

verdict, seems to have assumed that the plaintiffs had on hand five-twelfths of the 75,000, and allowed a recovery for that year on that basis. But the defendants did not impugn the correctness of this assumption, or ask to go to the jury upon the question of fact involved in it. They excepted generally "to the ruling of the court in not permitting the cause to go to the jury upon the questions of fact involved," without specifying any particular question of fact which they desired submitted to the jury. An assignment of error based upon such an exception is not valid.

Error is assigned of the ruling of the court in admitting the testimony of the witness Wolf in respect to matters of which it is insisted he had no personal knowledge. It suffices to say as to this exception that the evidence received was of no importance, and its reception was harmless. It was unnecessary for the plaintiffs to show how many stamps the second licensees had actually used. They were entitled to recover the rebate, irrespective of the fact whether the other licensees had ever availed themselves of their contract. The defendants accepted a lower rate of royalty when they made the second license contract, and, if the second licensees had never used a stamp under their license, the plaintiffs would, nevertheless, have been entitled to the reduced rate.

Error is also assigned of the refusal of the trial judge to permit the defendants to withdraw the counterclaim alleged in their answer. The counterclaim set up matters entirely distinct and independent from the cause of action of the plaintiffs, and which in no respect involved an inquiry into the merits thereof. It alleged that the plaintiffs had conspired with various licensees of the defendants to dispute the title of the defendants to the invention of the patent, and use the invention in violation thereof, and sought to recoup damages sustained thereby against the claim of the plaintiffs. As no evidence was offered in respect to the matters thus alleged, and as the verdict directed did not purport to, and could not by any implication, conclude the defendants in any future action from litigating these matters, the defendants were not prejudiced by the refusal. *Cromwell v. County of Sac*, 94 U. S. 351; *Ressequie v. Byers*, 52 Wis. 650, 9 N. W. 779; *Bascom v. Manning*, 52 N. H. 132; *Sweet v. Tuttle*, 14 N. Y. 465; *White v. Chase*, 128 Mass. 158.

We find no grounds for a reversal of the judgment, and it is therefore affirmed.

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ROUSSEAU v. PECK et al.

(Circuit Court, E. D. New York. March 15, 1895.)

1. PATENTS—VALIDITY—CLAIMS FOR RESULTS—ELECTRIC CIRCUIT BREAKERS.

Claims for an automatic electric circuit breaker, so operated by time mechanism as to permanently break the circuit at a predetermined time, and for an electro-magnet arranged to release a clockwork motor whenever the circuit remains closed for longer than a normal period, appear to be claims for results, or for all means for producing them, rather than for invented means for producing them.

**2. SAME—INFRINGEMENT.**

The Rousseau patent, No. 279,107, for an automatic opener of electric circuits, construed as to claims 1 and 2, and held not infringed, and apparently invalid.

This was a bill by David Rousseau against John B. Peck and others for infringement of a patent.

Richard N. Dyer, for plaintiff.

Edwin H. Brown and Edward P. Payson, for defendants.

**WHEELER**, District Judge. The questions in this case arise upon patent 279,107, dated June 5, 1883, and granted to the plaintiff for an automatic opener of electric circuits to prevent too long closing of the circuit, and exhaustion of the battery. The specification describes an electro-magnet in the circuit, with an armature near it, to be attracted and moved whenever the circuit is closed, and by this motion to start clockwork which, when continued, by intricate mechanism in two or three forms, raises detents that release other clockwork or start other devices, which permanently break the circuit. These claims are for:

(1) The combination, with an electric generator and an electric circuit emanating therefrom, of an electro-motive device which is vitalized by the closing of said circuit, automatic time mechanism which is started into operation by said electro-motive device when so vitalized, and an automatic circuit breaker which is operated by said time mechanism to permanently break said circuit at the expiration of a predetermined time after the closing of the same, substantially as set forth.

