

The single claim, as finally allowed, was as follows:

"The herein-described nippers, consisting of two levers pivoted together, and each provided in their jaw ends with coincident slots or recesses forming side bars, the bars of one lever being lapped between and close to the inner sides of those of the other lever, all arranged substantially as described, whereby a passage is provided through the nippers at right angles to the jaws, and in line approximately midway between the sides thereof, as set forth."

The patent is for a specific construction of an article of manufacture. The prior art showed such a cutting nipper outside, or at the side, of the nipping jaws, and the pivoted recessed levers, as shown in the drawings of the patent in suit, and lapped levers, as covered by the claim. The construction covered by the claim practically amounts to the same thing as the old familiar hand nipper, with a hole bored through it; and such a hole, extending through a vice, was shown in the prior art. The earlier Lewis patent sufficiently illustrates the position of the patent in suit. That the Lewis patent covers every essential feature of the patented nipper appears from a comparison of the specifications, and from the admissions of complainant's expert. Lewis describes the two jaw levers having their upper ends forked as in Broadbooks'. Broadbooks says:

"The two jaw levers, A and B, have their upper ends forked, the prongs of the lever, B, being passed between the prongs of lever, A, and the prongs are then pivoted together by means of two rivets, C,—one in each pair of prongs,—or by a single rivet, C', passed through all four prongs, as shown in Fig. 3."

This is the Lewis construction, and by means of it in each tool "an opening or recess is formed between the sides of the levers at the pivot or pivots, thus permitting of passing a rivet or wire between the [cutting] edges of the blades, and between the sides of the levers." If the complainant be limited to a narrow construction, the defendants do not infringe; for their flat-nosed plier is not a cutting nipper, and the passage between the pivotal portions of the levers is parallel with the sides of the levers, and not at right angles to the jaw. If complainant be permitted the expanded construction contended for, its patent is void, in view of the prior art. Let the bill be dismissed.

NEWTON ST. RY. CO. v. AMERICAN STREET-CAR ADVERTISING CO.

(Circuit Court of Appeals, First Circuit. July 19, 1898.)

No. 230.

PATENTS—CONSTRUCTION AND INFRINGEMENT—ADVERTISING RACK FOR STREET CARS.

The Randall patent, No. 380,696, for an advertising rack for street cars, if disclosing any invention whatever, must be very narrowly construed, and is not infringed by a structure which is not a complete article in itself, adapted to be readily attached to the car. 82 Fed. 732, reversed.

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

This was a suit in equity by the American Street-Car Advertising Company against the Newton Street-Railway Company and others for alleged infringement of letters patent No. 380,696, for an advertising rack for use in street cars.

In the specifications of his patent the patentee thus describes his invention:

"It has been the custom to place advertising cards in street cars at the corners formed by the roof and sides of the car. These cards have heretofore been simply tacked to the roof and side of the car, or held in place at each of said corners by means of two longitudinal strips,—one fastened to the framework of the roof, and the other to the framework of the side. My invention consists in an article styled an 'advertising rack,' constructed and applied at either of said corners, as hereinafter set forth, into which the cards may be conveniently placed, and from which they may be readily removed; the rack being an article complete in itself, adapted to be readily attached to the car at the place specified, where it will exhibit the cards therein in an attractive manner."

Fig. 1

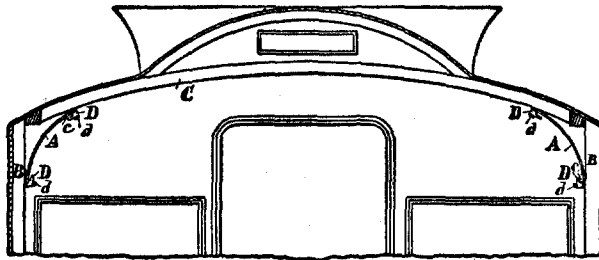


Fig. 2

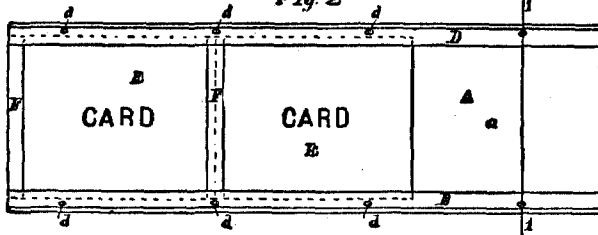


Fig. 3

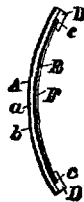


Fig. 4

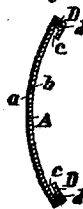


Fig. 5



While his application was pending in the patent office, the patentee, in endeavoring to distinguish the Akarman advertising device, which had been cited by the examiner as an anticipation, says:

"The Akarman device, before being fastened in place in car or elsewhere, is of several separate pieces, and does not form a rack to hold the cards until so fastened, while applicant's rack is complete and in condition to receive the cards when not fastened to the car."

The first claim of the patent, which alone was relied on and alleged to be infringed, is as follows:

"(1) An advertising rack adapted for use in a street car, consisting of the body, A, having a continuous concave face, and longitudinal moldings along the edges thereof, having grooves, c, adjacent to and in substantially the same plane as the concave face of the body, in combination with screws or equivalent devices for connecting the rack to the car, engaging with the moldings outside the grooves therein, substantially as and for the purpose set forth."

Frederick P. Fish and Charles G. Coe (George W. Morse and John C. Lane, on the brief), for appellant.

Causten Browne and William Quinby, for appellee.

Before COLT, Circuit Judge, and WEBB and BROWN, District Judges.

PER CURIAM. While we entertain doubts whether the complainant's device involves invention or patentability, yet, admitting that both were found in it, the patent must be held so close and narrow that it is not infringed by a structure that cannot be described, in the language of the patent, as "an article complete in itself, adapted to be readily attached to the car at the place specified," or, in the language impressed upon the patent office, a rack "complete and in condition to receive the cards when not fastened to the car." We are clear, therefore, that the respondent's structure does not infringe.

The decree of the circuit court against this appellant, the Newton Street-Railway Company, is reversed, and the case is remanded to that court, with directions to dismiss the bill, with costs; the appellant to recover the costs of this court.

THE VICTORIAN.

(District Court, D. Washington, N. D. July 22, 1898.)

SEAMEN'S WAGES—DESERTION—EVIDENCE FROM LOG.

By the act of February 18, 1895, the act of August 19, 1890, was so revised and amended as to exempt vessels in the coastwise trade (except between ports in the Atlantic and ports on the Pacific) and vessels engaged in trade between the United States and Canada from the requirements of the act of 1872 as to keeping official log books. Hence the wages of deserting seamen may be adjudged forfeited without any proof that they were ever noted in the log book as deserters.