

## WERTHEIMER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. May 9, 1895.)

## CUSTOMS DUTIES—EMBROIDERED GLOVES—ACT OCT. 1, 1890.

Ladies' kid gloves, embroidered with more than three single strands or cords, are liable to a duty of 50 cents per dozen pairs, under the provision of paragraph 458 of the act of 1890, in addition to the other applicable rates therein specified, although such gloves may be commercially known as "three row embroidered" gloves. The words "with more than three single strands or cords," in paragraph 458, refer to the actual number of single strands or cords upon the glove, and not to any commercial designation thereof.

## At Law.

Appeal by importers from decision of the board of United States general appraisers affirming the decision of the collector of customs at the port of New York in the classification for duty of certain ladies' kid gloves, embroidered, upon which the collector assessed an additional duty of 50 cents per dozen pairs, under the provisions of paragraph 458 of the act of 1890, and under the particular clause thereof reading: "On all embroidered gloves with more than three single strands or cords, fifty cents per dozen pairs."

The protest of Wertheimer & Co., importers, claimed that, while the gloves were embroidered, they were not embroidered with "more than three single strands or cords," and were not subject to such additional duty of 50 cents per dozen pairs. The evidence tended to show that gloves of this character were known in trade as "three row embroidered gloves." As a matter of fact, however, there were actually more than three single strands or cords on said gloves, although there were but three rows of embroidery thereon. Each of said rows of embroidery contained more than one single strand or cord.

On behalf of the United States, it was contended that this was a designation of the articles by specific and particular description, and referred only to their actual condition, and not to any commercial designation thereof, and, while these gloves might be known in trade as "three row embroidered gloves," as a matter of fact they had upon them nine single strands or cords, or three single strands in each row of embroidery.

W. Wickham Smith, for importers.

Henry C. Platt, Asst. U. S. Atty., for the United States.

TOWNSEND, District Judge (orally). It appears that the board of general appraisers classified the gloves in question for duty according to the actual number of single strands or cords on each glove. It has not been proved that there is any established commercial designation by which such gloves are known which conflicts with such classification; and the decision of the board of general appraisers is therefore affirmed

## UNITED STATES v. FRANKEL et al.

(Circuit Court, S. D. New York. June 3, 1895.)

No. 2,152.

## CUSTOMS DUTIES—DIAMONDS—ACT AUG. 28, 1894.

Diamonds, cut but not set, *held* dutiable at 25 per cent. ad valorem, under paragraph 338, Act. Aug. 27, 1894, as "precious stones of all kinds, cut but not set," and not free of duty, under paragraph 467 of said act.

The word "diamonds," in the latter paragraph, *held* to cover only "miners', glaziers', and engravers' diamonds not set," and to be only a heading to that paragraph, and restricted to the particular diamonds therein enumerated.

At Law. Appeal on behalf of the United States from decision of the board of United States general appraisers reversing the decision of the collector. Reversed.

J. Frankel's Sons imported on September 15, 1894, certain diamonds, cut but not set, upon which the collector assessed a duty of 25 per cent. ad valorem, under paragraph 338. Importers protested, claiming all diamonds to be free, under paragraph 467.

Henry C. Platt, Asst. U. S. Atty., for the United States.

W. Wickham Smith, for importers.

TOWNSEND, District Judge (orally). The articles in question in this case are diamonds, cut but not set, imported September 15, 1894. They were assessed for duty by the collector of customs at the port of New York at 25 per cent. ad valorem, under paragraph 338 of the act of August 28, 1894, which reads as follows:

"338. Precious stones of all kinds, cut but not set, twenty five per centum ad valorem; if set, and not specially provided for in this act, including pearls set thirty per centum ad valorem; imitations of precious stones, not exceeding an inch in dimensions, not set, ten per centum ad valorem. And on uncut precious stones of all kinds, ten per centum ad valorem."

The importers protested, claiming that the diamonds were free of duty, under paragraph 467 of the free list of said act, which reads as follows:

"467. Diamonds; miners', glaziers', and engravers' diamonds not set, and diamond dust or bort, and jewels to be used in the manufacture of watches or clocks."

