

ing the passage therefor. There was nothing novel or calling for inventive faculty in beveling the passage. So, irrespective of any question as to anticipatory patents, the court holds that as to said first claim of patent No. 170,998 said claim is void for want of patentable invention. Were it otherwise, such contrivance was long before anticipated.

2. As to the first claim of patent No. 224,281, that claim is for a combination therein described; the description whereof is vague and indefinite. The purpose sought to be effected was the contraction in an adjustable way of the passage from the press-box to the bale-chamber without specifying the mechanical devices whereby such a result could be effected, unless the combination is limited to the exact modes of effecting such a result. If such limitation is not to be considered an essential part of the combination then the claim is too broad, for prior thereto modes of such flexible adjustment were well known at the discharge of the rear end of the bale-chamber and by other modes of contracting the sides of the bale-chamber. Hence, the mere change of position of known mechanical devices from one part of the bale-chamber to another to effect the same result involves no patentable invention. Were it otherwise the court would hold that said devices had been anticipated by other patents produced in evidence.

The conclusion therefore is that the first claim of patent No. 170,998, is void. As to the first claim of patent No. 224,281, unless the same is restricted to the peculiar devices named in said combination the same is void. But the defendant does not use the specific mode of effecting the result named in said patent, and consequently does not infringe.

Bill dismissed with costs.

**BABCOCK, Deceased, by another, Special Adm'r, v. NORTHERN PAC.
R. Co.¹**

(Circuit Court, D. Minnesota. March, 1886.)

1. CONTRACT FOR USE OF INVENTION CONSTRUED.

An agreement to pay \$30 for each of the first 400 locomotive engines to which an invention should be applied, is not an agreement to apply the invention to 400 locomotives, and to pay \$30 for each one.

2. SAME.

The terms of payment, under this contract, were \$6,000 within 30 days after the contract was executed, and the remainder within the period of one year. *Held*, that this was an agreement to pay \$6,000 absolutely within 30 days, and in case the invention was applied to a number of locomotives sufficient to produce, at \$30 for each, a greater sum than \$6,000, then this excess was the remainder contemplated, and was payable within the year.

¹ Reported by Charles C. Linthicum, Esq., of the Chicago bar

In Equity.

Rockwood & Collom, for plaintiff.

W. P. Clough, for defendant.

NELSON, J. The contract upon which plaintiff's suit is founded requires the payment of \$30 for each of the first 400 locomotive engines to which the invention owned by plaintiff shall be applied by defendant. The terms of payment are \$6,000 within 30 days after the contract is executed, and the *remainder* within the period of one year thereafter.

The defendant did not agree to apply the invention to 400 locomotives, and pay \$30 for each one; but it agreed to pay \$6,000 absolutely within 30 days, and in case the number of locomotives to which it shall be applied within one year after execution of the contract at \$30 for each would produce a sum more than \$6,000, the *remainder*, that is, the excess over \$6,000, it agreed to pay within one year. After payment shall have been made upon 400 locomotives, no further sum should be paid by the defendant for the use of the invention. The defendant was not compelled to use the invention upon all of the 400 locomotives, or upon any; but it is bound to pay \$6,000 within 30 days after the contract was executed, which it has done, and it is admitted that the invention is not used upon more than 200 locomotives.

Judgment will be entered in favor of the defendant.

LIBBEY v. MT. WASHINGTON GLASS Co. and others.¹

(Circuit Court, D. Massachusetts. February 17, 1886.)

1. PATENTS FOR INVENTIONS—PARTY-COLORED GLASSWARE.

On motion for preliminary injunction, letters patent No. 232,002, granted to Joseph Locke, July 24, 1883, for an improved article of glassware, and the process for making the same, sustained.

2. SAME—NOVELTY.

This patent was for an article of glassware of ruby and amber colors, made from a gold-ruby compound, which was a well-known glass mixture containing gold. Patentee discovered that, by reheating only a portion of the article, the ruby color was developed in the reheated portions, while the other portions remained amber colored, producing an article known as "amberina." This process of obtaining party-colored glassware had been before practiced, but not with gold-ruby compound,—the amber color had not been obtained,—except by accident, and then with no thought of utilizing the product,—and, although this fact undoubtedly led patentee to make the discovery, the patent was sustained.

3. SAME—DESCRIPTION OF INVENTION.

The specification of this patent sufficiently describes the invention to enable persons skilled in the art to which it relates to produce the patented article.

¹ Reported by Charles C. Linthicum, Esq., of the Chicago bar.