

valve itself, or the combination of valve and case, were patentable. Nothing is said regarding a loose case having an end play, and the theory of plaintiffs, that the invention may be made to consist also "in a suitable case" by inserting a comma after the words cylinder valve, is too fanciful to be worthy of serious consideration.

Following this description of his invention is a reference to his drawing, in which A is said to represent the hydrant tube, B, the horizontal section connected with the water-main, C, a loose case around the hydrant tube for protecting the tube from dirt, etc., D, the cylinder valve, E, a rod having a screw-thread on its upper end, F, a sleeve-nut, G, the head of the hydrant, H, the stuffing box, etc. Having thus described his invention, in which a loose case is merely mentioned as one of the parts of the hydrant, and having no especial value except for protecting the tube from dirt, and in which no mention whatever is made of its having an up-and-down movement, the patentee claims: *First*, a hydrant or water-plug, constructed substantially as shown and described; that is to say, with the parts, A and B, connected together as shown, and with a cylinder valve and a waste-water valve, connected and operated in combination, substantially as herein specified. *Second*, the arrangement of the parts, A, B, valve, D, case, C, and stuffing box, H, as herein described, for the purpose specified. In the drawing attached to this original there is no indication that C has any up-and-down movement, as it rests at its lower end upon the horizontal main, and at its upper end is confined by a flange which would effectually prevent such movement. In the reissued patent the description, the specifications, the claims, and the drawing are all changed, and the loose case, C, with an entirely distinct and new function assigned to it, is thrust prominently forward as the leading feature of the invention. In his new specifications the patentee says that his invention "relates to improvements in the construction of fire-plugs or hydrants," but no mention is here made of its consisting of a cylinder valve in a suitable case, or of the combination suggested in the corresponding portion of the original specifications. C is first described as "a loose, *movable* case around the hydrant tube." After having at length described the entire hydrant substantially as before, he introduces the loose case, C, as a distinct feature of his invention in the following language:

"It will be observed that the casing, C, loosely rests upon the main, B, or upon a branch projecting upward from the same. This casing extends upward, enveloping the main portion of the water-pipe, A; at least that portion which is subterranean. Said casing extends upward and fits loosely about the plug or hydrant at the portion, A. Above the upper terminus of the casing, C, is provided the bead, *a*, upon the hydrant proper. Sufficient space is left between the bead, *a*, and the upper terminus of the casing, C, to permit of sufficient up-and-down play of the said casing, C, for the purpose which will hereafter more fully appear. This distance between the bead and casing may be adjusted to any described distance, thus lengthening or shortening it by means of its screw attachment at its base.

"The main function of the casing, C, is to prevent derangement of parts

during cold weather by the ground alternately freezing and thawing around the hydrant or plug. This process of freezing causes the surrounding earth, by its expansion, to lift or upheave, and thus be liable to derange the hydrant or plug. This upheaval or movement is received by the casing, C, which, by its capability of sliding loosely up and down, will accommodate the upheaval of the earth above mentioned, without any liability to derange the plug or hydrant. This is the chief function of the casing, C, although it likewise serves the purpose of protection to the water-pipe, A."

A new and distinct claim is also introduced as follows:

"(1) In combination with a hydrant or fire-plug, a detached and surrounding casing, C, said casing adapted to have an independent up-and-down motion sufficient to receive the entire movement imparted by the upheaval of the surrounding earth by freezing, without derangement or disturbance of the hydrant or plug proper, substantially as shown."

The drawing attached to his specifications is also changed, so as to give sufficient space between the top of the loose casing, C, and the flange above it, to allow an end play of the casing of several inches. From this comparison of the two patents it seems to us entirely clear that here is not only an expansion of the original claim, but an attempt to introduce an entirely new invention, neither claimed nor suggested in the original patent. It is scarcely necessary to say that this cannot be done.

The plaintiff's argument, that the words "with the parts, A and B, connected together, as shown," used in the first claim of the original patent, referred to the connection made by the loose casing, C, is wholly untenable. This casing surrounds the stock or hydrant tube, A, and rests upon a shoulder projecting from B, but it can no more be said to connect them than the ramrod of a musket can be regarded as connecting the stock and barrel, simply because it runs loosely through loops in the one into a hole provided for it in the other. When we speak of the connection of two parts we mean that device by which they are held together; and the connection referred to in this claim is defined by the specifications so clearly as to leave no doubt as to what was passing in the mind of the inventor: "The tube, A, is secured to horizontal section, B, by a ring-nut, M, which contains recesses," etc. As this is the only connection referred to in the specifications, the claim must be construed with reference to it. The telescopic casing, C, is, with reference to this device, at least, no connection at all. It is true that the joints of a telescope are said to be connected together, although the connection is, to a certain extent, a loose one. But in fact these joints are held together by flanges, which prevent a total disconnection without unscrewing or breaking the instrument. This illustration obviously has no application here. A glance at the drawing, too, shows that the casing, C, has no up-and-down play at all, but is confined at the top by a flange projecting from the stock. Indeed, the bill avers that this perpendicular movability was a feature not shown in the drawing. "Yet the said drawing showed the said case, though forming a part

of the hydrant, connecting the tube and water-main together, as being confined at the top as well as at the bottom, so as not to be a loose case and as not to have such end play." The only function of this casing was that described in the specifications, viz., the protection of the hydrant from the surrounding earth or dirt. In the drawing annexed to the reissue, however, there is given to the casing an end play of several inches by widening the space between the top of the casing and the flange of the stock.

