

struction of the newels sold by him. And this presumption is not dispelled by proving that the defendant realized the same profit from adopting, in the manufacture of the newels sold by him, a different and unpatented design. The fact that a certain profit is realized from the adoption of the design of A does not show that no profit is realized from the adoption of the design of B. The fourth exception raises the question whether the plaintiffs can, by virtue of section 4919, Rev. St., recover damages resulting from the defendant's infringement of their patent in addition to the profits realized by the defendant. Doubts appear to have existed in regard to the meaning of the provision in section 4919, but I understand the supreme court in *Birdsall v. Coolidge*, 93 U. S. 64, to hold the effect of the statute to be this: that when it appears, in a case in equity, that the defendant's profits, derived from the use of the plaintiff's invention, do not amount to so much as the plaintiff's damages arising from the infringement, the court may add to the amount of the defendant's profits a sum sufficient to make the amount awarded by the decree equal to the plaintiff's damages. So the decision referred to is understood in *Child v. Boston & Fair Haven Iron Works*, 19 FED. REP. 258.

Under this construction of the statute the plaintiffs, upon the proofs in this case, may have added to the defendants' profits the sum of \$151.50, making the recovery \$303, which is the amount of the plaintiffs' damages as shown by the proofs.

KIMBALL v. CUNNINGHAM.¹

(Circuit Court, E. D. New York April 24, 1884.)

PATENTS FOR INVENTIONS—PATENT No. 149,896—TAG OR TICKET FOR TICKETING CLOTHS, ETC.—INFRINGEMENT.

K. was the owner of a patent for a certain form of tag or ticket used for ticketing cloths, etc. The claim of the patent was for "a size or quality mark or ticket composed of two layers of paper, between which is secured the head or bridge of the fastening springs, which extend through the bottom layer, and are adapted to fasten the ticket to a fabric." K., having brought a suit against C. to restrain the infringement of the patent, applied for an injunction. It appeared that the defendant made a ticket, having a staple secured to a tag by an eyelet, the lips of which clamped the bridge or head of the staple to the underside of the tag. *Held*: That what K.'s patent purported to secure was the method of attaching the fastening spring or staple to the tag; that the defendant's ticket did not infringe on that method, and the motion for an injunction must be denied.

In Equity. Motion for preliminary injunction.
Townsend, Dyett & Einstein, for plaintiff.
Wm. C. Witter, for defendant.

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.

BENEDICT, J. This case comes before the court upon a motion for a preliminary injunction to restrain the defendant from making and selling a certain form of tag or ticket used for ticketing cloths and other similar fabrics, and alleged to be an infringement upon a patent No. 149,896, issued to Halmeah Van Grasen, April 21, 1874, and owned by the plaintiff. The plaintiff's patent is for an invention, the object of which is, as stated in the patent, to provide a ticket capable of being more readily attached than those heretofore in use. The invention is stated to consist in constructing tickets with metallic points at the back, which, upon being pressed against the fabric, will pass through the same, and by being bent back of the cloth will effectually secure the ticket to the cloth in a neat and strong manner. The claim reads thus:

"As an article of manufacture, a size or quality mark or ticket, composed of two layers of paper, between which is secured the head or bridge of the fastening springs, which extend through the bottom layer, and are adapted to fasten the ticket to a fabric."

The invention here sought to be secured does not, as insisted by the plaintiff, consist in the employment of a tag having soft metallic prongs securely fastened to the tag so as to attach it readily to the goods. If that were the invention, the patent would be void for want of novelty. What the patent purports to secure is the method of attaching the fastening springs or staple to the tag. No more is asserted in the claim, and the patent is limited to the method there described. The novelty of the invention thus sought to be secured consists in the method adopted for securing the staple to the tag. The distinctive feature of this method is constructing the tag of two layers of paper or other similar material, and placing the bridge or the head of the staple between the layers, which are then pasted or otherwise fastened together. The patent is, by its terms, confined to a ticket having a tag which is composed of two layers fastened together and a staple which is secured to the tag by placing its bridge or head between the layers of the tag. The defendant makes a ticket having a staple similar to the staple of the Van Grasen ticket secured to a tag by an eyelet, the lips of which clamp the bridge or head of the staple to the underside of the tag. Such a ticket does not, in my opinion, infringe the plaintiff's patent, for the reason that a tag composed of two layers is not necessary in the defendant's tag, and the staple is not secured to the tag by placing the staple between any layers of the tag. Clamping the head of the staple to the underside of the tag is not, in my opinion, equivalent to securing the head of the staple by placing it between the layers of the tag and pasting the layers together.

Motion for injunction denied.

STARK and others v. MUELLER and others.

(District Court, N. D. Illinois. December 8, 1884.)

SEAMEN'S WAGES—CONTRACT—QUANTUM MERUIT.

Where seamen ship for a voyage at a stated sum as compensation, and the voyage is broken up by disaster or peril of the sea, and no cargo is carried or freight earned, no recovery can be had for the time services were rendered by the seamen. The court cannot override the contract and award compensation to the seamen upon the *quantum meruit*.

In Admiralty.

Wm. L. Mitchell, for libelants.

Schuyler & Kremer, for respondents.

BLODGETT, J. This is a libel for wages. The libelants shipped as seamen on the schooner *Ketchum*, of which respondents were owners, on the twenty-sixth day of October, 1883, for a voyage from Milwaukee to Gill's pier, and from thence with a cargo of lumber to Chicago. The schooner arrived at the pier on the twenty-eighth day of October, and commenced loading, but, rough weather setting in, she hauled off from the dock, intending to ride out the storm at anchor. The storm, however, increased, and she was driven ashore on the morning of the thirty-first of October, where she afterwards became a total wreck. Libelants, by their contract, were to have \$20 for the entire voyage, or round trip, from Milwaukee to Chicago. At the request of the captain of the schooner, after she had gone aground, the seamen remained at a boarding-house on shore until the underwriters sent a wrecking-tug, for the purpose of endeavoring to get her off, as the captain anticipated that their services might be wanted by the wrecking party, and they so remained in waiting at the captain's request. After the wrecking party arrived, which was about the third of November, attempts were made to get the vessel off, which proved unavailing, and it appearing from investigation that the bottom of the vessel was substantially gone, the libelants, under the direction of the wreckers, assisted in stripping her sails and other removable property from her, and when that was done they were furnished with transportation to Chicago or Milwaukee, whichever port they wished to return to, and, excepting a small amount, received no further or other compensation at the time of their discharge.

The original libel claimed pay of the owners of the schooner for the proportion of time they served before the wreck, and from the insurance company who had issued the policy on the schooner for the time they were employed in helping the wreckers. The insurance company, after the proof was taken in the case, paid the libelants for their time from the first day of November up to the time they were discharged, when the wreck was abandoned, together with the costs of this suit up to that time; and the only question now remaining is whether anything is due libelants from the owners of the