

I will say further, in regard to this patent, that I deem it more than probable that a patent could never have been obtained for this device except for the specification and claim of the *five* parts of the combination, which Andrews said made his invention. So many patents for bed bottoms had been issued long prior to Andrews' application that, to my mind, it is extremely doubtful whether he could have had a patent for this combination of spiral springs, hooks, and suspension wires, and the frame; but when he introduced the further element of rings, which, probably, no one else had thought of or suggested within the knowledge of the patent-office, he was allowed a claim for this invention made up of five elements. This, however, is only my supposition, and is outside the evidence in the case; but it certainly appears, on the face of the patent itself, that Andrews intended to limit his invention to a combination of the five parts which he specially describes.

This bill is dismissed for want of equity.

ANDREWS and others v. EAMES.*

(Circuit Court, D. Connecticut. February 8, 1883.)

1. PATENT LAW—INFRINGEMENT.

The questions which arise in this case are the same as those in the earlier cases of *Andrews v. Carman*, reported in 13 Blatchf. C. C. 307, and *Andrews v. Cross*, reported in 8 FED. REP. 269, in which the same party is plaintiff, and the opinions of Judge BENEDICT and BLATCHFORD in those cases are followed by this court without discussion.

2. DRIVEN WELL—INFRINGEMENT—BORING THROUGH HARD SOIL.

It is no argument against infringement on the "driven-well" patented process of well-driving, that in certain soils it is necessary to bore or dig through the hard soil which lies over the sources of water-supply, provided, before a supply of water is reached, the patented process is thereafter used.

In Equity.

E. H. Hyde, Jr., J. C. Clayton, and A. Q. Keasbey, for plaintiffs
C. S. Hamilton and Charles R. Ingersoll, for defendant.

SHIPMAN, J. This is a bill in equity to restrain the defendant from the infringement of reissued letters patent to Nelson W. Green, dated May 9, 1871, and commonly known as the "Driven-well Patent." The original patent was issued January 14, 1868. The litigation upon the construction and validity of this patent began in the United States circuit court for the eastern district of New York.

*Affirmed. See 7 Sup. Ct. Rep. 107A.

Judge BENEDICT's opinion, sustaining the patent, (*Andrews v. Carman*, 13 Blatchf. C. C. 307,) has been followed by Judge BLATCHFORD, (*Andrews v. Cross*, 8 FED. REP. 269,) and by the circuit courts in other districts, wherever the question has been tried. The decision of Judge GRESHAM in *Hine v. Wahl*, also sustaining the patent, has recently been affirmed by an equally-divided supreme court. In this state of the litigation the construction which was given to the patent by Judges BENEDICT and BLATCHFORD will be followed without discussion. The defendant relied upon the invalidity of the reissued patent, its want of novelty, and upon non-infringement.

The first defense presents a question upon which I much desired to read the views of the supreme court in *Hine v. Wahl*, where the question was directly made; but, in view of the fact that the court did not declare the reissue invalid, it is not improper to regard the patent as sustained. I may add that my own opinion tends in favor of the validity of the reissue.

Upon the question of novelty, the Goode patent and the other printed exhibits have reference to an artesian well made by boring, and not to a well made by driving and without moving the earth upward.

The remaining question is that of infringement. The defendant's two wells were made by Frederick B. Platt and Daniel Clark. Platt's testimony is as follows:

Question 6. State fully and particularly the process used by you in constructing these wells? *Answer.* We had a hollow auger that bored a hole about three inches in diameter, with which we bored the hole till we struck water; then we coupled the pipe together, and either drove or pressed the pipe into the water below the strainer. *Q. 7.* What do you mean by driving or pressing the pipe into the water below the strainer. *A.* I mean by driving the pipe, striking it on top with a maul; and by pressing it, we put a chain on the pipe above, and used a lever with a purchase to push it down; this was done after the hole was bored. *Q. 10.* How far did you ordinarily drive or press the pipe? *A.* From three to five feet. *Q. 11.* Into what did you drive or press the pipe? *A.* Into the wet sand. *Q. 20.* Describe fully and particularly the process used by you in constructing these [the defendant's] wells, specifying what difference there was, if any, between them? *A.* I don't know as there was any difference from what I have described; we bored a hole, as I said before, in the ground to the water, inserted the pipe, and either drove or pressed the pipe into the water from three to six feet, and attached a pump to the top; a pump constructed for a driven well, I believe. *Q. 21.* What do you mean by into the water? *A.* The water in the ground. *Q. 22.* You did not strike a solid body of water, did you? *A.* I struck water enough to supply the pump; that was all we was after, generally. *Q. 23.* Do you mean by into the water, into the water-bearing stratum of the earth?