The board of general appraisers were of the opinion that congress did not intend to place the diamonds in question on the free list, but, for certain reasons stated in their opinion, they reversed the decision of the collector and held that said diamonds were entitled to free entry under said paragraph 467. From this decision the United States appeals.

It is admitted that the articles are "diamonds cut but not set," and that they are "precious stones." The position of the word "diamonds" at the head of paragraph 467 in the free list, printed in the same type as the rest of the paragraph, and followed by a semi-colon, of itself raises a presumption that congress thereby intended to place all diamonds upon the free list. The rest of said paragraph, and the language of paragraph 338, forcibly suggest a contrary intention. It has therefore been found necessary to examine the general plan of the whole act, and the punctuation, type, and language thereof.

It appears that in said act congress frequently placed at the beginning of a paragraph the general name or description of articles specifically named therein merely as a heading to such paragraph, and for no other purpose. In some of these instances the type and punctuation are the same as in paragraph 467. It also appears

that it is a part of the general plan of the act to arrange articles and their subheadings in alphabetical order. It further appears from an examination of the whole statute that congress could not have intended to make all diamonds free of duty under said act. Irrespective of the history, and admitted object of said statute to increase duties on luxuries, and reduce duties on necessities, the language of paragraph 338 is most significant upon this point, as showing the legislative intent. It not only provides for a duty of 25 per cent. ad valorem upon precious stones of all kinds, cut but not set, but also provides for a duty of 10 per cent. ad valorem on uncut precious stones of all kinds, and on imitations of precious stones. The second section of said act reads as follows:

"On and after the first day of August, eighteen hundred and ninety-four, unless otherwise provided for in this act, the following articles, when imported, shall be exempt from duty."

If, therefore, diamonds are otherwise provided for in said act, they would not be included in the free list. The phrase, "precious stones of all kinds, cut but not set," not only concededly covers diamonds, but is a specific provision, and the only provision, for "cut" diamonds. The counsel for the government strenuously contends that the phrase, "precious stones, cut but not set," is a more specific description of these diamonds, cut but not set, in the condition in which they are imported, than the single word "diamonds" in the free list. In that event the more specific appropriation must control. *Magone v. King*, 1 U. S. App. 267, 2 C. C. A. 363, 51 Fed. 525. It is further to be borne in mind that paragraph 338, in terms, covers precious stones "of all kinds." If it were intended by the use of the word "diamonds" in paragraph 467 to make all diamonds free, as is contended by counsel for the importer, then miners', glaziers', and engravers' diamonds, when set, would be free of duty. But it is manifest that congress could not have intended this result, because, by the express language of said paragraph, such diamonds are only free of duty when not set. And, finally, if the word "diamonds" in paragraph 467 was anything more than a sub-heading, there would have been no necessity of adding thereafter, in the same paragraph, the different kinds of diamonds, such as miners', glaziers', and engravers' diamonds. No sufficient reason has been suggested why, if all diamonds were to be free, congress should have specifically provided for miners', glaziers', and engravers' diamonds, cut but not set. I therefore am of the opinion that congress did not intend by the act of August 28, 1894, to admit diamonds free of duty, but that a consideration of the general plan and arrangement of said act, and a comparison of the foregoing provisions, show a plain intent to impose a duty of 25 per cent. on diamonds cut but not set. The decision of the board of general appraisers is reversed.

## STUART v. SMITH.

(Circuit Court, S. D. New York. April 16, 1895.)

## COPYRIGHT—INFRINGEMENT—INJUNCTION AGAINST OFFICER OF CORPORATION.

In a suit against one S. for an injunction against infringement of a copyright and for an accounting, it appeared that S. was the president and general manager of a corporation, financially responsible, by which, if at all, the infringement had been committed, contrary to the instructions of S., which corporation was not a party to the suit. *Held*, that S. should not alone be held personally responsible for the alleged wrongful acts, merely because he was an officer of the corporation, and that the bill should be dismissed. *Linotype Co. v. Ridder*, 65 Fed. 853, followed.

This was a suit by Ruth McEnery Stuart against Orlando J. Smith for infringement of a copyright. The cause was heard on the pleadings and proofs.

