

Legal Notes.

CONSTRUING CLAIMS.—The doctrine of mechanical equivalents and the theory of the construction of claims received no little attention in a decision recently handed down by Judge Gilbert in the Ninth Circuit of the United States Circuit Court of Appeals. Herman Cramer had brought an action at law against the Singer Manufacturing Company for an infringement on the first claim of his patent for a new sewing-machine treadle. Cramer's broad claim called for a "treadle provided with trunnions," the treadle supports being located in the vertical cross brace connecting the legs or side pieces of the machine. By so locating the treadle a better alignment could be secured, and the tendency of the machine in operation to loosen the joints which hold the legs in position, thereby displacing the treadle, was overcome. It would seem from the evidence submitted that never before had the treadle been mounted in the vertical cross brace. Soon after Cramer had patented his treadle, the Singer Manufacturing Company began to make, under Letters Patent granted to one of its employes, sewing machines in which the treadles were also hung in a vertical cross brace. The patent of the Singer Company provided for the use of point-center instead of knife-edge bearings with trunnions, which are the essential feature of Cramer's patent. The Court found that Cramer was entitled to the broadest application of the doctrine of equivalents, and insisted that if he had been the first to mount his treadle in the vertical cross brace, he was undoubtedly entitled to the protection of that combination and to the exclusive right to mount his treadle in the cross brace, no matter what the form of the bearings of the treadle might be. Furthermore, the Court found that in order to mount the Cramer treadle in the vertical cross brace on knife-edge bearings, it was absolutely necessary that it be provided with trunnions or their equivalent. If the patentee were entitled to the doctrine of mechanical equivalents and to the protection of the right to mount his treadle in the vertical cross brace with bearings, whether knife-edge or point-center, his right certainly "is not affected nor diminished by the use of the words 'provided with trunnions,' as found in his claim."

The Court likewise held that an inventor is not circumscribed by the words which he may first use to describe the merits of his invention, but that he may assert and maintain all the advantages which his device possesses. The point was raised by Cramer's opponents that in his original application Cramer had designated his invention as a "noiseless, self-adjusting treadle," that only by subsequent amendment had he defined his invention as a means "to keep the treadle bearings rigidly in line and at a fixed distance apart, to avoid friction," and that he should be limited to the original purpose specified. By such a limitation the charge of infringement could be avoided. The Court decided that Cramer was not limited to the purpose of securing a noiseless, self-adjusting treadle, but that he was justified in claiming all the advantages which might accrue from the application of his device.

LIBEL SUIT.—Our English contemporary, the Electrical Review, of London, recently won a libel suit in which it was the defendant and in which the right of an editor to criticize the work of an inventor was upheld. The action was brought by Benjamin C. Pole, an engineer, who went to England with a view of exhibiting his "multiple energizing momentum engine," which he christened "Poleforcia," as expressing a power which he claimed could be obtained in excess of the energy to be derived from other machinery used for similar purposes. "This curiously named engine," said the Electrical Review in the alleged libelous article, "consists of a series of engines with ratchet coupling to an assemblage of flywheels; and some wonderful gain of energy is supposed to be secured by the non-positive connection in the performance of rotary foot-pound work. Each flywheel is run nine revolutions idle, and is then automatically coupled to the shaft for three revolutions. The idea of the inventor seems to be that he can derive energy from nothing, because more power is required to lift one ton one foot than to draw one foot horizontally." The plaintiff objected not so much to the criticism of his engine as to the Electrical Review's statement that "it must have cost a lot to print the brochure on very good paper, and there must be some deluded creature at the back finding the money for this ridiculous thing. Presumably the public may be asked to subscribe to this, or we should not have noticed the affair at all. If those in it are acting in ignorance, it is kindness to let them know that the engine is best fitted for the useless scrap heap." Testimony was given for the defendant to show that for 1.4 electrical power put into the plaintiff's contrivance 0.425 came out; that is to say, 70 per cent of the power was lost in the machine.

