

The fifth clause contains provisions concerning the sale by complainants to other parties not material to the subject matter of this inquiry. It is provided in the said clause that complainants shall have the exclusive right in said territory to use any and all improvements upon said presses, which shall hereafter be made, and which shall be owned by or under the control of said parties of the first part, and shall have the right to adapt said improvements to all presses purchased by them before the date of said improvements.

The complainants were, therefore, not grantees of an exclusive right under the patent or any other right in the whole or any specified part of the United States. They were licensees with the right of using and vending to others to be used, within the specified territory, such presses embodying the patented inventions as they might purchase of the Allen Company, which owned the patents, and having coupled with that license a grant of the exclusive right to use, rent, and vend said presses in the specified territory upon the prescribed conditions, and a covenant for protection in the exclusive use and enjoyment of said automatic printing presses aforesaid and of the improvements aforesaid.

Such a contract clearly gives the licensee no right of action for an infringement of the patent. To enable the purchaser to sue, the assignment must, undoubtedly, convey to him the entire and unqualified monopoly which the patentee held in the territory specified, excluding the patentee himself as well as others. Any assignment short of this is a mere license, and the assignee cannot maintain an action for an infringement, and he alone can maintain an action against a third party who commits an infringement upon it.

Even when a suit is brought for the infringement of a patent, proceedings in equity may usually be maintained, as a more practical and efficient remedy.

No one can maintain a suit for the infringement of a patent except the patentee, or an assignee who owns the entire right in it for a specified territory, exclusive of the patentee himself. The owner of the exclusive right to use a patented article, and to sell it within a specified territory, but not the right to manufacture it, is a mere licensee, and cannot maintain an action for infringing the patent.

The parties who own the exclusive right to use and sell a patented invention within a specified territory, and guarantee its enjoyment from the patentee, cannot maintain a bill for an injunction and for an account against the patentees and parties who, with knowledge of the contract, have purchased the arrangement from them without the territory, and are using it within it.

The federal courts have no jurisdiction over a suit brought to enforce such a contract against the patentees, and the purchasers from them, where all the parties are citizens of the same State.

Bill dismissed.

[Causen Browne and James S. Holmes, for complainants.

George S. Hittard, James E. Maynard and M. F. Dickinson, for defendants.]

United States Circuit Court--District of California.

PATENT AMALGAMATING PAN.—COOLIDGE vs. MOORE.—INFRINGEMENT.

[Decided March 5, 1874.]

In a patent for an amalgamating pan, a claim for "constructing and placing the shoes and dies upon upper and nether disks obliquely at about the angle as described, together with the beveled bars B B B, etc., is a claim for the shoes and dies in combination with the bars.

The claim is not infringed by using the shoes and dies without the bars, although it should be shown that the bars are of no use in the combination.

Sawyer, Circuit Judge, delivered the opinion of the court.

We have examined the specifications annexed to the patent very carefully, and it is very plain to our minds that the patent is for a combination of several elements or parts. The petitioner commences by describing the drawings, and then states as follows:

The nature of my invention consists in the arranging of shoes and dies having grooves or channels cut obliquely from the circumference to the center, terminating in a line of a radius to the center or axis. My invention also relates to beveled bars placed between each die and partially filling the grooves, for the purpose of keeping the ore near the same as they pass each other.

Then he describes how the dies are fixed to the disks, and tells us how other dies have been used in a different arrangement; points out how the beveled bars are arranged in connection with the other parts; describes their operation, and concludes with the claim, which is in the following words:

I do not claim broadly the use of shoes and dies for the purpose of reducing amalgamating ores, for these are well known and used. What I do claim, however, and desire to secure by letters patent, is constructing and placing the shoes and dies upon upper and nether disks obliquely at about the angle as described, together with the beveled bars B B B, etc., substantially as described, and for the purposes set forth.

There is nothing to show that this combination was made or sold by the defendant, or that he has made portions of it and sold them to other parties, with the knowledge that they were to be used in connection with the "beveled bars" for the purpose of making up a single complete machine.

