

ant's invention is that it is an improvement in the door of a burglar-proof safe, combining the elements claimed, all acting together so as to render the door, when closed, impervious to the admission of explosive substances. The objection to this construction is that it is not what the patentee claimed, nor what the patent-office allowed. See *McClain v. Ortmyer*, 141 U. S. 419, 12 Sup. Ct. Rep. 76, where it is said:

"While the patentee may have been unfortunate in the language he has chosen to express his actual invention, and may have been entitled to a broader claim, we are not at liberty, without running counter to the entire current of authority in this court, to construe such claims to include more than their language fairly imports. Nothing is better settled in the law of patents than that the patentee may claim the whole or only a part of his invention, and that, if he only describe and claim a part, he is presumed to have abandoned the residue to the public. The object of the patent law in requiring the patentee to 'particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery,' is not only to secure to him all to which he is entitled, but to apprise the public of what is still open to them. The claim is the measure of his right to relief; and, while the specification may be referred to to limit the claim, it can never be made available to expand it."

As the bill claims a patent for an improvement in burglar-proof safe locks, which is not supported by the letters patent proffered, and as the infringement charged is wholly incompatible with complainant's patent, as shown by his letters patent, the demurrer is well taken, and should be sustained; and it is so ordered.

HAUGHEY v. LEE *et al.*

(Circuit Court, E. D. Pennsylvania. May 9, 1890.)

PATENTS FOR INVENTIONS—INVENTION.

The claim of patent No. 879,644, of March 20, 1889, was for an "interfering device," to be placed around a horse's leg to protect it from contact with the hoof of the other leg, and to widen the stride, consisting of the pendant of "suitable material, loosely jointed to the strap passing around the leg of the horse." Devices for this purpose were old, and had been constructed in the form of a strap with leather loops, forming "strikers,"—*i. e.*, the part adapted to hit the other hoof,—attached, standing out horizontally towards the other leg, and of a pliable material wound round the leg with the ends inside, and projecting horizontally towards the other leg, to form the "striker." A strap having a pendant had been attached to the leg of horses to prevent stall kicking. *Held*, in view of the state of the art, no invention was shown in changing the position of the "striker" from a horizontal to a pendent position.

Bill in Equity by Michael Haughey to enjoin Lee & Sons from infringement of patent granted to complainant for interfering device for horses.

E. J. O'Brien and *Edward P. Bliss*, for complainant.
Ernest Howard Hunter, for respondents.

BUTLER, J. The plaintiff sues for infringement of patent No. 379,-644, dated March 20, 1889,—“interfering device for horses.” The claim is as follows:

“The interfering device, consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap passing around the leg of a horse, substantially in the manner shown, and for the purposes set forth.”

The answer attacks the patent, and denies infringement. To support the former appeal is made to the state of the art. From this source it appears that interfering devices are of great antiquity, and of various forms, all having the same object,—protection of the leg, and spreading the stride. One of the earliest was the “boot,” made of leather or other pliable substance, padded, and fitted to the leg,—the main purpose of which was to protect the leg. Even this, however, was supposed to exert some influence on the step. Following it came various other contrivances, the dominant object of which was to produce a wider step,—called “spreading.” All these devices are still employed. Some consist of a strap strung with balls of wood, gum, or other similar material, made to buckle around the leg, above or below the pastern-joint. These balls stand out a little further than the “boot.” Others consist of a strap with leather loops attached to the outward side, two to five inches long. These loops at first are stiff, standing out horizontally, and are struck more readily than the “boot,” or balls. After a little use the loops hang, though not perpendicularly. Others are made of bands of platted straw, of gum pipe, and similarly pliable substances, and so fitted to the leg that the two ends form a “striker.” It is unnecessary to extend the enumeration. The object in all cases is to protect the leg, and induce a wider step. By this means it is sought to cure the vice of interfering. The projection on the strap is called a “striker.” A strap with pendent chain, or rope, has long been used to prevent kicking in the stall. This is attached to the leg in the same manner as the other devices. The chain is of various lengths, usually a foot or more.

