

tar color or dye, at 35 per cent. ad valorem. The appellant's claim that the merchandise is a dyewood extract, liable for duty under paragraph 26.

"We find from the evidence adduced on the hearing that primuline buff is a preparation from quercitron, which is the bark of the black oak, sometimes called 'dyers' oak,' and that it is used in tanning, and more generally in dyeing. In the latter use it imparts to calicoes and cloths shades of yellow colors. There is an admixture of alizarine in the preparation, which modifies the color, and this part comes from coal tar. The evidence showed, however, that quercitron furnishes 80 per cent. and alizarine 20 per cent. of the compound. The chief agent in the tinctorial result comes from the quercitron, which is predominant, and the effect of the alizarine is subordinate. We also find that primuline buff, at and prior to October 1, 1890, was known as a dyewood extract in the markets of the country and in the wholesale trade generally. On these findings we sustain the protest, and authorize a reliquidation accordingly."

It is thought that this decision is right and should be affirmed.

NATIONAL HARROW CO. v. HANBY.

(Circuit Court, N. D. New York. March 2, 1893.)

No. 5,973.

1. PATENTS FOR INVENTIONS—INFRINGEMENT—SPRING-TOOTH HARROWS.

Letters patent No. 388,306, granted August 21, 1888, to Reed and Clark, for an improvement in clips for spring-tooth harrows, claimed "the combination of a harrow beam, a tooth or share, a clip channeled on the under side, and the binding bolts, substantially as set forth;" the object of the invention being to protect, by means of a front flange on the clip or washer, the bolt heads or burrs from wear. *Held* that, in view of the prior state of the art, the claim must receive a narrow construction; and it is not infringed by a harrow having but one bolt, passing through a hole in the tooth, with a recessed washer so constructed that the bolt head is protected from wear, but having no clip channeled on the under side.

2. SAME—SUIT FOR INFRINGEMENT—PATENT AS PRIMA FACIE PROOF.

In a suit for infringement, the fact that defendant's machine is patented is prima facie proof that it does not infringe. *Brown v. Selby*, 2 Biss. 457, followed.

In Equity. Suit by the National Harrow Company against James Hanby for the infringement of a patent. Bill dismissed.

Charles H. Duell, for complainant.

George B. Selden, for defendant.

COXE, District Judge. The complainant, as assignee, sues for the infringement of letters patent, No. 388,306, granted to Reed and Clark, August 21, 1888, for an improvement in clips for spring-tooth harrows. The invention is an exceedingly simple one and can be sufficiently understood by reading the claim which is as follows: "The combination of a harrow beam, a tooth or share, a clip channeled on the under side, and the binding bolts, substantially as set forth." The object of the invention is to protect, by means of a front flange on the clip or washer, the bolt heads or the burrs from wear when the harrow is in use. The defenses are want of patentable novelty and non-infringement.

Any one at all familiar with patent litigation for the last decade will recognize that a pioneer invention in "spring-tooth har-

rows" is, seemingly, out of the question. The field was crowded when these patentees entered it. The record shows that every element of the patented combination and the combination itself, considered broadly, was old at the date of the application. It further appears that the feature to which special attention is called as being "the gist of the invention," namely, the protection of the bolt heads, was also well known. In letters patent, No. 334,180, granted to Franklin J. Marshal, in 1886, for improvements in spring-tooth harrows, appears this statement: "In order to obtain a more secure hold for the said tie bolts on the frame, and guard against the wear and enlargement of the bolt holes in the frame, and at the same time protect the heads of the tie bolts from wear and abrasion incident to the dragging of the same over the soil, I place on the under side of the bottom bar a plate or washer," with concave countersinks, etc. The only distinction pointed out between the Marshal clip and the patented clip, regarding this feature, is that the former does not protect so much of the bolt head as the latter. In letters patent, No. 358,839, granted to J. Morris Childs, in 1887, for improvements in similar harrows, is the following statement: "Another important feature of this construction consists in protecting the heads of bolts, 6, 6, from wear." This is criticised only because the protecting flange is a part of the harrow frame.

