

which were paid to protect the property of which he now claims to be the owner. This court knows no such principle of equity and fair dealing. So much from the standpoint of the relation of the parties to this action; but, on general principles of equity and good conscience, the complainant does not stand in a position to enjoin the issuance of this tax deed without payment of the tax, so long as there is no just complaint against the groundwork or justness of the tax.

As was said in *Hart v. Smith*, 44 Wis. 218:

"Nor do we understand that the rule long established in courts of equity, that he who seeks equity must do equity, is qualified or abrogated in favor of a party who seeks to remove a cloud upon his title to real estate by reason of illegal proceedings, taken to enforce a valid tax assessed thereon; and that such party may demand, as a right, from a court of equity, that such cloud shall be removed without his doing what justice and equity demand,—that is, pay the tax. None of the cases in this court recognize any such right on the part of the plaintiff, and we think no such right exists. It would be a gross impeachment of the power of a court of equity to deny it the right to demand of its suitors good faith and common honesty, before it shall be compelled to grant them any relief."

So, conceding that the purchase by Russell simply amounted to the payment of a tax, the complainant is not entitled to any relief until he shall pay the taxes paid for his benefit. It is suggested by counsel for defendant that Russell purchased the tax certificates individually, and not as trustee. It is sufficient to say that he could not do this, as it would be a violation of his trust. In the foreclosure proceeding, had in Fall River county, the defendant Russell was seeking to have his mortgage declared to be a first mortgage, and, if he had succeeded, he would have added the taxes paid to the amount of his debt; and merely because he failed in his efforts is no reason why he should be barred from asking the complainant to do equity. The order of the court will be that the restraining order heretofore issued in this action be, and the same is hereby, continued for the period of 30 days; and it is further ordered that unless the complainant shall pay the taxes represented by the certificates of sale upon which defendant Corson is applying for a tax deed within said 30 days, said restraining order be set aside, and held to be of no force.

QUEEN CITY BARREL-HEADER CO. et al. v. STANDARD OIL CO. et al.

(Circuit Court, N. D. New York. November 13, 1897.)

PATENTS—CONSTRUCTION OF CLAIM—BARREL-HEADING MACHINES.

The Mulvaney patent, No. 437,785, for improvements in barrel-heading machines, is not entitled, in view of the prior state of the art, to a broad construction of the first and fifth claims, the novel feature of which consists in placing a counterbalanced ring on the outside of pivoted arms, so as to bring the bearing-pieces mounted thereon rigidly against the staves of the barrel, thereby forming a compressor; and these claims are not infringed by a device in which the old truss hoop is pulled down upon the barrel by the use of the well-known machine called "the Yankee cooper," or by a device in which the truss hoop is counterbalanced and pivoted to a rod moving vertically in a rigid standard, which is permanently fastened to the bedplate of the machine.

This was a suit in equity by the Queen City Barrel-Header Company and others against the Standard Oil Company and others for alleged infringement of a patent for improvements in barrel-heading machines.

John W. Strehli and E. H. Wells, for complainants.

M. B. Philipp, M. H. Phelps, and C. A. Talcott, for defendants.

COXE, District Judge (orally). This is an equity suit for the infringement of letters patent, No. 437,785, granted October 7, 1890, to J. J. Mulvaney, Jr., for improvements in barrel-heading machines. The claims alleged to be infringed are the first and fifth. They are as follows:

"(1) In a barrel-heading machine, a series of bearing-pieces mounted upon pivoted arms and constituting a compressor, means for bringing the bearing-pieces inward to encircle and bear against all the staves of the barrel at its periphery, and devices for holding said bearing-pieces rigidly in position against the staves while moving downward, in combination with mechanism for moving the compressor downward, substantially as described."

"(5) In a barrel-heading machine, a series of bearing-pieces mounted on arms, as B, in combination with a counterbalance, and a ring, as F, hinged to one of said arms, substantially as set forth."

The defenses are lack of novelty and invention and noninfringement. The latter defense is the only one which will be considered.

