

clusion is reached with the less trouble, as the proceedings of the applicant, from the first application for a discharge to the last petition, as shown in the petition for review, were dilatory, and well calculated (if not actually intended) to wear out the patience of his creditors.

The said petition for review will be dismissed, with costs.

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THEOENS *v.* ISRAEL.<sup>1</sup>

(Circuit Court, E. D. Louisiana. March 5, 1887.)

PATENTS FOR INVENTIONS—COMBINATIONS—INFRINGEMENT.

To infringe a patent for a combination, it is necessary to use each member of the combination, or its equivalent, substantially as set forth; and, if the use of less than the whole be an infringement, it is only where the part used, separate and apart from the rest not used, was new and patentable to the inventor.

In Chancery.

*B. R. Forman*, for complainant.

*J. R. Beckwith*, *A. H. Leonard*, *Maurice Marks*, and *B. B. Bruenn*, for defendant.

PARDEE, J. The patent in this case purports to be for a combination, in a housing frame for mills, of certain brackets having hollow cylindrical pillars, provided with certain feet, caps, bolts, and rods, with certain bed-pieces, substantially and for the purpose set forth. In no sense is it a patent for divided or composite housing, or composite or divided housing frames, for mills. Under the evidence in the case, I am strongly inclined to the opinion that the patent should be held void for want of novelty; but it is not necessary to go into that matter. The evidence does not make a case of infringement. As noticed, the patent is for a combination of certain brackets with certain bed-pieces. To infringe a patent for a combination, it is necessary to use each member of the combination, or its equivalent, substantially as set forth; and, if the use of less than the whole can be an infringement, it is only where the part used, separate and apart from the rest not used, was new and patentable to the inventor. See *Cahoon v. Ring*, 1 Fish. Pat. Cas. 397; *Adair v. Thayer*, 4 Fed. Rep. 441.

The complainant's evidence in this case shows use by the defendant of brackets, but not of the specific kind, nor in combination, as described in the patent. The complainant and his witnesses seem to have been laboring under the impression that his patent was for divided housings, or housing frames, and their evidence goes no further than to show that the housings in defendant's mill were in separate pieces, and no one of them is able to specify any particular part of complainant's combination

<sup>1</sup>Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

as being used. Mr. Archibald Mitchell was apparently the most intelligent expert, and the best informed as to complainant's patent, of those called. He says that the housings for defendant's mill were constructed on the same general principle—the same general design—as complainant's patent, *i. e.*, in separate and distinct pieces: On cross-examination he was unable to describe the parts and combination used in the defendant's mill.

The certified copy of the files of the patent-office in the matter of complainant's patent shows that the original application of complainant contained a claim for "a housing frame for mills, made substantially as herein shown and described, consisting of the bed-piece and housing brackets, made in separate parts, to operate as set forth," and that this claim was rejected as anticipated by certain English patents.

The only infringement proved in this case is of said rejected claim.

A decree will be entered dismissing complainant's bill, with costs.

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### MOSHER v. JOYCE and others.

(Circuit Court, S. D. Ohio. June 2, 1887.)

#### 1. PATENTS FOR INVENTIONS—INFRINGEMENT—LEVER LIFTING-JACKS.

Letters patent Nos. 168,663 and 172,471, of date, respectively, October 11, 1875, and January 18, 1876, to Samuel E. Mosher, "for improvements in lever lifting-jacks," sustained, and held infringed by the "Joyce jack," No. 29, (except as to the "trip attachment" attached thereto,) and not infringed by the "Joyce jack," No. 8.

#### 2. SAME.

Claim No. 1 of letters patent No. 172,471, of date January 18, 1876, to Samuel E. Mosher, for "an improvement in lever lifting-jacks," substitutes for the single lever, engaging the pawl-block in a recess, (as in letters patent No. 168,663, of date October 11, 1875, to said Mosher,) a "double" lever, engaging the pawl-block at its outer sides. *Held*, (1) that the "double" lever constituted a useful improvement in lifting-jacks, it being the means of attaining greater strength and security, the pivots being thereby brought as close as desired to the weight sustained; and (2) that the invention was not anticipated by anything found in No. 168,663, or other prior lifting-jack inventions; and (3) that the double-lever device of the Joyce lifting-jack was a mere mechanical equivalent of the improvement. (On rehearing.)

#### In Equity. Bill for injunction.

Suit for infringement of two letters patent granted to complainant upon lever lifting-jacks, as follows: (1) No. 168,663, dated October 11, 1875, as to the following claim: "The block, D, provided with several teeth that catch simultaneously in those of bar, A, and pivoted to the lever, E, as and for the purpose specified." Also (2) No. 172,471, dated January 18, 1876, as to the following claim: "In a lifting-jack, the toothed lifting-block, pivoted to sockets of a double lever, swinging on an oscillating fulcrum, to engage and clear readily the teeth of the lifting-bar, as required, substantially, for the purpose described."