The court thereupon advised the jury to return a verdict for the defendant, which was accordingly done.

Lewis & Deal and Beatty, for plaintiff.

Williams & Bizzer, for defendant.]

United States Circuit Court--Southern District of New York.

PAPER BAG MACHINE PATENT.—THE UNION PAPER BAG MACHINE COMPANY

et al. vs. GEORGE L. NEWELL et al.

Blanchard, Judge:

By the 61st section of the act of July 8, 1870, (16 U. S. Statutes at Large, 209,) it is provided that in a suit in equity for relief against an alleged infringement of letters patent, certain specified defences may be pleaded and proofs of the same may be given upon certain specified notice in the answer of the defendant, and with a certain specified effect. Among the defences specified in the section are that the patentee was not the original and first inventor or discoverer of any material and substantial part of the thing patented, and "that it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public." As to notice in the answer, the section requires that, in giving such notice as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state in the answer "the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used." As to the effect specified, the section provides that "if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs."

This is a suit in equity for relief against an alleged infringement by the defendants of letters patent of the United States granted to Benjamin L. Binney, assignee of E. W. Goodale, as inventor, September 12, 1865, for a machine for making paper bags. The bill was filed May 13, 1873. The answer was filed July 7, 1873. The replication was filed August 25, 1873. The plaintiffs commenced taking proofs for final hearing by the examination of witnesses orally, before an examiner, under the 67th rule in equity, as amended, and by the filing of a paper proof, on the 23d of November, 1873. The plaintiffs rested their case on the 6th of November, 1873. The defendants so far as appears, have taken no proofs for final hearing. On the 25th of November, 1873, this court, after a full hearing of both parties, granted a preliminary injunction restraining the defendants from infringing the patent by using the invention described and claimed in the first claim thereof.

The answer of the defendants sets up, in general terms, a denial that E. W. Goodale was the original and first inventor of what is claimed in the patent or of any substantial or material part thereof, and a denial "that the same was not known or used before, or that it was not, at the time of the application for letters patent * * * in public use or on sale;" and avers in general terms "that the said alleged invention and improvements contained in said letters patent were in public use and on sale for more than two years prior to the date of the aforesaid application for letters patent thereof, or of any invention of the same by or on the part of said E. W. Goodale." But the answer does not state the name or residence of any person whom it alleges to have previously invented or to have had prior knowledge of the thing patented, nor does it state where or by whom the thing patented had been previously used, nor does it set up any defence of the abandonment of the invention to the public by E. W. Goodale as inventor.

Under this state of facts the defendants, not having obtained any leave to amend their answer or any extension of the time for taking proofs, which has expired by the lapse of time, now apply to the court, on affidavits to dissolve the injunction referred to. The affidavits seem to be intended, so far as they relate to defences authorized by the 61st section, to raise the defence that the invention covered by the first claim of the patent was, with the consent and allowance of E. W. Goodale, in public use in Clinton, in his proofs, and that the same was in public use before the application for the patent was made, and perhaps the defence that E. W. Goodale was not the original and first inventor or discoverer of what is covered by the first claim of the patent. The plaintiffs take the objection as a bar to the hearing of the application, so far as it rests on said defences, that, inasmuch as the defences attempted to be set up in the affidavits could not be availed of by the defendants in the taking of proofs for final hearing, both because the proofs are closed and the time is ready for final hearing, and because also the defendants have laid no foundation in their answer for putting in any proof to sustain such defences, such defences cannot be availed of to dissolve the injunction granted. This objection must prevail. No ground is shown in any other respect for dissolving the injunction.

In order to avoid any implication that the defences sought to be set up in the affidavits as defences under the 61st section would, on the papers put in on both sides on the application, be regarded as made out to such an extent, at least, as to warrant the dissolving of the injunction or to have required the withholding of the injunction when originally granted, it is proper to say that an examination of such papers has led me to the conclusion that no such result would follow from a consideration of the fact established by such papers.

