THE COURT refused the order to go in evidence to the jury, because it was not stamped.

They also instructed the jury that the plaintiffs could not recover on the defendant's promise, unless he had signed a note in writing promising to pay, etc., that its being a conditional promise did not take it out of the statute of frauds, and that the entry in the defendant's books was not a sufficient note in writing to charge the defendant.

They refused to instruct the jury that, if at the time of the promise the defendant was indebted to Bryan in a sum equal to the plaintiffs' claim, the evidence was applicable to the count for money had and received.

KILTY, C. J., absent.

TERRIBLE MIN. CO. v. ARGENTINE MIN. CO.[1]

(Circuit Court, D. Colorado. November, 1883.)

1. MINES—LOCATION—DISCOVERY SHAFT.
   A valid location of a mining claim must show in the discovery shaft a vein or lode of valuable ore in rock in place.
2. SAME.
   If a miner, after sinking a shaft, fails to find a lode, and then sinks another shaft, in which he does find one, he may make the latter his discovery shaft, on which location may be based.
3. SAME.
   A location is not valid beyond the limits of the lode on which the discovery is based.

Action by the Terrible Mining Company against the Argentine Mining Company.

HALLETT, District Judge (orally). That the plaintiff bringing his action to recover possession of a mining claim, must show a good location in compliance with the statute in respect to locations; i. e.: he must show in his discovery shaft a vein or lode of valuable ore, in rock in place, as well as compliance with the statute in other regards. The miner is not bound to make the first shaft or opening which he may sink, his discovery shaft. If, after sinking in one place, and failing to find a lode, he sinks in another, and finds one, he may make the second his discovery shaft, on which location may be based. That it is competent for him to make any shaft he may sink his discovery shaft, but it must disclose a lode or vein in rock in place, not simply mineral in a fragmentary condition. A location is held valid only to the extent of the lode which is included within it. If a location is extended beyond the limits of the lode, in so far as it goes beyond the lode it is held invalid, for the reason that the location gives no right to the surface, except in connection with the lode.

[1] This case has been heretofore reported in 5 McCrary, 639, and is now published in this series, so as to include therein all circuit and district court cases elsewhere reported which have been inadvertently omitted from the Federal Reporter.

BRAZEL v. EAU CLAIRE MILL-SUPPLY CO.

(Circuit Court, W. D. Wisconsin. October 25, 1898.)

No. 294.

1. PATENTS—VALIDITY—IMPROVED SNOWPLOWS.
   The Brazel patents, Nos. 298,441 and 367,694, for improvements in snowplows, are void for want of invention or patentable novelty, and were anticipated, more particularly by the Wyman Canadian patent, issued in 1873, and the Beer patent, No. 97,474, and, as a machine for cutting ruts, by an unpatented machine made and used in the pineries in Wisconsin in 1880.

2. SAME—MECHANICAL EQUIVALENTS.
   Adjustable wings attached to a snowplow, in the rear of the plows proper, for the purpose of carrying the snow loosened by the plows further away, are the equivalents of a rear set of plows used for the purpose of throwing the snow removed by the forward plows to a greater distance.

Suit in Equity for the Infringement of a Patent.

Watts S. Humphrey, for complainant.
Paul & Hawley, for defendant.

BUNN, District Judge. This is an action brought to restrain the defendant from infringing two letters patent for improvements in snowplows. The first patent was issued May 13, 1884 (No. 298,441), and the second on August 2, 1887 (No. 367,694). Infringement is alleged of the first claim of the 1884 patent, which is as follows:

"(1) The combination, with the plow frame or main frame and the supporting runners, of the adjustable plows, G, the adjustable pivoted wings, E, and hinged bars, F, substantially as and for the purpose set forth."

And of the second and third claims of the 1887 patent, which are as follows:

"(2) In a snowplow, the combination, with a central supporting beam having a bobsled secured at each end thereof and to suitable side beams, of moldboards mounted in connection with the said side beams, extension wings hinged in the rear of said moldboards, and a supplemental plow, adapted to be raised and lowered, operating in conjunction with the central and side beams ahead of the moldboards, substantially as described.

"(3) In a snowplow, the combination, with a central supporting beam having a bobsled secured at each end thereof and to suitable side beams, said beams having moldboards arranged on each side thereof and in connection therewith, of an independently operating plow arranged in front of the said moldboards, and adapted to be raised and lowered, substantially as described."

By the specifications and drawings of the first patent, it appears that the device consists of an ordinary bobsled having longitudinal beams, supported upon the crossbars of the front and rear sleds. Upon this frame are placed two moldboard plows with means for raising and lowering them. Behind these plows, supported upon the same frame, are diverging wings, one on each side, pivoted or hinged at the front ends to the beam, and having their rear ends connected to the hinged bars. The plows are thus adjustable vertically in order