A. T. Gurlitz, for complainant.  
Rowland Cox, for defendant.

TOWNSEND, District Judge. This is a final hearing on a bill alleging infringement of copyright, and praying for an injunction and an accounting. A preliminary injunction was granted November 18, 1893. Two motions to vacate the same have been denied. The complainant is the author of a story originally entitled "Carlotta di Carlo," the title of which was afterwards changed to "Carlotta's Intended." The defendant is the president and general manager of the American Press Association, a corporation which is engaged in furnishing matter in stereotype plate and syndicate form to a large number of newspapers throughout the United States. It is not necessary now to consider the circumstances in which the defendant claims that said press association acquired the right to publish said story, nor the proposed use thereof. Such right, if any, depends upon the construction to be given to a certain contract between the complainant and the J. B. Lippincott Company, which sold said story to said Press Association. The J. B. Lippincott Company is the publisher of Lippincott's Magazine. The complainant first sent her story to the editor of said magazine. Thereupon he called upon her, asked her to enlarge it, so that it might be used as the initial story in his magazine, and agreed to pay her \$300 therefor. Afterwards he sent her a check for said sum, and inclosed therewith the following letter and receipt:

"Lippincott's Monthly Magazine.

"Philadelphia, Feb. 27th, 189-.

"Mrs. R. McE. Stuart—Dear Mrs. Stuart: I send herein check for three hundred dollars (\$300.00) in accordance with our agreement, which is in payment for the manuscript 'Carlotta di Carlo,' on receipt of which kindly send me receipt as indicated below. We send the manuscript back to you by express, prepaid, for the purpose of your incorporating in it the parts which you said you had previously taken out. In its present shape, I am afraid it will be too short a story for the purpose for which we desire to use it, and if you could add, say a few thousand words, without affecting it disadvantageously, we should like you to do so. The name, of course, you will remember, we have concluded to change, so please suggest some that you think appropriate.

"Yours truly,

J. M. Stoddart."

"New York, March 2d, 1891.

"Received of J. B. Lippincott Company the sum of three hundred dollars (\$300), which I acknowledge to be in full payment of all rights, title, and interest, in this country and abroad, of the story of which I am the author, entitled 'Carlotta di Carlo,' the name of the same to be changed hereafter. I hereby agree that the J. B. Lippincott Company may publish this in any form without further recompense to me. Ruth McEnery Stuart."

The complainant signed and returned the receipt, and the story was copyrighted, and published in said magazine. Afterwards she wrote said editor, asking to recover her copyright, and in response received an assignment thereof to her. Prior to said assignment the Lippincott Company had sold said story to said American Press Association, which prepared plates of said story, printed 6,000 copies of sample sheets thereof, with other stories, under the title of "Novellettes," and offered to sell the plates for publication in installments to its newspaper patrons throughout the United States.

Counsel for defendant claims that the foregoing receipt fairly states the contract between the parties, and that by said contract the Lippincott Company, the assignor of said press association, acquired a perfect title in law and equity to said copyright. Complainant denies that said receipt states the contract between the parties, and claims that when the editor of Lippincott's Magazine called on her it was agreed that she should enlarge said story, and change its title, for the express purpose of having it published as the initial story in one number of said magazine, and for no other purpose; and that for that reason she accepted a much lower price than she would otherwise have done. In view of the conclusions reached, I shall not review at length the evidence upon this point. If it were necessary to the decision of the question, I should incline to hold that the parties have put a practical construction upon the contract by which the assignment was limited, as claimed by complainant. My reasons for this are as follows: The negotiations and correspondence were carried on between complainant and the editor of Lippincott's Magazine, as its editor and manager only. The story was modified for the express purpose of adapting it for publication in said magazine. The repeated assertions by complainant in her letters to said editor that there was no agreement to part with her copyright were not denied by him. The copyright was reassigned to her without consideration, at her request, without mention of its sale, or claim of further right therein. The language of the receipt, prepared by said editor, "I hereby agree that the J. B. Lippincott Company may publish this in any form without further recompense to me," would be mere surplusage if the prior language were intended as an absolute assignment. In these circumstances, in view of this practical construction of the contract by the parties, the receipt may fairly be so interpreted as to harmonize with the claim of complainant as to their original understanding. The testimony of said editor shows affirmatively that he negotiated on behalf of the magazine only, and fails to satisfactorily show that he disclosed any intention to use the article for any other purpose.