In another test 67 per cent was lost. After considering the matter for twenty minutes the jury returned a verdict for the defendants. The decision may be considered as a victory for that class of technical paper which is ever alert to warn the public against contrivances that are founded upon false scientific principles. Promoters very often sail so closely to the wind that in most cases the damage is irretrievably done when a company is once floated; and although the exposure of misleading claims on the part of promoters becomes the solemn duty of a paper, it is usually a very thankless task.

ENGLISH TRADE LIBELS.—The previously-mentioned unsuccessful suit brought against the London Electrical Review renders particularly timely an interesting article published in Engineering on what constitutes a libel to those who are engaged in the multifarious industries of our time. The nature of a libel upon persons in the way of their trade is well shown by the following case:

A certain paper in commenting upon the installation of a number of type-setting machines in an American newspaper office, remarked that "so short-lived does the installation appear to have been, that we learn that the machines were discontinued. This will be a very serious blow for this machine." It was decided when the case came up on appeal in an action for libel, that these words, besides being a disparagement of the plaintiff's machines, which would not be actionable without proof of special damage, were also, when taken in their reasonable meaning, capable of being understood by men of ordinary intelligence as conveying an imputation upon the plaintiffs in the way of their trade, and the question of libel or no libel was therefore rightly left to the jury. This judgment was affirmed in the House of Lords; and it was there stated that "if the only meaning which can be reasonably attached to a writing is that it is a criticism upon the goods or manufactures of a trader, it cannot be the subject of an action for libel; but an imputation upon a man in the way of his trade is properly the subject of an action without proof of special damage."

The principles upon which the publication of a libel, injuriously affecting the property in trade of a man, may be restrained, apply also in the case of slander. But jurisdiction in such cases is exercised only with the greatest caution. Whenever A accuses B of knowingly and intentionally infringing A's patent or copyright or trade-mark, in order to pass off his goods as A's, B has suffered a personal libel. But merely to state that B's patent is invalid, or that a picture which he sells is a piracy, is no libel on B personally, and is actionable only if the words be published falsely or maliciously, and damage has actually resulted. The same principle applies to cases for what is called slander of title. In the case of Crampton vs. South & Main (58 L. T. 516) it was decided that an action lies against a defendant who issues a circular stating that the plaintiffs' invention "had been proved to be an infringement of his own," when no proceeding had ever been taken to test its validity. The statement was clearly groundless and rested upon no probable cause.

In Hubbeck vs. Wilson (1899, 1. Q. B. 86) the Court of Appeal laid it down that a statement by a trader that goods of his manufacture are superior to those made by a rival, although untrue and made maliciously, is not actionable as a defamatory libel, nor does such a statement afford ground for an action, even if the plaintiff avers special damage. An injunction can, however, be obtained from a Judge of the High Court as a measure of relief. But such an injunction is granted only in the clearest cases.

The wrongful use of a trade-mark is sometimes made the subject of comment on the part of the true owner of the mark. Wherever there is no doubt of the validity of the mark care must be exercised before any accusations relating thereto are made through the medium of advertisements. An example may possibly here be not out of place. In 1897 two trade-marks registered by the Royal Baking Powder Company, of New York, were expunged from the English register of trade-marks by the order of the defendants, Wright, Crossly & Company. Both trade-marks were labels containing prominently the words "Royal Baking Powder." Soon after the defendants issued a circular referring to the order, which circular was alleged by the plaintiffs to be an intimation that they were not entitled to sell baking powder as "Royal Baking Powder" and that the defendants intended to proceed against those who used the label. An action was then commenced by the plaintiff company to restrain the defendants from representing that the plaintiffs were not entitled to sell their "Royal Baking Powder" in the United Kingdom, and from maliciously threatening the customers of the plaintiffs with legal proceedings in respect of their sales of the plaintiffs' baking powder. On the trial it was held that the circular represented what was not true, with regard to the plaintiff's baking powder; was issued, not in good

faith in support of a just claim, but maliciously, and had caused special and substantial damage. An injunction was granted, but on appeal (which was affirmed in the House of Lords) it was decided that there being no circumstances to suggest a secondary meaning the circular did not mean that the defendants intended to proceed against persons selling the plaintiffs' baking powder under the name of the "Royal Baking Powder."

