

DECISIONS RELATING TO PATENTS.

United States Circuit Court.—District of New Jersey.
THEBERATH vs. THE RUBBER AND CELLULOSE HARNESS TRIMMING COMPANY.

Nixon, D. J.:

Letters patent No. 99,032 held invalid.

Letters patent No. 99,032, granted to Theberath, for an improvement in the covering of harness trimmings, held to be invalid for the reason that the invention was in public use more than two years prior to filing the application, that fact appearing from the admissions of the plaintiff upon cross-examination.

Patents for designs have reference to appearance rather than utility. Their object is to encourage the arts of decoration rather than the invention of useful products; but all regulations and provisions that are applicable to the obtaining or protecting of patents for inventions are by section 4,933 made applicable also to design patents.

A design patent may be defeated, therefore, upon proof that articles which revealed to the eye the same design which is the subject of the patent were publicly made and sold for more than two years before the application was filed.

United States Circuit Court.—District of Connecticut.
ANDREWS *et al.* vs. EAMES.

Shipman, J.:

The driven well patent—reissue sustained.

The validity of the reissued patent to Nelson W. Green for driven wells sustained on authority of prior decisions.

The patent is infringed by boring or digging to the sources of the water supply when the soil is rough, or for other reasons it is difficult to drive or press a tube into the soil, provided, before a supply of water is reached, the patented process is thereafter used for the purpose of obtaining an adequate flow of water upon the surface of the ground.

This is a bill in equity to restrain the defendant from the infringement of reissued letters patent to Nelson W. Green, dated May 9, 1871, and commonly known as the "Driven Well Patent." The original patent was issued January 14, 1868. The litigation upon the construction and validity of this patent began in the United States Circuit Court for the Eastern District of New York. Judge Benedict's opinion sustaining the patent (*Andrews vs. Carman*, 13 Blatchf., C. C. R. 307) has been followed by Judge Blatchford (*Andrews vs. Cross*, 8 Fed. Rep. 269) and by the circuit courts in other districts wherever the question has been tried. The decision of Judge Gresham in *Hine vs. Wahl*, also sustaining the patent, has recently been affirmed by an equally divided Supreme Court. In this state of the litigation the construction which was given to the patent by Judges Benedict and Blatchford will be followed without discussion.

The defendant relied upon the invalidity of the reissued patent, its want of novelty, and upon non-infringement.

The first defense presents a question upon which I much desired to read the views of the Supreme Court in *Hine vs. Wahl*, where the question was directly made; but in view of the fact that the court did not declare the reissue invalid, it is not improper to regard the patent as sustained. I may add that my own opinion tends in favor of the validity of the reissue.

Upon the question of novelty the Goode patent and the other printed exhibits have reference to an Artesian well made by boring, and not to a well made by driving, and without removing the earth upward.

The remaining question is that of infringement. The defendant's two wells were made by Frederick B. Platt and Daniel Clark.

The defendant's counsel strenuously urge that these wells were constructed by boring; that the wells were bored until water was struck—that is, until a supply of water was obtained, and that the wells were finished by pressing the pipes more deeply into the source of supply which had been reached when the workmen "struck water." In other words, the defendant seeks to bring the case within the decision of Judge McCrary in *Andrews vs. Long* (12 Fed. Rep. 871). In this case, however, the witnesses, when they used the common expression, "struck water," did not mean that they had reached an adequate source of supply for a well, but that they had reached a place where the presence of water manifested itself, and where by continuous excavation an adequate supply would be attained. The wet sand or wet clay upon the auger showed that water was at hand. The well was then finished and a supply of water was obtained by pressing or driving a tube into the ground, without removing the earth upward, and attaching thereto a pump. When this was done, there was put—

"To practical use the new principle of forcing the water in the water bearing strata of the earth from the earth into a well pit by the use of artificial power applied to create a vacuum in the water bearing strata of the earth, and at the same time in the well pit." (*Andrews vs. Cross*, 8 Fed. Rep. 269.)

A workman in our New England soil would not ordinarily be able to drive or press a tube into the stony or tough crust, which must be penetrated before water bearing strata are reached; but it is no adequate argument against infringement that it is necessary to bore or dig into the rough and hard soil or the mass of tough clay which lies over the sources of water supply, provided, before a supply of water is reached, the patented process is thereafter used for the purpose of obtaining an adequate flow of water upon the surface of the ground.

Let there be the usual decree for an injunction and an accounting.

NEW BOOKS AND PUBLICATIONS.

