

is the diagonal cut on the same sides of the two points, and the angle at which the points run from the body of the staple, as shown in his device. This is what Miles invented, and nothing more; and since we find that the form of the body of his staple, and the diagonal cut of the penetrating points, were old when he devised his staple, I am of the opinion that the angle at which the prongs run from the body of the staple, and the fact that in his device both points are cut diagonally on the under side, do not give to the device such originality and novelty as are essential to patentability; nor, in my judgment, can the mere fact that it is so constructed as to be adapted to use upon pails make it patentable. The leading feature of complainant's device, though it may give to it utility and value, seems to have been produced rather by mere change of form from that of devices which preceded it, than by originality of construction. The adjustment of parts is purely mechanical, and in the previous state of the art required only the exercise of mechanical skill. A staple with one point beveled on one side, and the other point beveled on the opposite side, was old. It was common knowledge that, as the points should be driven into the wood, they would be forced in different directions, because each point would be pushed in an opposite direction from the bevel. Now, the construction of a staple so that both points should be beveled on the same, that is, the under side, thereby causing both points, when driven into the wood, to incline or bend in the same direction, that is, a direction opposite the bevel, would seem to be, in the language of the supreme court, "but the carrying forward, or new or more extended application, of a thought original with others," or well known in mechanics, and not such an invention as will sustain a patent.

The learned counsel for complainant, in argument, relied strongly on the case of *Rogers v. Sargent*, 7 Blatch. 507, which involved the validity of a patent for a wire staple with corrugated or indented backs or ends. In that case the patent was sustained, and counsel have argued that the invention was merely a corrugated staple, the mere use of a piece of corrugated wire, such as every one had seen long before, but which

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when bent into a staple, produced a particular and novel effect. But an examination of the opinion of the court shows that the decision of the case was made to rest upon peculiar and special grounds. The patentee's staple was formed by compression between dies, and it appeared that his claim was granted by the patent-office "as a claim to a staple, the shanks of which were to have a rounded edge in the direction of their width, a sharpened edge in the direction of their thickness, and transverse indentations, *when those three qualities were produced by compression between dies, as contradistinguished from forging the points and cutting the barbs by a chisel.*" And it was this difference, leading to the production of the article at a cheaper rate by the new method, which was regarded by the patent-office as a patentable difference. And it is evident, from the opinion of Judge Blatchford, that he sustained the patent upon that ground, for he says: "The evidence shows that the patented staple could not be made by hand at a price which would admit of its profitable manufacture; that the sale of it made by dies, by machinery, has been very great, and that it has altogether superseded the non-serrated staple before used for blinds. In view of these facts I think the re-issued patent is valid, and the claim sustainable in law. The words 'constructed substantially as above-described,' in the claim, cannot be regarded as having reference solely to the construction of the staple into a staple with transverse corrugations, and so formed as to penetrate wood easily and be withdrawn therefrom with difficulty. *

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They mean not only staples of such a shape that they can readily be inserted into wood and with difficulty be withdrawn from it, *but staples made into such shape by the action of dies, which form the corrugations by swaging. To this idea of the use of dies, enabling the article to be made by machinery, is to be attributed the utility and success of the invention. This use of dies to make the corrugations, and not merely the reduction in size of the spike, forms part of the adaptation of the spike for use in blinds. And the article, when so made by dies, is a new commodity or article of manufacture.*"

So it clearly appears that the patent was sustained for the reason that the corrugations were, under the patentee's claims, to be made by the use of dies, thus enabling the article to be constructed by machinery, so that it should become a new article of manufacture. This is the special ground upon which the opinion proceeds in establishing the patentee's rights; and, therefore, I do not regard the case as one in which it is unqualifiedly held that a patent which merely covers a staple having indentations of equal depths, and over the whole surface, is valid. The particular features of the patentee's invention, to which attention has been called, evidently controlled the decision of the case.

Without pursuing the case at bar further, I am of opinion that complainant's patent must fall, because of the want of patentability of the device in question.

PANGBURN v. THE NORWEGIAN BARK GUNN.

THE SAME v. THE ITALIAN BARK CARMELITA ROCCA.

CONTI v. THE NORWEGIAN BARK GUNN.

(*District Court, E. D. New York. May 28, 1880.*)

1. COLLISION AT PIER—VESSELS ADRIFT IN A STORM.—In the East river, at Brooklyn, during a squall, the bark Gunn attempted to make fast at a pier outside of a bark, the C. Rocca, which again was fast outside a ship, the Paulina. Before the moorings could be all made fast the C. Rocca broke loose, and both she and the Gunn were driven against a canal-boat, the William Doran, lying further up in the slip, doing and receiving damage. Suit was brought in this district by the owner of the canal-boat to recover damages against both the other vessels; and suit was also begun in the southern district of New York, by the owner of the C. Rocca, to recover his damages against the Gunn, which, by consent, was tried with the other two actions in this court. *Held*, that the Gunn, having taken the risk of making fast at such a place in face of a storm, was responsible for damages caused by the accident to the other two vessels, and that the C. Rocca was not liable for damages caused to the canal-boat.

In Admiralty.