The exhaustive briefs of counsel for defendant contain several defenses, only one of which will be considered, as it alone appears to be

fatal to complainant's claim. The answer alleges, and the evidence shows, that said American Press Association, of which the defendant is president, is a corporation. There is no question as to its financial responsibility. It has not been joined as a party defendant in this suit. The evidence shows that the alleged infringing acts were committed by said corporation, contrary to the express instructions of defendant, and without his knowledge, and that the first intimation he had that said story had been published by said corporation was when he was served with the papers in this case. In these circumstances it would be contrary to the well-settled rules of equity to hold this defendant alone personally liable for such wrongful acts, merely because he was an officer of said corporation. *Ambler v. Choteau*, 107 U. S. 586, 1 Sup. Ct. 556; *Howard v. Plow Works*, 35 Fed. 743; *Cahoone Barnet Manuf'g Co. v. Rubber & Celluloid Harness Co.*, 45 Fed. 582. This question is considered, and the cases bearing thereon are collected, in *Linotype Co. v. Ridder* (recently decided by me) 65 Fed. 853. Let the bill be dismissed.

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SINGER MANUF'G CO. v. SCHENCK.

(Circuit Court, S. D. New York. May 22, 1895.)

1. PATENTS—PRIOR USE—ADMISSIBILITY OF EVIDENCE.

Affidavits made by witnesses more than 10 years before the hearing, in respect to the details of construction of a machine which they had not seen for nearly 20 years prior to the date of the affidavits, are not admissible as evidence, when, after reading the same, the witnesses disclaim any present recollection of the features of the machine, and merely say that, if they swore to the affidavits, they were true.

2. SAME—PRIOR USE—EVIDENCE.

The defense of prior use cannot be sustained upon the testimony of witnesses who attempt to describe the details of a machine from memory after the lapse of nearly 30 years, where their statements are vague, uncertain, and contradictory. To sustain the defense, the evidence in support of it should be so strong as to exclude every reasonable hypothesis that the structure was of an experimental and tentative character.

3. SAME—SEWING MACHINES.

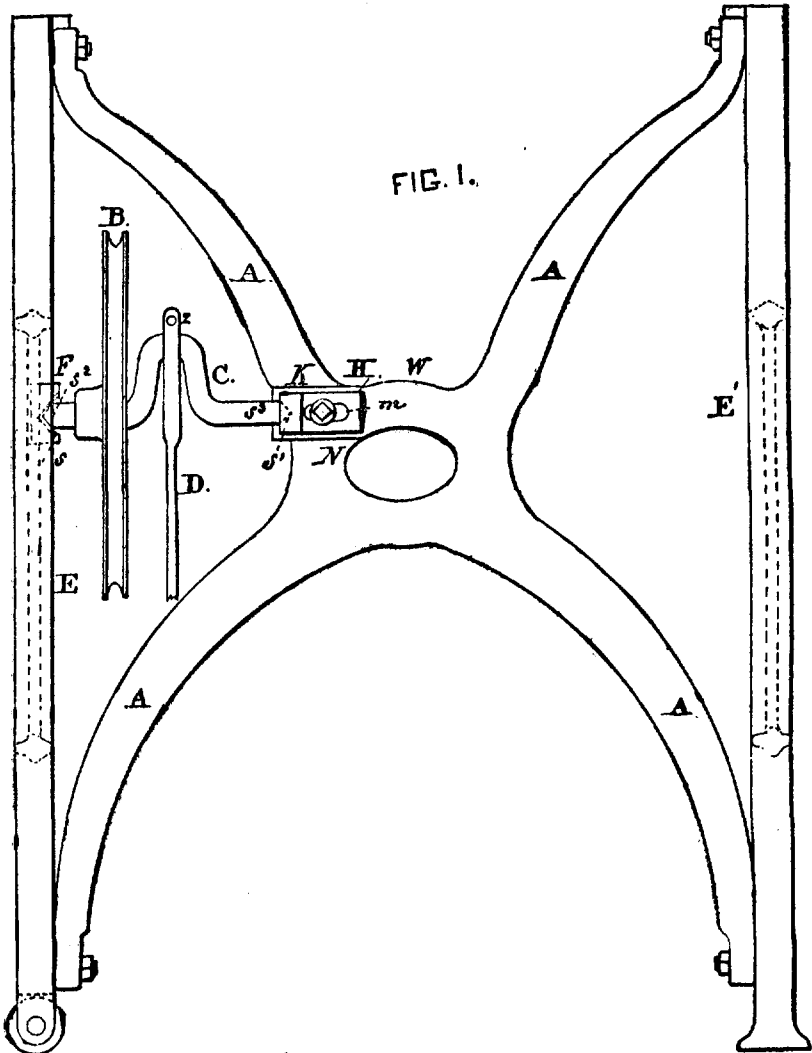
The Miller and Diehl patent, No. 224,710, for an improvement in band-wheel bearings for sewing machines, held not invalid on the ground of prior use, and held infringed.

