

He says he applied the air brakes at once; that the bell was ringing all the time from Weston Station until the accident; that he saw the vehicle rounding the turn, and had a view of it until it was struck; that the tool house did not obstruct his view.

Brant, the fireman, says he rang the bell all the time from Weston Station until past the crossing; that he saw the man driving towards the crossing, and, when the horse's head was to the crossing, the horse stopped momentarily; that the man pulled the lines with one hand, and hit the horse with the other, and it jumped across the track; that the whistle was blown for the crossing before the whistle board was reached; immediately thereafter the alarm whistle followed, and the air brakes were applied; that he saw the buggy roof all the time over the top of the tool house; that the horse came along at a pretty smart walk; that he did not stop during all this time until the pause at the crossing itself; says he did not see the man look out; all he saw was his arms. Wilson, a milk agent, was on the next car to the engine; says he heard the crossing whistle blown, followed by the alarm, and felt the air brakes applied; that he leaped to his feet, and ran to the door. He is positive the alarm whistle was blown just as the whistle board was passed. Stryker, who was working in the fields a half a mile north of the railroad, says he heard the whistle just as the train was coming out of the cut. In addition to this, Taylor and Canfield, passengers, and Cuthbertson, the conductor, all testified that the crossing whistle and the alarm whistle were sounded and the brakes applied, but at what point they were unable to say.

In opposition to all this, we have the testimony of a number of witnesses for the plaintiff who state that they looked at the train when they heard the whistle, and that the train was then near or passing the tool house. But, in considering the testimony of these witnesses, the seeming contradiction must be modified by the fact that the sound would be from three to four seconds in reaching a person three-quarters of a mile away, and that during that time, at the 60-mile rate the train was running, it would have covered from 240 to 320 feet, a very substantial part of the distance between the whistle post and the tool house.

After a careful review of the entire testimony, we are of opinion that, tested by the rule laid down above, the court should have given binding instructions in favor of the defendant.

The judgment of the circuit court is reversed, and the case is remanded to that court, with directions to award a new trial.

FRANK v. WM. P. MOCKRIDGE MANUF'G CO.

(Circuit Court of Appeals, Third Circuit. May 3, 1895.)

No. 18.

INFRINGEMENT OF PATENTS—CUFF FASTENER.

The Frank patent, No. 397,119, for an improvement in cuff fasteners, in view of the prior state of the art, and of the fact that the improved form is described in the claims by letters of reference to the drawings, and of

the further fact that in the second claim such description was inserted by amendment after the rejection of a descriptive word, *held* to be limited to the specific form of hook therein described, and therefore not infringed by defendant's fastener. 65 Fed. 521, affirmed.

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

This was a suit in equity by Henry C. Frank against the William P. Mockridge Manufacturing Company for infringement of a patent for cuff fasteners. The circuit court dismissed the bill on the ground that there was no infringement. 65 Fed. 521. Complainant appeals.

W. P. Preble, for appellant.

L. H. Scott, for appellee.

Before DALLAS, Circuit Judge, and WALES and BUFFINGTON, District Judges.

BUFFINGTON, District Judge. This is an appeal by Henry C. Frank from a decree of the circuit court of the United States for the district of New Jersey, dismissing a bill filed by him against the William P. Mockridge Manufacturing Company. The prayer of the bill was to restrain the alleged infringement of the claims of letters patent No. 397,119, issued February 5, 1889, to complainant, for an improvement in cuff fasteners. Two defenses—noninfringement and lack of patentable novelty—were raised. Conceding the patentability of the device in question, of which it had some well-founded doubts, the court below decided that in view of the prior art, and the self-imposed limitations of the claims in the patent-office proceedings, those claims should be confined to the form of hook therein specified, and that, when so construed, infringement was not shown. The questions in the case were confined to a comparatively narrow limit, and the court below considered them in detail so fully, and its very careful and exhaustive opinion is so satisfactory and self-sustaining, that it would be a needless repetition to restate the reasoning and authorities which inevitably lead to the conclusion therein reached. We therefore adopt its opinion as fully expressing the views of this court. The appeal is dismissed, and the decree entered is affirmed.

GERMAIN et al. v. WILGUS.

(Circuit Court of Appeals, Ninth Circuit. March 1, 1895.)

No. 207.

1. PATENTS--INFRINGEMENT SUITS--SUFFICIENCY OF BILL--PROPERT OF PATENT.

A bill for infringement will not be held bad for want of a sufficient description of the invention, where it makes profert of the letters patent, although the same are not annexed to the bill.

2. SAME--EQUITY JURISDICTION.

A bill for a mere account of profits and damages against an infringer, or which prays an injunction, but without alleging public acquiescence in plaintiff's rights, or that the patent had been sustained in an action