

AMERICAN IRON CO. v. ANGLO-AMERICAN ROOFING CO.

(Circuit Court, S. D. New York. May 25, 1883.)

PATENTS FOR INVENTIONS—WANT OF NOVELTY.

There is no patentable novelty in the subject-matter of a patent for a metallic roofing or covering made of a series of corrugated shingles, to be secured to the roof by nails, as are ordinary wooden shingles, one shingle overlapping another, so as to cover the nail holes in the lower shingle.

WALLACE, J. The claim of complainant's patent, alleged to be infringed by defendant, is for "a metallic roofing or covering, made of a series of corrugated shingles." The metal shingles are secured to the roof by nails, as are ordinary wooden shingles, one shingle overlapping another, so as to cover the nail holes in the lower shingles.

There is no patentable novelty in the subject-matter of the claim. Metallic roofing laid in small sheets, the edges of which were lapped over each other by various devices, was old. Corrugated metal roofing was old. Corrugated metallic roofing laid in sheets, a section of one sheet overlapping part of another sheet, is described in the patent granted to Charles C. Scarf, June 10, 1869; and the gist of his invention was in employing a felt lining for the corrugated metal plates, in order to make the joints or seams tight.

This being the prior state of the art, it was open to the patentee to improve the mode of fastening the sheets or plates of corrugated metal. If he had employed new devices, or old ones that were not obviously applicable, but were useful, his improvement might have been invention. What he did, however, was merely to adopt for the fastening and laying of his metallic shingles the means which had always been employed for laying and fastening wooden shingles. Such an application of old instrumentalities to a new but cognate use, did not involve original thought or inventive skill.

The bill is dismissed.

THE ORIENT.*

BAKER and others v. MERCHANTS' MUT. INS. Co.*

(Circuit Court, E. D. Louisiana. June, 1883.)

1. SEAWORTHY.

Seaworthy, in the sense used, means in such a condition of strength and soundness as to resist the ordinary action of the sea, wind, and waves during the contemplated voyage. A ship is seaworthy, in this sense, when her hull, tackle, apparel, and furniture are in such a condition of soundness and strength as to withstand the ordinary action of the sea and weather.

2. SAME—BURDEN OF PROOF.

Where it was established that the vessel was sound and seaworthy for two years previous to her loss, and that she was wrecked in a cyclone, the burden of proof is upon the insurers to establish, satisfactorily, the alleged unseaworthiness.

3. ATLANTIC OCEAN.

The loss of a vessel wrecked in the Gulf of Mexico is covered by a policy of insurance containing a special clause by which the ship is limited "to navigate the Atlantic ocean between Europe and America;" the Gulf of Mexico being a part of the Atlantic ocean.

Admiralty Appeal.

Richard De Gray, J. R. Beckwith, Charles B. Singleton, and Richard H. Browne, for libelants.

Thomas H. Kennedy, Joseph P. Hornor, and Francis W. Baker, for defendants.

PARDEE, J. There are two questions of fact in this case upon which the parties differ: (1) Was the Orient *seaworthy* when she left the port of Liverpool on the voyage during which she was insured? (2) Was she *seaworthy* when she sailed from Ship island on the voyage during which she was wrecked and lost? Seaworthy, in the sense used, means in such a condition of strength and soundness as to resist the ordinary action of the sea, wind, and waves during the contemplated voyage. A ship is seaworthy in this sense when her hull, tackle, apparel, and furniture are in such a condition of soundness and strength as to withstand the ordinary action of the sea and weather. See 19 How. 167; 1 Curt. 148.

"It is sufficient, on a question of seaworthiness, if the vessel was fit to perform the voyage insured, as to *ordinary* perils—the underwriters are bound as to the extraordinary perils." 2 Wash. C. C. 480.

* Reported by Joseph P. Hornor, Esq., of the New Orleans bar. Affirmed. See 7 Sup. Ct. Rep. 821.