

On the face of the patent, therefore, what the patentee did was to unite two old features; that is, he united the open loop and the roller of the prior art.

Turning to the record the statements of the patent are verified and all the features of the patented device are shown in the patents to Dennis, Le Blond and Strong, respectively, the first named showing the roller in a closed loop and the other two the open loop without the roller. Any one who places the Dennis roller in the Strong or Le Blond guides, or who makes the Strong or Le Blond opening in the Dennis guide will produce the patented structure. The device is an exceedingly simple one and in view of the fact that both features clearly appear in the prior art it is thought that no patentable novelty can be predicated of their union. Bearing in mind what was well known before it was nothing but the work of the ordinary mechanic to place an antifriction roller in the old guide when greater freedom of movement was required.

The bill is dismissed.

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MOORE v. MARNELL.

(Circuit Court, N. D. New York. April 7, 1899.)

PATENTS—INVENTION AND INFRINGEMENT—APPARATUS FOR DIGGING TRENCHES.

The Moore patent, No. 524,502, for improvements in hoisting and conveying apparatus used in digging sewer trenches, construed, and held to show patentable invention, and also held infringed.

This was a suit in equity by Thomas F. Moore against Thomas Marnell for alleged infringement of a patent for improvements in apparatus used in digging sewer trenches.

George W. Hey, for complainant.

M. L. McCarthy, for defendant.

COXE, District Judge. This is an equity suit for infringement of letters patent, No. 524,502, granted to the complainant August 14, 1894, for improvements in hoisting and conveying apparatus employed in digging sewer trenches. The first claim only is involved. It is as follows:

"1. In a hoisting and conveying apparatus, the combination with tracks arranged lengthwise of the trench to be excavated, of a conveyer car running upon said tracks and provided with an open base frame and an open raised frame, forming an aperture for the passage of the hoisting bucket, a platform arranged on said raised frame adjacent to said aperture, and guide wheels mounted on the raised frame above said platform, and hoisting and draft cables running over said guide wheels respectively, whereby such cables are supported clear of the operator standing upon said platform, substantially as set forth."

The defenses are the usual ones, anticipation, lack of invention and noninfringement.

It is thought that the claim covers ingenious congeries, constituting a distinct improvement over anything in the prior art. The machine of the patent expedites the work of digging trenches in crowded cities without closing the streets or seriously interrupting

traffic. Only one section of the trench need be kept open, the rear of the trench being filled in proportion as the front is excavated. The machine has been received with approbation by those engaged in trench-excavating and has quite generally superseded the old methods. In view of all this the court is of the opinion that it would be an injustice to Mr. Moore to classify his achievement as one within the sphere of the skilled workman only. The defendant's machine is the exact counterpart of the machine of the patent, except that his platform is not located precisely as shown in the drawings. The position of the platform is not of the essence of the invention. The claim provides for "a platform arranged on said raised frame adjacent to said aperture." The defendant has such a platform enabling the operator while standing thereon to do all the necessary work. The complainant is entitled to a decree.

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CARLSON v. UNITED NEW YORK SANDY HOOK PILOTS' ASS'N et al.

(District Court, S. D. New York. April 7, 1899.)

MASTER AND SERVANT—FELLOW SERVANTS—NEGLIGENT KILLING OF SEAMAN.

A steam pilot boat approached an outgoing steamship for the purpose of taking off her pilot, which was to be done by holding the pilot boat as near as safe and practicable, to the steamer while a small boat was lowered and rowed to the steamer, returning with the pilot. *Held*, that a mate of the pilot boat, who had charge of her navigation, was a fellow servant of the men lowering the small boat and the seamen therein, each being at the time engaged in executing a part of a common undertaking in which each took the risk of the others' negligence, and that the owners could not be held liable for the death of the seamen in the small boat, though caused by the negligent navigation of the pilot boat by the mate after the smaller boat had been lowered alongside.

In Admiralty. Death claim. Pilot boat.

Wheeler & Cortis, for libellant.

J. Culbert Palmer and Harrington Putnam, for respondents.

BROWN, District Judge. The above libel was filed by the administrator of Theodore Carlson, a seaman on the steam pilot boat New York, whose death is alleged to have been caused by the negligence of the mate of the New York in reversing the propeller, in consequence of which the yawl, in which the seaman had just launched, was caught and the two seamen in her killed. The accident occurred at about 10:30 p. m. of November 12, 1897, outside of Sandy Hook, and a little to the eastward of the easterly end of Gedney Channel.

The steam pilot boat New York was 177 feet long, and built expressly for the pilotage service. She was owned by the United New York Sandy Hook Pilots' Association and the United New Jersey Sandy Hook Pilots' Association, which were corporations organized under the state acts of New York and New Jersey, upon the reorganization of the pilotage service in 1895, for the purpose of taking the title to all the pilot boats used in the service; and the New York was built by those corporations afterwards for the same service. These corporations exercised no control over the management or