

whom it was issued." Tested by the rules laid down in the authorities I have cited, I think the indictment clearly insufficient. The foundation of the whole proceeding is the issuing of the subpoena by one of the several officials, authorized, by the sections I have quoted, to issue subpoenas in contested election cases. The authority is special and statutory, and the particular official who issued the subpoena, and the manner in which it was issued, should have been averred in the indictment. This has not been done, and hence it does not appear that the defendant owed such duty, and was under such legal process as to render him liable to the penalties prescribed by the statute. For this reason the indictment should be quashed.

This conclusion renders it unnecessary to pass upon the questions raised by the third and fourth reasons assigned in the motion to quash, or to decide whether an officer of the classes named in the statute may go beyond the county of which, or in which, he is an official under the state laws, and take the depositions of witnesses in other counties in the same congressional district, or whether his subpoena will run beyond the county in which he resides, where, by the state laws, his powers are only exercisable in that county.

MURBARGER *et al.* v. BAKER *et al.*

(Circuit Court, N. D. New York. May 11, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—THILL SPRINGS.

Letters patent No. 344,786, issued June 29, 1886, to William E. Murbarger, for an improved anti-rattler spring for thill couplings, consisting of a spring of V form, having arms provided with reverse curves at their ends, and with convex portions between the V point and the reverse curves, are not infringed by a spring which, though substantially like the patented device, has no reverse curve and no convex portion; since said patent, being but one in a long series of similar improvements, is restricted to the precise form described in its claim.

In Equity.

William A. Redding, for complainants.

Frederick I. Allen, for defendants.

COXE, J. This is an action in equity based upon letters patent No. 344,786 granted to William E. Murbarger, June 29, 1886, for an improved anti-rattler spring for thill-couplings. The patentee conceived the invention in December, 1883, or January, 1884. His object was to provide an inexpensive spring which can be inserted in, and removed from, the space between the thill and axle without removing the thill; a spring having reverse curves upon its arms to fit the clip of the axle upon one side and the curve of the end of the thill upon the other, so as to be held in place by the tension of the spring. The claims are as follows:

"(1) An anti-rattler spring of V form, having arms provided with reverse curves *e i* at their ends, and with extended or convexed portions *x y* between the V point and reverse curves, the space between said convexities being greater than the space between the jack-clip and thill-heel, substantially as described. (2) An anti-rattler spring of V form, provided with two arms having reverse curves *e i* at their free ends, and with its lower end bent abruptly and curved forward, substantially as described."

The defenses are want of invention and non-infringement.

The evidence shows that the patentee was very far from being a pioneer. The field of invention, at best an exceedingly narrow one, was so fully occupied when he entered it, that many who had come with high expectations of being permitted to locate there had been crowded into the adjoining, but less fertile, field of mechanical skill. The prior art shows a great variety of springs designed to accomplish the same results as the spring in controversy. There were U-shaped springs, hook-shaped springs, cup-shaped springs and V-shaped springs. There were springs made of flat metal, wire and rubber. There were lever springs, coiled springs, and leaf springs; springs with their lower ends round, angular and bent abruptly; springs with straight arms and arms having concavities, convexities and reverse curves. It is entirely clear, therefore, in view of the prior art and of the limitations submitted to in the patent-office, that the complainants are not entitled to a broad construction of the claims or to invoke the aid of the doctrine of equivalents. The improvement of the patent is but one in a long series of similar improvements having precisely the same object in view. The rule is well established that in such cases the patentee must be restricted to the form, arrangement and purpose described and claimed. It is thought that the defendants do not infringe the claims construed in the light of this well-known principle of law. It is not pretended that the defendants' spring has all the features of the patented spring, but it is argued that the two structures are "substantially" and "practically" alike and that where the defendants diverge they employ equivalents. Comparing the defendants' spring with the claims, it will be found that there is no reverse curve *i*, no convex portion *y*, and that the space between the convexities is not greater than between the jack-clip and thill-heel. In fact, there are no "convexities," as the side of the spring which engages the thill-heel is substantially straight. Furthermore, there is no "lower end bent abruptly and curved forward," in the sense in which these words are used in the patent. As the defendants do not infringe the bill must be dismissed.

CONSOLIDATED BUNGING APPARATUS CO. v. METROPOLITAN BREWING CO.¹

(Circuit Court, E. D. New York. May 1, 1891.)

PATENTS FOR INVENTIONS—No. 222,975—BEER VESSELS.

Patent No. 222,975, granted to Otto Zwietusch and Edward Heitman for an improvement in automatic pressure relief apparatus for beer vessels, was not anticipated by patent No. 219,057, granted to Emil Zesch for an improvement in relief attachments for beer-fermenting vessels.

In Equity. Suit for injunction and accounting.

Banning, Banning & Payson, (E. & H. A. Banning, of counsel,) for plaintiff.

Edward N. Dickerson, for defendant.

WHEELER, J. This suit is brought upon patent No. 222,975, dated December 23, 1879, and granted to Otto Zwietusch and Edward Heitman for an improvement in automatic pressure relief apparatus for beer vessels. The patent, and particularly the first claim, which is the one now under consideration, was construed and sustained against most of the defenses now made in *Apparatus Co. v. Woerle*, 29 Fed. Rep. 449. The views of Judge BLODGETT are concurred in and followed, and reference to them appears to be sufficient so far as the same questions arise here. Patent No. 219,057, dated August 26, 1879, and granted to Emil Zesch for an improvement in relief attachments for beer-fermenting casks, appears to have been before the court in that case, but without evidence as to the time of the invention or use of the structure. Such evidence has been produced here. But neither this evidence nor any other proof in the case shows with the clearness required for the overthrow of a patent that either Zesch or any one invented or used the combination of the knife-edge mechanical fit valve with surrounding water chamber of this claim prior to its invention by these patentees. The decision of this question in this way, with what was decided in that case and is followed in this, entitles the plaintiff to such a decree here as was had there.

Let a decree be entered for the orator, for an injunction and an account upon the first claim of the patent, with costs.

¹Reported by Edward G. Benedict, Esq., of the New York bar.