

improvement in the new wheel. It is somewhat significant that the alleged invention was not made until the monopoly secured by the patent of 1877 was approaching its end. If it be granted, however, that the change is useful, this would not help the plaintiff under the circumstances. Utility does not establish invention. Without it, of course, no invention, however ingenious, is patentable. There must be both utility and invention. Great utility may have some bearing on the question of invention. In such case, less evidence may establish its existence. Yet great utility sometimes results from changes in mechanical devices which embrace no invention. It is only necessary to cite *Hollister v. Benedict, etc., Manuf'g Co.*, 113 U. S. 59, 5 Sup. Ct. Rep. 717, to present a striking example of this. There the construction of the revenue stamp involved, embraced both utility and novelty. This was admitted. The utility was conceded to be very great, and the novelty exhibited much ingenuity. Yet the court held that no invention was shown, and consequently overturned the patent. In the light of this case, it seems quite clear that the change in the method of combining the body and rim of the wheels here involved, did not require invention. As we have seen, it was very slight, and produced no new result. If experience developed any defect in the wheel of Sax and Ker, or difficulty in constructing it, which could be overcome by transferring the groove to the rim and tongue to the body, it seems plain that any intelligent mechanic employed about the work must have seen this, and been able to make the change. Much more, we think, could have been urged in support of the revenue stamp patent than can be said for the plaintiff's.

A decree must be entered for the defendant with costs.

HENIUS *v.* LUBLIN and another.

(*Circuit Court, S. D. New York. May 9, 1887.*)

PATENTS FOR INVENTIONS—VALIDITY—KNOWN PROCESS—IMPROVEMENT.

A bill in equity to restrain the infringement of a patent will be dismissed where the patent alleged to be infringed is merely for an improvement in a previously known process, easily suggested by the tools used in the same, and the authorship of which improvement, if entitled to be called an invention, belongs to the person who devised such original process, and not to the patentee.

In Equity. Bill for infringement of letters patent.

Arthur V. Briesen, for plaintiff.

Edmund Wetmore and *Wm. A. Jenner*, for defendants.

SHIPMAN, J. This is a bill in equity which is based upon the alleged infringement of letters patent No. 316,034, applied for November 28, 1884, and issued April 21, 1885, to Max W. Henius, for an im-

proved process of manufacturing corset stays. The object of the invention was to blank out single and double or H-shaped corset stays from a strip of metal by successive single operations. The H-shaped or Sherwood stay was the invention of Henry C. Sherwood. The process is probably stated with sufficient clearness in the two claims of the patent, as follows:

“(1)The method of forming single and double corset stays at a single operation, which consists in blanking out a single stay between the two sides of the last half of one double stay and the two sides of the first half of the next double stay, and at the same time separating the completed double stay from the strip. (2) The herein-described improvement in the art of manufacturing corset stays, the same consisting—*First*, in feeding to the press a strip of metal the width of a double stay; *secondly*, in blanking out a single stay between the two parts of the last half of one double stay and the two parts of the first half of the next double stay; and, *thirdly*, in separating the completed double stay from the strip of metal.”

In December, 1883, and January, 1884, and prior to the date of the alleged invention, John Norton, the foreman of the Blun & Henius Manufacturing Company, of which Henius was a member, devised and made, at Henius' request, the tools for making what is called the Cohn Stay, which is a double O-shaped corset stay, connected by cross pieces at each end. The dies for the Cohn stay are the same as for the Sherwood stay, except that the die for the cross cut is placed very near the die for the longitudinal cut. The principle or the method of the so-called Henius process was easily suggested by the Cohn tools.

I am strongly inclined to the opinion that, in view of the previously known process for making the Cohn stay, there was no invention in the process for making the Sherwood stay; but, if the latter improvement is entitled to be called an invention, its authorship entirely belongs to John Norton, the same person who made the tools for the Cohn stay. Norton's testimony upon the subject is very clear, is corroborated by Sherwood, and is entirely uncontradicted. The bill is dismissed.

THE PEQUOT.¹

THE ALASKA.

BROOKLYN & N. Y. FERRY CO. v. THE PEQUOT.

PROVIDENCE & STONINGTON S. S. CO. v. THE ALASKA.

(District Court, E. D. New York. April 4, 1887.)

1. COLLISION—STEAMER AND FERRY-BOAT—EAST RIVER NAVIGATION—KEEPING IN MID-STREAM—ARTICLE 16, INTERNATIONAL REGULATIONS.

The steamer P. was coming down the East river, near the New York shore, on the ebb-tide, when the ferry-boat A. started out from the New York shore

¹Reported by Edward G. Benedict, Esq., of the New York bar.