A HISTORY OF THE PEOPLE OF THE UNITED STATES, FROM THE REVOLUTION TO THE CIVIL WAR. By John Bach McMaster. In five volumes. Vol. I. New York: D. Appleton & Co., No. 1 Bond Street.

The prevailing impression is that all noteworthy facts in our domestic history as a nation have long ago been collected and placed before the public in standard histories, by the ablest writers, and nothing remains to be said that can have any flavor of importance or permanent interest. But this impression, we think, will be speedily removed from the minds of those who study the work above mentioned. Professor McMaster's new volume is full of historical information of the deepest interest; he presents to us a picture of the home life of our fathers, their occupations, amusements, laws, manners, and customs, that will be wholly new to the great majority of readers. Those who have prided themselves on knowing a thing or two about American history will be quite likely to wonder how it is that such a mass of highly interesting and important matter as this book presents could so long have remained hidden from view. The answer, apparently, is no sufficiently expert hand has until now attempted the task of picking out the treasure from the surrounding rubbish.

Untiring industry in the examination of authentic records, peculiar ability in the marshaling and emphasis of facts, clearness and felicity of literary expression—these are the leading characteristics of Professor McMaster's work; entitling it to rank among the most excellent of historical productions.

Let us give a few extracts, showing the condition of some of our institutions as they were conducted only about a hundred years ago:

THE CONDITION OF AMERICAN WORKING PEOPLE IN 1784.

A wonderful amelioration has taken place since that day in the condition of the poor. Their houses were meaner, their food was coarser, their clothing was of commoner stuff, their wages were, despite the depreciation that has gone on in the value of the money, lower by one-half than at present.

A man who performed what would now be called unskilled labor, who sawed wood, who dug ditches, who mended the roads, who mixed mortar, who carried boards to the carpenter, and bricks to the mason, or helped to cut hay in the harvest time, usually received as the fruit of his daily toil two shillings.* Sometimes, when the laborers were few, he was paid more and became the envy of his fellows if at the end of the week he took home to his family fifteen shillings, a sum now greatly exceeded by four dollars. Yet all authorities agree that in 1784 the hire of workmen was twice as great as in 1774.

On such a pittance it was only by the strictest economy that a mechanic kept his children from starvation and himself from jail. In the low and dingy rooms which he called his home were wanting many articles of adornment and of use now to be found in the dwellings of the poorest of his class. Sand sprinkled on the floor did duty as a carpet. There was no glass on his table, there was no china in his cupboard, there were no prints on his wall. What a stove was he did not know, coal he had never seen, matches he had never heard of. Over a fire of fragments of boxes and barrels which he lit with the sparks struck from a flint, or with live coals brought from a neighbor's hearth, his wife cooked up a rude meal and served it in pewter dishes. He rarely tasted fresh meat as often as once in a week, and paid for it a much higher price than his posterity. Everything indeed which ranked as a staple of life was very costly. Corn stood at three shillings the bushel, wheat at eight and sixpence, an assize of bread was fourpence, a pound of salt pork was tenpence. Many other commodities now to be seen on the tables of the poor were either quite unknown, or far beyond the reach of his scanty means.

Unenviable is the lot of that man who cannot in the height of the season when the wharfs and markets are heaped with baskets and crates of fruit, spare three cents for a pound of grapes or five cents for as many peaches, or, when Sunday comes around, indulge his family with water-melons or cantaloupes. One hundred years ago the wretched fox grape was the only kind that found its way to the market, and was the luxury of the rich. Among the fruits and vegetables of which no one had then even heard are cantaloupes, many varieties of peaches and pears, tomatoes and rhubarb, sweet corn, the cauliflower, the egg plant, head lettuce, and okra. On the window benches of every tenement house may be seen growing geraniums and verbenas—flowers not known a century ago. In truth, the best kept gardens were then rank with hollyhocks and sunflowers, roses and snowballs, lilacs, pinks, tulips, and above all the Jerusalem cherry, a plant once much admired, but now scarcely seen.

If the food of an artisan would now be thought coarse, his clothes would be thought abominable. A pair of yellow buckskin or leathern breeches, a checked shirt, a red flannel jacket, a rust felt hat cocked up at the corners, shoes of neat's skin set off with huge buckles of brass, and a leathern apron comprised his scanty wardrobe. The leather he smeared with grease to keep it soft and flexible. His sons followed in his footsteps, or were apprenticed to neighboring tradesmen. His daughter went out to service. She performed indeed all the duties at present exacted from women of her class, but with them were coupled many others rendered

* Six shillings made a dollar, New England currency.

useless by the great improvement that has since taken place in the conveniences of life. She mended the clothes, she did up the ruffs, she ran on errands from one end of the town to other, she milked the cows, made the butter, walked ten blocks for a pail of water, spun flax for the family linen, and when the year was up, received ten pounds for her wages. Yet small as was her pay she had, before bestowing herself in marriage on the footman or the gardener, laid away in her stocking enough guineas and joes to buy a few chairs, a table, and a bed.

