

ON APPLICATION FOR REHEARING.

JACKSON, J. I concur fully in the conclusion reached by the district judge, that the Rodebaugh patent of October 16, 1877,—letters patent No. 196,102, was anticipated by the patent issued to Thomas Craney,—No. 150j534,—dated May 5, 1874; that in so far as the Rodebaugh improvement differs from that of the Craney patent nothing more than mechanical

March 13, 1889.

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skill was involved and exercised. I am further of the opinion that said Rodebaugh patent was anticipated by the patent of Ely,—No. 163,309,—dated May 18, 1875.

2. If the Rodebaugh patent could be held valid, it would, in view of the action of the department, as shown by the file-wrapper and contents, have to be limited to the precise mechanism and construction therein described, and, as thus limited, it is not infringed by the machine used by the defendants. Rodebaugh's original claim was broad enough to have covered the machine as used by defendants. It was "(1) the eccentric lever, E, E¹, and connecting strap, F, combined with the vertical shaft or bar, D, carrying the dog-head, substantially as described, and for the purpose specified." This claim was rejected by the patent-office on reference to said Ely patent, No. 163,309, in which is found an eccentric lever operating on the vertically reciprocating bar, which carries the dog, and capable of locking the bar in any position it may be set. Upon the rejection of this broad claim Rodebaugh was compelled to present the new claim now shown in claim 1 of the letters patent issued to him, which cannot by any construction, or under any rule of doctrine of equivalents, be enlarged so as to cover or embrace what was previously rejected. It must manifestly be limited to the specific device therein described, in which the dog-head is locked when the eccentric lever has been moved through the half circle, or 180 degrees of the circle, of its action, and brought into a perpendicular position with the standard or shaft. The defendant's lever is differently constructed, having its greatest locking capacity when in a horizontal position, and losing this locking capacity entirely when carried to the position of the perpendicular at which the Rodebaugh lever makes its most effective lock. I am clearly of the opinion that the application for rehearing should be denied, and that complainants' bill should be dismissed, with costs.