

desired effect, and it is impossible to escape the conclusion that this was done for the purpose of deceiving the public, because the presumption is that the claim would not have been allowed in any broader form than that in which it appears.

The patent to Gundersen of December 30, 1873, shows a barrel constructed with an extension rib, on which are found shoulders which are rectangular in a lateral direction, and engage with corresponding shoulders on the recoil plate. All the shoulders are rectilinear in a direction about tangential to the line of movement at its intersection with the upper edge of the barrel. They do not extend to the top surface of the barrel, but are covered by the extension of the rib.

In view of the Gundersen patent there was no ground for Le Fever to claim shoulders rectangular in their horizontal cross section, and extending out to the top surface of the barrel, without reference to their vertical form. There would have been no invention in merely prolonging the upward extent of the shoulders; so the curved vertical form of the shoulders was introduced in connection with their being square. So far as appears, the first claim was novel and is valid, but it is not infringed by the defendant, because in its arm the shoulders are rectilinear.

The bill is dismissed, with costs.

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### FROST and others v. MARCUS and another.

(Circuit Court, S. D. New York. March 11, 1882.)

#### PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

Although defendants' structure contains improvements, yet if it involves the patented invention its use may be enjoined.

*G. M. Plympton*, for plaintiffs.

*Dickerson & Dickerson*, for defendants.

BLATCHFORD, Justice. The decision in Massachusetts disposes of all the questions on this motion in favor of the plaintiff, except that of infringement. As to that, the alleged infringing article here clearly comes within the principles of the decision under which the defendants' article in the Massachusetts case was held to infringe. It adds two nipping places to the one the patent has, thus making three. It distributes the strain as to the material of the plate, and it bites more of the fabric by nipping it at three places. Thereby the sides

of the structure before reaching the first nip may be made more rapidly converging, because that nip is not required to hold so firmly, or so much of the fabric. Yet the first nip holds more or less according to the thickness of the fabric in it as compared with the convergence of the sides, and although when the fabric is drawn through the first nip it is held by the other two nips, and is packed in the wider end portions, it still, as to part of it, continues to be held by the first nip. The defendants' structure doubtless contains improvements, but it involves the patented invention. The motion for an injunction is granted.

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### THE CIMBRIA.

(District Court, E. D. New York. June 30, 1882.)

#### SHIPPING—NEGLIGENT STOWAGE—LIABILITY FOR LOSS.

In the stowage of drums of glycerine care must be taken to prevent working of the tiers in case of springing of the ship, and the vessel will be liable for loss or damage where the exercise of proper care would have prevented any injury arising from any springing of the ship.

*Scudder & Carter*, for libellants.

*Butler, Stillman & Hubbard*, for respondents.

BENEDICT, D. J. This action is to recover for the loss of the contents of two drums of glycerine, during a voyage from Hamburg to New York, on the steamer *Cimbria*. The two drums in question formed part of a shipment consisting of 26 drums, made under an ordinary bill of lading, wherein is an exception of liability for damage caused by perils of the seas or arising through insufficiency in strength of the packages. The drums when shipped were in good order; upon arrival two of them were found to have been cut through, apparently by a sharp edge, and the contents gone. These drums were of sheet iron, in thickness about three-sixteenths of an inch, with heads about 28 inches in diameter. On each end, where the head was joined, was a ridge or rim, and around each drum at the middle were two iron rings, projecting from the surface of the drum from one and three-fourths to one and one-half inches; the body of the drum being in this way protected by these rolling rings, on which the drum rests. Drums constructed in this manner, for the purpose of transporting glycerine, have been used for some time on Atlantic voyages, and have proved to be sufficient for the purpose.