A. I suppose so. Q. 24. What was your object in driving or pressing the pipe in the manner which you have testified? A. To get a supply of water for the pump. Q. 25. State whether or not a supply of water was furnished for the pump before the pressing or driving took place. A. It was not. Q. 29. State whether or not, after driving or pressing the pipes, as you have testified to, you removed any earth upward in constructing these wells? A. No sir.

The testimony of Clark is more brief, but to the same effect.

The defendant's counsel strenuously urge that these wells were constructed by boring; that the wells were bored until water was struck—that is, until a supply of water was obtained; and that the wells were finished by pressing the pipe more deeply into the source of supply which had been reached when the workmen "struck water." In other words, the defendant seeks to bring the case within the decision of Judge McCrARY in *Andrews v. Long*, 12 FED. REP. 871.

In this case, however, the witnesses, when they used the common expression "struck water," did not mean that they had reached an adequate source of supply for a well, but that they had reached a place where the presence of water manifested itself, and where by continuous excavation an adequate supply would be attained. The wet sand or wet clay upon the auger showed that water was at hand. The well was then finished, and a supply of water was obtained by pressing or driving a tube into the ground, without removing the earth upward, and attaching thereto a pump. When this was done, there was put "to practical use the new principle of forcing the water in the water-bearing strata of the earth from the earth into a well-pit by the use of artificial power applied to create a vacuum in the water-bearing strata of the earth and at the same time in the well-pit." *Andrews v. Cross*, 8 FED. REP. 269.

A workman in our New England soil would not ordinarily be able to drive or press a tube into the stony or tough crust which must be penetrated before water-bearing strata are reached. But it is no adequate argument against infringement that it is necessary to bore or dig into the rough and hard soil, or the mass of tough clay which lies over the sources of water supply, provided, before a supply of water is reached, the patented process is thereafter used for the purpose of obtaining an adequate flow of water upon the surface of the ground.

Let there be the usual decree for an injunction and an accounting.

EVORY and others *v.* BURT and others.

(*Circuit Court, D. Massachusetts.* February 3, 1883.)

PATENTS FOR INVENTIONS—IMPROVEMENT IN SHOES.

Where an improvement on a shoe effects the same results in substantially the same way, it is an infringement on plaintiff's patent, although it presents great simplicity and cheapness as compared to complainant's patent.

In Equity.

F. H. Betts, for complainants.

Geo. D. Noyes, for defendants.

LOWELL, J. The plaintiffs are the owners of patent No. 59,375, issued to two of them in 1866. The specification describes the invention as consisting of "a novel mode of constructing shoes and gaiters, whereby the ordinary elastic goring at the sides, and the tedious lacing up in front, are both dispensed with, while, at the same time, the tops will expand to receive the foot, and fit neatly and closely around the ankle when the shoe is on, being also water-tight to the extreme top of the shoe."

The mode of obtaining these advantages is by inserting at the rear of the front or vamp of the shoe a triangular flap, or gore, and a similar gore at the front of the back part, or quarter. These flaps, or gores, are sewed together at their edges, and when the shoe is to be put on, they open and admit the foot, and then are closed again and folded outside the shoe, and tied or buckled "forward over the instep." The patentees say: "We do not claim, broadly, for an extension gore flap, inserted in the ankle of gaiter shoes, for this is fully covered by the broad claim of Samuel Babbett's patent, issued March 7, 1865, * * *" and set out the advantages of their mode of construction. Babbett's patent was for a flap inserted in the heel, and carried round the foot and fastened at the heel again. Another patent, issued to Brown & Wootin, was for flaps inserted in the heel and brought round on each side of the foot. The English patent of Norris, of 1856, shows a gore flap like the plaintiffs', except that it folds inside the shoe; but such a flap would be uncomfortable, and the shoe containing it would not be likely to obtain a market.

The claim of the plaintiffs' patent is: "A shoe, when constructed with an expansion gore flap, C, D; the external fold, C, of which is attached to and in front of the quarter, B, and the internal fold, D, of which is attached to and in rear of the vamp, A; the said several parts and pieces being respectively constructed, and the whole ar-