In view of the state of the art it is manifest that neither of the claims involved is capable of a broad construction. It is thought that the best reference of the defendants is the St. Louis prior use. It is established beyond doubt that long prior to the date claimed by the inventor for his invention a truss hoop was pulled down upon the barrel for the purpose of compressing the staves by a machine well known in the barrel-making art as "the Yankee cooper." If to the arms of the St. Louis device were added a series of broader bearing-pieces the operation would be identical with the operation now practiced in the defendants' factory. The proof is undisputed that for several years the defendants' method has consisted in pulling down upon the barrel the old truss hoop by the use of "the Yankee cooper," to the arms of which are attached broad bearing-surfaces. It is impossible to hold that a construction can be placed upon the claims broad enough to include this operation.

It appears also that before the method just referred to was used the truss hoop was counterbalanced and pivoted to a rod moving vertically in a rigid standard, the latter being permanently fastened to the bedplate of the machine. It is argued by the complainants that this latter construction is an infringement. This contention cannot be maintained. It would seem to be within the province of the ordinary workman, in view of the device shown in the English patent to Clapperston and Lyle, No. 1,764, July 4, 1865, in which a pivoted counterbalanced ring is shown, to provide such a device for holding and manipulating the hoop used in the St. Louis factory. But even if this were otherwise the hoop of the defendants can in no event be regarded as the equivalent of the ring of the patent. In neither of the methods used by the defendants do the bearing-pieces

of the pivoted arms constitute a compressor; in neither are the bearing-pieces brought inwardly to encircle and bear against the staves of the barrel; in neither is there a device for holding the bearing-pieces rigidly in position against the staves. The novel feature of the claims consists in placing the counterbalanced ring upon the outside of the arms so as to bring the bearing-pieces rigidly against the staves of the barrel. The defendants do not use this construction. The hoop of the defendants as first used was, as before stated, pivoted to a separate and independent standard and not to one of the moving arms, as described in the specification and fifth claim. The bill is dismissed.

PHOENIX IRON-WORKS CO. v. NEW YORK SECURITY & TRUST CO. et al.
(Circuit Court of Appeals, Sixth Circuit. December 7, 1897.)

No. 529.

MORTGAGES—AFTER-ACQUIRED PROPERTY—CONDITIONAL SALES.

Machinery constituting the complete steam plant and motive power of a street railroad, when placed in its power house, becomes an integral part of the property, as a railroad system, and passes under a mortgage, previously executed and recorded, covering the entire road and plant, constructed and to be constructed, though such machinery was placed in the building under a contract by which the seller reserved title until full payment was received therefor, which payment has never been made.

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

Bill was filed in the court below September 16, 1895, for foreclosure of mortgage executed by the Capital Railway Company, a corporation organized under the laws of Kentucky, with its principal office and business in the city of Frankfort, in that state, in favor of the New York Security & Trust Company, the original plaintiff in the court below; the same being a trust mortgage. The complainant is a corporation organized under the laws of the state of New York. The Capital Railway Company, the defendant, under authority conferred by its articles of incorporation, executed a mortgage on its franchise property and railway plant, of date September 26, 1893, to secure 70 bonds, in the sum of \$1,000 each, bearing date November 1, 1893, and payable November 1, 1913, with interest until paid at the rate of 6 per cent., payable semi-annually. This mortgage was acknowledged and recorded in the proper office, as required by law, October 16, 1893. The description of the property included in the mortgage is as follows: "All and singular, the aforesaid railroad of the said party of the first part, constructed and to be constructed, and situate, lying, and being in the city of Frankfort and in the county of Franklin and state of Kentucky, together with all the real and personal property and income of the said party, its lands, tenements, hereditaments, rights of way, fixtures, buildings, structures, road, switches, turnouts, ties, motors, cars, carriages, rolling stock, equipments, machinery, tools, implements, materials, chattels, privileges, franchises, rights, interests, appendages, appurtenances, incomes, rents, resources, benefits, investments, assets, and estates, legal and equitable, which are now owned, and shall hereafter be owned or acquired, by the said first party, or in any way belonging to or appertaining to its said railroad." The appellant, the Phoenix Iron-Works Company, intervened by petition in the case, and asserted a lien, prior to that of the mortgage, on certain machinery placed in the power house of the railway company, consisting of engine, stack, boiler, pump, etc., constituting the steam plant, and furnishing the motive power for the railroad. The Capital Railway Company had a contract with Frank Whitley to construct its lines and erect its power house, and furnish and set up its