The motion to dissolve the injunction is denied.

[George Harding and Horace Binney, Sd. for complainants. Marcus P. Norton, for defendants.]

United States Circuit Court--District of New Jersey.

WETHERILL et al. vs. THE NEW JERSEY ZINC COMPANY.

McKenna, Circuit Judge:

At a final hearing of this cause it was adjudged that the defendants had infringed letters patent granted to Samuel Wetherill, on the 13th of November, 1855, and extended for seven years, for a process for making white oxide of zinc, and they were perpetually enjoined "from the further conducting, selling, or using in any way or manner, directly or indirectly, the said patented invention, or any part or parts thereof." They are now alleged to have violated this injunction in the use of a process substantially the same as Wetherill's, or at least embracing its essential features, and a motion has been made for an attachment against them for contempt.

The characteristic features of Wetherill's process were stated to consist in the employment of a thin bed fire of chestnut coal and of a superincumbent layer of pulverized ore and pea coal of the approximate thickness of three inches, the enforced passage of atmospheric air in numerous jets

through the mass, by which its combustion is maintained, the vaporization of the zinc and its oxidation in the furnace above the charge, when the zinc in the ore is expelled, and the repetition of the process. In the blast furnace—to which alone, as a prior device, it is necessary to refer—the fuel and ore are not comminuted, nor is the charge spread in a thin layer, and when its working is begun it must necessarily be continued without interruption until the furnace is blown out. In all these particulars the Wetherill process is different. The bed fire consists of fuel in a comminuted form; so also does the charge of mingled ore and carbon. This charge is spread in a layer of the maximum depth of eight or nine inches, and through it is diffused a blast of air, not only to keep up combustion, but to supply the vaporized zinc with sufficient oxygen in the furnace chamber to convert it into white oxide, and when the metallic zinc is expelled from the ore, the scoria or slag is removed and the process repeated. It is thus an alternating process, inasmuch as it is susceptible of temporary suspension and repetition, whereby it is distinguishable from the operation of the blast furnace, which is continuous and incapable of interruption.

The process used by the defendants is claimed to differ essentially from Wetherill's, first, in the character of the charges employed, and, second, in the continuity of their treatment; and upon the determination of these facts the result of the present application depends.

The defendants introduce a supplemental blast into the furnace chamber above the charge. No such blast is used in the Wetherill process, and the proof at the final hearing of the cause demonstrated that the results were perfect without it. Now, if the means employed by the defendants to supply the charge with air beneath it operate less efficiently than Wetherill's, although they are identical in function in the mode of operation, does it follow that a necessary supplement in air is necessary in the other process? We think clearly not. We think clearly not. But in point of fact the oxidation of the zinc fumes is effected by the lower blast in the defendant's method as in Wetherill's. This is the import of Mr. Kenwick's testimony, who says that vapors fit to go to the collecting chamber were coming off the charge before the supplemental blast was turned on. But, in view of the preponderating weight of the proofs taken before the final hearing, if the product is not perfect without this additional supply of oxygen, it must be ascribed to the defective application of the lower blast, and not to any essential difference in the character of the method of introducing it.

We are therefore drawn to the conclusion that a preliminary bed fire, or thin charge of comminuted ore and carbonaceous matter, and the enforced passage of the air in numerous jets through the mass, by which its combustion is maintained and vaporization and oxidation of the zinc above the charge, when it is expelled from the ore, are effected, are features common to both Wetherill's and the defendants' methods.

We are satisfied that the method complained of is, in substance and character, the same with the method pursued by the defendants before the injunction, for the use of which they were adjudged to be infringers.

A billable attachment must, therefore, be awarded against the president of the defendant company, upon whom the injunction was served, and who is shown to have devised and practiced the transgressing process.

Recent American and Foreign Patents.

Improved Gas Regulator.

