

The plaintiff has granted no licenses, but has himself made and sold the locks separately and with bags, intending to supply the wants of the trade for them. He showed to the master that his profit upon these locks was 91 cents per dozen, and that the defendants had made and sold, with bags, 38,265 of them; but made no further showing of their profits. The exceptions raised the question whether these facts furnish a sufficient basis for the estimation of damages beyond merely nominal damages.

Two defects are apparent in the plaintiff's claim in this respect—one is that the case does not show that plaintiff's profits are due to the patented feature of the locks, in whole, or in any definite part; the other is that these facts do not show that the plaintiff would have had an opportunity to make and sell these locks if the defendants had not made and sold them with their bags. The case shows that there are other kinds of locks for such bags, and they are mere incidents to the bags for their more convenient use. However it might be as to articles wholly covered by a patent for which there was no, or no convenient, substitute, it does not follow in a case like this that a purchaser of the principal thing with a patented incident would go until he should find that particular kind of incident before purchasing. The form, material, or workmanship, of the bag itself may have been, and is quite likely to have been, as decisive with the purchaser as, and perhaps more so than, the lock. The plaintiff may have, and probably has, suffered damages from this infringement. He must show more than this, however, in order to recover them. He must, according to the cases, show what they are, or some reliable basis for estimating them. *Garretson v. Clark*, 111 U. S. 120, 4 Sup. Ct. Rep. 291; *Black v. Thorne*, 111 U. S. 122, 4 Sup. Ct. Rep. 326; *Dobson v. Hartford Carpet Co.*, 114 U. S. 439, 5 Sup. Ct. Rep. 945; *Dobson v. Dornan*, 116 U. S. 10, 6 Sup. Ct. Rep. 946.

Exceptions overruled, report accepted and confirmed.

COTTLE v. KREMENTZ and others.

(Circuit Court, S. D. New York. May 13, 1887.)

PATENTS FOR INVENTIONS—PATENTABILITY—NOVELTY—COLLAR AND SLEEVE BUTTONS.

Letters patent No. 202,412, dated April 16, 1878, to Shubael Cottle, for improvement in collar and sleeve buttons, contained two claims,—one for the making of such buttons by striking up the post from the back, forming them in one piece, thickening the post at the base for strength, and soldering the head to the post; the other for the button, whose tubular back and post are formed in one piece, and having the metal thickened at the base of the post. *Held*, that the first claim was patentable for novelty in method of construction, but that the claim for the button itself was not.

In Equity. Bill for infringement of letters patent.

W. H. L. Lee, for orator.

Frederic H. Betts and *J. E. Hindon Hyde*, for defendants.

WHEELER, J. This cause rests upon patent for invention No. 202,412, dated April 16, 1878, issued to the orator for an improvement in the construction of collar and sleeve buttons. The specification describes the making of such buttons by striking up the post from the back, forming them in one piece, thickening the post at the base for strength, and soldering the head to the post. There are two claims,—one for the improved process of constructing the button; and the other for the button, whose tubular post and back are formed in one piece, and having the metal thickened at the base of the post. The defendants' buttons are formed wholly in one piece, but without using the orator's process. The patent describes the prior method of making such buttons, which was to make the head, back, and post separately, and then unite them by soldering them together; and their defects, which were that frequently they were imperfectly united. When well made, they were not essentially different in form or function from those made according to the patent, or those of the defendants. The thickening of the post at the base is not material. They were generally strong enough there before; but, if not, the strengthening of them at that place would be too obvious to support a patent for doing that. The orator invented a mode of making such buttons which was new and very useful, and for which he deservedly had a patent; but the buttons, when made, were not new, except that they were made by that new mode. For them there was no ground for a patent. In the old buttons the post and back were not formed of one piece, but when they had been united, and become, with the head, a button, they were of one piece for the purposes of the button, as much as if they had always been in one piece. The thing patented in this part of the patent was not new, and this part of the patent is, apparently, invalid on that account. *The Wood Paper Patent*, 23 Wall. 563; *Cochrane v. Badische Anilin & Soda Fabrik*, 111 U. S. 293, 4 Sup. Ct. Rep. 455; *McKloskey v. Du Bois*, 8 Fed. Rep. 710, and 9 Fed. Rep. 38; *McKloskey v. Hamill*, 15 Fed. Rep. 750.

Let a decree be entered dismissing the bill of complaint, with costs.

COOKE v. GLOBE FILES Co. and others.

(Circuit Court, S. D. New York. March 16, 1887.)

PATENTS FOR INVENTIONS—PATENTABLE INVENTION—LETTER AND INVOICE FILE
—“RE-ENFORCE PIECE.”

Letters patent No. 282,275 were granted July 31, 1883, to William A. Cooke, Jr., for a letter and invoice file, the principal claims of which were a combination of tape called a “re-enforce piece” and the attachment of tapes to gussets in a certain manner. The said claims showed no new part or function which was not known before, but merely a mode of strengthening such files in places where they were previously weak, without requiring more than the skill of a good workman to reach the result obtained. *Held*, that said claims of the patent did not cover any patentable invention, and a bill to restrain infringement must therefore be dismissed.