

NEWARK MACHINE CO. *v.* GAAR and others.¹

(Circuit Court, D. Indiana. November 18, 1886.)

1. PATENTS FOR INVENTIONS—CLOVER-HULLERS—SEED-CLEANERS.

On the same record and evidence as in *Newark Machine Co. v. Hargett*, 28 Fed. Rep. 567, the decision in that case followed.

2. SAME—CONSTRUCTION OF CLAIMS—INFRINGEMENT.

If the patentability of the devices claimed in letters patent No. 322,465, of July 21, 1885, to Miller, for recleaner for grain-separators, be conceded, the claims must, in view of the prior art, be construed strictly; and, not being found in defendants' machine, *held*, there was no infringement.

In Chancery.

Wells W. Leggett, M. D. Leggett, Wm. & Lew Wallace, for plaintiff.
Wood & Boyd, for defendants.

WOODS, J. The questions presented here, excepting one, are the same which were recently considered and decided, and as I think correctly decided, in the case of *Newark Machine Co. v. Hargett*, 28 Fed. Rep. 567. The record and evidence in the two cases, it is conceded, are the same; but it is insisted that these defendants are shown to have infringed the device covered by patent No. 322,465, issued July 21, 1885, to Miller. The claims of that patent are two, and read as follows:

"(1) A recleaning attachment for grain-separators, consisting, essentially, of a hopper, a screen for receiving the grain from the hopper, an elevator having a chamber at its lower end, and its upper end arranged to deliver the grain to the hopper, and an inclined conductor having one end connected directly with the chamber of the elevator, and its upper end formed into a mouth, arranged under the discharge mouth of the screen to convey the tailings to the chamber of the elevator, substantially as set forth.

"(2) The combination, with a separator, of a recleaning device, consisting, essentially, of a screen, an elevator for elevating the tailings to the screen, and a spout arranged directly between the screen and elevator for receiving the tailings from the screen, and discharging them into the elevator frame or casing."

If the patentability of the device described in each claim be conceded, it is clear, in the light of the earlier art, that these claims must be construed strictly,—and, so construed, were not infringed by the defendants, whose recleaning attachments have not had "a spout arranged directly between the screen and elevator," nor "an inclined conductor having one end connected directly with the chamber of the elevator." Besides, the evidence shows, as I view it, that these devices or claims had been anticipated by the Shively recleaner.

Bill dismissed for want of equity.

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

THOMPSON v. HALL and others.¹

(Circuit Court, E. D. New York. July 24, 1885.)

PATENTS FOR INVENTIONS—PATENTEE AN EMPLOYEE—LETTERS PATENT No. 232,-975—IMPROVEMENT IN CUTTING-PLIERS.

A patent was issued to plaintiff, Henry G. Thompson, as assignee of Moses C. Johnson, for an improvement in cutting-pliers, and he filed a bill for damages and an injunction against one Hall. It appeared that Hall was president of a company engaged in making cutting-pliers under a patent issued to Hall. The writ turned on the question whether a certain model was made by Johnson while he was in the employ of the company, or after he had been discharged by Hall. *Held* that, on the evidence, it was not made till after the discharge; that Johnson was not the first inventor; and that the bill must be dismissed.

In Equity.*Horace Barnard*, for plaintiff.*Amos Broadnax*, for defendants.

BENEDICT, J. This action is founded upon letters patent No. 232,-975, dated October 5, 1880, issued to Henry G. Thompson, assignee of Moses C. Johnson, for an improvement in cutting-pliers. The bill charges infringement, and prays for damages and an injunction. The question at issue is whether the combination described in the plaintiff's patent was invented by Moses C. Johnson while an employe of a corporation styled the Interchangeable Tool Company, which corporation was engaged in the manufacture of cutting-pliers under a patent issued to the defendant Thos. G. Hall, then the president of the corporation. In support of the averment that Moses C. Johnson was the first inventor of the combination in question, the plaintiff produces a model known in the case as defendant's Exhibit C, which model embodies the invention in question, and was made, as the plaintiff has sought to prove, while Johnson was in the employ of the Interchangeable Tool Company. On the other hand, the defendants assert, and have sought to prove, that this model was not made by Johnson while employed by the Interchangeable Tool Company, but after Johnson had been discharged from that employment, and for the purpose of supporting a fraudulent claim to an invention really discovered by the defendant Hall, put forth for the first time by Johnson after he had been discharged from the service of the Interchangeable Tool Company.

In one aspect, the decision of the case depends upon a question of time; that is to say, whether this model, (Exhibit C,) composed of brass and iron, was made when Johnson says it was, while he was a workman for Hall's company, or at a date subsequent to Hall's discharge of Johnson. Upon this question much testimony has been taken on both sides. Upon a full consideration of all the evidence,

¹Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.