

Syllabus.

alent. *Prouty v. Ruggles*, 16 Pet. 336; *Gould v. Rees*, 15 Wall. 187; *Rowell v. Lindsay*, ante, 97, and cases therein cited.

But counsel for appellee insists that the patent was not intended to cover a combination, but merely the forming of the under side of the pad by the use of a smooth sheet of leather crimped in order to have its ends turned up without producing wrinkles.

As already stated, the appellant does not use the crimped leather as the inner lining of a stuffed pad. He uses the crimped leather stiffened by a metal plate as a substitute for a stuffed pad with a crimped leather lining.

There is, therefore, no infringement, unless the patent of the appellee should be construed to cover simply a piece of leather crimped to the proper shape, and having its under side smooth and free from wrinkles, to be used to keep the upper part of the collar from galling the neck of the horse. If the patent is so construed it must be held void, for the evidence in the record is conclusive to show that such a device was made, sold, and used by many persons years before the date of the appellee's patent.

The result of these views is that

The decree of the Circuit Court must be reversed, and the cause remanded to that court, with directions to dismiss the bill.

CAILLOT & Another v. DEETKEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF CALIFORNIA.

Submitted January 12, 1885.—Decided January 26, 1885.

This court can acquire no jurisdiction under a writ of error where the return to it is made by filing the transcript of the record here after the expiration of the term of this court next succeeding the filing of the writ in the Circuit Court.

The facts are stated in the opinion of the court.

Syllabus.

Mr. J. J. Scrivner for plaintiffs in error.

Mr. John A. Wright, Mr. John F. Hanna and Mr. James M. Johnston for defendant in error.

MR. JUSTICE MILLER delivered the opinion of the court.

It has been repeatedly decided by this court that where no return has been made to a writ of error by filing the transcript of the record here, either before or during the term of the court next succeeding the filing of the writ in the Circuit Court, this court has acquired no jurisdiction of the case, and the writ having then expired, can acquire none under that writ, and it must, therefore, be dismissed. *Villabolos v. United States*, 6 How. 81; *Castro v. United States*, 3 Wall. 46; *Mussina v. Cavasos*, 6 Wall. 355, 358; *Murdock v. Memphis*, 20 Wall. 590, 624.

In the case before us the writ of error was filed in the Circuit Court in which the record was March 16, 1882, and the transcript that was returned with it was filed in this court November 28, 1884. Two full terms of the court had passed, therefore, between the filing of the writ of error in the Circuit Court and its return with the transcript into this court.

It must, therefore, be

Dismissed for want of jurisdiction.

CHEONG AH MOY *v.* UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF CALIFORNIA.

Submitted January 9, 1885.—Decided January 26, 1885.

The court declines to decide a question arising in a case which no longer exists, in regard to rights which it cannot enforce.

The facts are stated in the opinion of the court.