We find nothing, then, in the original patent which lends support to plaintiff's theory that Bailey was the inventor of the loose casing described in the reissue, and we are therefore of the opinion that the commissioner had no jurisdiction to grant such reissue.

But conceding, for the purpose of this case, that we may re-examine the decision of the commissioner as to the question of mistake or inadvertence, the evidence tends only to show that Bailey was, or may have been, the first inventor of the loose casing having an up-and-down movement, and that the model forwarded by him to the patent-office embodied this invention. The mistake, then, was that of his attorneys in preparing the original drawings and specifications. There is no evidence that he was mistaken or misled as to the legal import of his patent, or that he intended to claim more than he did claim. Unfortunately the model was destroyed by a fire in the patent-office, and there is no direct testimony that it did, in fact, exhibit an up-and-down movement, except that of the inventor himself, who says that during the winter of 1866-67, or the spring of 1867, he made two models, one of which he sent to Munn & Co., his patent solicitors in New York, and the other of which he produced and put in evidence as "Exhibit Bailey's Original Model." He testifies in general terms that there was no difference between the two, but he does not undertake to compare them in detail, and the lapse of sixteen years and a half since the model was constructed certainly affords a basis for an argument that he may be mistaken in his recollection. Two other witnesses testify that they saw the two models, and that one of them was the exhibit; but neither of these witnesses undertake to describe in detail the one which became the patent-office model, nor to say that it was a duplicate of the exhibit in every material respect. Their attention does not seem to have been called to the peculiar feature which is now made the basis of the plaintiffs' claim. Whether this model did, in fact, exhibit this end play is not proven to my mind with that clearness which we should regard as necessary to establish such an important fact, in the face of Bailey's other testimony with respect to his procurement of the original patent. It is true that the duplicate, "Bailey's original model," contains somewhat less than an inch of end play, but this is effected, to a certain extent, at least, by the employment of leather washers, apparently superfluous in number and of unusual thickness, in the screw connection between the stock of the hydrant proper and the branch of the water-main. Indeed, it is

stated by Bailey himself that, when the metal parts are screwed together without leather washers, the space left for end play of the casing, between its stock and the bead on the body of the hydrant, is only 3-32 of an inch.

But, admitting that his testimony with regard to the patent-office model should be taken for all that can be claimed for it, there is nothing to show that Bailey did not secure to himself all of which he intended to claim the monopoly of manufacturing and using. His letters to his attorneys, Munn & Co., were also burned, and there is no attempt to show by parol the instructions contained in them. Bailey simply says that his recollection is that he wrote them about it, "giving them my idea of it sometime previous, I think a month, to the forwarding to them of the specifications." There is no evidence from the office of Munn & Co. as to what their instructions were, or whether the model sent to them contained the up-and-down movement or not. We can only say with respect to this branch of the case that, if the patentee intended to claim a loose casing around the hydrant, he would, in all probability, have so instructed his solicitors, and if he had done this, it is incredible that they should have so completely neglected his instructions in this important particular, and that when he signed the specifications he should have failed to notice the omission of the principal feature of his invention; and that he should have held possession of the patent for eight years without discovering the defect. He testifies that he read the specification which he executed and sent to Munn & Co., September 7, 1867, before he signed and swore to it; that he received his patent within two or three days after its issue upon March 10, 1868, and then read it, but did not examine the drawings, because he did not consider them an important part of his patent. It was not until eight years afterwards, when he saw hydrants made by the plaintiffs in use in Saginaw, that he recollected that his own device contained a perpendicular movement embodied in a subsequent patent granted to Race & Mathews.

There is also evidence that when Race & Mathews applied for their patent in December, 1868, they were informed by the examiner that a rejection was declared with reference to Bailey's hydrant, the model of which showed the whole invention of the loose casing claimed by Race & Mathews; but the examiner who wrote this letter is dead, and the letter itself is wholly inadmissible as evidence. The history of the reissue is substantially this: In 1875, Bailey being at Saginaw, Michigan, where hydrants made by the plaintiffs were in use, and learning that the city had been threatened with prosecution by R. D. Wood & Co., the present owners of the Race & Mathews' patent and the real defendants in this case, returned home and wrote to the plaintiffs that Mathews had no patent on a loose case, but that he (Bailey) had one patented in 1868, saying: "If you will look up this matter, and satisfy yourselves that my claim is good, I will sell