

UNITED STATES v. HAYNES.

(Circuit Court, D. Massachusetts. March 24, 1886.)

CRIMINAL LAW—REMITTING INDICTMENT TO DISTRICT COURT—Rev. St. § 1037.

After conviction in the district court, the indictment cannot be lawfully remitted to the circuit court, under Rev. St. § 1037.

Motion in Arrest of Judgment.

C. Almy, Jr., Asst. U. S. Atty, for the United States.

B. F. Butler and H. Dunham, for defendant.

COLT, J. This indictment was remitted from the district to the circuit court, under section 1037, Rev. St., on motion of the district attorney, and after conviction in the district court. Upon the present motion in arrest of judgment the question is raised whether, after conviction in the district court, the indictment can be lawfully remitted to the circuit court under section 1037. There are serious objections to the allowance of a remission at this stage of the case. The defendant, if entitled to a new trial, has a right to a re-examination of the facts by the court where the issues were tried, and this court has no power to re-examine the facts. The seventh amendment to the constitution provides as follows: "And no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to common law." In the construction of this provision in *Parsons v. Bedford*, 3 Pet. 433, Mr. Justice STORRY says:

"This is a prohibition to the courts of the United States to re-examine any facts tried by a jury in any other manner. The only modes known to the common law to re-examine such facts are the granting of a new trial by the court where the issue was tried, or to which the record was properly returnable, or the award of a *venire facias de novo* by an appellate court, for some error of law which intervened in the proceedings."

This language is cited with approval in *The Justices v. Murray*, 9 Wall. 274. We do not think section 1037 should be construed so broadly as to permit the remission of an indictment to another court after conviction, and so deprive the defendant of any right he may have to a new trial by the court where the issue was tried.

The motion in arrest of judgment is sustained.

FORSCHNER v. BAUMGARTEN and another.¹*(Circuit Court, S. D. New York. March 16, 1886.)***1. PATENTS FOR INVENTIONS—GLASS SCALE-PANS FOR WEIGHING.**

Letters patent No. 214,643, of April 22, 1879, to Charles Forscher, for an improvement in scale-pans for weighing, are void for want of patentable novelty in the invention.

2. SAME.

There is no invention in making a scale-pan of glass, with glass lugs made integral therewith, and suspending it by branching metal bows passing through holes in said lugs, glass and glazed porcelain scale-pans being old, and metallic scale-pans suspended on such branching bows being old.

3. PLEADINGS—EVIDENCE—PRIOR USE AND PRIOR PUBLICATIONS.

Certain catalogues, showing features of the patent sued on, were offered in evidence, although not set up in the answer. *Held*, that these circulars should be considered as evidence in support of allegations of prior knowledge and use by others, properly made in the answer, but not as prior publications describing the invention, and constituting anticipations, of themselves, within the statute.

In Equity.

R. B. McMaster, for plaintiff.

Louis C. Raeger, for defendants.

WHEELER, J. This suit is brought upon patent No. 214,643, dated April 22, 1879, and granted to the plaintiff for an improvement in scale-pans for weighing. The specification sets forth the scale-pans as "made entire of glass," with strong lugs, one on each side, opposite each other, with two holes in each for a suspending bow of metal, divided at each end into two branches, to be put through the two holes in each lug, and fastened there with nuts. The claim is for a scale-dish formed with extended lugs, each having two holes through it, in combination with double suspending bows passing down through the holes and secured beneath the same, substantially as specified. One of the defenses set up is want of patentable novelty.

A scale-dish of glazed porcelain is shown to have been described in the *Mechanic's Magazine*, a printed publication, in 1836, volume 25, p. 23, as in use by a Mr. Juggins, a dealer in butter and cheese, in London; and the forming of scale-pans of "glass, or it may be porcelain," is set forth as part of the invention of Edward Dowling in his specification for an English patent, April 14, 1859. Metallic scale-pans, suspended on branching bows like those of plaintiff's patent, are shown to have been made, and on sale in this country, prior to the plaintiff's invention. This fact is shown, in part, by catalogues not set up in the answer, and objected to for that reason. They are considered, however, as evidence in support of allegations of prior knowledge and use by others properly made in the answer, and not as prior publications describing the invention, and constituting an-

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