

LALANCE & GROSJEAN MANUF'G Co. v. MOSHEIM.

(Circuit Court, S. D. New York. December 26, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—DEMURRER TO BILL—JUDICIAL NOTICE.

When a bill for infringement is demurred to on the ground that the patent on its face is void for want of patentable invention, in view of old and well-known devices, the court will not take judicial notice that certain similar articles exhibited at the argument were in use before the date of the patent, when it has the slightest doubt that such was the fact.

In Equity. Bill by Lalance & Grosjean Manufacturing Company against Julius E. Mosheim for infringing a patent. Heard on demurrer to the bill. Overruled.

Arthur v. Briesen, for complainant.

Robert N. Kenyon, for defendant.

COXE, J. The defendant demurs on the ground that complainant's patent is, on its face, void for want of patentable novelty in view of old and well-known devices of which the court will take judicial notice. The patent No. 285,645 was granted September 25, 1883, to Milligan and Chaumont for an improvement in enameled iron wash-basins. At the argument various structures alleged to have been in use long prior to 1883 were produced, which, if properly proved, would strongly tend to support the defendant's contention. Though many of these, certainly, had a familiar appearance, the court could hardly say with absolute certainty that such structures were in existence prior to 1883. The authority of a judge to substitute his knowledge for legal proof should be exercised with the utmost caution and only in the plainest cases. If there be the slightest doubt it is by far the safer way to permit the cause to proceed in the usual manner. *Blessing v. Copper Works*, 34 Fed. Rep. 753; *Eclipse Co. v. Adkins*, 36 Fed. Rep. 554; *Standard Oil Co. v. Southern Pac. Co.*, 42 Fed. Rep. 295. In *New York Belting & Packing Co. v. New Jersey Car-Spring & Rubber Co.*, 137 U. S. 445, 11 Sup. Ct. Rep. 193, the question of patentability was presented by a demurrer. The supreme court say:

"We think that the demurrer should have been overruled, and that the defendants should have been put to answer the bill. Whether or not the design is new is a question of fact, which, whatever our impressions may be, we do not think it proper to determine by taking judicial notice of the various designs which may have come under our observation. It is a question which may and should be raised by answer and settled by proper proofs."

The other point—that the claims are void in view of the state of the art disclosed by the patent itself—involves a construction of the patent which it would be unsafe to undertake in the absence of explanatory proofs.

For these reasons the demurrer must be overruled.

ENTERPRISE MANUF'G CO. OF PENNSYLVANIA v. SARGENT *et al.*

(Circuit Court, D. Connecticut December 23, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—VIOLATION OF INJUNCTION—CONTEMPT.

Defendants, having been enjoined from infringing the 1st, 2d, and 6th claims of letters patent No. 271,398, issued January 30, 1883, to John G. Baker, for a machine for mincing meat, etc., constructed a machine in exact accordance with those claims, but having in addition thereto a detachable frame containing three stationary blades through which the meat is pressed by the forcing screw, thus cutting it to some extent before it reaches the rotating knives. Plaintiff moved for an attachment for contempt, on the ground that the detachable frame was of no practical value, but defendants filed affidavits alleging that with the attachment from 21 to 38 per cent. more meat was cut than without it. *Held*, that this presented a new question, which could not be tried in a contempt proceeding.

In Equity. Motion to attach for a contempt in violating an injunction.

Charles Howson and Charles E. Mitchell, for plaintiff.

John K. Beach and Edmund Wetmore, for defendants.

SHIPMAN, J. This is a motion for attachment of the defendants for contempt for the alleged violation of an injunction against the infringement of the 1st, 2d, and 6th claims of letters patent No. 271,398, dated January 30, 1883, to John G. Baker, assignor to the plaintiff, for a machine for mincing meat and other plastic substances. The construction of the machines which were the subject of the controversy upon the previous hearings, the principle and characteristics of the patent, and the nature of the difference between the patentee's device and its predecessors, were explained in 28 Fed. Rep. 185, and 34 Fed. Rep. 134. The new machine of the defendants, which is the subject of the present motion, is the Baker machine, made in exact accordance with the patent, so far as the 1st, 2d, and 6th claims are concerned, with the following addition: The forward edge of the end of the forcing screw is enlarged into a lip having a sharp edge. Between the outer end of the forcing screw and the rotating knife is a stationary, but detachable, frame, in which are three stationary blades. As the forcing screw revolves and delivers meat, the meat is, before it reaches the rotating knife, cut, to a certain extent, between the sharp edge of the lip of the screw and the three stationary blades within the frame. The theory of the plaintiff, when it brought the motion, was that the three-bladed detachable frame was a thing of no practical value or importance, and was not expected, by its makers, to be of assistance in cutting; and, furthermore, that it could be taken out of the machine and laid aside without affecting the usefulness of the structure. The affidavits of the defendants strongly tend to the conclusion that it aids in the cutting of meat. The tests which the defendants made were, if accurate, to the effect that the new machine delivered, with the same number of revolutions and under the same circumstances, from 21 to 38 per cent. more cut meat than the unaltered Baker machine, and, for the purpose of the decision of this motion, I must assume that the addition of the three-bladed frame en-