

vimus, nec super eum mittemus, nisi per legale iudicium parium suorum vel per legem tenæ, etc.—which is pointed against arbitrary power, was violated. I cannot say what damages I should have given if I had been on the jury; but I directed and told them that they were not bound by any certain damages, against the solicitor general's argument. Upon the whole, I am of the opinion that the damages are not excessive, and that it is very dangerous for the judges to intermeddle in damages for tort, and which all mankind at first blush must think so, to induce a court to grant a new trial for excessive damages."

Here the jury saw a formidable organization of detectives for the pursuit of criminals, in the pay of private parties, and in their interests alone, employed by the defendant for that purpose, proceeding in the most arbitrary manner, without the least pretense of magisterial authority, to arrest a free man, and drag him to a distant place in another dominion, for a crime committed there, and in this case arresting the wrong man in that way, when regular procedure would have developed that fact, and prevented the outrage. This verdict and judgment do not go so much upon the negligence or blunder of arresting the wrong man as upon the illegality of the proceeding as against anybody. The fundamental error was in assuming that it was possible to arrest a fugitive from another state without a warrant, by merely having a policeman make the arrest, and then negotiating for "a consent," which should relieve the "service" of the trouble of extradition proceedings. If the necessity which relaxes the law against arbitrary arrests in favor of policemen proceeding to temporarily detain suspected persons can be thus extended, then, indeed, is the policeman greater than the king. The mere presence and co-operation of a policeman does not make "a police arrest" valid, but the circumstances, and particularly the exigencies, of the case must be such as to justify the policeman in proceeding without a warrant. However useful detective agencies may be, they proceed at their peril, and at that of their employers, when they undertake arbitrary arrests such as this is shown to have been. Motion overruled.

GORSE *et al.* v. PARKER.

(Circuit Court, N. D. Illinois. May 14, 1888.)

PATENTS FOR INVENTIONS—NOVELTY—ELASTIC HOSE.

Letters patent No. 174,711, granted to Edward Tivey, March 14, 1876, for improvement in elastic hose, (the invention consisting in making an elastic stocking, with a seamless heel, by knitting or weaving a heel-piece which is attached with seams, or by being knitted onto the sides of the stocking so that the seams do not come against the tendon of the heel,) are void for want of novelty; elastic stockings with seamless heels having been common as early as 1870, and the Tivey invention merely changing the seam from the line of the heel-tendon to the sides.

In Equity. Bill for infringement of patent, brought by William Gorse and others against Andrew H. Parker.

Daniel Blackman, for complainant.
Andrew H. Parker, pro se.

BLODGETT, J. The bill in this case asks for an injunction and accounting against the defendant by reason of the alleged infringement of letters patent No. 174,711 granted March 14, 1876, to Edward Tivey, for "an improvement in elastic hose." The patentee states in his specifications that up to the time of his invention it had been the practice to make elastic hose or anklets for treating varicose veins with a seam down the back-side of the stocking, along the heel-tendon, and that such seam was liable to irritate the skin, and produce soreness and lameness; and the invention consisted in making an elastic stocking with a seamless heel, which was accomplished, as shown in his patent, by knitting or weaving a heel-piece, which was attached with seams, or by being knitted onto the sides of the stocking so that the seams did not come against the tendon of the heel.

The patent has but one claim, which is "the improved elastic hose above described, composed of the leg-piece, and the heel-part E, united as shown." The defense interposed is want of novelty, and under this defense the defendant has offered proof from several witnesses tending to show that it has been common to make elastic stockings with seamless heels since certainly as early as the year 1870; and an ankle with a seamless heel is offered in evidence, which, by the testimony of two witnesses was made as much as 20 years ago. The proof also shows that it has always been usual in the manufacture of elastic stockings of the character described in this patent to make the seams in such way as not to interfere with any sore or tender part of the limb of the wearer; in other words, the seams were located at any place in the stocking where the comfort or convenience, or the purposes for which the stocking was worn, required. Stockings of this character are made by first weaving or knitting a blank of the desired size and shape to make the stocking, and the edges of this blank are then brought together and united by a seam so as to form a garment; and it hardly needs proof, and would occur to any person, perhaps as a matter of common knowledge, that in any garment made of textile material, united by seams, the seams can be located wherever the manufacturer sees fit to put them. In the light of this proof, and what I may say is our common knowledge in reference to the matter of locating seams in garments, I cannot conceive that there was any novelty in this patentee's method of making heelless, elastic hose. All that was done was to change the location of the seam from the line of the heel-tendon to the sides, and in fact to insert a heel-piece instead of continuing the seam down the back of the stocking. The bill is therefore dismissed for want of equity.

SELLERS *et al.* v. COFRODE *et al.*¹

(Circuit Court, E. D. Pennsylvania. April 27, 1888.)

PATENTS FOR INVENTIONS—ANTICIPATION.

Where a manufacture is indistinguishable in all material respects from a former manufacture, is constructed from the same material, by the same mechanical operations, and by the use of tools which, though called by different names, are similar in general character and manufacture, the claims for the process of making and for the manufacture thus made are void.

This was a bill to restrain the infringement of letters patent No. 236,723 for a sleeve-nut, and method of making sleeve-nut, issued January 18, 1881, to George H. Sellers, assignor to William Sellers and John Sellers, Jr. The bill was filed by said William Sellers and John Sellers, Jr., as owners of the patent, and the Edge Moor Iron Company, licensees. The prayer was for an injunction and account. The specifications in complainant's patent were as follows:

"My invention relates to that class of wrought-iron couplings which connect tension-bolts, such as are used in bridge and roof and other trusses; and it consists of a right-hand nut, a left-hand-nut, and the sleeve proper which unites the two nuts, the length of this intermediate sleeve being proportioned to the amount of adjustment required. Such sleeve-nuts have heretofore been constructed, so far as I know, in two forms: one with the sleeve cylindrical inside and outside, and the nuts hexagonal at the ends, enlarging towards and vanishing in the round sleeve; the other with hexagonal exterior and parallel sides from end to end, and the interior of the sleeve cylindrical. Both these forms have the end sections thickened up to receive the thread. In both of these forms there is a surplus of metal which is necessarily unequally distributed, producing unequal sections longitudinally, so that this surplus gives additional weight without additional strength, and requires a corresponding increase in the other parts of the structure to sustain it. With the cylindrical sleeve the tapered hexagonal ends afford a very insecure hold for the wrench required to adjust the nut, and the hexagonal sleeve, with parallel sides from end to end, gives a clumsy appearance to the structure, with the largest surplus of metal. It is the object of my invention to furnish a wrought-iron sleeve-nut, having the sleeve with a polygonal exterior and a polygonal or cylindrical interior, uniting cylindrical nuts of a diameter less than that of the sleeve, the thickness of metal in the longitudinal section being as nearly uniform as is compatible with proper bearing surfaces for the wrench, thus affording a wrought-iron sleeve-nut with no surplus metal, and with an outline architecturally correct."

As described in the specifications he made the sleeve-nut from a wrought-iron plate. He obtained the desired form for the sleeve by first forging a tube in polygonal dies over a mandrel of the size desired for the interior of the sleeve. He then forged the ends over a smaller mandrel in dies which had the outline of the nut, but which had the center or sleeve-part cut away, thus securing by one rapid and simple operation the production of accurately shaped ends, of diminished interior diameter, while retaining the large interior diameter of the sleeve, and the