This was a bill by the Singer Manufacturing Company against Allen Schenck, president of the New Home Sewing-Machine Company, for alleged infringement of a patent relating to an improvement in sewing machines.

This action is founded upon letters patent No. 224,710, granted February 17, 1880, to the complainant, as assignee of the inventors, Miller and Diehl, for an improvement in band-wheel bearings for sewing machines.

The specification states as follows: "The object of our invention is to do away with the rattling of the band wheel and to reduce the friction, also to simplify and condense the parts, lessening the cost and avoiding the complications of the anti-rattling journals in use. \* \* \* On band wheels as formerly constructed, having a bearing on a stud, the pitman was applied outside the bearing, causing a side or jamming movement and excessive wear and lost motion. In our improvement the power is applied at the center, and the pressure is always directly upon the bearings, so that there is no tendency to a side or jamming motion, and the friction and wear are consequently re-

duced to the least amount. The crank is supported at one end by the central brace, and at the other end by one of the side pieces of the frame. By this arrangement a great advantage is obtained, as the crank presses down in direct line both upon the side of the frame and upon the central brace, thereby equalizing and distributing the weight throughout the entire frame without any lateral pressure whatever or any tendency to sag or break the side piece, E, or to rack the frame when the machine is in operation. The crank also is thus very much shorter than if extended the whole length of the frame as formerly, and the cost, friction, and wear are proportionally reduced. The bearings also being conical instead of straight, the end play of the crank is prevented, and an adjustment for wear and lost motion may be readily made by means of a set-screw on the central brace or on the side piece, or on both the central brace and the side piece, or by the use of an adjustable lug or bearing upon the central brace or the side piece, substantially as at H, Fig 1."



The first and second claims only are involved. They are as follows: "(1) In the frame of a sewing machine, the central brace, A, as a support or bearing for one end of the crank, C, operating either in direct contact with the said central brace, A, or connected therewith by means of an adjustable lug or bearing, substantially in the manner and for the purposes described. (2) In the frame of a sewing machine, the crank, C, having the conical bearings s<sup>1</sup> s<sup>2</sup> s<sup>3</sup>, in combination with an adjustable lug or bearing on the central brace, A, or on the side piece, E, substantially in the manner and for the purposes described."

The defenses are noninfringement, if the claims are narrowly construed, and anticipation by a structure made by one J. E. Burdge, of Cincinnati, Ohio, prior to 1864.

Livingston Gifford, for complainant.

John Dane, Jr., for defendant.

COXE, District Judge (after stating the facts). The important question in this cause is whether or not the invention is anticipated by the Burdge structure alleged to have been made about 30 years ago. This was the principal question discussed at the argument, and, although other defenses are suggested in the defendant's brief, there can be little doubt that the complainant is entitled to a decree if the Burdge defense is removed from its path. Invention is established and infringement is hardly disputed. The Burdge machine is said to have been invented by Jonathan E. Burdge some time during the war of the Rebellion and prior to 1864. The burden of establishing this defense rests heavily upon the defendant; it must be proved beyond a reasonable doubt. The wisdom of this rule was never more apparent than in the present case. The difficulty, if not the impossibility, of procuring accurate oral testimony regarding commonplace events occurring 30 years ago, is obvious to all. The exhibit "Burdge Sewing-Machine Stand" was used for many years as a flower stand in the dooryard of J. E. Burdge at Home City, near Cincinnati. When resurrected for the purposes of litigation it was merely an iron frame consisting of two side pieces connected with a saw-buck brace. Between one of the legs and the brace there was a crank shaft with a U-shaped crank, one end being mounted in a boss cast upon the machine leg and the other in an adjustable bearing screw which was held in place by a lug screwed to the cross brace. This was all. There was no table, treadle, pitman, band wheel or band. Some boards had been laid over the iron frame, and for many years it had stood outdoors as a stand for flower pots. If this structure were ever used in connection with a sewing machine, it must have been prior to or during the early part of 1864. No one pretends to have seen it so used after that date.

