

MCCARTHY *v.* CLARK.

Circuit Court, W. D. Pennsylvania.

May 31, 1888.

PATENTS FOR INVENTIONS—PATENTABILITY—APPARATUS FOR CLEANING
CESSPOOLS.

Claims 1, 4, and 10 of letters patent No. 138,034, issued to William C. McCarthy, April 22, 1873, for an improvement for apparatus for cleaning cesspools, *held*, in view of the state of the art at the date of their issuance, not to describe a patentable invention

In Equity. Bill to restrain infringement of patent.

The patent referred to in the opinion is No. 138,034, issued to William C. McCarthy, April 22, 1873.

Wm. L. Pierce, for complainant.

T. H. Davis, for defendant.

PER CURIAM. The patent upon which this suit is founded, is for an improvement for apparatus for cleaning cesspools, etc., and contains 10 claims, the first, fourth, and tenth of which are involved in this controversy. These three claims, taken together, comprehend the same mechanical elements, and are divided into three only nominally separate combinations. All these elements are old. Not one of them is new; and in view of the state of the art at the date of the patent, which is April

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22, 1873, it is difficult to perceive any patentable merit in them. In the machines then in use for similar purposes are to be found like mechanical appliances, somewhat different in form, but adapted to perform exactly the same functions. Under these circumstances, the inventive thoughtfulness of the patentee ought to be manifest; and, certainly, his conception ought not to be within the scope of mere mechanical suggestiveness or skill. Upon the ground alone that the claims referred to do not describe a patentable invention, irrespective of the other features of the machine described in the patent, this suit cannot be sustained, and it is therefore Unnecessary to consider the question of infringement. The bill is dismissed, with costs.