

would be a failure. It will not be claimed that the inventor of an improvement upon a previously patented combination can use one of the patented elements in a dwarfed and incomplete way, but by its use receive the old resultant benefit, and escape the charge of infringement by reason of the low percentage of such use. The defendants' theory is that its use is so far unlike that of Edison that it can properly be said to be radically different. That theory is not supported in the Waring specification, and it does not seem to me to be supported by the facts. The statement in the specification that the atmospheric air may be at first exhausted as nearly as possible, and the desired gas then admitted, is significant. The amount of gas admitted Profs. Appleton and Carmichael's affidavits show to have been small.

The defendants claim that the Edison patent, which was dated January 27, 1880, has expired, by reason of the expiration of the British patent No. 4,576, for the same invention, antedated to November 10, 1879, but not sealed, and the specification of which was not enrolled until after the United States patent in suit had been issued. This question was recently examined by Judge Jenkins in *Telephone Co. v. Cushman*, 57 Fed. 842. He refers to the various decisions upon the question, and concludes that the invention is not patented abroad before the actual sealing and issuance of the patent, and that the term "patented," as used in section 4887 of the Revised Statutes, "does not mean the preliminary proceedings, but the actual issuance of the patent under the seal of the government, speaking the exercise of sovereign will, investing the patentee with the grant of a monopoly." In this conclusion I entirely concur.

The motion is granted. The terms of the order are to be settled upon notice.

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#### KRICK v. JANSEN.

(Circuit Court, S. D. New York. January 4, 1894.)

##### PATENTS—INVENTION—FLORAL DESIGNS.

The Krick patent, No. 408,416, for a floral design, consisting of a foundation having holes in it, combined with picks for holding the flowers in position, shows patentable invention.

In Equity. Suit by William C. Krick against Edward Jansen for infringement of a patent. A demurrer to the bill was heretofore overruled. 52 Fed. 823. Decree for plaintiff.

Isaac S. McGiehan, for plaintiff.

Louis C. Raegener, for defendant.

WHEELER, District Judge. If the plaintiff's patent, No. 408,416, dated August 6, 1889, for a floral letter or design, was for the letter merely, consisting of the foundation, covered with flowers, as described, it would be anticipated, and void. But it is for such letters in combination with the holes and picks for holding them in position on large floral pieces. This combination seems to be new, and quite useful. It did not involve great invention; but great-

ness is not required for patentability. It seems to be sufficient for that.

The defendant's letters have not holes through the foundation for attaching the picks to them, but have the picks at the edges of, and over, the foundation, attaching them to it in a manner equivalent to that. This does not appear to be a successful evasion of the patent. He seems to have taken the substance of the plaintiff's invention.

Let a decree be entered for the plaintiff.

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WESTERN UNION TEL. CO. v. INMAN & I. STEAMSHIP CO.  
INMAN & I. STEAMSHIP CO. v. WESTERN UNION TEL. CO.

(Circuit Court of Appeals, Second Circuit. January 12, 1894.)

Nos. 32, 33.

**NAVIGABLE WATERS—OBSTRUCTION BY SUBMARINE CABLE.**

A vessel which, though touching bottom, forces her way by her own screw through the soft mud, is "navigating;" and if, while so doing, her screw is fouled by, and breaks, a submarine cable, the burden is on the cable company to show that the cable was so constructed and maintained as "not to obstruct navigation," as required by Rev. St. § 5263; and this burden is not sustained when there is nothing to show the actual condition of the cable at the time, and it appears that it was originally laid near the end of an existing pier used by large ocean steamers, and over a mud bank, which they must necessarily plow through at certain states of the tide. 43 Fed. 85, affirmed.

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

In Admiralty. These were cross libels to recover damages caused by the breaking of a submarine cable by the screw of the steamship City of Richmond, and for fouling of the screw thereby. In the district court the libel of the telegraph company was dismissed, and that of the steamship company sustained. 43 Fed. 85. This decree was affirmed pro forma by the circuit court, and the telegraph company appeals. Affirmed.

Statement by LACOMBE, Circuit Judge:

These are appeals by the Western Union Telegraph Company from pro forma decrees of the circuit court affirming decrees of the district court, southern district of New York. Cross libels were brought by the parties, each claiming its damages sustained on August 16, 1887, by a fouling of the screw of the S. S. City of Richmond with submarine cables owned by the telegraph company, and extending under the North river from at or near Courtland street, on the New York side, to and under the Netherland Steamship Company's pier, on the Jersey City side. The Netherland pier was there, and in use by ocean steamers, before the cables in question were laid under it; and ocean steamers have been in the habit of docking at Jersey City for 40 years. The cables of the libellant were first laid there in 1867, under authority of the act of congress of July 24, 1866. The district judge found the telegraph company solely in fault, dismissed its libel, and sustained the cross libel of the steamship company.