

holes. When draught is applied, the plate pinches the trace and holds it down upon the broad part of the frame, and tends to relieve it at the weak points where the tongues enter it and to prevent the strain upon the tongues, so that they will not tear out. The same thing is accomplished by the use of the loop in the complainant's device. He says: "The greater the strain [draught] applied, the more firmly the trace is held to the frame, thereby relieving the strain upon the trace at the tongue." The plate or cross-bar of the loop which pinches the trace or belt when the loop is drawn down, is broader in Cole's buckle than in complainant's device, but it performs the same service in the same or substantially the same way. One tongue in Cole's buckle is on the under side of that part called the plate, and another tongue is on the forward part of the frame, and in complainant's buckle the tongue is on the outer face of the forward end-bar of the buckle frame only; but this is not material. The function of the draught loop of complainant's buckle, and the plate or draught loop of Cole's buckle, is the same. The construction of the loops differ, but they are both loose loops. Cole's device has an extra tongue on the under side of the broad plate or loop, but this does not affect the principal function, which is to pinch or firmly hold the trace or belt when draught is applied. So I find in Cole's patent No. 69,181 all the features embraced in the second, third, and fourth claims of complainant's patent, and operating substantially to accomplish the same result.

The bill of complaint is dismissed, and decree accordingly for the defendant.

CANFIELD RUBBER Co. v. GROSS and another.

(Circuit Court, D. Massachusetts. September 12, 1887.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Complainant was the owner of letters patent for an improved dress shield for the under part of the armhole of a dress. The shield was made of "stockinet," and coated on one side with a thin layer of India rubber. After being stretched upon a proper form, it was vulcanized by heat, to hold it in shape. The shield was of a crescent form, and without seam. Defendant's shield was similar, except that it had stockings upon both sides of the rubber. It appeared that the idea of a seamless shield was not new with complainant, nor was there any patentable novelty in vulcanizing or heating the shield so that it should permanently hold its shape. *Held*, that the validity of complainant's patent was not sufficiently apparent to sustain a motion for a preliminary injunction against defendant for infringement.

In Equity.

M. B. Philipp and *J. L. S. Roberts*, for complainant.

F. H. Betts, for defendants.

COLE, J. This is a motion for a preliminary injunction. The complainant is the owner of letters patent dated June 18, 1878, granted to *G. W. Wood*, for an improved dress shield for the under part of the armhole of a dress. The shield is made of thin elastic webbing known

as "stockinet," and coated on one side with a thin layer of India rubber. It is then cut into pieces of the proper size, preferably square, and stretched upon a form of the shape required in making the complete shield. This form is of sheet metal with an upper concave edge, and with catch pins or points around its convex edge. This piece of stockinet coated with India rubber is applied to this form in such manner that it passes over the concave edge, and extends down on both sides of the form, and is held in position by the pins. In this condition it is vulcanized by heat, in consequence of which it thereafter holds its shape. After unhooking the edges of the fabric from the pins, the shield is trimmed; and it is then ready for use. The first claim is for "a shield for garments, made of one piece of stockinet coated with rubber, of a crescent form, and without seam, as a new article of manufacture." The defendants' shield is similar, except that it has stockinet on both sides of the rubber, which is undoubtedly an improvement.

The main ground of defense to this motion is the want of patentability of the Wood shield, in view of the prior state of the art. Shields made of two pieces of India rubber, covered by a textile fabric, and united by a crescent-shaped seam or joint, are found described in the Hotchkiss patent, dated November 1, 1870. The advantages of the Wood shield are that it is seamless, and that its shape is set by a process of vulcanization. But Wood was not the first to make a seamless shield, for we find such a shield described in the Beames patent of October 22, 1872. The Beames shield was made of an oval piece of linen or muslin; and by the aid of a form made for the purpose, and a hot iron, there was produced a crescent-shaped seamless shield. It cannot, therefore, be said that the invention of a seamless shield of a crescent shape originated with Wood. The attempt to carry the invention of Wood back more than five years from the date of his application, and so prior to the date of the Beames patent, is not made out with sufficient certainty upon the papers before me. But it is said that the Beames shield would not retain its shape, and that Wood, by vulcanizing or heating, set the shield so that it permanently retains its form. If this last idea was new with Wood, it is clear that his patent should be sustained. The difficulty, however, is that the idea of setting India rubber articles permanently into different forms, by making the articles upon forms or moulds, and exposing them to the vulcanizing process, is very old in the art of India rubber manufacture. In the English patent granted to Thomas Hancock, September 17, 1846, for improvements in the manufacturing and treating articles made of caoutchouc, either alone or in combination with other substances, the specification says: "When I manufacture these compounds into articles requiring to be of a permanent shape or form, I make such articles in or upon forms, moulds, plates, or engraved surfaces or patterns, by pressing, fitting, placing, or moulding such compounds, previously prepared, in sheets or otherwise in or upon such moulds or forms, and allowing the articles to remain there while exposed to the vulcanizing process, which effectually sets them permanently to the respective forms."

Without pursuing this inquiry further, it is sufficient to say that I am not entirely free from doubt, upon the evidence before me, as to the validity of the Wood patent; and therefore, bearing in mind the rules which govern the courts in motions of this character, whatever may be the ultimate conclusion of the court upon final hearing, it is clearly my duty to deny the present motion. Motion denied.

REED and others, Copartners, v. LAWRENCE and others.

SAME v. CHASE and others.

(Circuit Court, S. D. Michigan, W. D. September 19, 1887.)

REHEARING—NEWLY-DISCOVERED EVIDENCE—ADJUDICATION DE NOVO.

Upon a rehearing, for the purpose of considering the effect of newly-discovered evidence as to the validity of reissue No. 9,148, of the Garver patent, dated April 13, 1880, when such evidence is not sufficient to disturb the decree, the circuit court will not make the rehearing the pretext for adjudicating upon the controversy *de novo*, it having twice been heard before a justice of the supreme court, although the circuit court has serious doubt of the correctness of the superior decision.

On Rehearing. For opinion on former decision and rehearing, see 25 Fed. Rep. 94, and 29 Fed. Rep. 915.

W. G. Howard and J. W. Osborn, for complainants.

Edwards & Stewart and John R. Bennett, for defendants.

SEVERENS, J. The newly-discovered evidence in these causes having been brought in, they have been reargued before the circuit and district judges, and upon consideration thereof the court holds that, although there are marks of suspicion upon it which fairly provoke criticism, the evidence must be regarded as establishing the fact that Willett did in fact for many years use a harrow, with teeth constructed as claimed by the defendants; that the use was sufficient to make it public within the meaning of that term; that the use had been discontinued and gone out of sight when the Garver patent was issued; but we do not hold that the recollection of it was so far obliterated as to prevent its being an anticipation of that patent, if intrinsically sufficient. We are of the opinion, however, that the Willett harrow cannot be regarded as a sufficient development of the features of the Garver patent, sustained by the former decree in this case as to constitute it such an anticipation as would invalidate the patent; it was a casual but vague and inchoate conception of the principles developed in Garver's invention. If, as has been settled in this litigation, until the supreme court shall have expressed its opinion upon the subject otherwise, the hay rakes and teeth in evidence in these causes, having the same conformation and attachments, or substantially so, with their adaptation to some parts of the work of a