

ticles, or of home articles in general, or to in any way check the business of the purchase and sale of goods brought from other states excepting in the degree that all taxation checks trade. It is not laid upon foreign goods as such. It simply lays an equal tax upon all North Carolina merchants, affecting alike their home and foreign trade. The imposition of the tax is one within the power of the state, and violates no provision of the constitution of the United States.

I have not inquired into the question of whether or not this application is prematurely brought. The petitioner is imprisoned, not for refusing to pay a tax, but for the preliminary matter of refusal to make a sworn statement of his purchases. I simply note the fact. The decision is placed on the constitutionality of the law, the matter upon which I understand both parties (the state and petitioner) desire an opinion. The petition, showing upon its face that applicant is not entitled to a writ of *habeas corpus*, has been denied.

WHITNEY v. BOSTON & ALBANY R. Co. *et al.*

(Circuit Court, D. Massachusetts. December 14, 1891.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—WOOD-WORKING MACHINERY.

Letters patent No. 259,958, granted June 20, 1882, to Baxter D. Whitney for improvements in wood-planing machines, were for a pressure-bar supported and guided by curved levers projecting from its ends, and working in curved grooves concentric with the journals of the cutter cylinder, with an elastic plate or pad, forming a supplemental flexible foot and distributive pressure regulator; the pressure-bar being arranged on the rear or incoming side of the cutter cylinder for the purpose of bearing upon the lumber and holding it firmly to the bed-plate. *Held*, that this is infringed by a machine which has a pressure-bar with curved guides engaging with grooves formed concentrically round the journal boxes of the cutter cylinder; a yielding presser-foot consisting of an elastic plate, having a bearing surface adapted to regulate the pressure to correspond with the varying thicknesses of the wood; and the combination of a flexible pad with auxiliary support to prevent undue deflection.

2. SAME—SUIT FOR INFRINGEMENT—INTERLOCUTORY DECREE.

Where a suit for the infringement of a patent is brought against the users of a single machine who purchased it from the manufacturers, and who have nothing to do with its construction, the interlocutory decree for plaintiff will be for an account only.

In Equity. Suit by Baxter D. Whitney against Boston & Albany Railroad Company and others for the infringement of a patent.

David Hall Rice, for complainant.

Parkinson & Parkinson, for defendants.

NELSON, J. On the 20th of June, 1882, the plaintiff, a manufacturer of wood-working machinery, took out a patent (No. 259,958) for improvements in wood-planing machines. The invention, so far as it is covered by the second and third claims of the patent,—the only claims which are in controversy in this suit,—consists of a presser-bar supported and guided by curved levers projecting from its ends, and working in

curved grooves concentric with the journals of the cutter-cylinder, with an elastic plate or pad, forming a supplemental flexible foot and distributive pressure regulator, the section of the bar being curved above and upright below. The presser-bar is arranged on the rear or incoming side of the cutter cylinder for the purpose of bearing upon the lumber and holding it firmly to the bed-plate. The defenses are want of novelty, non-infringement, anticipation, and public use and sale more than two years prior to the application.

The utility of the invention is apparent. It serves to prevent the lumber from binding, adapts itself to the inequalities of the wood, and prevents the chips from being thrown back upon the cutters, and the machine can be run with less power. The superiority of its work is shown by the exhibits in the case. The planing-machine in use in the railroad company's shop is provided with projections which, in function and effect, are practically the same as the plaintiff's levers. It has curved guides engaging with curved grooves, formed concentrically round the journal boxes of the cutter cylinder. It has a yielding presser-foot, consisting of an elastic plate, having a bearing surface adapted to regulate the pressure to correspond with the varying thickness of the wood. It has a combination of a flexible pad, with auxiliary support to prevent undue deflection. The whole construction and arrangement of the presser-bar is a manifest imitation of Whitney's device, and is a plain infringement of the second and third claims of the patent, unless the remaining defenses are good.

