

to our entire satisfaction that at the date of the Lynch patent "a rectangular terra-cotta pipe," having the bore divided into ducts by partitions, was not a new article of manufacture. The several hollow blocks of terra cotta which were produced on the hearing, all of which antedate the patent in suit, namely, Exhibits C, D, K, N, R, and S, have all of the essential and characteristic features of the alleged new terra-cotta wire conduit pipe described in the patent. They are rectangular in form. The interior of each is divided into two or more compartments or ducts, and they might severally be laid in sections so as to form a continuous pipe or conduit for carrying a wire or a cable composed of wires. The several exhibits above referred to might be appropriately termed terra-cotta conduit pipes, as well as hollow blocks of terra cotta. It is true that these several exhibits were intended to be used as building material, rather than as a conduit for carrying wires, but this fact is quite immaterial. If the alleged new article of manufacture was in fact an old article at the date of the patent,—as we think it was,—in view of the aforesaid exhibits, then it goes without saying that the patentee was not entitled to a patent merely because he suggested the idea of devoting it to a new use. Neither the number of the ducts into which the bore is divided nor the length of the pipe is a material feature of the invention. It is obvious, therefore, that he did not suggest any changes, either in the form or the structure of the old article, which were necessary to adapt it to the new use, and according to well-established principles he is not entitled to a patent merely for suggesting the application of an old article or device to a new use. *Brown v. Piper*, 91 U. S. 37, 41; *Roberts v. Ryer*, Id. 150, 157; *Knapp v. Morss*, 150 U. S. 221, 228, 14 Sup. Ct. 81; *Aron v. Railway Co.*, 132 U. S. 84, 89, 10 Sup. Ct. 24; *Ansonia Brass & Copper Co. v. Electrical Supply Co.*, 144 U. S. 11, 17, 12 Sup. Ct. 601.

Without pursuing the subject at any greater length, it is sufficient to say that we are clearly of the opinion that the patent in suit is void for the reasons which we have indicated. The decree of the circuit court is therefore affirmed.

KRICK v. JANSEN.

(Circuit Court of Appeals, Second Circuit. May 29, 1894.)

PATENTS—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, *held* not to show patentable invention. 59 Fed. 364, reversed.

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

This was a suit by William C. Krick against Edward Jansen for the infringement of a patent. The defendant demurred to the bill. The second ground of demurrer assigned was the want of novelty on the face of the patent. The demurrer on this ground was overruled. See 52 Fed. 823. The plaintiff subsequently obtained a decree. See 59 Fed. 364. The defendant thereupon appealed.

Louis C. Raegener, for appellant.
Isaac S. McGiehan, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This appeal is from a decree of the circuit court which sustained the validity of letters patent No. 408,416, dated August 6, 1889, and issued to William C. Krick, for an improvement in floral letters or designs, and which adjudged that the defendant had infringed the patent. The invention relates to floral letters or floral designs for decorative purposes, and consists of flowers secured to a foundation piece of wood, metal, or pasteboard, of the required size and shape, and provided with small holes in the back of the piece, into which toothpicks are inserted to hold the whole design in position. The patentee says, in his specification, that the object of the invention is—

“To provide a letter or ornament made of small flowers wired or glued to a wooden foundation piece, which is adapted to be held in position by means of toothpicks inserted in its back, all as will be hereinafter explained. In marking or forming designs on floral pieces, it has been the custom heretofore to tie the flower to the end of a toothpick, and stick the toothpick into the floral piece, and repeating the same process until the design, letter, or figure is complete. In practice, I have found this to be a very tedious and slow process—First, because it takes a great deal of time to tie each flower singly to the pick; and, second, because the design, letter, or figure is very apt to be made crooked when each flower is applied to the piece singly.”

The specification further says as follows:

“To construct my improved floral letter or design, I first cut the foundation piece, A (of wood, metal, or stiff pasteboard), to requisite size and shape. The holes, c, c, are then made to receive the pick. I then secure the flowers by binding the stem portion to the form either with wire or fine twine. As each letter or design is secured with two or three picks, it can be accurately adjusted to the floral piece without disturbing the other flowers.”

The claim was for—

“A floral letter, figure, or design for decorating purposes, consisting of the flowers, a, secured to the foundation piece, A, which is formed to create the letter or figure desired, and provided with the holes, c, in the combination with the picks, e, all as herein described.”

It appears from the testimony of the patentee that, prior to the date of his invention, floral designs, such as wreaths and crosses, had been made of wood, and that two methods were employed to attach the flowers to the wooden foundation,—one by winding them upon the wood with thread or wire, and the other by putting moss around or upon the foundation, and fastening the flowers to toothpicks, which were afterwards inserted in the moss. It was also testified that it had long been customary to decorate the interior walls of churches and Sunday-school rooms, during festival periods, by words apparently formed of flowers or evergreens, which were made by cutting the letters out of a foundation of pasteboard or cardboard, and covering the face of the foundation with flowers or leaves. It thus appears that, before the date of the invention, wooden frames, in the shape of wreaths or crosses, were used as a foundation to

which the flowers which covered the frame were attached by picks thrust into the moss, and that it was usual to make a foundation of letters cut on or from a sheet of cardboard, the face of which was covered with flowers. After the use of wooden frames as a foundation for floral decorations, which were secured to the moss by picks, and after the use of cardboard letters for analogous purposes, there was no invention in securing flowers to a foundation piece so formed as to create the desired letter or figure, although provided with small holes, through which the wooden picks are inserted to fasten the letter to the entire floral ornament. The patentee added holes in the back of the wooden foundation to the pre-existing devices. We do not perceive, in the wooden letters with the holes, notwithstanding its popularity, a patentable improvement upon the wooden cross or wreath. This result obviates the necessity of examining the question of infringement. The decree of the circuit court is reversed, with costs, and the case is remanded to that court, with instructions to dismiss the bill, with costs of the circuit court.

SIXTEEN HUNDRED TONS OF NITRATE OF SODA v. McLEOD.

(Circuit Court of Appeals, Ninth Circuit. April 2, 1894.)

No. 117.

1. SHIPPING—CHARTER PARTY—DEMURRAGE—RESTRICTIONS ON LIABILITY.

A charter party which makes the charterer liable for demurrage only when caused by his default does not relieve him of liability for delay caused by his omission to perform his covenants, even though he is not guilty of negligence.

2. SAME—POLITICAL OCCURRENCES.

A charter party provided for demurrage for detention of the vessel by default of the charterer excepting detentions caused by political occurrences. *Held*, that political occurrences which prevented the charterer from procuring a cargo, but did not prevent him from loading any cargo he might procure, did not relieve him from liability for demurrage. Ross, District Judge, dissenting.

Appeal from the District Court of the United States for the Northern District of California.

Libel by McLeod against 1,600 tons of nitrate of soda for demurrage. Libellant obtained a decree. The owners of the cargo appeal.

Page & Eells, for appellant.

Andros & Frank, for appellee.

Before McKENNA and GILBERT, Circuit Judges, and ROSS, District Judge.

GILBERT, Circuit Judge. On the 16th day of September, 1890, the British ship Dunstaffnaage, then on a voyage to a South American port, laden with lumber, was chartered to J. W. Grace & Co., merchants of San Francisco, to bring nitrate of soda "from a
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