

## Legal Notes.

**A SEWING MACHINE PATENT CONSTRUED.**—The Johnston patent, 324,261, for a ruffling or gathering attachment for sewing machines, was declared void for lack of invention by the Circuit Court of Appeals in the case of Greist Manufacturing Company vs. Parsons (125 Fed. Rep. 160).

The patent relates to alleged improvements in sewing-machine attachments for making ruffles, plaits, or gathers. In the operation of these attachments, as a genus, a steel blade moves back and forth near the needle in the direction of the feed; levers are so connected that the up-and-down motion of the needle bar is converted into the to-and-fro movement of the ruffling-blade; the two pieces of cloth to be sewn together are placed under the needle, with the ruffling-blade in contact with the upper piece; and as the needle rises out of the cloth the ruffling-blade pushes the upper piece into a fold which is secured by a stitch when the needle descends. To regulate the size of the fold, one species had means for controlling the amount of "lost motion" between the needle-bar and ruffling-blade. The less the lost motion, the greater the stroke of the ruffling-blade, and *vice versa*. Within this species, one class adjusted only the limit of the backward stroke of the ruffling-blade, while another adjusted also, to a less extent, the limit of the forward stroke, so that the blade moved farther forward in making full than in making scant gathers, in order to bring the stitches nearer the center of the folds. This was all old. To the creation of genus or species or class the disclosure in the present letters contributed nothing. The alleged improvement was held to be a mere variation within the last-named class.

"The mechanism, so far as the claims in suit are concerned, may be described as consisting of two levers, pivoted at a common point, one connecting with the needle-bar and the other with the ruffling-blade, which levers are made to co-operate with each other by means of two stops mounted on one of the levers and a cam-shaped contact device pivoted to the other lever and interposed between the stops. By turning the cam on its pivot, its opposite edges may be caused to recede from or approach both stops simultaneously, whereby the amount of lost motion between the levers is varied, and the limit of both the forward and backward stroke of the ruffling-blade is adjusted."

After a careful examination of the thirty-five reference patents, the Court failed to find a ruffler that could not be distinguished from the exact terms of each of the claims sued upon. The prior art is full of various combinations of levers, stops, and cams which are operated to produce all the work that can be done with appellee's ruffler. The Court thought that each element of the claims in the suit was old in this very art, and had been used to perform the same function assigned to it in Johnston's present device. "This ruffler introduces no new mode of operation, produces ruffles no better and no faster, and does not afford to the user (though it may to the manufacturer) any advantage over others. The novelty consisted in selecting and rearranging old elements to produce a machine new in form, but old in function, and therefore an old machine. And though Johnston made a better selection and arrangement than did Horace's painter, who 'joined a human head to neck of horse, culled here and there a limb, and daubed on feathers various as his whim, so that a woman, lovely to a wish, went tailing off into a loathsome fish,' the genius of the artist was not more wanting in the one case than that of the inventor in the other; for 'it is not invention to combine old devices into a new article without producing any new mode of operation.'"

The decree of the Circuit Court dismissing the appeal was affirmed.

**A CURIOUS ASSIGNMENT.**—The recent case of Canda vs. The Michigan Malleable Iron Company, decided by the Circuit Court of Appeals for the Sixth Circuit (124 Fed. Rep. 486) brings out the law of assignments in a manner that every inventor can easily understand. F. E. Canda had obtained a patent on improvements in the construction of drawbar attachments for railroad cars. He assigned this patent in an instrument which reads as follows:

"I, the undersigned, Ferdinand E. Canda, of the borough of Manhattan, in the city of New York, for and in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto Canda Brothers, a firm composed of Charles J. Canda and myself, all my rights, title, and interest in and to six certain letters patent issued to me by the United States of America, and numbered and dated as follows, viz.: No. 460,426, dated September 29, 1891 [and five others enumerated], being an entire interest

therein for the sole use of said firm of Canda Brothers, and legal representative, successors, and assigns."

