

Without giving a breadth of construction to the Moore and Rogers patent which I do not think warranted, I am unable to find any infringement on the part of the defendant. In view of the prior Hatch patent of August 1, 1871, the Moore and Rogers patent must be limited to the improved mechanism therein shown. A comparison of the two machines discloses a marked difference in construction and mode of operation. I do not find in the Young machine the crimper-slide found in the Moore and Rogers patent. In the Young machine the lip-turner, which turns the flange of the stiffener, is bolted to the frame, which is firmly fastened to the stationary table or bed; the lip-turner constituting a part of the frame or box in which the female mould is encased. Neither in the first nor in the second process of the Young machine do I find the weighted arm or spring or crimper-slide of the Moore and Rogers device. It may be said that both machines clamp and grip a stiffener between a male and female mould, and afterwards turn a flange, but the construction and operation of the machines are quite different. In my opinion the defendant's machine does not embrace the combination of devices covered by the first claim of the Moore and Rogers patent; nor do I think, in view of the prior state of the art, that the third or process claim of the Moore and Rogers patent, even if it is held to be valid, should be construed to cover either the first or second process of the Young invention. Bill dismissed.

ROYER v. KING *et al.* SAME v. RICHMAN *et al.* SAME v. RUSSELL.

(*Circuit Court, D. Indiana. November 28, 1888.*)

PATENTS FOR INVENTIONS—INVENTION—THRESHING-MACHINES.

Patent No. 259,264, issued June 6, 1882, to Louis C. Royer, as assignee of Christopher Blinn, covering the combination, in a threshing-machine, of a cylinder, a concave and grate below, a revolving beater arranged sufficiently near the cylinder to deflect the straw downward, a revolving rake and beater in the rear of the first beater, a vibrating shaker and carrier below, involves no invention; the J. A. Throp patent of April 18, 1876, those to complainant of September 7, 1875, and June 20, 1876, and the model made by Westinghouse & Co. during 1877-80, all contain substantially the same elements in the same combination as in the Blinn machine; the improvements made by Blinn in the incline of the grate, and the location of the beater, being only such as a skilled mechanic could have made with the others before him.

At Law. Action for infringement of patent.

These actions are brought by Louis C. Royer against John King and others, George W. Richman and others, and Allen A. Russell, respectively. The plaintiff is the assignee and owner of letters patent No. 259,264, issued June 6, 1882, to him as assignee of Christopher Blinn, for an improvement in threshing-machines. There were three claims in the patent, which cover the general combination, in a threshing-machine, of a threshing cylinder, a concave and grate below, a revolving beater arranged sufficiently near the cylinder to deflect the straw downward, a re-

volving rake and beater in the rear of the first beater, and a vibrating shaker and carrier, located below beaters, all constructed, arranged, and operated as shown. By stipulation the cases were submitted to the court for trial without the intervention of a jury. It was further stipulated that the decision of the court should be final and binding upon both parties, and that neither of them should appeal therefrom; and that, if the decision was adverse to the plaintiff, no other suits should be brought against Russell & Co., or the sellers or users of machines made by them. On the trial the defendants insisted that no invention was displayed by the device shown in the Blinn patent, on account of the previous state of the art as disclosed in letters patent No. 176,282, issued to J. A. Throp, April 18, 1876, and the patents issued to the plaintiff Louis C. Royer, Nos. 167,570, dated September 7, 1875, and 179,064, dated June 20, 1876. These, with a number of patents, and a model of a threshing-machine made by Westinghouse & Co., of Schenectady, N. Y., during the years 1877-80, were offered in evidence; the latter chiefly as anticipating the device of Blinn. The machines used by the defendants were made by Russell & Co., of Massillon, Ohio, which company defended these suits.

Mr. Stone, George E. Baldwin, and Jos. B. Kealing, for plaintiff.

M. D. Leggett and C. P. Jacobs, for defendants.

GRESHAM, J., (*orally, after stating the facts as above.*) I read from the Blinn specification:

"The great desideratum in all threshing-machines and separators is to arrest the straw after it leaves the threshing cylinder as speedily as possible, and to deliver it over to the grain separating devices in order to prevent it being thrown through or nearly through the machine, in order to effect perfect separation."

Blinn thus speaks of the then state of the art. He must be held to have had in mind the Westinghouse device, the Throp patent of April 18, 1876, and the Royer patents of September 7, 1875, and June 20, 1876. A skilled mechanic, with the Westinghouse machine and these patents before him, could have made the improvement which is described in the Blinn patent. The old machines contained a cylinder, a concave plate, and a grate, two beaters, one in front and one in rear, and a vibrating carrier, acting in co-operation, substantially as the same elements are combined and act in the Blinn machine. Neither the slight change that Blinn made in the incline of the grate, nor in the location near it and the cylinder of the beater, involved invention. Indeed, Blinn did little more than take the beater as he found it in the Throp machine, and put it in the Royer machine. While the latter, thus improved, is perhaps superior to the Throp and other machines, the improvement involved no invention. Finding and judgment for defendants.

McMURRAY *et al.* v. EMERSON.*(Circuit Court, D. Massachusetts. November 21, 1888.)*

PATENTS FOR INVENTIONS—INFRINGEMENT—MEASURE OF DAMAGES.

The measure of damages for infringement of a patent is to be ascertained by considering the amount of profits or savings made by defendant by the use of the infringing device, beyond what he could have made by the use of tools free to the public.

At Law. Action for damages.

This was an action brought by Louis McMurray and others against George R. Emerson for infringement of reissue patent No. 8,781, dated July 1, 1879, for an invention of Abel Barker, and reissue patent No. 10,672, dated December 15, 1885, for an invention of Jabez A. Bostwick, each invention being for an improvement in tools for soldering the caps or covers on tin cans, and both patents being owned by the plaintiffs as assignees.

Causten Browne and Benjamin Price, for plaintiffs.

A. H. Briggs, for defendant.

NELSON, J., (*charging jury.*) In this suit the plaintiff seeks to recover damages for the infringement of two patents of which he is the owner, the Barker patent and the Bostwick patent. These patents relate to improvements in tools for soldering tin cans. There does not seem to be any dispute between the parties as to the ownership of the patents, nor as to their validity. The defendant concedes that the plaintiff owns them, and that they are valid, and also that he has infringed them by the use of a tool in his tin-canning establishment; and that tool has been produced and exhibited to the jury. The defendant also concedes, and the plaintiff accepts the concession as true, that the tool embodying the improvements has been used by the defendant in soldering 50,000 tin cans. In regard to the rule of law applicable generally to the case as to the construction which the jury are to give to the patents, it is not necessary for the court to make any extensive or elaborate explanation, because they will not be troubled with the consideration of any question as to their validity, or as to the defendant's infringement; and it is only necessary for the court to read to the jury two prayers which the plaintiff has requested the court to give upon this branch of the case, and to say that the court adopts these prayers as containing a correct exposition of the law. The defendant concedes also that these prayers state the rule of law correctly.

In regard to the Barker patent, the plaintiff requests the court to give, and the court does give, this instruction: That the fifth claim of the Barker reissue patent is for a soldering apparatus consisting of a disc to melt and spread the solder, which disc is formed with a recess in its under side to give room for the convex lid of the can and confine the soldering process to the outer edge of the lid; this disc being in combination with