Joseph Adams, Washington, D. C.—This invention relates to that class of regulators in which the pressure of the gas acts upon a flexible diaphragm to which is attached a valve that opens or closes as the gas is turned on or off from the burner, or as the pressure varies from the street mains; and it consists in a new and improved arrangement, in which the valve is made more sensitive to the pressure of the gas by means of a balloon-like arrangement of thin metal in the diaphragm that opens down through the valve, and, being constantly filled with gas, counteracts, by its buoyancy, the weight of the valve, and hence makes the diaphragm, as connected with the valve, more sensitive to the pressure of the gas.

Improved Hydrant.

John Thomas Davis, Washington, D. C.—This invention is designed to provide novel means calculated to facilitate the operation and manipulation of hydrants, while they are also effectually prevented from freezing in the severest temperature of the winter.

Improved Saw Mill.

John N. Hall, Central City, Col. Ter.—The features of this invention are: An improved apparatus for adjusting the ends of the log as it rests upon the head blocks; for adjusting the log for slabbing; for automatically moving the log laterally toward the saw after each cut, or from the saw when necessary; and for operating the log carriage.

Improved Velocipede.

Friedrich C. Scharff, Chillicothe, O.—This is a perambulator to be used by grown-up persons and children for the conveyance of parcels. The horizontal frame is supported on the crank axle, to which the driving wheels are keyed. The middle part of the frame has a seat. Upward and downward extending standards are cast to form the bearings for crank shafts, by which the motive power is transmitted from hand cranks of the upper shaft to the driving wheel. These shafts, as well as the axle of the driving wheels, are provided with double cranks, one crank on each shaft being under right angles to the other. The crank rods connect the upper driving shaft with the lower crank shaft, and suitable rods connect the lower shaft with the crank axle of the wheels, transmitting thus the driving power to them. The lower shaft is also provided with radial arms and weights, which serve the purpose of a fly wheel, and assist transmission of power. There is also a guide wheel, readily governed.

Improved Portable Feather Renovator.

Abner B. Hutchins, Brooklyn, N. Y.—There is a perforated plate for distributing the steam throughout the mass of feathers contained in a cylinder. A jacket surrounds the cylinder, to confine the steam for drying off the feathers, and there is a flexible tube for discharging the feathers from the cylinder into the sack. The jacket is arranged to form the bottom, sides, and top of the truck body; also a protecting case for the steaming cylinder. The steam pipes are provided with cocks, controlling the steam so as to let it into the cylinder, first for steaming the feathers, and afterward into the jacket for drying them off.

Improved Breech Loading Fire Arm.

Joseph C. Dane, La Crosse, Wis.—This invention relates to means whereby the barrel or barrels of a breech loader may be conveniently locked to and unlocked from the stock, and consists in a slide that forms both a part of the trigger guard and a part of the mechanism for operating the key.

Improved Paper Box Machine.

William Gates, Frankfort, N. Y.—A roll of paper or straw board is placed on a spindle supported by arms, and its end is carried under a slitting cylinder where slits are cut by spring cutters. The paper is carried from the slitting cylinder upward, and under the pasting roller, whence it is carried to the platen, the face of which is provided with small points, which hold the paper in place over the mold ready for the plunger. Each plunger is preceded by a knife, which cuts off the paper for the box. The plunger forces the paper into a recess, and doors are then forced against its sides, forming the box. The parts are then firmly pressed together by suitable mechanism.

Improved Painter's Pail.

Francis C. Landon, Josiah Smith, and James H. Flood, Southold, N. Y.—This is an improved painter's pail, so constructed as to enable the painter to take up the ladder with him paints of different colors, and a large and a small brush for each color, with the same facility that he now takes paint of a single color. It consists of a tray having a cover provided with holes not unlike a table castor, into which two or more paint buckets may be set. Receptacles are provided for brushes, etc., and the whole is suitably suspended.

Improved Car Starter.

