

A great many objections were made at the trial to documentary evidence offered by the plaintiffs. Some deeds were objected to because of alleged uncertain and inadequate descriptions. Others were objected to because of alleged noncompliance with the requirements of the statutes of Missouri concerning acknowledgments. It may be that some of these objections were well taken. I have not considered them, because I dispose of the case, as already seen, more readily by a consideration of the outstanding title in the grantees of Mary Wing. Again, I notice that the answer of the defendants consists of a general denial only. If objection had been taken during the trial to the introduction of any evidence on the issue of estoppel, such objection might possibly have been sustained. But as the parties have taken a broad view of the case, introduced much evidence on both sides, on the issue of estoppel, and elaborately argued the same, the court takes them at their word, and passes upon this issue, among others. Certain it is that the plaintiffs were advised of the purpose of the defendants to rely upon estoppel as a defense, from the abstract of title, which distinctly pointed to evidence on that issue as a part of the defendants' chain of title. Both plaintiffs and defendants seemed to rely upon adverse possession as a factor in their titles. But I am of the opinion that neither party proved any such adverse possession. The case must therefore stand on the record title and on estoppel in pais as already stated, and judgment must be for the defendants.

CLUNE v. MADDEN et al.

(Circuit Court of Appeals, Seventh Circuit. July 1, 1897.)

No. 368.

1. PATENTS—INVENTIONS—FOLDING BEDS.

There is no invention in the use of a pin or hook on the back of a folding bed-lounge to automatically engage with an eye on the headrest when the two sections are folded together, thus holding the back firmly in place. 77 Fed. 205, affirmed.

2. SAME.

The Clune patent, No. 394,957, for a folding bed-lounge, is void as to the first claim for want of invention. 77 Fed. 205, affirmed.

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

This was a suit in equity by Michael Clune against Thomas Madden, Edward J. O'Reilly, and Christopher A. O'Connor for alleged infringement of a patent relating to folding bed-lounges. The circuit court held the patent invalid, and dismissed the bill. 77 Fed. 205. The complainant has appealed.

Chester Bradford, for appellant.

V. H. Lockwood, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This appeal is from a decree dismissing a bill for infringement of the first claim of patent No. 394,957, issued

December 25, 1888, to Michael Clune, of Indianapolis, Ind. The claim reads as follows:

"A bed-lounge composed of two folding sections hinged together, the lower one having a back rigidly attached thereto, and a fastening for the same, composed of two parts, one of which is fixed at or near the top of the inside of the head of the upper folding section, the other at or near the top of the back, so that when the lounge is folded up the two parts will engage with each other, securing the headrest of the frame to the back, substantially as shown and described."

As stated in the opinion of the court below (77 Fed. 205):

"The only novelty in the combination claimed by the complainant consists in the use of an eye on the headrest of the lounge, and a pin or hook on the back, so placed that the two will automatically engage when the two sections are folded together, and thus hold the back firmly in place."

We quite agree with that court that, in view of the common and diversified uses of similar devices for the accomplishment of similar purposes, it is impossible to find patentable novelty in the invention. The Braun patent, No. 177,462, shows a similar construction, designed to secure the upper head section on the lower stationary section, or, in other words, to prevent horizontal movement of the upper section; but it needed no power of invention to put into the groove in the back of Braun's lounge a pin, which should engage automatically with a hook, or spring catch, or other device there used, for the further purpose of holding the back firmly; especially since devices composed of two parts, but which were engaged by hand, had been used theretofore upon lounges for the same purpose. The decree is therefore affirmed.

UNIVERSAL WINDING CO. v. WILLIMANTIC LINEN CO.

(Circuit Court, D. Connecticut. July 27, 1897.)

1. PATENTS—PRESUMPTIONS FROM GRANT—ANTICIPATION.

The grant of a patent raises a presumption of operativeness and of some utility, and, if prior, though it be a mere paper patent, it may anticipate, if it sufficiently discloses the principle of the alleged invention. Such a patent may also be relevant, to show that another device does not infringe such an invention, but is merely an improvement on the prior patent, or an application thereof to a new purpose.

2. SAME—CONSTRUCTION OF CLAIMS—INFRINGEMENT—MACHINE FOR WINDING COPS.

The Wardwell patent, No. 480,157, for a machine for winding cops, construed, and *held* not infringed as to claims 1, 2, 3, and 4; and *held*, also, that claim 4 cannot be sustained in view of the prior state of the art, if so construed as to embrace unequal cone-pulleys as an equivalent of the means therein claimed.

3. SAME—ANTICIPATION—MUSEUM EXHIBITS.

Proof that long prior to the granting of a patent for a cop wound in a particular way several specimens of cops wound, so far as can be seen from their exterior layers, in exactly the same way, had been imported from the Fiji Islands, and kept on exhibition in the National Museum at Washington, and were known to many persons prior to the date of the alleged invention, is sufficient evidence of anticipation.

4. SAME—PROCESS AND PRODUCT PATENT COPS.

The Wardwell patents, Nos. 480,158 and 486,745, for a method of winding cops, and for a cop, respectively, are void for want of patentable novelty.