

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

the result of a preliminary cutting operation. The circuit court found the facts of similarity and dissimilarity in the operation of the two machines as follows:

"The practical operation of complainant's and defendants' machines showed that in each the screw independently forced the meat forward towards the perforations under great pressure, and that in defendants' machine there was a preliminary longitudinal cutting, amounting to a severance of the mass before the meat reached the perforations, which, if repeated, was sufficient to reduce the strips to hash, while in complainant's machine the masses of meat were indented by the forcing ribs, but were not ordinarily preliminarily severed."

Under this state of facts, the question is whether the first claim is infringed. The complainant's expert does not deny that "a number of slight incisions are made in the face of the mass of meat as it is forced forward against the perforated plate," but he regards this action as purely incidental, and entirely immaterial to the essential operation of the machine. It is true that the cutting action is not extensive, but the machine is so constructed that preliminary cutting—the action which Baker avoided—must necessarily take place. The distinctive feature of the Baker device is its abandonment of the preliminary cutting by the cutters around the shaft, and its reliance upon the knife on the inside of the perforated plate. When the defendants turned the terminal edges of the grooves in the casing into knives, which co-acted with the edge of the threads of the screw, they necessarily created a cutting of the meat before the plate was reached. As the device is constructed, cutting action by the stationary knives must commence before the meat reached the rotating plate, which is integral with the screw; and thereby the defendants place themselves outside of the territory occupied by claim 1 of the Baker patent. Inasmuch as the same preliminary noncutting characteristic of the invention must enter into the construction of claims 4 and 5, they also are not infringed. The decree of the circuit court is affirmed, with costs.

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PRIETH et al. v. CAMPBELL PRINTING-PRESS & MANUF'G CO.

(Circuit Court of Appeals, Third Circuit. March 22, 1897.)

No. 9.

PRELIMINARY INJUNCTION—PATENT CASES—DECISIONS IN OTHER CIRCUITS.

Where a preliminary injunction has been granted solely on the strength of a decision in another circuit, and thereafter the judgment in the latter case is reversed and vacated by the circuit court of appeals, and the bill ordered to be dismissed, even because of an accord and satisfaction, this so changes the status of affairs that the preliminary injunction will be dissolved on an appeal therefrom.

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

This was a suit in equity by the Campbell Printing-Press & Manufacturing Company against Theodora Prieth, Edmund S. Prieth, and Benedict Prieth, for alleged infringement of letters patent No. 376,053, issued January 3, 1888, to John H. Stonemetz, for an improvement in printing presses. The court below granted a preliminary

injunction, on the strength of a decision by the circuit court for the district of Massachusetts (64 Fed. 782) sustaining the patent. 77 Fed. 976. From the order granting said injunction the defendants have appealed.

Arthur E. Dowell, for appellants.

Louis W. Southgate, for appellee.

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

ACHESON, Circuit Judge. The interlocutory order granting an injunction, which is the subject-matter of this appeal, was based altogether upon the adjudication on the patent in suit by the United States circuit court for the district of Massachusetts in the case of Manufacturing Co. v. Marden, 64 Fed. 782; the court below declining to consider any question involving the regularity and validity of that adjudication. The learned judge below in his opinion said:

"So long as the decree of the circuit court of the district of Massachusetts stands unrevoked and unmodified, the comity which exists between federal courts justifies this court, upon an application of this kind, in accepting its conclusions." 77 Fed. 976.

Now, pending this appeal,—on March 9, 1897,—the United States circuit court of appeals for the First circuit reversed the decree of the circuit court for the district of Massachusetts, and directed the dismissal of the bill of complaint there. The decree of the court of appeals, as appears from a duly-certified copy filed in this court, is in the words following:

"The petition for a rehearing is granted, and, having been fully heard, the judgment heretofore entered is vacated, the decree of the circuit court is reversed, and the case is remanded to that court, with directions to dismiss the bill because of accord and satisfaction, and without costs to either party in either court."

This latter decree, while not decisive of the merits of the controversy, nevertheless deprives the adjudication of the circuit court of the district of Massachusetts of the conclusive effect which the court below felt constrained to give to it; and, in view of the changed condition of the litigation touching this patent, we are of the opinion that the appellants should be relieved from preliminary injunction. It is therefore ordered and decreed that the injunction granted by the circuit court against the appellants be, and the same is, dissolved, with costs in this court to the appellants.

