

## UNITED STATES v. BAILEY.

(Circuit Court, S. D. New York. July 24, 1891.)

## OFFENSES AGAINST POSTAL LAWS—LOTTERIES—INDICTMENT.

An indictment for sending lottery circulars through the mails need not show how the circulars concern a lottery; but, where the circulars do not show on their face that they relate to a lottery, the indictment should aver the existence of a lottery, or an intention to hold a lottery, to which the circulars refer.

At Law. Indictment for sending lottery circulars through the mails.  
*Edward Mitchell*, U. S. Atty., and *Maxwell Everts*, Asst. U. S. Atty.  
*Abram J. Rose*, for defendant.

BENEDICT, J. I do not think this indictment defective for failing to show how and in what manner the circulars set forth in the several counts concern a lottery. It is sufficient, in my opinion, to charge in the words of the statute the fact that they do concern a lottery, without setting forth the evidence going to show that fact. But I think the indictment defective, because it fails to aver the existence of any lottery, or of an intention to hold any lottery or drawing for prizes to which the circulars set forth relate. The circulars upon their face do not show that they concern or in any way relate to a lottery. In such a case, the existence of a lottery, or of a scheme for a lottery, or of an intention to hold some lottery or drawing for prizes, to which the circulars relate, must be proved by other evidence than the circulars themselves. The fact should therefore be averred. For absence of this averment, the demurrer to the indictment is sustained.

WATSON v. STEVENS *et al.*

(Circuit Court, D. Massachusetts. August 7, 1891.)

## PATENTS FOR INVENTIONS—SHANK STIFFENER—NOVELTY.

The first claim of letters patent No. 367,484, (Watson patent,) for a machine for compressing shank stiffeners by two rotating dies or compressing rollers, the meeting faces of which present a recess with one straight and one curved face, thereby curving one face of the stiffener transversely, combined with means for rotating the rollers, and a lifting plate to assist in curving the shank longitudinally; and the sixth claim of said patent for a method of finishing the edges of shank stiffeners by cutting out a blank from a sheet of material, leaving it with beveled edges and obtuse angled corners, and thereafter passing the same between rollers having dies with rounded edges to round the obtuse angles and beveled portions as cut,—are merely adaptations of old and well-known mechanism and processes to a new use, with only such changes and modifications, none of which are novel, as are necessary to make them available for the new use.

In Equity. Bill for infringement of patent.

*Fish, Richardson & Storrow*, for complainant.

*W. A. Macleod*, for defendants.

NELSON, J. The following are the first and sixth claims of the Watson patent, No. 367,484:

(1) "In a machine for compressing shank stiffeners, two rotating dies or compressing rollers, the meeting faces of which are formed to present a recess having one straight and one curved face or side, to thereby curve transversely one face of the stiffener, combined with means for rotating the said die-rollers, and a lifting plate to assist in curving the said shank longitudinally, substantially as described."

"(6) The herein-described method of finishing the edges of shank stiffeners, which consists in cutting out a blank from a sheet of material, leaving the same with beveled edges and obtuse angled corners, and thereafter passing the same between rollers having dies with rounded edges or margins in order to round the obtuse angles and beveled portions as cut, substantially as described."

I am of opinion that the machine for compressing shank stiffeners, described in the first claim, and the method of finishing the edges of shank stiffeners, described in the sixth claim, are merely adaptations to a new use of old and well-known mechanism and processes, with only such changes and modifications, none of which involve any element of novelty or invention, as are necessary to make what was old and well known suitable and available for the new use. The plaintiff's bill for the infringement of the first and sixth claims of the Watson patent can therefore not be maintained, and a decree is to be entered dismissing the bill, with costs. Ordered accordingly.

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CAMPBELL MACH. CO. v. GOODYEAR SHOE MACH. CO.

(Circuit Court, D. Massachusetts. August 8, 1891.)

PATENTS FOR INVENTIONS—SEWING-MACHINES—INFRINGEMENT.

The nineteenth claim of letters patent No. 253,156, issued January 31, 1882, to Duncan H. Campbell, for an improvement in sewing-machines, consisting of a combination of a hook-needle, thread-arm, and thread-eye, with operating mechanism for the arm and eye, which causes the eye to first carry and deliver the thread to the arm, and thence deliver it to the needle, and also causes the arm to merely retain and release the thread delivered to it, so that the arm is prevented from abrading the thread, is infringed by a welting-machine and a stitching-machine having the same combination of needle, arm, and eye, with somewhat different mechanism, performing the same function, the only difference being that in the welt-machine the relative motions of the arm and eye are slightly different, and in the stitching-machine the arm is stationary, and the motion, which, in the Campbell machine, transfers the thread to the arm, is given to the eye.

In Equity. Bill to restrain infringement of patent.

*Maynard & Beach*, for complainant.

*C. Smith and Elmer P. Howe*, for defendants.

NELSON, J. The nineteenth claim of the plaintiff's patent, issued to Duncan H. Campbell, January 31, 1882, No. 253,156, for improvements in sewing-machines, is as follows: