

using the highway, when the accident occurred, as a depot yard,—to stand its cars, and to make up its train,—and it can hardly be contended that, under a license to lay its tracks across the street, it could lawfully devote the highway to such uses. Nor was it a valid excuse for the obstruction of the street that the depot had been located at the corner of Fourth street and First avenue, and that trains coming from the east, when halted at the station, would necessarily project to some extent into the avenue. It was the defendant's duty to so locate its depot that trains could be halted thereat without obstructing travel on the public thoroughfares, and it cannot plead the faulty location of its depot or switches as a justification for incommoding the public. *State v. Morris & E. R. Co.*, 25 N. J. Law, 441; *State v. Chicago, M. & St. P. Ry. Co.*, 77 Iowa, 443, 42 N. W. 365; *Jones v. Railway Co.*, 107 Mass. 264. We are therefore constrained to hold that the issue concerning the negligence of the railway company was properly submitted to the jury, and that no error was committed in refusing the instructions to which we have last above referred.

With respect to the suggestion that the injuries complained of were immediately occasioned by the sudden shying of the horse which the plaintiff was driving, it is only necessary to say that the shying of the horse cannot be regarded as the sole, proximate cause of the injury. The obstruction which had been placed in the highway directly contributed to the accident, and the jury was justified in so finding. *Andrews v. Railway Co.*, 77 Iowa, 672, 42 N. W. 513; *Skjeggerud v. Railway Co.*, 38 Minn. 56, 35 N. W. 572; *Corey v. Railroad Co.*, 32 Minn. 457, 21 N. W. 479.

The result is that the judgment of the circuit court must be affirmed, with costs; and it is so ordered.

---

#### JOHNSON CO. v. PACIFIC ROLLING MILLS CO.

(Circuit Court, N. D. California. November 27, 1893.)

##### 1. PATENTS—INVENTION—RAILWAY CHAIRS.

There is no invention in riveting clips to a railway chair, when the prior art includes chairs of substantially the same form, having the clips integral with the chair, and pressed out of it.

##### 2. SAME—RAILWAY CHAIRS.

The Entwisle patent, No. 364,996, for a railway chair, is void for want of invention.

In Equity. Suit for infringement of letters patent No. 364,996, issued June 14, 1887, to Edward B. Entwisle, for an improvement in railway chairs. Bill dismissed.

William F. Booth, for complainant.

Wheaton, Kallcock & Kierce, for respondent.

McKENNA, Circuit Judge, (orally.) This is a suit for an infringement of a patent for a new article of manufacture, described as a "railway chair." It consists of a box chair, to which are riveted

side clips, one on either side of the chair, set staggered with reference to one another. In one claim of the patent it is described as follows:

"As a new article of manufacture, a railroad rail chair of the hollow or box form described, provided with two side clips, as B, B, diagonally riveted, one on each side, to the sides of said chair. \* \* \*"

The defendant's device is an imitation, and undoubtedly infringes. But it is claimed the plaintiff's article is not an invention. Railway chairs existed in substantially, if not precisely, the same form as plaintiff's, having clips set diagonally one to the other, but, instead of being riveted on, are integral with the chair, being pressed out of it. The change plaintiff made was to rivet the clips. I do not think the change involved invention. It caused no change in use or operation. It is claimed that it was a cheaper chair, and could be made in a blacksmith shop, while the other required a machine shop. The evidence of cheapness or of making is not very satisfactory.

The bill is dismissed.

---

BLAIR et al. v. ADAMS et al.

(Circuit Court, W. D. Texas, San Antonio Division. December 7, 1893.)

No. 338.

**BASTARDS—CAPACITY TO TRANSMIT ESTATES.**

A statute declaring that bastards "shall be capable of inheriting from and through their mothers and of transmitting estates \* \* \* in like manner as if they had been lawfully begotten of such mothers" (Rev. St. Tex. art. 1657) gives a bastard no capacity to transmit his estate, through his deceased mother, to her surviving brothers and sisters.

At Law. Action of trespass to try title brought by Millie V. Blair and others against F. M. Adams and others. Heard on demurrer to an intervening petition. Demurrer sustained.

John R. Peel, for plaintiffs.

John A. Green, F. Vandervoort, and Bethel Coopwood, for defendants.

Floyd McGown, for interveners.

MAXEY, District Judge. This is a suit in the ordinary form of trespass to try title, instituted by plaintiffs to recover of defendants a tract of land containing 480 acres, patented by the state to John Acklin, assignee of Antonio Balle, October 18, 1861. John McGee and others have filed their petition of intervention, in which they assert title to the land as heirs at law of John Acklin. To the petition of intervention the defendants demur. The facts alleged in the petition of intervention, to which the demurrer applies, are as follows: John Acklin was the bastard son of one Polly McGee, having been born to her out of wedlock. The mother never married, and died prior to her bastard son. At her death she left surviving her neither father nor mother, nor other child or children except the son, John. She also left at her decease several brothers and sisters. The bastard son subsequently died,