

patent the invention described in the Coté patent is clear and is not denied. It is evident that the Coté machine does not infringe the original patent of Moffitt. The "former" described in the original specification of Moffitt being elongated in cross-section and eccentrically set upon its shaft, could not have either a rotating or reciprocating movement in the semi-circular grooved mould of the Coté patent, and by no stretch of construction could the stationary grooved mould of the latter patent be considered the equivalent of the cylindrical revolving rollers of Moffitt's original patent.

The specification and first claim of the reissued patent are a plain attempt to include a device which was not and could not be fairly covered by the original patent. That claim is, therefore, for that reason void. *Gill v. Wells*, 22 Wall. 1; *The Wood Paper Patent*, 23 id. 566; *Powder Company v. Powder Works*, 98 U. S. 126; *Ball v. Langles*, 102 id. 128; *Miller v. Brass Company*, 104 id. 350; *James v. Campbell*, id. 356; *Heald v. Rice*, id. 737; *Bantz v. Frantz*, 105 id. 160; *Johnson v. Railroad Company*, id. 539. And the evidence shows no infringement of any other claim of the reissued patent.

The decree of the Circuit Court dismissing the bill was therefore right, and must be

Affirmed.

SCHOOL DISTRICT OF ACKLEY v. HALL.

A writ of error will not be dismissed for want of jurisdiction by reason of a failure to annex thereto or return therewith an assignment of errors, pursuant to the requirements of sect. 997 Rev. Stat.

MOTION to dismiss a writ of error to the Circuit Court of the United States for the District of Iowa, with which is united a motion to affirm.

Mr. Walter H. Smith and *Mr. Alexander T. Britton* in support of the motions.

Mr. Galusha Parsons, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

A failure to annex to or return with a writ of error an assignment of errors, as required by sect. 997 of the Revised Statutes, is no ground for dismissal for want of jurisdiction. If an assignment is filed in accordance with the requirements of par. 4, Rule 21, it will ordinarily be enough.

There is not in this case such a color of right to a dismissal as to make it proper for us to consider the motion to affirm. *Whitney v. Cook*, 99 U. S. 607.

Motions denied.

GRANT v. PHENIX INSURANCE COMPANY.

A decree is not final within the meaning of the act conferring appellate jurisdiction, unless upon its affirmance nothing remains but to execute it. The court therefore dismisses an appeal by the defendant in a foreclosure suit from the decree therein rendered, which neither finds the amount due nor orders the sale of the mortgaged property, although it overrules his defence, declares the complainant to be holder of the mortgage, and, in order to ascertain the amount due him and other lien creditors, and for taxes, refers the case to a master, and appoints a receiver to take charge of the property.

MOTION to dismiss an appeal from the Supreme Court of the District of Columbia.

This is an appeal from the following decree in a suit for the foreclosure of certain deeds of trust in the nature of mortgages to secure the payment of money:—

“The cause came on to be heard upon the pleadings and proofs therein, and having been submitted by the counsel of the respective parties and duly considered by the court, and it appearing to the court that said defendant, Albert Grant, is not entitled to any relief under his cross-bill in this cause; that the plaintiff is the holder and owner of the several obligations of said Grant, secured by the deeds of trust on the real estate prayed in the original bill of complaint herein to be sold for the payment of the indebtedness thereon, and mentioned