It sometimes happens that a firm issues an advertisement to the effect that its product has received the "First Prize Medal" at some exhibition, whereas, in fact, the reward in question has been bestowed upon a trade rival. The question then arises: Can an action be maintained to restrain the publication of such a misleading statement? It would seem that in England there has been no case on the point. The author of the article in Engineering, however, believes that if it could be shown that such a statement was issued maliciously, and with the intention to injure the person who was a true holder of the award, the statement would be libelous, and could be made the subject matter of successful proceedings. It seems to us that an action might well be maintained if it could be shown that by the use of the words "First Prize Medal" trade was actually diverted. In such a case actual damage could certainly be computed.

In Part IV. Special Term of the New York Supreme Court, Judge Leventritt reiterated the broad rule stated in the Prince Manufacturing Company vs. Prince's Metallic Paint Company (135 N. Y., 24) which reads: "Any material misstatement in a label or trade-mark as to the person by whom the article is manufactured, or as to the place where manufactured, or as to the material composing it, or any other material false representation, deprives a party of the right to relief in equity. . . . It is not whether or not the plaintiff intended to deceive, or whether the defendant designed to impose on the public; it is sufficient to forbid equity from interfering if his label was naturally calculated to and did deceive." The plaintiff in a recent case under discussion invoked the aid of the court of conscience, while his own conduct in relation to the subject-matter of the suit, in the language of Judge Leventritt, was unconscionable. It is a most salutary rule, which in cases like the present denies equity to a person who has been guilty of a material misrepresentation on his label, concerning the ingredients composing the article which he seeks to protect.

THE CASCARET CASE.—In the matter of the Sterling Remedy Company against R. J. Gorey, decided in equity in the United States Circuit Court for the Northern District of Ohio, it was held that the word "Cascara" was an infringement of "Cascarets." The box sold by the defendant compared with that introduced by the complainant presented no such dissimilarities as would distinguish the one from the other. The Court found that the defendant so advertised his product and so boxed it that an unfair advantage was taken of the complainant. Although there were differences between the two packages, the differences were less observable than the resemblances; and unless the defendant intended to infringe the rights of the complainant, "he has gone to extraordinary pains in imitating the package of the complainant."

"GRAPE-NUT" TRADE-MARK ACTION.—The Postum Cereal Company, Limited, recently brought an action against the American Health Food Company in the United States Circuit Court, E. D. Wisconsin, for trade-mark infringement, alleging that its mark "Grape Nuts" was infringed by the name "Grain-Hearts," the product of the defendants. The Court found that no infringement existed in fact. The package of the complainant was not so imitated by the defendant as to lead to unfair competition in trade, although there was similarity in the terms in which the foods and the qualities were described. The Court held that the defendant's goods were reasonably distinguished from those of the complainant in the conspicuous trade-mark on the labels, in the coloring and printed matter of the packages and in general appearance, so that the charge of unfair competition in trade was unfounded.

THE CYANIDE PATENTS IN NEW ZEALAND.—It is reported by the Minister of Mines for 1900, in the matter of the cyanide process in New Zealand, that since the patent rights were granted four years ago, the amount of revenue paid to the government has amounted to £4,253, or about 42½ per cent of the initial cost incurred. By recent legislation the term to which the patent rights remain in force in New Zealand has been extended until such time as the revenue derived from gold mines exceeds the expenditure which was necessary to make the cyanide process available to the gold-mining industry of the colony.