In the present case the general regulations and instructions have been recalled for revision by the secretary of the treasury, and copies thereof were not at hand to be produced at the hearing of this matter, in order to ascertain whether they contained sufficient authority or not. But a special letter of instructions has been issued to the superintendent of immigration during the pendency of these proceedings, "approving the course" pursued by him in the arrest of the petitioners, and directing him "to proceed to effect the return of the immigrants to the country from which they came." This direct instruction is a sufficient authority. The affidavit signed by the petitioners voluntarily, after the contents thereof had been carefully interpreted to them, shows clearly that they came here under a contract or promise of labor at $1.25 per day, and therefore, in violation of the act of 1885, and unlawfully. By the amendment of 1887, therefore, they became liable to be returned without being permitted to land, and under the act of 1888 they were liable, within one year after being permitted to land, to be arrested and returned. The proof of the facts being clear, and the personal direction of the secretary of the treasury that they be returned, and his ratification of the previous proceeding, being explicit, I am compelled to dismiss the writ, and to remand the petitioners accordingly.

WAITE v. ROBINSON *et al.*

(*Circuit Court, D. Massachusetts.* September 15, 1892.)

No. 2855.

PATENTS FOR INVENTIONS—INVENTION—CONVERTIBLE CHAIRS.

Letters patent No. 329,805, issued November 3, 1885, to William Boscawen, for an improvement in chairs that may be converted from a high to a low chair and carriage, are void for want of invention.

In Equity. Bill by Gilman Waite against Charles H. Robinson and others for infringement of letters patent No. 329,805, issued November 3, 1885, to William Boscawen, assignor to Daniel L. Thompson, Charles A. Perley, and Gilman Waite, for an improvement in chairs. Bill dismissed.

In his specifications the patentee describes his invention as follows:

"This invention has for its object an improvement in convertible chairs,—that is, chairs that may be converted from a high chair to a low chair and carriage; and the invention consists in a convertible chair so constructed that its back posts form slideways, whereon the seat of the chair may slide up and down, and form also the push-handle and front legs or support of the chair; and the invention still further consists in a convertible chair having a sliding chair seat in combination with guideways, whereon the seat may slide up and down; and the invention also consists in slideways formed by the back posts of a chair and a sliding seat, in combination with wheels or rollers, whereon the seat is directly or indirectly supported in its lowest position,—all of which is with greater particularity hereinafter shown, described, and claimed."

The claims of the patent are as follows:

"(1) The combination, with the slides, A, and wheels, D, connected therewith, of the seat, E, its bracket, F, and attached wheels, H, substantially as specified. (2) The combination, with the slides and their attached wheels, of the seat provided with a pair of wheels, and adapted to slide on, and be secured in different positions upon, said slides, substantially as described. (3) The combination, with the slides, A, having the grooves, B, and stops or catches, of the seat and its supporting bracket, having studs engaging said grooved slides, and adapted to engage said stops or catches, and wheels upon the said slides and brackets, substantially as described. (4) The inclined slides, A, combined with the seat adapted to move up or down said slides, means to lock said seat in different altitudes on said slides, and wheels connected with the seat, substantially as described. (5) The slides, A, forming the front legs and back support for the seat, and the attached rear legs, C, and wheels, D, combined with the chair seat, its supporting bracket engaging and movable up and down said slides, and means to retain it in given position thereon, substantially as described. (6) The slides, A, having the rear legs, C, and wheels, D, combined with the seat, E, its bracket, F, engaging and movable up and down said slides, and means to retain it in position, and the spring, G, connecting the seat and bracket, substantially as described. (7) The slides, A, having the rear legs, C, and wheels, D, and extended to form push-handles, combined with the seat, E, its bracket, F, engaging and movable up and down said slides, and means to retain it in position, and the spring, G, connecting the seat and bracket, substantially as described. (8) The slides, A, having the rear legs, C, and wheels, D, combined with the seat, E, its bracket, F, engaging and movable up and down said slides, and means to retain it in position, the stops, *h*, wheels, H, and the spring, G, connecting the seat and bracket, substantially as described."