It is too plain for debate that the claim, if sustained, must receive a narrow construction, and the court is clearly of the opinion that when so construed the defendant does not infringe.

The two harrows sold by the defendant were made under letters patent, No. 473,796, granted to William Strait, April 26, 1892. The fact that the defendant's harrow is patented is, *prima facie*, proof that it does not infringe. In *Brown v. Selby*, 2 Biss. 457, the court, at page 470, says:

"As has already been stated, the defendants are all claiming under patents, many of which embrace essential parts of their machines. They are, therefore, *prima facie* protected in their rights. It is true, if the plaintiff is a prior inventor and patentee, their claims, so far as they trench upon his, must yield. But all of these parties claim to be improvers of the corn planter. There are numerous patents upon different parts of the machine, and it would seem to be the duty of the court to confine each inventor to the specific parts which he invented, and to which he is fairly entitled."

See, also, *Burden v. Corning*, 2 Fish. Pat. Cas. 477, 497.

The defendant's harrow does not have the two bolts on either side of the tooth, as required by the claim. It has one bolt which passes through a hole in the tooth. It does not have a clip channeled on the under side, but it does have a recessed washer so constructed that the bolt head is protected from wear. Similar washers were well known long prior to the complainant's patent. It follows that the bill must be dismissed.

WILSON v. ANSONIA BRASS & COPPER CO.

(Circuit Court of Appeals, Second Circuit. February 7, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—LAMP BURNERS.

Letters patent No. 316,422, granted April 21, 1885, to George H. Wilson for a lamp burner, in which the alleged novelty consisted in the arrangement and number of the teeth in the wick carrier, which were located at the top and bottom edges of the carrier, holding the wick so that it could be raised equally on all sides, are void for want of invention, in view of the prior state of the art. 48 Fed. Rep. 681, reversed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Equity. Suit by George H. Wilson against the Ansonia Brass & Copper Company for infringement of a patent. There was a decree in favor of complainant, sustaining his patent, and declaring defendant's device an infringement, (48 Fed. Rep. 681,) from which defendant appeals. Reversed.

Edwin H. Brown, for appellant.

R. H. Shannon, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. The complainant claims under a patent to himself, No. 316,422, dated April 21, 1885, for a lamp burner. Its two claims are:

"(1) In a lamp burner, a wick-adjusting tube or carrier, provided with teeth projecting inwardly from the top and bottom edges thereof, substantially as described. (2) In a lamp burner, a wick-adjusting tube or carrier, I, having one or more slots, P, and provided with inwardly projecting teeth at the top and bottom, in combination with an air tube provided with one or more air inlets, G, whereby the wick is drawn upward with the carrier in the usual way, and downward positively past the air inlet or inlets, substantially as set forth."

Air inlets were old, and it was old to cut a slot in the wick raiser so as to enable it to play over the air inlets. The alleged novelty of complainant's device is wholly in the arrangement of the teeth,—the number of them and their location at the top and bottom edges of the raiser, "holding the wick so that it can be raised equally on all sides." The specification states that "wick carriers having inwardly projecting teeth at two points between the extremities" were old. The evidence as to the prior state of the art shows teeth—at the upper end, (Moeller's patent;) at the lower edge, (Morse's patent)—extending a considerable distance downward from the upper end, (Bailey & Thayer's patent;) near the upper end, and near the lower end, with an intermediate row, (Carton's patent;) near the upper end, and near the lower end, (Brokke's patent.) Sometimes these teeth projected inwardly; sometimes outwardly. It also shows wicks sewn into holes near the bottom of the wick raiser, (Reistle's patent,) which is the method used by defendant for his lower fastening. It may be that no one prior to complainant used two rows of teeth for this purpose, located, one exactly at the top, the other exactly at the bottom;