The only questions left in the case are, whether this combination, in the proportions stated in the patent, produced any new and useful result; and, if so, whether the defendants have infringed by using it in these proportions. I think that both of these questions must be answered in the negative, and against the complainants. The weight of the evidence does not give support to the alleged value of the patented composition, except for poker checks and martingale rings. It is not strong enough to be useful in the manufacture of billiard balls, piano keys, knife handles, or any articles which are liable to be cracked or broken by coming in contact with other substances.

It is also quite clear that the proportions mentioned in the patent

do not yield the best results, and that the patentee himself early abandoned their use. He says he does not remember when he quit using two parts of kaolin to one of shellac, but that he ascertained some years ago that, in order to secure a more ivory-like appearance to the manufactured articles in making up the composition, he was obliged to reduce the quantity of kaolin, and to substitute therefor "a lead," and that he varied the proportions so much that in some cases he used equal parts of kaolin and shellac, and in others one part of shellac and from one and a quarter to one and three-quarters of kaolin, and one part of "a lead." It does not appear that the defendants have adhered any more closely to the proportions of the patent than the patentee himself. After full consideration, I am not able to give any construction to the claim of the patent which will constitute them infringers, and the bill of complaint must be dismissed, with costs.

BROWN MANUF'G CO. v. DEERE and others.

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

PATENTS FOR INVENTIONS—COUPLINGS FOR CULTIVATORS—CLAIM 1 OF PATENT No. 190,816—PATENTABILITY—ANTICIPATION—INFRINGEMENT.

The first claim of letters patent No. 190,816, granted to William P. Brown, May 15, 1877, for an improvement in couplings for cultivators, construed, and held, that Brown's device was a patentable invention, not anticipated by Coonrod's patent of 1867, Stover's patent of 1870, or Haslup's patent of 1872, and was infringed by the device of defendant.

In Equity.

*A. W. Train and George H. Christy*, for complainant.

*West & Bond and Coburn & Thacher*, for defendant.

BLODGETT, J. The complainant in this case seeks an injunction and accounting against the defendant for the alleged infringement of the first claim of patent No. 190,816, granted to William P. Brown, May 15, 1877, for an improvement in couplings for cultivators. The patentee states:

"My invention relates to an improved form of coupling for fastening the forward ends of the beams of plows or gangs to the axle of a wheeled cultivator. The improvement consists in the particular construction and arrangement of a tube or pipe-box turning loosely upon the horizontal ends of the crank-axle, and connected through an adjustable stirrup or sleeve and bracket with a head having a long bearing at right angles to the pipe-box, to which head the forward ends of the plow-beams are bolted, while the pipe-box is provided with means for turning it against the gravity of the attached cultivators in the rear, whereby the said cultivators are manipulated with greater ease, as hereinafter more fully described."

The distinctive feature of this device, which is now brought to the attention of the court in this case, is the auxiliary power applied by means of the pipe-box and an arm projecting upward therefrom to