

proved process. And in this view it must be shown that the defendants use all the different steps of that process; otherwise there can be no infringement. The defendants do not use the sweating process, which is the first step in the Royer treatment, and therefore they do not infringe. This patent has been construed by Judge DRUMMOND, in the case of *Royer v. Manufacturing Co.*, 20 Fed. Rep. 853, and I agree with the conclusion he reached, namely, that—

“If this is a valid patent for a process, it must be limited to the precise, or, certainly, substantial, description which has been given in the specifications; and, in order to constitute an infringement of that process, a person must be shown to have followed substantially the same process, the same mode of reaching the result, as is described in the specifications.”

This case has been ably presented on both sides. If the contention of the counsel for the plaintiff was correct, that Royer had invented an entirely new process, which had revolutionized the art of preparing raw hide for belting and other purposes, it might be that the court should give that broad construction to this patent which is justified in the case of a foundation patent; but when we find, as in this case, that the substantial steps in the process are all old, the utmost that Royer is entitled to is protection against those who use in substance his precise process. Bill dismissed.

ROYER v. COUPE *et al.*

(Circuit Court, D. Massachusetts. March 12, 1889.)

PATENTS FOR INVENTIONS—INVENTION—MACHINE FOR TREATING RAW HIDES.

Letters patent No. 172,346, issued January 18, 1876, to Herman Royer, the claim of which, broadly, is for the combination with a raw-hide fulling-machine of an automatic reverser, are void, the elements being old, and their combination requiring no invention.

In Equity.

Bill by Herman Royer against William Coupe and others for the infringement of a patent.

M. A. Wheaton and Livermore & Fish, for complainant.

B. F. Thurston, W. H. Thurston, and Manuel Eyre, for defendants.

COLT, J. This suit is for infringement of letters patent No. 172,346, dated January 18, 1876, granted to the complainant for an improvement in machines for treating raw hide. The patent is for an improvement upon the raw-hide fulling-machine which forms the subject-matter of two prior patents, the first dated May 12, 1868, and granted to the complainant and his brother Louis, and the second bearing date June 22, 1869, and granted to the complainant. The patent in suit covers the attachment to a raw-hide fulling-machine of a shifting device, or an apparatus whereby the shaft may be reversed automatically. The claim is as follows:

"In combination with the drum, *A*, of a raw-hide fulling-machine, operating to twist the leather alternately in one direction and the other, a shifting device for the purpose of making the operation automatic and continuous, substantially as described."

Broadly speaking, the claim is for the combination with a raw-hide fulling-machine of an automatic reverser. Now, it cannot be denied that the fulling-machine was old, and further, that automatic reversing apparatus, in a variety of forms, including the form shown in the patent in suit, was old, and therefore we come to the first proposition in this case,—whether the combination of these two things for the first time constitutes a patentable subject of invention. This identical question under this patent was before Judge DRUMMOND in the case of this complainant against the Chicago Manufacturing Co., 20 Fed. Rep. 853, and it was there held, and it seems to me properly, that, under the patent laws as construed by the courts, there was no invention in such a combination of old devices. In discussing this patent, Judge DRUMMOND says:

"It seems to me that the evidence shows that this improvement was nothing more than the application to raw-hide fulling-machines of an old and well-known device used in washing-machines; and the testimony of one of the witnesses clearly establishes that the plaintiff obtained his idea from an examination and description of the same device used in a washing-machine, and, under the suggestion and with the assistance of the witness, applied it to the fulling-machine. It therefore comes within the rule which has been so long settled, that the application of an old device to another analogous use is not a patentable subject, and therefore I think the bill is not maintainable under this principle of the patent law, and must be dismissed."

There is no reason, upon the present record, to doubt the soundness of Judge DRUMMOND's conclusions. When Royer had perfected his fulling-machine so as to make it practicable to apply an automatic reverser, he knew exactly what to do. He applied to Mr. Clerc to construct a reversing apparatus precisely like those which had been applied by him to washing-machines for some years, and this was accordingly done, and the apparatus applied to the fulling-machine. It is difficult to discover any element of invention in this. The learned counsel for the complainant has entered into an exhaustive review of the authorities bearing upon the question of what constitutes invention, and he seeks to show that what Royer did was patentable. But the simple underlying facts in this case are to my mind at variance with many of the authorities he cites, and with his elaborate reasoning on the subject. Under the law as now administered by the courts, I can find nothing patentable in what Royer did, and therefore the bill must be dismissed. Bill dismissed.

ELECTRICAL ACCUMULATOR CO. v. JULIEN ELECTRIC CO. *et al.*

(Circuit Court, S. D. New York. March 18, 1889.)

1. PATENTS FOR INVENTIONS—CONSTRUCTION OF CLAIM—FAURE SECONDARY BATTERIES.

The specification in letters patent No. 252,002, issued January 8, 1882, to C. A. Faure, describes the secondary batteries invented by Gaston Planté, in which the plates have comparatively limited capacity, and require a long and expensive operation for their formation, and states the patentee's object to be to prevent such waste of time and money, and to construct a more powerful battery. Claim 1 is "as an improvement in secondary batteries, an electrode consisting;" etc. *Held*, that a secondary battery, as distinguished from a primary one, is an element of the combination.

2. SAME.

There being well-known primary batteries, and well-known secondary batteries, though there are others not definitely classifiable, the term "secondary battery," as used in the patent will not be construed as including a primary battery which has been exhausted and partially restored by being charged from an independent generator.

3. SAME.

Claim 1 being for "an electrode," etc., and the words "a pair of electrodes" being used in another claim, and it appearing from a foreign patent and the file-wrapper and the domestic patent that the patentee's attention was drawn to the distinction between one and two electrodes, the claim cannot be limited to the use of two electrodes, but a battery containing one Faure electrode, though the other is dissimilar, is within the claim, if the two operate to receive and discharge electricity as stated in the specification.

4. SAME.

Claim 1 is for "an electrode consisting of a support coated on one or more faces with an active layer of absorptive substance such as metal or metallic compound applied thereto in the described condition so as to be or instantly become spongy, and thus capable of receiving and discharging electricity, as stated; in contradistinction to a metallic plate itself rendered spongy by the disintegrating action of electricity, substantially," etc. It is stated that the oxides or salts of lead not soluble in the electrolyte is deemed most advantageous for covering the supports, but that the invention includes generally substances capable of absorbing and storing electricity; for example, manganese, or any salt, the oxide of whose base is insoluble; that the active material may be applied in various ways as in the form of paint, paste, or cement, in the form of a deposit by galvanic action or chemical precipitation or otherwise. In charging, the electricity produces a reduced mass of porous lead on one electrode and a mass of peroxide of lead on the other, and in discharging the reduced lead becomes oxidized, and the peroxidized lead is reduced. *Held*, that the claim includes a coating soluble in the electrolyte and one which is applied after immersion by galvanic deposit or chemical precipitation from a solution in the liquid.

5. SAME—DATE OF INVENTION.

The patentee cannot claim the invention earlier than October 20, 1880, which was the date of his French patent, he being then a citizen of France.

6. SAME—ANTICIPATION.

The *Electrician* of 1868 contained an article entitled "Secondary Batteries," but there was no evidence that a successful secondary battery having the characteristics therein mentioned was ever made, though similar structures were proved inoperative; and in charging such battery a reduced mass of porous lead on one electrode and a mass of peroxide of lead on the other were not produced. A person skilled in the art, after reading the article, would be unable to produce a Faure battery in any of its practical forms. *Held* no anticipation.

7. SAME.

A witness testified to reading an article 25 years before, and to experiments and results by him which would amount to anticipation. The article was not