GILBERT *v.* WEIR PLOW CO.

(*Circuit Court, N. D. Illinois.* November 24, 1884.)

PATENTS FOR INVENTIONS—ANTICIPATION.

Where the devices used were all anticipated by devices used in older inventions, the mere circumstance of a different method of producing the same result in a combination will not entitle a claimant to the exclusive right to the use of such combination.

In Equity.

Geo. W. Dyer, for complainant.

West & Bond, for defendant.

BLODGETT, J. This is a suit to restrain the infringement of patent No. 88,413, issued as of March 23, 1869, to John G. Robinson, for an "improvement in gang and trench plows," and for an accounting for profits and damages. This patent covers several devices, but the only one in controversy in this suit is what the patentee describes "as a device for adjusting the depth of the furrows." It consists of a movable arm or wheel-journal for the right hand, or furrow-wheel, with an angular lever so connected with this movable arm that this wheel-arm can be raised above or lowered below the end of the axle. The wheel-arm or journal is fastened horizontally to a grooved vertical plate, which is arranged to move on a plate fixed vertically to the end of the axle, and an angular lever fulcrumed on the axle is connected by a pitman with the grooved plate which carries the wheel, so that the axle may be raised or lowered by the movement of this lever in the notches of a ratcheted bar with which it is held in engagement by a spring. This feature of the patent is covered by the first claim, which is:

(1) "The combination of the angular lever, A, ratchet, C, and spring, B, with the pitman, D, and sliding axle-tree arm, E, in the manner described and for the purposes set forth."

The defenses are (1) that defendant does not infringe; (2) that the patent is void for want of novelty.

The proof in this case shows that wheel-arms, which could be moved upon the end of the axle of a wheeled cultivator or plow so as to bring the axle, or one end of it, above or below the center of the wheel, are old, and were well known long prior to the issue of this patent. In fact, it is only the axle inside the hub of the wheel which moves up or down in the complainant's device, or any of the devices shown in the proof, as the wheel always rests upon the ground, and the axle is the part of the device which changes its position. We find in the patent of Joseph Vowles, for a cultivator, issued in February, 1860, a wheel-spindle, vertically movable on the end of the axle, the slides, or plates, to which the spindle or wheel-arms were fixed, having a rack, and levers being arranged with teeth to engage with the teeth or cogs of the rack, so as to move the wheel-arm up or down with these levers.

Robinson, the patentee of complainant's device, also obtained, in December, 1860, a patent for an "improvement in plows," wherein he showed a wheel-arm arranged to be moved up or down so as to raise or lower the plows; but he showed no levers for this operation, the movable plate carrying the wheel-arm being held in place by pins, which were taken out to make the adjustment, and then replaced in other holes, as provided. In May, 1861, another patent was issued to Vowles for an "improvement in cultivators," showing the same device for a movable wheel-arm that was shown in his patent of February, 1860. In the patent of Edwin J. Fraser, issued April 23, 1861, for an "improvement in plows," a movable wheel-arm is shown, by which the axle is raised and lowered so as to adjust the axle horizontally when one wheel is running in the furrow. This adjustment is made by means of a lever with an eccentric or sector fulcrumed on the top of the vertical guide or socket in which the wheel-arm was moved. In the patent granted to J. L. & W. L. Black, December 19, 1865, a movable wheel-arm is shown, actuated; that is, moved up or down by means of a chain fixed to the slide which carried the movable wheel-arm which is worked by a bent or angular lever connected with the chain. So, too, the patent issued to A. Hammond, issued March 27, 1866, shows a wheel-arm movable up and down by means of a screw engaging in a toothed rack on the plate to which the movable arm is fixed.

It therefore clearly appears that devices for adjusting the height of one or both ends of the axle in relation to the center of the wheel when applied to cultivators and plows was old before the patent now before the court was granted, and that in all the prior patents substantially the same mode of securing the movability of the axle was adopted; that is, the wheel-arm was made fast to a vertical plate, which is either grooved so as to slide on a vertical plate fixed to the end of the axle, or the plate fixed to the end of the axle is grooved, and the plate fixed to the end of the arms slides in such grooves. We also find that in the Vowles patents of 1860 and 1861 the wheel-arm is actuated by means of a lever having a toothed segment at the end which engages with the teeth or cogs of a rack attached to the plate which carries the wheel-arm; this segmental lever being fulcrumed on a pin so as to move the plate up or down without the aid of a connecting link or pitman. In the Fraser patent of 1861 a sector or eccentric is applied to raise or lower this movable wheel-arm. In the patent of Black of December, 1865, a bent or angular lever is shown attached to a chain connected with the sliding-plate fixed to the wheel-arm; and it also shows an arched or segment-shaped notched bar so arranged as to engage with or hold the lever in any place within its range; in other words, a ratchet bar.

Here we have in these older devices, as it seems to me, all the elements of the first claim of this Robinson patent. Vowles' two patents show levers with segments or eccentrics, and the teeth or cogs