

if at all. The decision was put upon the ground that there had been no infringement, but it is also said that the court expressed no opinion upon the validity of the claims of the patent. If, therefore, this court should have determined that on the question of infringement the court had erred, the conclusion could be of no avail to the appellant, unless, going beyond the assignment of error, we had also determined that the patent in suit is valid. The assignment is predicated, not as it ought to have been, upon the ruling of the court, but upon the reason given for the decision. That, as we have more than once declared, is improper and unavailing. *Caverly v. Deere*, 24 U. S. App. 617, 13 C. C. A. 452, 66 Fed. 305; *Russell v. Kern*, 34 U. S. App. 90, 16 C. C. A. 154, 69 Fed. 94.

The decree below is affirmed.

ENTERPRISE MANUF'G CO. v. SNOW et al.

(Circuit Court of Appeals, Second Circuit. May 3, 1897.)

PATENTS—INFRINGEMENT—MEAT CUTTERS.

The Baker patent, No. 271,398, for an improved machine for cutting up plastic substances, in which the main idea consists in pressing the meat, by means of a forcing screw, and without any preliminary cutting, against a perforated plate, on the inner face of which is a knife, which, operating in connection with the plate, serves as the sole means of the cutting, held not infringed by a somewhat similar device, in which there was a preliminary cutting or slitting of the meat by stationary knives. 72 Fed. 262, affirmed.

Appeal from the Circuit Court of the United States for the District of Connecticut.

Charles E. Mitchell and Charles Howson, for complainant.

Albert H. Walker, for defendants.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. The complainant brought its bill in equity before the circuit court for the district of Connecticut to restrain the defendants from the alleged infringement of claims 1, 4, and 5 of letters patent No. 271,398, granted on January 30, 1883, to John G. Baker, for an improved machine for cutting up plastic substances. From the decree of the circuit court, which dismissed the bill (72 Fed. 262), the complainants appealed.

The claims which are in controversy are as follows:

"(1) The combination, in a machine for cutting up plastic or yielding substances, of the following instrumentalities, namely: First, a casing for containing the substances to be cut up; second, a perforated plate at or near the end of the casing; third, a device for forcing the crude mass forward in the casing and against the said plate, without otherwise disturbing the integrity of the said mass; and, fourth, a knife operating against the inner face of the plate, and serving as the sole means, in connection with the said plate, of cutting up the mass by severing therefrom the portions which enter the perforations, all substantially as set forth."

"(4) The combination of the casing, E, made larger at its outer than at its inner end, with a perforated plate, a knife, and a feed-screw.

"(5) The combination of a casing, E, made larger at its outer than at its

inner end, with a perforated plate, a knife, and a feed-screw, the thread of which conforms with the said casing, as set forth."

This patent was carefully considered, and the invention was fully described, by the circuit court for the district of Connecticut, in *Manufacturing Co. v. Sargent*, 28 Fed. 185, 34 Fed. 134, and the views therein expressed were approved by the circuit court of appeals for the Third circuit in *Wanamaker v. Manufacturing Co.*, 3 C. C. A. 672, 53 Fed. 791. The first claim describes the patentable combination which constituted the distinctive features of the invention, and distinguished it from any of its predecessors in meat-chopping devices. The third element, as described in the specification, is simply a forcing screw; and the fourth element is a knife, which is the sole cutting means, in connection with the plate. It will thus be perceived that in the invention which was protected by the patent the forcing screw was not a cutting instrument, and interfered with the wholeness of the meat in no other manner than was incidental to its function of pressing the mass forward, while the cutting was solely performed by the knife when in connection with the plate. In order to point out the patentable character of the improvement, and to distinguish it from previously existing machines, particularly the Purchase Miles patents of 1861 and 1864, the decision in the second *Sargent Case*, *supra*, said:

"The main object of the patentee was to construct a machine which should get rid of the supposed necessity of preliminary cutting or chopping knives, and rely for its cutting character entirely upon the plate and knife at the end of the casing. Thus the patentee said in his specification: 'A perforated plate and a knife have been used in a cutting machine, but in combination with preliminary cutting or chopping knives, moving and stationary, acting independently of the plate, for mincing meat before it reaches the said plate in a minced condition, the plate and knife being in this case for the purpose of preventing the escape of large lumps which may have escaped the action of the preliminary chopping knives. In my invention, reliance for cutting up the substance is placed entirely on the plate and knife and a device for imparting direct pressure to a crude, uncut substance against the plate without any action on the substance during its passage to the plate, excepting that for effecting the desired pressure, the aim being to cut up the substance to uniform, or nearly uniform, sizes,—a result which cannot be attained when there are intervening choppers to cut the substance up to different sizes, large and small.' But it does not follow that the patentee meant, or that his patent is to be fairly construed as meaning, that the meat was to come to the plate in a condition in which no rubbing, or no abrasion, or no disintegration had taken place. He simply meant that, in contrast with the Miles machine, there was no cutting action in his device; that no reliance was placed, for cutting up the meat, upon anything else than the plate and the knife; and that the mass was forced to the plate without any other disturbance of its integrity than was incident to the forcing process."

The defendants' device has a casing, a forcing screw, a rotating perforated plate, structurally integral with the screw, and stationary knives, structurally a part of the casing. The terminal walls of the grooves in the casing are the knives. As the edges of the threads of the screw near the perforated plate come in contact with the edges of the grooves in the casing, lengthwise and parallel incisions are made in the meat before the knives co-act with the perforated plate. These lengthwise incisions are about an inch from the point where the perforated plate begins its work, but they are manifestly