

devise and construct the former, with the latter before one's eyes,—which, in contemplation of law, we must assume Mr. Allen had,—was the work of an adaptive mechanic, and not the province of an inventor. All the improvements claimed were, as compared with Shippen's device, within the category of degree. They produced no new result; the parts performed no new function,—it was simply a transposing or readjusting of Shippen's elements to changed conditions, to accomplish the same result they had before. It is true the radiation of the distributing rods in Shippen's device did not take place from the particular pull wheel situated above the framework where the actuating mechanism was placed, but this was because local conditions did not so require. Had they done so; had the wells been on all sides of the water power, instead of on one,—it is apparent the first pull wheel (or a revolving disk, which the patent says is its equivalent) could have been made the radiating center; and if the storage house interfered with the lateral movement, or the subsequent shifting, of the rods, it required no invention to dispense with a superstructure which performed no function whatever in the pumping. That left off, we have remaining a supporting frame for the power shaft and the pump-driving shaft, forming a house frame, and the end of the latter shaft extending above the frame, in combination with pump-actuating rods.

For the reasons above stated, we are of opinion the complainant's bill should be dismissed, and his patent held for naught. Such being the case, it is needless for us to discuss the alleged infringement. Let a decree be prepared.

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SMITH v. MACBETH.

(Circuit Court, E. D. New York. January 1, 1894.)

**PATENTS—INFRINGEMENT—MAGNETO-ELECTRIC MACHINES FOR FIRING FUSES.**

The Smith patent, No. 201,296, for improvement in magneto-electric machines for firing fuses in blasting, is narrowed by its claims, as allowed, to the combination of an operating device with the switch of the condensing circuit in its path, and adapted to be opened by direct impingement of it, and is not therefore infringed by defendant's device, in which the switch is not in the path of the operating device, and is not opened by the direct impingement of any of the parts constituting the operating device.

This was a suit in equity by H. Julius Smith against James Macbeth for infringement of a patent granted to complainant.

Leonard E. Curtis, for orator.

James A. Hudson and Arthur S. Browne, for defendant.

**WHEELER**, District Judge. This bill is brought for alleged infringement of letters patent No. 201,296, dated March 12, 1878, and granted to the orator, for improvement in magneto-electric machines for firing fuses in blasting. The electricity is developed and accumulated in a condensing circuit by the rotation of armatures moved by a rack bar forced downward by hand and working a pinion with accelerated velocity; the condensing circuit is

broken by the end of the rack bar striking a switch as it reaches the limit of its stroke, when the electricity is accumulated to its greatest intensity; and the current is sent by the working circuit to the fuses. In the original application the orator described and claimed the combination with the operating device of a rotary armature of a dynamo-magneto electric machine of a circuit breaker arranged in the condensing circuit of the machine so as to be positively operated by said rotating device, whereby the condensing circuit is broken, and the developed electric current switched therefrom to a working circuit, by which the current is conducted to the point where it is to be applied for firing. On rejection, this part of the application was changed to a description and claim of:

"(1) The combination with the operating device of the rotary armature of a dynamo-magneto electric machine of a bridge or switch arranged in the condensing circuit of said machine, and in the path of said operating device, and adapted to be opened by direct impingement of said device thereupon, substantially as described, and for the purposes set forth."

Upon the application so changed, the patent was granted; and this claim is now alleged to be infringed. In the defendant's machine the armatures are rotated by pulling upward with increasing velocity a bar attached to the end of a lever pivoted on a shaft, and moving a toothed segment meshed in a pinion. The switch in the condensing circuit is opened by a stud on a cam pivoted on the same shaft with the lever, which lifts a latch and lets a spring move it as the operating bar reaches its upward limit, and the electricity is accumulated to its greatest intensity, and the current is thereby sent by the working circuit to the fuses. The orator was apparently the first to apply the power by motion in a direct line to revolving the armatures, whereby the velocity can be more regularly accelerated than when applied by a crank, as before; and also the first to break the condensing circuit by the direct action of the operating device. Therefore, this claim of the patent is probably valid for what it covers. If the general claim first made had been allowed, and could have been sustained, it would perhaps have covered the defendant's machine; but the limitations and restrictions inserted in it to obtain it remain with it. *Roemer v. Peddie*, 132 U. S. 313, 10 Sup. Ct. 98. They narrow it to the combination of an operating device with the switch of the condensing circuit in its path, and adapted to be opened by direct impingement of it. The switch in the defendant's condensing circuit is not in the path of the operating device, which consists of the bar lever and toothed segment extending from the handle to the shaft on which the lever is pivoted, but is situated beyond the shaft, and outside the path of movement of these parts; and it is not opened by the direct impingement of any of these parts constituting the operating device, but indirectly by the shaft moving the cam which carries the stud that lifts the latch. This does not, as now understood, appear to be an infringement. Bill dismissed.

ROGERS TYPOGRAPH CO. v. MERGENTHALER LINOTYPE CO.

(Circuit Court of Appeals, Third Circuit. December 3, 1894.)

No. 11.

1. PATENTS—LINOTYPE MACHINE—INFRINGEMENT.

Letters patent Nos. 313,224 and 317,828, issued, respectively, March 3, 1885, and May 12, 1885, to Ottmar Mergenthaler for "improvement in machines for producing printing bars," consisting, in part, of a combination of a series of independent matrices representing characters, holders or magazines for said matrices, finger keys representing the respective characters, intermediate mechanism to assemble the matrices, and a casting machine to co-operate with the assembled matrices, are for inventions of unusual merit, and, in view of the prior art, entitled to liberal construction, and are infringed by the Rogers machine, which, while in some respects an improvement, operates on the same principle, contains the same general features, and produces substantially the same results.

2. SAME—FAULT IN ORIGINAL MACHINE.

The fact that the machine, when first produced, failed to justify perfectly, which fault was remedied, and perfect justification produced by improved machines subsequently made, is no reason for denying relief to the original patentee.

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

This was a bill by the Mergenthaler Linotype Company against the Rogers Typograph Company for an injunction. There was a decree for complainant in the court below, from which decree respondent appeals.

George H. Lothrop and M. B. Philipp, for appellant.  
Frederic H. Betts, for appellee.

Before ACHESON and DALLAS, Circuit Judges, and BUTLER, District Judge.

ACHESON, Circuit Judge. This suit was upon two letters patent of the United States granted to Ottmar Mergenthaler,—No. 313,224, dated March 3, 1885, and No. 317,828, dated May 12, 1885. The inventions relate to a machine for producing printing bars. Each patent describes and shows mechanisms whereby matrices, in any desired association of characters, are assembled in a line, such line of matrices brought into proper relation with a mold of the size required for a line of type of predetermined length, and a cast made in the mold, forming a printing bar bearing in relief the characters impressed in the matrices. The patented mechanisms produce a series of lines of type, which can be arranged into columns, and thus hand composition by individual type is dispensed with.

The specification of the first patent contains the following statement:

"This invention is directed to the rap'd and economical production of letter-press printing, and relates to a machine to be driven by power, and