The defendant has also shown, (if the testimony is credible,) the use of an interfering device made of a strap and pendent striker, loosely hung. The witnesses testify to having seen it used at a race-course near Norristown. One witness testifies to having seen a similar device,—the pendant being of gum or wooden balls,—at the stable of Mr. Hitner, in the same vicinity. One witness, a harness-maker, in Philadelphia, testifies that he assisted to make a number of similar devices, for a farrier, the strikers of which consisted of gum pipe—illustrated by an exhibit in proof. Another testifies that he saw these in the shop-window when made. The witnesses who testify to the devices used near Norristown, speak of a period 20 years past; and the same is true of the witnesses who testify to the Philadelphia device. The plaintiff called a number of persons, familiar with the general subject, who say they never saw any such devices. This does not, however, disprove their existence. I should hesitate to disregard the testimony of the plaintiff's witnesses, or to accept the suggestion that these devices were experiments

merely. Yet I would hesitate to declare the patent invalid on this testimony. The case may be put on safer ground. In view of the other devices shown—about whose existence there is no question,—it seems clear that the slight change in form which the plaintiff made did not require invention. He simply altered the “striker” from a horizontal to a perpendicular position. He found it standing out laterally, and loosened it so as to hang. This was all. Surely no invention was required to do it. Any mechanic to whose line the work belonged (or indeed any handy person, though not a mechanic) could do this. The idea or conception that this change might be beneficial, was not patentable. The question is simply, was invention required to make the change? In my judgment it was not. The kicking device exhibited a method of doing it. This device indeed required nothing but shortening the chain to make it correspond in every essential respect with the plaintiff’s. Applying this to a horse in motion, instead of one standing in his stall, is not even a new use. If new it would be analogous to the old. Patents are constantly overturned for want of invention, where its absence is not so clear. The later volumes of reports are full of such cases; eight are contained in the last issue—132 U. S. It is sufficient to cite a few of them. *Hollister v. Manufacturing Co.*, 113 U. S. 59, 5 Sup. Ct. Rep. 717; *Thompson v. Boisselier*, 114 U. S. 1, 5 Sup. Ct. Rep. 1042; *Pennsylvania R. Co. v. Locomotive Engine Safety Truck Co.*, 110 U. S. 490, 4 Sup. Ct. Rep. 220; *Bussey v. Manufacturing Co.*, 110 U. S. 131, 4 Sup. Ct. Rep. 38; *Gardner v. Herz*, 118 U. S. 180, 6 Sup. Ct. Rep. 1027; *Weir v. Morden*, 125 U. S. 98, 8 Sup. Ct. Rep. 869; *Holland v. Shipley*, 127 U. S. 396, 8 Sup. Ct. Rep. 1089; *Aron v. Railway Co.*, 132 U. S. 84, 10 Sup. Ct. Rep. 24; *Day v. Railway Co.*, 132 U. S. 98, 10 Sup. Ct. Rep. 11; *Roemer v. Bernheim*, 132 U. S. 103, 10 Sup. Ct. Rep. 12; *Watson v. Railway Co.*, 132 U. S. 161, 10 Sup. Ct. Rep. 45. It is said by some of the plaintiff’s witnesses that his striker taps the leg to which it is attached, as well as the other, and his counsel urge this as important. The specifications say nothing about it, but ascribe the device’s superiority to the fact that it strikes the opposite leg, by a “swinging tangential motion.” The claim also is silent on the subject. The counsel (as we understand) concede that the device would be old but for the capacity to perform this additional function. If that is true the patent is clearly void, because the claim embraces devices that will not perform it; and is therefore too broad. But aside from this, the tapping of the leg referred to, is unimportant. Every device used strikes and rubs the leg to which it is attached. Whenever the projection is hit by the opposite leg the blow is communicated to the other. The effect must necessarily be similar to the supposed tapping. I would rather sustain the patent than overturn it, (I feel this inclination in all cases,) but the proofs will not allow me. The bill must be dismissed, with costs.