William Guilfoyle, New York City.—This invention consists of double drums with central or side ratchet wheels, which are keyed to the axles of the car wheels, and encircled by metallic springs or bands lined with leather, one end of said bands being connected to a heavy elliptic or other shaped spring, the other to a chain which passes over a windlass roller and pulley to the brake shaft. Loose bands or shoes of the drums take off the friction and wear from the connecting bands, and preserve the same thereby.

Improved Device for Cleaning Bottles, Barrels, etc.

John C. G. Hüpfel, New York City.—This invention consists of a tubular standard having a perforated cylindrical extension tube, which is inserted into the bottle or barrel till the projecting stem of a conical valve at the base of the extension tube is carried down by the pressure thereon, opening the valve and forcing the water instantly through the perforations to the inside of the barrel. The pressure of the water closes the valve as soon as the object to be cleaned is raised from the valve stem, and thereby the supply cut off. This is a very ingenious contrivance for accomplishing the object designed for it.

Improved Sewing Machine Table and Cabinet.

Harriet R. Tracy, New York City.—This invention consists in combining with a sewing machine table a set of drawers, which are pivoted at the front corner in such a manner as to enable the same to be turned beneath the body of the table top when not in use, and to be turned in an outward direction therefrom to bring the drawers in prolongation of the end of table, in order to form an extension of the latter for supporting work. The invention further consists in applying, to the bottom of the drawer frame, hinged legs which can be turned down to rest on the floor for relieving the hinges of the drawers from all strain, the bar being also hinged so as to enable the same to be turned up against the drawer frame, in order to enable the latter to clear the base of the table or cabinet and the treadle. At the upper edge of the drawer frame is a hinged bar carrying a hinged leaf, which is adapted to be turned against the edge of the table top for forming a flush surface, and to be turned in an outward direction from the drawers to form an extension leaf. There are two pivot plates for sustaining the leaf of the drawer frame in an extended position, said plates being adjustable vertically.

Improved Device for Burning Hydrocarbons.

George W. Rumrill, Lima, Peru.—This invention consists of an air blower (in combination with a boiler having the oil delivered into the furnace in spray by a steam jet) to be used for producing a jet before steam is raised. The blower is connected with the boiler, or to the steam pipe leading to the injector. This is an apparatus for regulating the delivery of the oil into the furnace, and for shutting it off altogether and letting it on, so arranged that by turning the screw the steam pipe will be shifted forward and back to open or close the annular space between its nozzle and that of the oil pipe. This device for burning hydrocarbons has been in successful operation for some time, and further information may be had concerning it by addressing J. G. Holbrook, Guardian Mutual Life Insurance Company, 251 Broadway, New York City.

Improved Rotary Engine.

Josiah C. Hamilton, Ashtabula, O.—The steam enters alternately from the cut-off valve to sliding abutment valves, and from them to the piston by a top slot on one side and a bottom slot at the other side, and vice versa when reversed. This, with the action of a sliding tube which controls the exhaust, causes the effective rotation of the shaft at any point of the piston, and without dead points.

Improved Frame for Cultivators, Scrapers, etc.

John W. Rabb, La Grange, Tex.—This invention consists in so constructing the running gear of a two wheeled vehicle, that it may be conveniently applied to the several purposes. The axle is bent four times at right angles, giving it a crank form, and may be turned down to bring its side parts into a horizontal position, or turned up to bring its side part into a vertical position without changing the position of the cross beam. It may be locked in place, when turned up, by a button, which may be turned over the side part. The plows can be raised and lowered by simply loosening the nuts and bolts. The lower parts of the standards are curved to give any desired pitch to the plows. By attaching a marking plow to each end of the cross beam, two rows, six feet apart, may be marked at a time. By attaching a third plow to the center of the cross beam, three rows three feet apart, may be marked at a time. A scraper plate is bolted to the forward side of the cross beam, and is intended for use in covering cotton, corn, and other seeds, for filling up inequalities in the surface of the ground, to move the soil loosened by the plows in roadmaking, and for other similar uses. By suitable construction, should an obstruction be encountered, a very slight rise of the rear end of the machine will change the line of draft so that the draft upon the machine will raise the axle into a vertical position, raising the plows, harrow, scraper, or whatever may be attached to the cross beam, and enabling them to pass over the obstruction. The machine can be used as a cart without detaching the plows, scraper, or harrow that may be attached to it, by simply raising the axle into a vertical position.