Maynadier & Beach, for complainant.
Hey & Wilkinson and *William A. Morse*, for defendants.

PUTNAM, Circuit Judge. That the complainant had difficulty when he applied for his patent, in understanding the spirit and essence of his alleged invention, is inferable from the fact that, on an improvement of so low a grade as his must be admitted to be, he stated his claim in eight different ways. This inference is strengthened because he does not now inform the court whether he relies on all his claims, which is hardly possible, or on which of them he relies; but he leaves the court to look through them all, compare their phraseology, and endeavor thus to ascertain what he has failed to point out.

In his direct examination his expert testified as follows:

"The main novelty is that the seat slides up and down on the frame, and has feet of its own, which, when it is held in its lowest position, extend below the adjacent part of the frame, and hold them up from the floor."

At that stage of his testimony, the expert expressed himself as though there was a double novelty,—one in the sliding up and down of the seat, and the other in the capability of extending the feet below the adjacent part of the frame. The former he properly abandoned at the close of his cross-examination, in connection with what he had to say as to the Cross patent, under which the defendants claim to be manufacturing. The court is unable to appreciate that what was thus left, whether in

combination or otherwise, is sufficient to put in operation the power vested in congress by the constitution to promote the progress of science and useful arts by securing to inventors exclusive rights.

We refer to the topic of the utility of complainant's chair only as it bears on the point of invention. One of the defendants testified that a chair made in accordance with the patent in suit would not be a practical commercial article; and it appears by the evidence of the plaintiff that, although at the time he testified he had owned this patent for seven years, he never had put on the market a chair constructed to conform to it. To fill an order he had commenced some 15 dozen, which were not completed at the date of his deposition.

This is not an instance where a valuable invention lies dormant for want of means of developing it; because the complainant also testified that he manufactures nothing but patent chairs of various kinds, and sells these to the extent of 70,000, more or less, annually. A novelty which remains unused so many years in the hands of an extensive manufacturer, exclusively engaged in the special trade to which it relates, must be presumed to involve, at the best, a very low degree of that useful invention which the patent code of the United States requires. Indeed, the entire field shown by the exhibits in this case seems a dreary one, nowhere enlivened by a single exhibition of the genius of invention, or of the "happy thought" which, under the patent laws, frequently answers in the place of the former.

We think the sum of all that can be said is that the complainant's novelty shows somewhat more mechanical skill, experience, and aptitude than those which preceded it, but not enough to rise above the conditions described in *Hollister* v. *Manufacturing Co.*, 113 U. S. 59, 73, 5 Sup. Ct. Rep. 717.

Bill dismissed, with costs for the defendants.

CALIFORNIA ARTIFICIAL STONE PAV. CO. *v.* STARR *et al.*

(*Circuit Court, N. D. California.* August 29, 1892.)

No. 11,449.

PATENTS FOR INVENTIONS—INFRINGEMENTS—CONCRETE PAVEMENTS.

Reissued letters patent No. 4,364, granted May 2, 1871, to John Schillinger for an improvement in concrete pavements, consisting in dividing the pavement into blocks by the interposition of strips of tarred paper or equivalent material, so that each block may be removed and repaired separately, is infringed by a sidewalk laid in two layers, the bottom one of coarse cement, separated into blocks by scantling joints, and the top one of fine cement, divided while plastic by a trowel or other cutting instrument, on lines coincident with the scantling joints, so as to induce the cracking to follow such joints, rather than the body of the block. *Hurlbut* v. *Schillinger*, 9 Sup. Ct. Rep. 584, 130 U. S. 456, followed. *Paving Co.* v. *Schalicke*, 7 Sup. Ct. Rep. 391, 119 U. S. 401, distinguished.