The testimony offered upon this issue is exceedingly voluminous, but it will only be necessary to state generally the reasons for the conclusion reached. Affidavits made in 1883 by two of the defendant's witnesses, Olive Burdge and James Skardon, were offered in evidence under objection. These affidavits were clearly inadmissible. Assuming that papers made 20 years after the event can in any view be used to refresh the recollection of a witness, these affidavits certainly could not be so used, for both witnesses disclaimed any present recollection of the important features of the Burdge machine



even after reading the affidavits. All they could say was that if they swore to the affidavits they were true. When they testified in this cause their minds were blank upon all important matters in controversy. There is no theory upon which the affidavits are competent. Without them the testimony of the witnesses is too indefinite and uncertain to sustain any finding of fact. Mrs. Martha Cole, another of defendant's witnesses, was shown the "Burdge Sewing Stand," and was asked when before she had seen a stand of the same construction. Her answer was, "I recognize the stand as the same one we had at home during the war." It is not pretended that she had the identical stand. What she meant was that she had one of the same construction. Mrs. Cole's mother did have a Burdge sewing machine during the war, but Burdge took it back in less than a year for nonpayment of the purchase money, and the witness never saw it thereafter. Mrs. Cole was between 13 and 14 years of age when the machine was at her home. Her attention was not called to the feature here in controversy, and all she was able to say was that the stand shown her in 1892 was of the same character as the stand seen by her 30 years before. Of course this proves nothing. Even had her attention been called to the crank shaft, and she had testified that it was like the crank shaft of her mother's machine, it would have been entitled to little weight. It is doubted if a single sewing woman in the country can recall the minute details of the driving gear of a sewing machine which she has not seen for 30 years. That part of the mechanism above the table to which her attention is constantly called she might possibly remember, but the particular construction of the crank shaft and its bearings would make only a fleeting impression on her mind. The probability is that she would not examine it at all, and if she did she would not retain such distinctions as we are here dealing with in her mind for a single day. Mrs. Cole says nothing that aids the defendant; the circumstances were such that she could say nothing. Human memory is incapable of performing such miraculous feats. Let any one skeptical on this subject test it by attempting to describe the details of construction of a complicated machine to which his attention was never particularly called and which he has not seen since 1865. No matter how retentive is his memory, he will probably find that certainty and accuracy are simply out of the question.

This leaves the Burdge prior use to depend upon the testimony of one witness—William M. Burdge, a son of the alleged inventor. The considerations to which allusion has just been made apply to this witness as well. If the court is to overthrow a patent upon the testimony of a single witness as to events happening 30 years ago he should be a witness in whose word the court can place implicit reliance. If for any reason the court is in doubt as to the truth of his testimony the defense must fail. The court is now in doubt, and the reasons therefor may be summarized as follows:

First. The witness was but 16 or 17 years of age when he worked at his father's shop, and he was only there about a year. For the reasons already stated, it is hardly possible, in such circumstances, that minute details can be accurately remembered. Indeed, the sit-

uation in this regard cannot be stated more fairly than by the witness himself. He says: "Of course, I assisted on all the machines, and I can't recollect one part any more than another unless the part were shown me to refresh my mind." And, again: "I cannot remember every detail of every or any one machine that was built thirty years ago, when I was about seventeen years of age."

Second. There are numerous contradictions and admitted errors in his testimony. These are not more numerous than would be expected in the testimony of any witness who attempted to describe a machine which he had not seen for 30 years, but they demonstrate how unreliable his memory is. For instance, how can the court find that he is right as to the crank shaft when he is clearly wrong as to the treadle rod?