(2) An electric circuit of the kind described, provided with an electro-magnet arranged therein, in combination with a clockwork motor, arranged, when released, to work a contact breaker to permanently break the circuit, and having the said magnet arranged to thus release the said clockwork whenever said magnet remains active and the circuit remains closed longer than a normal period, substantially as herein set forth.

Such circuit breakers starting by clockwork were well known and in use before the plaintiff's invention, and among those put in evidence is one called the "Gibson Cut-Off," of unquestioned priority. This device is compared with that of the patent by the plaintiff testifying thus:

"When the armature is drawn down, it releases the clock movement, and proceeds towards cutting off, while the Rousseau apparatus releases a clock movement, and proceeds towards cutting off, but the parts come back to their normal condition if the circuit is not closed long enough to cut off."

And by one of his witnesses thus:

"After each normal closure of the circuit to light the gas, the Gibson apparatus runs down a little, and does not recover the ground lost; while in the case of the Rousseau apparatus the normal closure of the circuit in lighting the gas allows the spring to run down a little, but the circuit-breaking appliances have not moved towards or approached a condition wherein the circuit is broken; but, on the other hand, they at once, on the opening of the circuit after the normal closure, recover their positions and reinstate themselves in their original condition."

These claims are not for the specific mechanical devices which constitute these parts,—the other claims are for those,—but are for the combination of parts composed of devices which will do these things. One element of the combination of the first claim is

a circuit breaker operated by time mechanism to permanently break the circuit "at the expiration of a predetermined time after the closing." One of the second is a magnet arranged to release clockwork whenever the "magnet remains active and the circuit remains closed longer than a normal period." In neither is any arrangement of devices, or anything composed of devices, for the recovery of the parts to place, included. The same witness testifies with reference to the alleged infringement:

"With the defendants' apparatus, the normal closure of the circuit for the purpose of lighting the gas, though it starts the clockwork, allows the same to come to rest, and the circuit-breaking appliances to return to their normal position, after each lighting operation, or after each normal closure, so that a predetermined period of time can be settled upon by the constructor for the permanent breaking of the circuit should an accident occur; and this is the vital feature that gives the distinguishing characteristic to the Rousseau device, and which feature is clearly found in the apparatus of the defendants."

So this improvement, the alleged taking of which is the only infringement to be considered, does not appear to be covered by these claims.

Again, these claims do not appear to cover the specific mechanism. *Wing v. Anthony*, 106 U. S. 142, 1 Sup. Ct. 93. If they did, the defendants do not use it. The only new thing which they can cover is the circuit breaker of the first, so operated by time mechanism as to permanently break the circuit on predetermined time; or the magnet of the second, arranged to release a clockwork motor whenever the circuit remains closed longer than a normal period, in their respective combinations. These appear to be results, or all means of producing them, rather than invented means of producing them. The plaintiff would not seem to be any more entitled to a patent in a combination on mechanism that will break a circuit, or a magnet that will release clockwork on predetermined time, merely, than the patentee was on connecting the reed with the yarn beam, in *Stone v. Sprague*, 1 Story, 270, Fed. Cas. No. 13,487; or than the Hansons were on forming pipes of metal under heat and pressure, in *Le Roy v. Tatham*, 14 How. 175; or than Morse was on the electric current for marking or printing at a distance, in *O'Reilly v. Morse*, 15 How. 62.

Bill dismissed.

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### BLOUNT MANUF'G CO. v. BARDSLEY.

(Circuit Court, E. D. New York. March 15, 1895.)

#### 1. PATENTS—ANTICIPATION OF COMBINATION.

Where prior machines show similar parts in other arrangements for other purposes, but nothing shows them working together in any arrangement like that of the patent, for the purpose of the patent or any other purpose, there is no anticipation.

#### 2. SAME—INFRINGEMENT OF COMBINATION CLAIMS.

A claim for a combination, which specifies among its elements a piston and its piston rod operating upon certain spring mechanism, *was* infringed by a machine having all the parts of the claim except that its piston has no piston rod proper, but is itself extended so as to reach the parts which the rod would reach.