

Syllabus.

breach of contract or of duty on the part of this defendant, the case is relieved of all difficulty.

The conductor of the defendant's train, upon the plaintiff's presenting a ticket bearing no stamp of the agent at Hot Springs, had no authority to waive any condition of the contract, to dispense with the want of such stamp, to inquire into the previous circumstances, or to permit him to travel on the train. It would be inconsistent alike with the express terms of the contract of the parties, and with the proper performance of the duties of the conductor, in examining the tickets of other passengers, and in conducting his train with due regard to speed and safety, that he should undertake to determine, from oral statements of the passenger or other evidence, facts alleged to have taken place before the beginning of the return trip, and as to which the contract on the face of the ticket made the stamp of the agent of the Hot Springs Railroad Company at Hot Springs the only and conclusive proof.

The necessary conclusion is that the plaintiff cannot maintain this action against the defendant for the act of its conductor in putting him off the train. *Townshend v. New York Central Railroad*, 56 N. Y. 295; *Shelton v. Lake Shore Railway*, 29 Ohio St. 214; *Frederick v. Marquette &c. Railroad*, 37 Michigan, 342; *Bradshaw v. South Boston Railroad*, 135 Mass. 407; *Murdock v. Boston & Albany Railroad*, 137 Mass. 293, 299; *Louisville & Nashville Railroad v. Fleming*, 14 Lea (Tenn.), 128.

Judgment affirmed.

HOLLAND v. SHIPLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF OHIO.

No. 249. Argued and Submitted April 25, 1888. — Decided May 14, 1888.

A patent for a lead-holding tube of a pencil, having at the lower end two or more longitudinal slots, a screw-thread inside, and a clamping-sleeve outside, each part of which, as well as the combination of two or more slots with the sleeve, or of a single slot with the screw-thread, has been previously used in such tubes, is void for want of invention.

Opinion of the Court.

BILL IN EQUITY to restrain alleged infringements of letters patent. Decree dismissing the bill. Complainant appealed. The case is stated in the opinion.

Mr. George J. Murray for appellant.

Mr. E. E. Wood and *Mr. Edward Boyd*, for appellees, submitted on their brief.

MR. JUSTICE GRAY delivered the opinion of the court.

This is an appeal from a decree dismissing a bill in equity for the infringement of letters patent granted to the plaintiff January 22, 1884, for "improvements in lead-holders for pencils," which (omitting the drawings and the explanation of them) fully shows the invention claimed, and the form of lead-holders or lead-tubes previously in use and known to the patentee, as follows:

"The object of my present invention is to hold the lead or crayon in pencils from slipping back within the tube when pressed upon by the act of writing, without danger of breaking the lead.

"Lead-tubes now in common use are usually slotted at the lower end to form elastic clamping-fingers, which fingers are closed upon the lead near its point end by a sleeve or a tube which moves longitudinally over the fingers. These fingers are either smooth upon the inside, or terminate at their ends in sharp inward projections or claws. The first kind soon become so smooth that the lead slips back when borne upon in the act of writing; and the second frequently breaks the lead when the clamping-sleeve is tightened up, and when tightened up carefully the lead often breaks in use when writing with the pencil inclined. I overcome both these objections by making a fine screw-thread within the lower end of the tube, before it is slotted to form the clamping-fingers.

"The clamping-fingers may, instead of being screw-threaded upon the inside, be serrated or roughened to accomplish the same result; but the screw-thread is much better, because by this means a uniformly-even roughened surface can be made

Opinion of the Court.

within the lower end of the tube at comparatively small expense; and, as these pencils are designed to take the place of the common lead-pencil, they must be made cheaply to insure their introduction into general use.

"I am aware that it is old to provide a pencil-case for holding ordinary lead-pencils with a sliding ring, to which are secured spring-clamps having their holding-surfaces serrated, and having their shanks bent to approach each other, then jut outwardly and downwardly at their free ends, so that a ring-slide may be moved upon said shanks to cause the free ends of the clamps to grasp or release a pencil; and I am also aware that it is old to provide the lead-holding tube of a pencil with an interior thread and a single slot. I therefore do not claim either of these devices.

"I claim as my invention —

"1. As a new article of manufacture, a lead-tube for pencils, consisting, substantially as before set forth, of a tube provided at one end with internal or female threads and two or more longitudinal slots to form threaded fingers.

"2. The combination, with the lead-tube provided at one end with internal threads and two or more longitudinal slots, of a clamping-sleeve adapted to be adjusted upon the slotted end of the tube to press the threaded fingers upon a lead, substantially as described."

It thus appears upon the face of the plaintiff's specification that there were already in use lead-holding tubes for pencils with two or more slots at the lower end, so as to form elastic clamping-fingers, closing upon the lead by means of a sliding sleeve; as well as tubes with a single slot and an interior screw-thread.

The slots, the screw-thread within, and the outer sleeve being all old, and the combination of two or more slots with the sleeve, or of a single slot with the screw-thread, being also old, it is too clear for discussion, that to make two or more slots in a tube threaded inside and sleeved outside required no invention; and it is therefore unnecessary to consider the evidence upon the question whether the plaintiff was the first person who did this.

Decree affirmed.