But there is one other change which has, it must be admitted, done far more to increase the physical comfort of the poorest class than better food, higher wages, finer clothes.

Men are no longer imprisoned for debt. No crime known to the law brought so many to the jails and prisons as the crime of debt, and the class most likely to get into debt was the most defenseless and dependent, the great body of servants, of artisans, and of laborers, those in short who depended on their daily wages for their daily bread. One hundred years ago the laborer who fell from a scaffold or lay sick of a fever was sure to be seized by the sheriff the moment he recovered, and be carried to jail for the bill of a few dollars which had been run up during his illness at the huckster's or the tavern.

For more than fifty years after the peace there was in Connecticut an underground prison which surpassed in horrors the Black Hole of Calcutta. This den, known as the Newgate prison, was in an old worked out copper mine in the hills near Granby. The only entrance to it was by means of a ladder down a shaft which led to the caverns underground. There, in little pens of wood, from thirty to one hundred culprits were immured, their feet made fast to iron bars, and their necks chained to beams in the roof.

The darkness was intense, the caves reeked with filth, vermin abounded; water trickled from the roof and oozed from the sides of the caverns; huge masses of earth were perpetually falling off. In the dampness and the filth, the clothing of the prisoners grew mouldy and rotted away, and their limbs became stiff with rheumatism. The Newgate prison was perhaps the worst in the country, yet in every country were jails such as would now be thought unfit places of habitation for the vilest and most loathsome of beasts. At Northampton the cells were scarce four feet high, and filled with the noxious gases of the privy vaults through which they were supposed to be ventilated. Light came in from two chinks in the wall. At the Worcester prison were a number of like cells, four feet high by eleven long, without a window or a chimney, or even a hole in the wall. Not a ray of light ever penetrated them. In other jails in Massachusetts the cells were so small that the prisoners were lodged in hammocks swung one over the other. In Philadelphia the keeps were eighteen feet by twenty feet, and so crowded that at night each prisoner had a space six feet by two to lie down in.

Into such pits and dungeons all classes of offenders of both sexes were indiscriminately thrust. . . . Modes of punishment long since driven from the prisons with execrations as worthy of an African kraal were looked upon by society with a profound indifference. The tread mill was always going. The pillory and the stocks were never empty. The shears, the branding iron, and the lash were never idle for a day. . . . A wretch so hardened as to be recommitted was branded on the arm. Keepers knew no other mode of silencing the ravings of a madman than tying him up by the thumbs and flogging him till he was too exhausted to utter a groan.

The misery of the unfortunate creatures cooped up in the cells, even of the most humanely kept prisons, surpassed in horror anything ever recorded in fiction. No attendance was provided for the sick. No clothes were distributed to the naked; such a thing as a bed was rarely seen, and this soon became so foul with insects that the owner dispensed with it gladly. Many of the inmates of the prisons passed years without so much as washing themselves. Their hair grew long. Their bodies were covered with scabs and lice and emitted a horrible stench. Their clothing rotted from their backs and exposed their bodies, tormented with all manner of skin diseases and a yellow flesh cracking open with filth.

Aqua Regia for Preserving Meat.

According to an Italian journal, Pavesi has studied the action of very dilute aqua regia upon meat and other animal substances, and has found it to be an excellent preservative, and that pieces of meat weighing two pounds kept unchanged in wooden vessels filled with it for years, retaining their flavor also. Meat treated with it may afterward be dried at 60° or 100° Fabr., without any further change than a decrease of volume and acquiring a brown color. If placed in water for a few hours, the meat regains its original softness and natural color.

The experimenter does not give the exact proportions in which he mixes the acids and water, but says that "the solution must have a slightly acid taste."

The process is also suited to the preservation of animal substances for scientific purposes, such as anatomical and pathological specimens.

A mixture of sodium chloride and potassium nitrate has been in general use for centuries for preserving meat, so that the only novelty consists in omitting the alkaline bases and substituting the less objectionable hydrogen; in other words, using the acids instead of their salts. H.