Improved Car Coupling.

Alexander Crocker, La Crosse, Wis.—This invention consists in a novel mode of constructing a two part coupling link so that the two sections cannot come apart (as long as the conjoined cars remain on the track), nor turn on each other; but if one runs off an embankment or bridge and turns over, a wooden pin may be at once broken, one section turned on the other and the two separated.

Improved Automatic Car Coupling.

Ezra N. Gifford, Cleveland, Ohio.—This invention relates to car couplings that are bifurcated and operated by the pressure of the link, and consists in making enlargements on the coupling pin to prevent it from rising or falling when upheld; in reducing the pin at a certain part to enable it to be reversed; in providing the drawhead with side projections and the buffer head with an incline, to hold up the coupler; and finally, in making a short upward incline on the coupling pin, to receive the advancing link and facilitate the tripping operation.

Improved Jump Seat for Carriages.

John A. Hanna, Bel Air, Md.—This invention consists in the improvement of the ordinary jump seats of carriages, by causing the rear seat that turns forward and backward to be supported in both positions by the same side handle, and to allow said support to set well forward and the bolt to go up through the seat without running into the end panels.

Improved Hand and Foot Power.

John J. Kimball, Naperville, Ill.—This is an ingenious combination of levers, so arranged that the operator, by throwing his weight alternately upon his heels and toes, and, at the same time, alternately pushing and pulling upon the levers, can give a steady and uniform motion to the shaft and through it to the machine to be driven.

Improved Car Coupling.

Jacob F. Burner, Elko, Nevada.—This automatic car coupling consists of a stationary lower jaw with hinged upper spring jaw, which is provided with a pivoted hook and yoke for coupling the slotted arrow or other shaped link, and lifting the same for uncoupling, so as to detach it from the hook ends of the jaws. The pivoted jaw and hook are connected, by a chain, with suitable mechanism to raise them and uncouple the link.

Improved Belt Tightener.

Charles L. Work, Cincinnati, Ohio.—This is a simple and convenient device for tightening belts easily and quickly, and without removing them from the pulleys. A block, which is securely clamped to one extremity of the belt, carries a rack parallel in direction to the latter. On this rack travels (by means of a cog and handle) a second block, which is secured to the other end of the belt. By running the sliding block forward, the two ends are brought together and the belt tightened, when it can, through its portion between the blocks, be cut and released.

Automatic Machine for Retouching Photographic Negatives.

Alfred S. Johnson, Waupun, Wis.—This invention consists of automatic mechanism to be worked by spring power or other means, a pencil holder, a cam or other equivalent device, and one or more springs, so combined and arranged that a reciprocating motion may be imparted to the pencil to cause it to strike blows on the negative with its point in quick succession for the employment of mechanical means in substitution of the hand process always heretofore employed for this purpose.

Improved Fire Shovel.

John B. Firth, Brooklyn, N. Y.—This is a durable coal shovel, which may be stamped of two parts, in such a manner that not only a stronger connection of handle and shovel is produced, but also the double use of a shovel and stove lid lifter be obtained. The invention consists in so cutting the back of the shovel, and lapping the edges over each other, that a strong connection of two thicknesses, with two rivets only, is obtained.

Improved Lumber Carrier.

Esau Tarrant, Muskegon, Mich.—This invention proposes the construction, in lumber yards, of long tracks, between which are numbers of transverse rollers. The planks are laid upon the latter, and held against them by passing under other rollers, disposed at intervals, held in spring bearings. Each plank passing between the rollers will be pushed against the one ahead of it, and that one against the one ahead of it, and so on to any extent, so that they can be carried by this plan to any distance that may be required.