It was contended that "my" interest meant "the" entire, not simply "an" entire interest. The assignor was the sole patentee, and also one of the assignees. No criticism was made upon that fact. The Court thought the objection was hypercritical, and that the intent and effect of the assignment was to transfer a one-half interest to the other partner, nothing being to show that the partners stood upon unequal terms.

The patent in suit was one granted to Ferdinand E. Canda for improvements in the construction of drawbar attachments for railroad cars. The defendant set up the usual answer of anticipation by previous patents. The Circuit Court held all the claims invalid upon the ground that the alleged invention was not new. From the decision of the Circuit Court an appeal was taken.

In drawbar attachments provision is usually made for easing the shock in starting and stopping the cars, this end being attained by allowing a sliding motion of the drawbar between the draft timbers running lengthwise at or near the inner end of the drawbar, and so associated with it as to register the inward thrust of the drawbar as well as the lengthwise pull in forward draft. One end of the spring is secured or in contact with the drawbar or some of its attachments—as, for instance, a follower fixed thereon—and the other to the draft timbers or something thereto attached. A casing is necessary to contain and hold in place such springs and the tail of the drawbar sliding between them and the followers and sometimes other parts. It is particularly this casing which is the subject of the Canda patent. The inventor made his casing with rigid sides and top, adapted to be let into the inner sides of the draft timbers. To provide easy access to the parts, and also to receive a bottom plate, he leaves the bottom of the casing open, the expectation being that the bottom will be supplied by the builder.

The counsel for appellee made the point that because a casing without a bottom would serve no purpose and could be put to no use, the claim in which it appeared must fail. But the Court thought it erroneous to suppose that because the element or the combination of elements in a claim would not of themselves constitute an operative invention, the claim is, therefore, void. A man may invent a single element or an improvement in some element in a machine, or he may invent an entire machine or product.

An examination of the state of the art convinced the Court that none of the prior patents cited showed the peculiar adaptation of the Canda patent to the bottom of the casing for connection with a bottom plate having recesses to receive the lower edges of the sides of the casing, thereby contributing to its strength. The decree was reversed.

**A QUEER CASE FOR DAMAGES.**—The Topeka Journal states that a farmer who drove into Iola, Kan., some time ago found all of the hitching racks in town full, and so tied his horse to an empty box car standing on a side track in an alley. A few minutes later a switch engine coupled on to the car and started up the alley. The hitchstrap in this instance was a rope, and it was tied around the animal's neck. The horse did fairly well until he encountered a telephone pole. The buggy was demolished there. The engine kept on going, so did the horse, until another telephone pole was reached. Then the horse tried to go on one side and the engine and car on the other. The animal's neck was broken. Now the farmer wants damages from the railroad company.

**INVENTION IN THE MANUFACTURE OF TUBING.**—A bill was filed against Spang, Chalfant & Co. by the National Tube Company (125 Fed. Rep. 22) for alleged infringement of Letters Patent 581,251 to Patterson, covering a process of making butt-weld pipe by charging the plates into the furnace from the rear, and withdrawing them from the front by means of tongs or other suitable device, which also draws them through the welding bell.

The Court admitted the value of the back-charging practice and its advantages over former methods. "It is a natural, continuous, and straightaway method, and, like all such improved methods of continuous handling, it avoids congestion of workmen; allows steady, as compared with intermittent, work; it utilizes the same heat and labor to produce a larger product. We are also satisfied that by a quiescent charging better heat results are obtained and less scrap made. We are also satisfied that further use of the practice has developed advantages additional to the two which alone the patentee had in mind and referred to in the application, viz., even longitudinal heating and separation of the working force. But, conceding such difference and progress, the fact still remains that the step here made was one of gradual, and to be expected, progress which marks every great, and therefore progressive, industry. In that advance the tongs and movable draw bench afforded scope for inventive genius,

