

pans assembled and united in clusters were old when the patentee first made them. Several modes had been adopted for uniting them. One was by assembling the pans on a sheet of tin in the desired contiguity, each pan being riveted through the bottom to a sheet. Another mode was by riveting the pans to a strip or bar of metal instead of a sheet, and uniting the several strips or bars. In other instances the sheet and bar were dispensed with, and the pans were united by rivets through their sides near the rim; and in others still, the edge of one pan was lapped and seamed over the edge of the adjacent pans.

It is testified to, and seems probable, that single flat-flanged biscuit pans, made of tin, were old. The patent contemplates pans of sheet-metal. But if flanged pans were new when made of tin or sheet-metal they were old when made of cast-iron. As shown in the patent to Waterman, granted April 5, 1859, pans of cast-iron were united in clusters by a cast connection, which was substantially a flange around the rim of each pan, extending from the rim of each pan to the flange upon the rim of the adjacent pan. This being the prior state of the art, the defense of want of novelty is fatal to the patent. The ordinary skill and judgment of the mechanic, with the prior structures before him, would suggest that such pans could be made with flanges and united by rivets through the flanges, if he desired to avoid inserting a rivet through the body of the pans. The Waterman structure alone would suggest the mode of the patent. As the flanges of that structure were united in the process of casting and could not be so united when sheet-metal was to be used, the obvious way to unite them in sheet-metal would be by lapping and riveting or soldering the flanges.

The bill is dismissed.

PATTEE PLOW Co. v. KINGMAN and others.¹

(Circuit Court, E. D. Missouri. March 2, 1885.)

1. PATENTS—NOVELTY.

Letters patent No. 187,899, issued to J. H. Pattee, February 27, 1877, for an improvement in cultivators' axles, are void for want of novelty.

2. SAME—UNDUE EXPANSION OF ORIGINAL CLAIM.

The second claim of J. H. Pattee's reissued patent No. 6,080, for an improvement in cultivators, expands the original patent beyond legal limits, and is void.

3. SAME—INFRINGEMENT.

Letters patent No. 174,684, issued to T. W. Kendall, March 14, 1876, for a pivoted runner attached to a cultivator, is not infringed by a jointed runner which cannot be kept out of contact with the ground by the draught of the team.

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.

In Equity.

This is a suit for the alleged infringement of four patents owned by the complainants, viz.: Letters patent No. 138,148, issued to J. H. Pattee, January 21, 1873; reissue No. 6,080, dated October 6, 1874, and being a reissue of original patent No. 124,218, issued to J. H. Pattee, March 5, 1872; original patent No. 174,684, issued to T. W. Kendall, March 14, 1876; and original patent No. 187,899, issued to J. H. Pattee, February 27, 1877,—all for improvements in cultivators. Patent No. 135,148 was left out in making up the proofs, so that the case stood for hearing on the other three.

Reissue No. 6,080 is for an improvement in tongueless cultivators. The second claim, which is the only one here in question, is as follows:

“The axle, A, hinged to the wheel spindle or draught plate, B, B, so that the wheels are retained in the line of progression by the draught of the animals, when one is in advance of the other, substantially as described, and for the purpose specified.”

Complainant's counsel urged that this second claim is the same as the first claim of the original patent, which is as follows:

“The axle, A, having plates, B, hinged to the wheel spindle plates, C, so that the wheels are retained in the line of progression when one is in advance of the other, as set forth.”

On the part of the defense it was insisted that this second claim had been enlarged by the omission of the plates, B, so as to make the peculiar axle, any axle, and that the operation stated in the claim was changed, if not defeated, by the insertion in the reissue specification of the words, “The draught animals may be attached *direct* or by any suitable device,” the direct hitch leaving either or both wheels to get out of the line of progression. In complainant's machine the beams are attached to the draught-plates, C, of the original patent, which became the draught-plates, B, of the reissue. The defendant's machine had the direct hitch, with the draught-plates at the extreme sides of the machine, and the plow-beams attached to the horizontal portions of the axle. The description in the reissue was more in accordance with the construction of the machine shown in the 1873 patent, which was dropped out, than it was in accordance with the original, so far as the devices of this claim are concerned, thus leaving, as was contended, the claim enlarged by omissions from the original claim, and by additions to the specification.

Infringement was also claimed as to the first and second claims of the Kendall patent, which were for runners pivoted to the wheel spindles or axle, so as to be held out of contact with the ground by the draught of the team when the machine was used for field operations, and to be held in contact with the ground when the plows were suspended from the axle for transportation. The defendant's machine was provided with hinged runners, which were folded up by

hand for field operations, and folded down and locked for transportation.

The Pattee patent, No. 187,899, is for a method of constructing the arch in parts, which construction was shown to be old in coupling-yokes for cultivator beams, in trusses, and various other devices.

John R. Bennett and George Harding, for complainant.

West & Bond, for defendants.

TREAT, J. Reissued patent 6,080 of 1874, second claim of which is under consideration, has, as to that claim, expanded the original beyond legal limits. Therefore said reissued patent is void to the extent claimed, wherein the defendant is alleged to have infringed.

2. As to Kendall patent No. 174,684 there is no infringement.

3. As to Pattee patent of 1877, No. 187,899, said patent is void, there being no novelty of invention therein that is patentable.

Bill dismissed, with costs.

THE PROFESSOR MORSE.

(*District Court, D. New Jersey. May 8, 1885.*)

1. ADMIRALTY JURISDICTION—LOCALITY AS TEST.

In all cases of maritime torts the locality of the act is the test of admiralty cognizance; and whether the court has jurisdiction in any case depends upon whether the wrong and injury complained of was committed on the high seas, or navigable waters.

2. SAME—INJURY TO MARINE RAILWAY—LIBEL DISMISSED.

The marine railway claimed to have been injured in this case, as described in the libel, was not at the time of the injury a floating structure, and within the admiralty jurisdiction. *The Plymouth*, 3 Wall. 20, followed, and *The Arkansas*, 17 FED. REP. 383, distinguished.

In Admiralty.

Bedle, Muirheid & McGee, for libelants.

Goodrich, Dedy & Platt, for respondents.

NIXON, J. This is a proceeding *in rem*. The defendant steamer has been libeled for an alleged maritime tort, to the damage of the libelants' marine railway. On the return of the monition the respondents appeared and took three exceptions to the libel filed in the case: (1) Because it did not state facts sufficient to constitute a maritime claim or lien against the vessel; (2) because the court has no jurisdiction to proceed against the vessel in the manner in which the same is sought to be proceeded against by libel; (3) because the alleged injury done to the marine railway and cradle, and the alleged damages resulting to the libelants by reason thereof, were not done, caused, or suffered upon the water and within the ebb and flow of the tide, but were alleged to be done upon the land; and that the court had no jurisdiction in the case.