

amended his claim in the manner in which it was allowed, saying, with reference to all his amendments:

"The invention in this case does not consist in new devices, but in the combination of old devices in such a manner as to produce new results; in other words, it is a new organization of mechanical devices by which work that has heretofore been performed by hand is now performed by machinery automatically."

He therefore increased the number of elements of the combination so as to make it include not merely an automatic crimper and a carrying dial, but also mechanism for the automatic delivering of the heads and the automatic forcing of the heads upon the shells. But he also added to the claim language which was apparently intended to differentiate his crimping mechanism from pre-existing crimpers by the fact that his devices were arranged to operate consecutively on the tube. It is true that the patent office had said that mechanisms for successively operating upon the shells involved no novelty, yet the patentee changed the language of this claim with the apparent object of making a point of this supposed peculiarity in the method of operation. From this history it appears that the question of infringement does not depend in this case upon the mechanical equivalency of the element which was substituted for the omitted part of the combination, (*Meter Co. v. Desper*, 101 U. S. 332,) but it depends upon the construction of the claim, and whether the patentee has limited his invention, by the terms which he has selected, to crimpers which operated consecutively, (*McClain v. Ortmyer*, 141 U. S. 419, 12 Sup. Ct. Rep. 76.) Upon this contention I think that the defendant is correct.

It is also insisted that the fourth claim was not infringed, because the defendant's machines did not contain the friction dial, L. The claim, as originally presented, was for "the combination in an assembling machine of a shell carrying dial, D, and a friction dial, L', with the spring transfer jaws, m, m, and reciprocating punch, h, all arranged to operate substantially as described for placing the metal heads upon the shells, as set forth." The claim was rejected, upon the ground that the particular combination named had been anticipated; whereupon it was amended so as to claim the automatic character of the combination to feed, place, and force the metal head upon the shell. The defendant urges that the friction dial, L, was substituted for L'. By mistake, apparently, the prime mark was omitted, for the dial, L, has no co-operative connection with the spring fingers, and has also no relation to the heads, which are the principal subject of the mechanism of the fourth claim, but its co-operative connection is with the devices which take hold of the reinforces and the wads. This clerical error is easily understood by reference to the specification. The proper construction of the claim is to regard the dial, L, as the one with which the fingers are connected, and which is called L' in the drawings and specification. As thus construed, it was infringed, and a rehearing thereon is unnecessary.

The motion for a rehearing upon the third claim, and for liberty to introduce the file wrapper and contents in evidence, is granted.

In re MEAD.

(District Court, S. D. New York. May 24, 1893.)

BANKRUPTCY—EQUITY SUIT—SALE OF REAL PROPERTY—REFERENCE ON PRIOR LIENS—DEPOSIT IN REGISTRY.

In an equity suit in the district court to recover assets belonging to a bankrupt's creditors, the court, in a decree appointing a receiver, may direct the sale of real property free from incumbrances, and thereafter order a reference to ascertain summarily the amount due in case of dispute upon a mortgage which is a prior lien, and direct sufficient proceeds of the sale to be deposited meantime in the registry, as security for the mortgage, and that the premises be conveyed free from the mortgage.

In Equity. Bankruptcy.

Nelson Smith, for complainant.

Wheeler H. Peckham, for bankrupt.

Luke A. Lockwood, for mortgagee.

BROWN, District Judge. Under the bankrupt act of 1867, the district courts, in exercising equity powers and in administering equitable relief, act as courts of bankruptcy quite as much as when administering either common-law or summary remedies. The special powers given by the various sections of the bankrupt act and the acts amendatory thereof, as incidental to the general powers of the court, are not restricted to any particular conditions of procedure, but in appropriate cases may be exercised as rightfully when giving equitable relief, as in its common law or summary procedure.

In the present case the court, under its decree in the equity suit brought by the assignee in bankruptcy, has in effect adjudged that all beneficial interest in the premises in question belongs rightfully to the assignee for the benefit of the creditors of the bankrupt, save only a certain equity to Mrs. Mead, the bankrupt's wife, which is provided for in the decree. The assignee has been put in possession of the premises, as receiver, and, under the decree of the court, has sold the premises at public sale free from all incumbrances as he was authorized and directed to do, at which sale Mrs. Mead, one of the defendants, was the highest bidder, and is entitled to the conveyance of the property on compliance with the terms of sale.

A dispute having arisen, however, as respects the amount due to Mr. Naylor upon certain second mortgages held by him upon the premises in question, and a reference having been taken for the purpose of ascertaining the amount of his actual interest and lien thereon, which is still pending and undetermined, the proceedings appropriate to be taken are evidently such as are provided by sections 5063, 5075, 4972, and 4979 of the Revised Statutes. In re Clark, 9 Blatchf. 372; In re Kirtland, 10 Blatchf. 515; In re Ellerhorst, 7 N. B. R. 49, 2 Sawy. 219. All possible rights of the mortgagee will be preserved by providing that the whole amount which can be possibly claimed under the mortgages shall be held by the assignee, or in the registry of the court, or other depository as may be agreed upon, "in place of the estate disposed of." Section 5063.