For the purpose of showing anticipation, the manufacturers of the infringing machine, who are the parties defending this suit, have referred to a number of patents granted prior to that of the plaintiff. It is enough to say that in none of them can be found the perfectly working combinations of the plaintiff's second and third claims. The same may be said of the machines manufactured by J. A. Fay & Co. as early as 1874. It is incredible that this valuable improvement should have been known so many years, and yet put to no practicable use until the plaintiff introduced it into his machines.

It is claimed that the device covered by the second and third claims of the patent is to be found in machines manufactured and sold by the plaintiff more than two years before the filing of his application in the patent-office. The evidence, however, proves that at this time the plaintiff was engaged in experimenting upon improvements in presser-bars, that the machines were sold under guaranties for experimental purposes, and that they all lacked the auxiliary support, which is an important element in the invention, its function being to relieve the flexible foot, and prevent its breaking when it comes in contact with inequalities in the wood. As the railroad company are the users of a single machine purchased of the manufacturers, and had nothing to do with its construction, the interlocutory decree for the plaintiff will be for an account only, and no injunction is to issue against the defendant until the further order of the court; and it is so ordered.

A. JOHNSTON & Co., Limited, v. AMERICAN HEAT INSULATING Co., Limited, et al.
 (Circuit Court, W. D. Pennsylvania. December 3, 1891.)

1. PATENTS FOR INVENTIONS—REISSUE—ENLARGEMENT OF CLAIM.

The claim of the original patent was: "As a new article of manufacture, a non-conducting covering composed of layers or wrappings of paper saturated with adhesive material, and compressed while being formed into tubular sections of a thickness of one-half inch or more, substantially as shown and described." In the reissue the words, "of a thickness of one-half inch or more," were omitted; but it appeared that a covering for the designated purpose, of less thickness than one-half inch, would lack the non-conducting property, and would be inoperative and useless; that in the practice of the invention the covering is always of greater thickness, and must be; and the infringing article exceeded that thickness. *Held* that, as the omission did not really enlarge the patentee's rights, the change was immaterial, and did not avoid the patent.

2. SAME.

In the claim of the reissue, the words "or coated" were inserted after the word "saturated." *Held*, that the two words were used evidently as alternative expressions, to denote the same thing, and the claim was not broadened.

In Equity. Suit for infringement of a patent. Decree for plaintiff.

James I. Kay and *W. Bakewell*, for complainant.

W. L. Pierce, for defendant.

Before *ACHESON* and *REED*, JJ.

ACHESON, J. The plaintiff, the assignee of reissued letters patent No. 8,752, dated June 10, 1879, issued to the inventor, John C. Reed, assignor, etc., sues the defendant for the infringement thereof. The invention, which is an improvement in coverings for steam-boilers and pipes, consists of a non-conducting covering, composed of layers or wrappings of paper saturated or coated with suitable adhesive material, and compressed while being formed into tubular sections, and capable of being divided longitudinally, so as to be placed around the pipes or other surfaces to be covered. The specification thus describes the method of making the covering:

"I prepare the non-conducting covering from paper, for which purpose I prefer, and generally employ, what is termed 'roofing paper,' though other kinds of paper may be used. Upon a revolving mandrel of suitable size, regulated for the purpose for which the covering is intended, and generally a section of pipe of the same diameter as the pipe to which the covering is to be applied, I wind or wrap the roofing or other paper, at the same time applying some adhesive mixture to the layers to cause adhesion, and making traction on the free end of the paper, so as to lay the wrappings firmly and smoothly. In addition to the traction, which will compact the covering, I make use of pressure by means of weighted friction bar or plate, or in other suitable manner, so as to insure a dense, firm structure throughout. This operation is continued until a covering of sufficient thickness has been applied to the pipe, when, if the covering has been formed on this pipe, (taking the place of a mandrel,) upon which it is to remain, the covering may be finished by applying a suitable coat of paint, which can be readily and rapidly done by revolving the pipe before its removal; but, if the covering has been formed on a mandrel or pipe with which it is not intended to use it, it may be coated with paint at the time, and then withdrawn from the mandrel, to be afterwards