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J. J. WARREN CO. v. ROSENBLATT.<sup>1</sup>

(Circuit Court of Appeals, Seventh Circuit. May 14, 1897.)

No. 402.

1. PATENTS—VALIDITY—CYCLE LUGGAGE CARRIERS.

The Allen, Sachtleben, and Walters patent, No. 444,642, for a luggage carrier for cycles, is void for want of invention, and as involving merely a change in the form of an ordinary hand bag to fit the space between the arch, strut, and tie of a cycle.

<sup>1</sup> Rehearing denied June 17, 1897.

**2. SAME—PRESUMPTION FROM GRANT OF PATENT.**

The presumption of validity arising from the grant of a patent cannot control the judgment of the court when it is manifest there is no invention.

**Appeal from the Circuit Court of the United States for the Northern District of Illinois.**

The J. J. Warren Company, the appellant, as assignee of the patentees, filed its bill to restrain the infringement of letters patent of the United States No. 444,642, issued January 13, 1891, to Thomas Gaskell Allen, Jr., William Louis Sachtleben, and John Forrest Walters for "luggage carrier for cycles." The answer denied patentable novelty and invention, and asserted that the alleged invention required nothing more than the exercise of mere mechanical skill, and that the letters patent were invalid. Testimony was taken upon the part of the complainant below solely upon the question of infringement, and which established such infringement. The defendant introduced by stipulation a certain old medicine case in use in 1889. At the hearing the bill was dismissed for want of equity, and upon the ground that the patent was invalid. The specification of the patent contains the following: "The usual and present construction of carrier for attaching to a cycle is of laced metal or of basket work, like a flat, rectangular screen, with fasteners for fixing it onto the tip of the frame of the machine, and it is on such a screen that a coat or other article of wearing-apparel is usually fastened by a cord or a strap; and in some cases, when a small bag is used, it is generally hung from the handle-bar; there being in every instance a difficulty of adjusting the carrier to the balance of the machine, which renders it inconvenient for the rider to master the motion of the machine, and necessarily increases his labor in working the pedals. Another disadvantage arises from the tendency of the machine to overbalance itself by the height of the article fastened on the upper frame,—circumstances which have always prevented cyclists from taking a change of clothing with them on a journey. All the foregoing disadvantages are completely eclipsed by our invention, which consists of a hold-all or casing of a shape corresponding to the space between the 'arch,' 'strut,' and 'tie' of a machine, so that it occupies a position below the rider's body, and sufficiently low to the gravity-center as to steady the machine while traveling. Its position in no wise interferes with the rider's legs while operating the pedals, and its capacity is such that all the necessary articles for personal use, besides a stock of the most essential small articles of wearing-apparel, such as socks, collars, and the like, besides a complete change of clothing, can be stored in it for use, as required. The hold-all is provided internally with web-loops or pockets, and the opening, which is at the side, is covered by a flap, over which is another flap to fold in an opposite direction to enable the inclosed articles to be protected from dust and rain."

The luggage carrier occupies the space between the arch, strut, and tie of a safety bicycle, and is of the form and shape of that space, and by straps and buckle fasteners is attached to the arch and strut and other portions of the cycle; the specification further stating that: "The shape or formation of the hold-all will depend essentially upon the curvature of the machine frame, the hold-all being in every case, according to our invention, of such a character that it can be fixed into and occupy the space between the arch, strut, and tie of a cycle-machine propelled by manual power acting on pedals, as hereinbefore set forth. \* \* \* The hold-all, when removed from the cycle-machine, can be readily carried in the hand, like an ordinary hand-bag, by the loop-strap, U."

The claim of the patent is as follows: "A hold-all, adapted to fit within the space between the arch, strut, and tie of a cycle-machine, and composed of two side plates, A, B, edge strip, C, one of the side plates being provided with a flap, D, to fold downward, and coverable by an outside flap, E, to fold upward, for inclosing the contents, and preserving them from dust and rain, substantially as described."

William Zimmerman, for appellant.

T. A. Banning, for appellee.