

somebody had suggested, which is not indicated in his patent at all, that the pressure might be produced by an external contrivance, irrespective of such weight. Now, if somebody has invented what would be improvements merely, the defendant supposed to infringe may be an improver, but he is none the less an infringer. Herein the court is reduced to the necessity of determining, first, has this defendant used the patentee's contrivance as indicated in claim 2, or a mechanical equivalent therefor. It appears that the defendant, placing his contrivance horizontally, instead of trusting to gravity merely, with the weight itself on one end, used springs. Under ordinary modes operating a spring may effect precisely the same result as a small vertical weight. But what does the defendant do? He has a contrivance which in many particulars differs very essentially from the plaintiff's mode of operation. No slot,—no vertical pressure; a coiling process (in that respect like the patentee's) by which a like result may be produced with an essential element of the combination omitted. When I say "omitted," I mean that the function of the spring may be the same as the weight. But there are other elements of the combination: the pins or rollers, rings, the upper end and the lower fixed, operating in the manner which he has described.

Without proceeding further with regard to the matter, I have indicated, in a general way, the views the court entertains in respect to the question under investigation. The only difficulty that has been presented to my mind in regard to the matter is with reference to the doctrine supposed to be laid down in 13 Wall. in the case cited, whether the court, instead of presenting these matters to the jury, should undertake, at this stage of the inquiry, to determine the question for itself. That case in 13 Wall. is familiar to the profession. I suppose it is also familiar that since then there have been at least four or five decisions by the supreme court modifying that doctrine essentially. In other words, in the course of a trial before a jury, the plaintiff having closed, the court is at liberty at that stage of the case to instruct a verdict for the defendant; and that is exactly like this case, and the instruction will be accordingly.

GRAY *v.* HALKYARD and others.<sup>1</sup>

(Circuit Court, D. Rhode Island. August 16, 1886.)

## PATENTS FOR INVENTIONS—ACTIONS—QUESTIONS FOR JURY.

Where a bill was filed for infringement of two patents, and, upon the final hearing, the following questions were presented: *First*, whether the plaintiff S. or the defendant H. was the first inventor of the device claimed in one of the patents; and, *second*, had the invention been in public use more than two years before application for said patent? *held*, that the first question presented a simple issue of fact, proper for the determination of a jury, and that the second question, which depended upon conflicting testimony, could be more satisfactorily determined by hearing of the witnesses in person.

## In Equity.

Before GRAY and COLT, JJ.

GRAY, Justice. This bill in equity, for the infringement of two patents, has been argued upon the printed record of pleadings and proofs.

In the present state of the law, there can be no doubt that the patent dated September 21, 1880, for an improvement in "lacing-hook stock," is void for want of invention.

With regard to the patent dated June 13, 1882, for improvements in "machines for making lacing-hooks," the case presents questions requiring more consideration, the chief of which may be summed up thus: *First*. Whether the plaintiff Smith or the defendant Halkyard was the first inventor. *Second*. Had the invention been in public use more than two years before Smith's application? *Third*. Are the first, third, and seventh claims void for want of novelty? *Fourth*. Have the second and eighth claims been infringed by the defendants?

The first question presents a simple issue of fact proper for the determination of a jury. The supposed invention was made in the shop of the Union Eyelet Company, in which Smith was superintendent, and Halkyard machinist and tool-maker. Each of them testifies that he was the first inventor, and the real question is, which of them is to be believed? The second question, also, depends upon conflicting testimony, and can be more satisfactorily determined by a hearing of the witnesses in person. It is therefore ordered that these two questions be submitted to a jury of 12 men, to be drawn, summoned, and impaneled in the usual manner; and the further consideration of the case is postponed until a verdict, satisfactory to the judge who presides at the trial, shall have been returned upon these two questions.

Issues to a jury to be framed accordingly.

<sup>1</sup>Edited by Charles C. Linthicum, Esq., of the Chicago bar.