Third. There is evidence inherent in the stand itself that it was never anything more than an experiment. There is no band wheel. This wheel has to be fitted on the crank shaft before the shaft is mounted in the bearings. If a wheel were ever on the shaft where is it? It could hardly have been broken off without leaving the hub at least. If the machine were dismembered, what possible reason could there be for carefully replacing the shaft in its bearings? The inference that the structure was an experiment is surely as plausible as that it was an operative machine.

Fourth. The presumption that it was never a completed machine may be drawn also from the following facts: The treadle was absent, and there was no hole in which to insert the pin which holds the treadle to the rod. There was no table and no marks indicating that the machine had been used. There was a hole on the left leg directly opposite the boss on the right leg, indicating that a crank shaft running clear across from leg to leg had first been used. There is also the presumption that if the machine had been made for sale the lug would have been cast on the brace, and not made of wrought iron and screwed to the brace.

Fifth. The brace and the adjustable bearing for one end of the crank shaft were improvements which made their appearance in the art after 1865. It is most unlikely that one man in 1863 should have hit upon a stand combining so many valuable features which were produced by the evolution of the art during a series of years by different inventors at different times and places. If these things were well known in 1863, is it probable that they would have lain dormant for half a dozen years? If the experiment were made in the 70's the appearance of these features would be natural enough, but their appearance in 1863, when the art was yet in its infancy, is certainly extraordinary. A structure which anticipated so many inventions would have been put to some nobler use than as a stand for flowers.

Sixth. Burdge can hardly be called a disinterested witness. He contradicts himself and is contradicted by others upon many material points. None of the parties to whom he says machines were sold have been found, and persons who would naturally know of the machines if they had existed never heard of them.

Many other considerations of a similar character tending to cast

suspicion upon the alleged prior use might be alluded to, but it is unnecessary to pursue the subject further. Enough has been said to demonstrate the proposition that the proof in support of defendant's contention is vague, uncertain and contradictory. It fails to carry conviction to the mind; difficulty is encountered at every turn.

The court approached this defense with every inclination to treat it with the utmost fairness. When, however, all has been said in its favor, there is still the ever-present doubt as to its verity. There is still the conviction that the court cannot be sure that a completed operative machine like the exhibit was made by Burdge prior to 1864, or that such a machine was ever made by him. The flower stand is a certainty; all else is uncertain. When, where, by whom and for what purpose the crank shaft was placed on the stand is conjectural. The moment the realm of speculation is entered several theories suggest themselves at least as plausible as that advanced by the defendant. In order to sustain this defense the court must find that the evidence offered in its support is so strong as to exclude every reasonable hypothesis that the structure was of an experimental and tentative character. Can the court find upon this proof that the Burdge flower stand was ever a part of a completed machine? Can it say this beyond a reasonable doubt? It is thought not. No authority has been found where a patent has been defeated upon proof so vulnerable. Something more than probability, certainly something more than possibility, is needed to anticipate a patent.

It is unnecessary to discuss the point suggested at the argument, because upon examination I am convinced that the structure when discovered as a flower stand had not reached such a point of completion as to warrant the inference which might, possibly, be drawn had some of the more important missing parts been present.

It follows that the complainant is entitled to the usual decree.

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#### ROCKER SPRING CO. v. THOMAS.

(Circuit Court, N. D. Ohio, E. D. May 31, 1895.)

No. 5,187.

#### 1. PATENTS—ANTICIPATION.

Patent No. 354,043, issued to Connolly, December 7, 1886, for "spring attachment for rocking chairs," the principal feature of which is the use of spiral or coil springs to connect the base and rocking part of a platform rocking chair, located at opposite sides of the chair center, and in the center of the oscillation of the chair seat, and rigidly connected to such parts, was not anticipated by patent No. 185,501, issued to the same, December 19, 1876, for an improvement in tilting chairs, described as intended to provide a chair furnished with a spring which will afford an elastic or yielding support for the seat, and which will at the same time permit such seat to be tilted or rocked according to the inclination of the occupier's body and limbs, and the essence of which consists in the application or employment of a spiral spring in such a manner as will afford a support to the seat, being compressed fully or in part when such seat