COLT *et al.* v. COLT *et al.*

(Circuit Court, D. Connecticut. July 22, 1881.)

1. CONSTRUCTION OF WILLS—CODICIL—REVOCATION OF BEQUEST.

A will gave to each of several legatees a specified number of shares of stock in a manufacturing company, including a bequest of 500 shares to testator's brother for life, and then provided that the residue of such stock owned by the testator at the time of his death "shall be divided among the several persons and parties to whom I have hereinbefore given legacies of stock, in the ratio and proportion in which said legacies of stock are hereinbefore given; * * * meaning that my residuary estate in said stock shall be shared by the same persons to whom I have given specified legacies in stock, and in precisely the same ratable proportions." By a codicil testator provided that "I also revoke and cancel, for reasons growing out of his late unbrotherly conduct towards me, the legacy of 500 shares of the stock * * * given in the aforesaid will" to his brother. *Held*, that the proportional part of the residuary stock which would fall to the brother by virtue of the specific legacy was separate and independent from it, and hence was not revoked by the revocation of the latter.

2. SAME—REVOCATION OF TRUST.

The will also gave to the executors and their successors 500 shares of such stock, "in trust for the issue" of such brother, "the profits and dividends thereof to be applied to the education of his said issue * * * until the youngest surviving of said issue shall have reached the age of 21 years," when the stock and the accumulations thereof should go to them in equal proportions absolutely. By a second codicil testator gave to each child of the said brother a legacy of \$100, and then declared that "I hereby cancel and wholly revoke any and all other legacies or devises by me heretofore at any time made to or for the use and benefit of said children, or any of them; * * * and I hereby give" to certain children of a different brother "the property, to-wit, 500 shares" of such stock, "which in and by said original will is bequeathed to my executors in trust for the use" of the children of the first mentioned brother, "to be held by my executors for said children in the same manner, and subject to the same limitations, as are provided in said original will in the bequest to the children" of the first-mentioned brother. *Held*, that this was not a mere substitution of the children of one brother for those of the other, the title remaining in the trustees, but was a complete revocation of all legacies given to the one set of children, including their proportional part of the residue of stock, and operated to divest the title of the trustees, and revest it in them in favor of the other set; and hence this change did not carry with it any proportional part of the residue of stock, under the provision of the original will.

3. SAME—SUIT TO CONSTRUE—PARTIES—EXECUTORS AS TRUSTEES.

Where a will bequeaths property to the executors, in trust for certain legatees, and an action is brought by another legatee to construe the will, service upon the executors simply as such is sufficient to also make them parties in their capacity as trustees, and in that capacity they are bound by the decree.

4. JUDGMENT—COLLATERAL ATTACK.

In an action in a state court which had jurisdiction of the subject-matter, an order was made finding as facts that certain minor defendants and their guardian had been served with process, that "the parties appeared by their respective counsel, and the said minors were duly represented by their guardians." Subsequent orders and decrees recited that the "respondents" and the "parties" appeared by their counsel, filed their answer, etc. *Held* that, while these orders and decrees stand unimpeached by direct proceedings in the state court, the questions therein determined cannot be raised in an independent suit in a federal court, on the ground that the minors were not in fact represented by counsel.

5. SAME—GUARDIAN AD LITEM.

In an action in a state court having jurisdiction of the subject-matter, an order which finds that certain minor defendants "were duly represented by their guardian" is conclusive, until set aside by direct proceedings, that they were properly represented; and, in a collateral action, a federal court will not entertain the suggestion that, under the state law, the general guardian had no power to represent the minors, and that they were not bound by the decree because no guardian *ad litem* was appointed.

Affirmed in 4 Sup. Ct. Rep. 553.

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