and presumably have secured protection to those who devised them. The principle of back-charging was not Patterson's invention. Now, why should the general principle and practice of back-charging which tongs have made available for butt-weld heating be monopolized to prevent their use for that purpose? Nor was the principle of quiescent charging his. He simply utilized these principles by employing them in the only way they could be used by means of improved tongs and shifting draw bench, and in a way the draw bench naturally suggested. That this use disclosed new and unexpected advantages may be conceded, but it is not everything that is novel and useful that is patentable. Many processes and methods have proved exceedingly valuable in manufacturing that have not been patentable. To use, with some changes, the language of another, we may say that the development of this as of every great industry develops a constant demand for new methods, which the ordinary skill of those versed in such branch has generally been adequate to devise, and which devising is the natural outgrowth of such development. Each forward step prepares the way for another, and to burden a great industry with a monopoly to each improver for every step thus made, except where marked by an advance greater than mere progressive skill, is unjust in principle and hostile to progress. In reaching the conclusion of the invalidity of this patent we are not unmindful of the *prima facies* to which its issue entitles it. But the *prima facies* is necessarily affected by the fact that the record discloses neither in the specification of the patent nor in the action of the examiner any reference to the so-called Crane practice. Indeed, the proofs show it was not known to Patterson. His specification contains no reference to it."

While the testimony of the experts in the case showed thermal and operative advantages of back-charging, a conclusion with which the court agreed, and while the process is simple, effective, and economical, the Court was nevertheless satisfied that it involved no invention. The patent was declared invalid, and the bill dismissed.

**A NUMBERING MACHINE PATENT CONSTRUED AND DECLARED INVALID.**—William A. Force & Co. sought to restrain the Independent Manufacturing Company (124 Fed. Rep., 72), from continuing an alleged infringement of letters patent for a numbering machine granted to Willard W. Sawyer in 1891. The patent in question was adjudicated in a recent case of W. A. Force vs. Sawyer-Boss Manufacturing Company et al. (111 Fed. Rep., 902, affirmed in 113 Fed. Rep., 1018). After the decree in this previous suit, the Sawyer-Boss Manufacturing Company sold out to the defendants in the present suit, the Independent Manufacturing Co.

The court thought that the defendants enjoined by the former decree were making an infringing machine, particularly so since Robert A. Stewart, the defendant in this and the former suit, is the president of the Independent Manufacturing Company, and that the individual defendants of the former suit were members of the Independent Manufacturing Company. Nevertheless, the chief contention involved the question of infringement; for the machine manufactured by the Independent Manufacturing Company was claimed to be different from the former infringing machine, the complainant charging infringement of the first claim of the patent, which was as follows:

"1. In a stamp, the combination of a main frame, a series of similarly spaced numbering wheels, corresponding ratchet wheels, detents for these numbering wheels and ratchet wheels operating radially within a support, pawls for imparting motion to said ratchet wheels, a movable yoke sustaining the numbering and ratchet wheels, and a frame-like lever carrying the pawls and pivotally connected to said yoke and also to the main frame, and an inking lever fulcrumed to the main frame and pivotally connected between its ends with the said lever which moves the pawls substantially as specified."

"All the parts of this combination are old," said the court, "except the frame-like lever pivotally connected with the yoke and main frame, and an inking lever fulcrumed to the main frame and pivotally connected between its ends with the lever which moves the pawls. In other words, the inventor devised the frame-like lever, which moves the pawls and also the inking pad by the same downward motion of the rod or plunger. When the rod descends, the lever throws the inking pad out, and moves the pawls which actuate the ratchet wheels, and this becomes possible because the frame-like lever is pivotally connected to the yoke and also to the main frame, and the inking lever fulcrumed to the main frame is pivotally connected between its ends with the lever which moves the pawls. This practically conjoint movement of the pawls and inking lever results from such pivotal connections. The vital point of the invention is the pivotal connection; the vital result is this movement of the pawls and inking lever."

This was old, and the bill was consequently dismissed.