

Case No. 6,318.

HEDDEN V. EATON ET AL.

[2 N. J. Law J. (1879) 49.]

Circuit Court, D. New Jersey.

PATENTS—NOVELTY—PRIOR USE AND ABANDONMENT—FERROTYPES.

- [1. Prior uses, merely experimental, and abandoned as unsuccessful, are not sufficient to show want of novelty in a perfected improvement, made some years later.]
- [2. Hedden's patent of March 7, 1876, reissue No. 6,982, for improvement in ferrotype plates and ferrotypes, is valid.]

Bill for infringement of patent of March 7th, 1876, reissue No. 6,982, for improvement in ferrotype plates and ferrotypes. Claim 1. A ferrotype plate covered by a coating composed of linseed oil and India red, substantially as and for the purpose set forth. 2. A ferrotype when taken upon a reddish brown or chocolate colored plate prepared substantially as described. Infringement of 1st claim was proved, and the question was whether the patent is void for want of novelty.

Wm. W. Swann and Chauncey Smith, for complainant.

Leonard E. Curtis, for defendants.

NIXON, District Judge (after reviewing the evidence), held that the evidence establishes: 1. That sheet iron coated with varnish composed of substantially the same ingredients and having the same color, was in use for other articles long before the alleged invention of Hedden. 2. That the use of varnish of a chocolate color, composed mainly of India red and linseed oil, was known and used for the backs of ferrotype plates several years before the date of complainant's patent 3. That these backs were not finished with a sufficiently smooth and glazed surface, to make the pictures produced on them such an improvement on the pictures taken on the black plates as to attract public attention, or secure the public favor. 4. That the production of pictures in the chocolate colored plates, ceased some years before the date of the alleged invention of Hedden. 5. That by more perfectly finishing the chocolate or reddish brown plate, according to the directions of Hedden, a better and more lifelike picture was obtained, evinced by the popularity of the pictures taken on his plates. (Authorities cited as to patentable improvements in processes leading to a better and cheaper production of iron: *Smith v. Nicholas*, 21 Wall. [88 U. S.] 112; 1 *Webst. Pat Cas.* 14; *Crane v. Price*, Id. 409; *Neilson v. Harford*, Id. 295.)

The complainant's success attests the improvement; the prior uses alleged were experimental and abandoned as unsuccessful. Hedden took up the matter and led the way to a perfected improvement which they groped after but never quite attained to. There is patentability in such improvement, and a decree must be entered against the defendants for infringement of the 1st claim of the complainant's patent.