

## TRAVER v. BROWN.

(Circuit Court, D. Vermont. October 2, 1894.)

## PATENTS—STITCH-BREAKING MACHINE—ANTICIPATION.

The Traver patent, No. 431,957, for a "stitch-breaking and raveling attachment for machines for sewing looped fabrics," which operates by wedging the threads apart, was not anticipated by the prior Congdon invention, which operated by seizing and pulling the threads; and defendant's machine, which operates in part, at least, by wedging the threads apart, is an infringement.

This was a rehearing upon new evidence in a suit by Adelbert Lee Traver against Eugene H. Brown for infringement of a patent. The case on the first hearing is reported in 62 Fed. 933.

Odin B. Roberts, for plaintiff.

Franklin Scott, for defendant.

WHEELER, District Judge. This case has been opened, and a copy of the file wrapper and contents of an application of Oliver J. Congdon, dated December 8, 1887, serial No. 257,297, for a patent "for an improvement in method for removing surplus material from machines for uniting knit or looped fabrics," put in evidence, with a stipulation that a machine was made, used, and broken up embodying the invention described. It has been further heard and considered upon this and the former evidence. In that machine, as understood, a point projecting from the corner of a square plate moving across the fabric entered the first stitch of a row, engaged the first thread of the stitch, with another plate clamped it, and, moving further, broke it; then, returning across the fabric, and releasing the loose end of the thread, another point projecting from another corner of the square plate entered the next stitch, with the other plate clamped the next thread, and, moving further, broke that; and so proceeded breaking the threads and removing the pieces till the thread of that row of stitches was all removed. It appears to have broken the threads of the stitches by seizing and pulling them, and is not shown to have done so at all by wedging them apart. Still it is argued to have so limited the field for invention which the plaintiff's patent might cover as to leave the defendant's machine outside. That machine is said to have pulled the threads apart, where the defendant's cuts them; and the defendant is said to have taken that invention by making the parts cut, rather than to have taken the plaintiff's invention as it is patented in this patent. This argument would be better founded if the defendant's machine divided the threads wholly without wedging, and the machine of the patent wholly excluded cutting. But the edges of the wedge of the patent are described as blunt or rounded only, "so as not to cut the fabric immediately on coming in contact with it," and are left so they may help division by abrasion, or cutting even, as well as by strain on further pressure. The defendant's machine appears to operate by wedging, according to the patent, even if it does cut, and cut more than the patent describes. Let there be a decree as before.

## BONSACK MACH. CO. v. ELLIOT.

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

## PATENTS—VALIDITY AND INFRINGEMENT—CIGARETTE MACHINES.

The following patents for cigarette machines held valid and infringed as to the claims mentioned, namely: The Hook patent, No. 184,207, as to claim 2; the Emery patent, No. 216,164, as to claims 10, 12, 14, and 15; the Bonsack patent, No. 238,640, as to claims 6 and 7; and the Emery patent, No. 308,556, as to claims 1 and 2.

This was a suit in equity by the Bonsack Machine Company against Henry C. Elliot for infringement of certain patents for cigarette machines.

Samuel A. Duncan and M. B. Philipp, for orator.  
Edwin H. Brown, for defendant.

WHEELER, District Judge. This suit is brought upon letters patent No. 184,207, dated November 7, 1876, and granted to Albert H. Hook; No. 216,164, dated June 3, 1879, and granted to Charles G. Emery and William H. Emery; No. 238,640, dated March 8, 1881, and granted to James A. Bonsack; and No. 308,556, dated November 25, 1884, and granted to William H. Emery,—all for cigarette machines, and owned by the orator. The only invention shown of a cigarette machine proper prior to the date of Hook's application, April 3, 1876, is that described in French patent, No. 104,164, antedated July 8, and issued October 5, 1874, to Abadie & Co., for such a machine. Hook's invention is claimed to have been made prior to the issuing of that patent; and upon this point the testimony of witnesses in another case, among others that of C. A. Brown, has been stipulated into this case, upon condition that they should be produced for cross-examination. Brown died without being so produced, and a motion to suppress his testimony for that cause has been made, and is granted. The other evidence, however, shows clearly the priority of Hook's invention over the issuing of the patent to Abadie & Co., and leaves the field of invention of such a machine, at the time of his invention, open to him. In all of these machines a continuous ribbon of paper for a wrapper, coming from a spool flat, is drawn past a wheel which gums one edge, through a tapering former, which gradually raises the edges, and folds them over one under the other with the gum between around the filler, and through a tube which presses the gummed edges together, causing them to adhere, making a continuous cigarette, to be cut into suitable lengths, for smoking. In Hook's invention the paper ribbon was drawn past the gumming wheel before entering the former, and granulated or otherwise prepared. Tobacco was delivered from a bucket wheel, having an intermittent motion, into the hollow formed by the rising edges of the paper as it passed into the former. In practice, suitable paper was found to be too delicate to bear the strain of being filled and pulled through the machine; and an endless belt of common ribbon was put in, and drawn through with the paper ribbon, to support it. In the patent