

were common to both parties, in the broad claim of Hartshorn. When the mistake was discovered, it was corrected by a simple exchange of claims. We are of opinion that, under these unusual circumstances, the lateness of the application is explained and shown to have been brought about by an actual mistake, without fraud, and to have been one from which no innocent person could have suffered.

This broad claim is infringed by the defendant's apparatus. His pawls, or detents, differ somewhat from those described in the patent, but not materially, as far as the first claim is concerned.

Decree for complainant on the Campbell reissue.

BOSTON RUBBER SHOE Co. v. LAMKIN and others.

(Circuit Court, D. Massachusetts. October 11, 1883.)

PATENTS FOR INVENTIONS.

The patent of Erskine F. Bickford, No. 196,788, for rubber boot-straps, not sustained for lack of novelty.

In Equity.

J. L. S. Roberts, for complainant.

John K. Beach, for defendants.

LOWELL, J. The patent of Erskine F. Bickford, No. 196,788, dated November 6, 1877, is sued upon here. The single claim is:

"As an improved article of manufacture, a rubber boot provided with a rounded, standing loop, of substantially the same material as the boot; said loop being made in the shape of a staple, and having its ends flattened and cemented, or otherwise suitably secured, between the inner and outer layers of said boot, substantially as and for the purposes described."

The boot which is described and drawn in the specification has a standing loop which opens transversely of the leg, instead of longitudinally with it. This makes a very convenient loop, which appears to have made the boot acceptable to the public. The evidence produced by the defendant upon the state of the art shows a patent issued to F. H. Moore, January 15, 1864, No. 41,087, in which a standing loop is described, which the patentee says is intended as a substitute for the ordinary woven or webbing boot-straps in common use. It is to be constructed of metal, or any rigid, tough, or hard substance, such as heavy wire or plate metal. The loops are shown as opening transversely of the leg, and the patentee says that they may be grasped with much greater facility than the ordinary straps. This patent was reissued in February, 1864, with a claim as follows:

"A strap for boots and shoes constructed of metal, or other rigid or tough material, attached either permanently to the boot-top, or in such manner as to admit, after the boot is drawn on the foot, of being turned or shoved down within or at the outer side of the boot, substantially as described."

The first part of the claim describes the plaintiff's strap or loop, and no patent can be sustained for an old form of boot containing a standing loop of tough material, unless invention is exercised in the adaptation. But the loop of the plaintiff's boot is attached to the boot in a mode old and well known, in the handles of bags and other similar articles of India rubber. There was, therefore, in my opinion, no room for invention in adapting a strap or loop of India rubber to a boot of the same material in one of the forms shown by Moore in his reissued patent. Bill dismissed, with costs.

DAVIDSON and others v. FOUR HUNDRED TONS IRON ORE.

(District Court, D. New Jersey. October 2, 1883.)

SUIT TO RECOVER DEMURRAGE, AND FOR BREACH OF CONTRACT OF AFFREIGHTMENT.

Libelants were not permitted to recover in a suit for demurrage and damages by reason of a breach of contract to carry freight, the facts showing that the failure on the part of the defendants to fulfill their contract was caused in a measure by the acts of the libelants, and in part by circumstances over which defendants had no control, and with which they could not be fairly charged, and where, under the contract, there appeared to be no agreement to pay demurrage except in the case of unreasonable delay, and there was no evidence of such unreasonable delay.

In Admiralty.

Beebe, Wilcox & Hobbs, for libelants.

Samuel H. Valentine, for respondent.

NIXON, J. This is a proceeding *in rem* on a contract of affreightment. The libel alleges that on the fifteenth of October, 1882, the libelants agreed with the respondent, D. W. R. Read & Co., to lighter or transport from the bark *Mattea*, which was about to arrive into the port of New York, a cargo of about 700 tons of iron ore, and to carry the same from the port of New York to the city of Hudson, at the rate of freight of 60 cents per ton; the said respondent also agreeing to pay demurrage for the detention of libelants' boats at the rate of eight dollars per day for each boat; that said bark did not arrive at New York, and was not ready to discharge her cargo, until November 27, 1882; that on the arrival of the bark the libelants' lighter, called the *Sylvan Stream*, received on board 293 tons of said ore, and proceeded forthwith to Hudson, and discharged the same in as good condition and order as received; but that said lighter was detained by the respondent four days, and that libelants are entitled to the sum of \$32 for demurrage; that in respect to the residue of the cargo, notwithstanding the libelants had their lighters along-side of the bark in readiness to receive the same, the respondent delayed having the same discharged into the lighter until it was impossible to proceed to Hudson on account of the ice, and the close of navigation in conse-