purposes, but that is not invention. Taking the principle, heretofore stated, as the criterion, to-wit, that in a patentable design there must be exhibited originality and beauty, it is apparent that this patent cannot be sustained. The design, which is its subject, may be beautiful; it certainly is not novel, nor is it original with the patentee. The injunction heretofore granted is dissolved, and the bill is dismissed, with costs.

COMPAGNIE UNIVERSELLE DU CANAL INTEROCEANIQUE *v.* BELLONI *et al.*[1]

(*District Court, E. D. New York.* March 28, 1891.)

ADMIRALTY PRACTICE—SECURITY UNDER ADMIRALTY RULE 53—INSUFFICIENT AFFIDAVIT.

An objection by the respondent in a cross-suit to giving security under admiralty rule 53 in the amount of the claim of the libel, on the ground that he cannot do so "without serious embarrassment to his business, and great expense and sacrifice," is insufficient.

In Admiralty. On motion as to amount of security.

Butler, Stillman & Hubbard, for claimants.

W. J. Marrin and *R. D. Benedict*, for libelants.

BENEDICT, J. This is a motion taken under the admiralty rule 53 to obtain a direction from the court as to the amount of security which shall be given by Belloni, the respondent in a cross-libel filed by the Compagnie Universelle du Canal Interoceanique against him in this court. The damages demanded in the action against Belloni are the sum of $20,000. It is sought in this motion to have the amount of the security fixed at not exceeding $6,000. The ground upon which this application is based is that Belloni cannot give security in the amount in the libel "without serious embarrassment to his business, and great expense and sacrifice." In my opinion this affidavit does not show cause for a direction by the court that the security should be less than the sum demanded in the libel, namely, $20,000.

[1] Reported by Edward G. Benedict, Esq., of the New York bar.

BALL *et al.* *v.* TRENHOLM.

(*District Court, D. South Carolina.* April 1, 1891.)

1. ADMIRALTY—JURISDICTION—DEFECTIVE WHARF.
   A claim against a wharf-owner for injury sustained by a vessel in the dock by reason of an alleged defect therein is within the jurisdiction of admiralty, and a libel *in personam* will lie.
2. RES ADJUDICATA.
   But where such an action has been brought in the state court, and a verdict rendered for defendant, and plaintiff's motion for new trial overruled, and a notice of appeal given, the action of the court is *res adjudicata*, although the formal judgment has not been entered, and the jurisdiction of the court is exhausted. An order entered in the circuit court after appeal to the supreme court, giving plaintiffs leave to discontinue their cause on payment of costs, is *coram non judice*, and will not enable them to maintain a libel in a court of admiralty on the same cause of action.
3. DISMISSAL OF SUIT.
   An order to discontinue a cause cannot be entered after judgment.

In Admiralty.

Charles Prioleau and *Northrop & Memminger*, for libelants.

J. Ancrum Simons, for respondent.

SIMONTON, J. Libel *in personam* against a wharf-owner for injury sustained by a vessel in the dock, by reason of an alleged defect therein. Exceptions are filed to the jurisdiction of the court, on the ground that the subject-matter of the suit is not within the cognizance of admiralty; and, next, that this controversy has already been determined in the state court. There is no doubt on my mind that the case is within the jurisdiction of the admiralty. *The John E. Berkman*, 6 Fed. Rep. 535; *Sawyer* v. *Oakman*, 7 Blatchf. 290. The other exception requires more discussion. An action was brought in the court of common pleas for Charleston county by these libelants against this respondent. The complaint set forth the same facts as are alleged in this libel; the defense made in the answer is the same made on the merits in the pleading before this court. The cause, being at issue, was tried before his honor, Judge IZLAR, and a jury. The verdict was for the defendant. The plaintiffs moved for a new trial on the minutes, and on an affidavit of the absence of a material witness. The judge in a written decree refused the new trial, expressing his satisfaction with the verdict. Plaintiffs gave notice in writing of their intention to appeal to the supreme court. Before any other steps were taken an order of Judge IZLAR was entered in the court below, giving leave to plaintiffs to discontinue their cause on payment of costs. This order was on the written consent of the attorney for defendant. Under these circumstances, is the controversy between these parties ended, so that this action will not lie?

It becomes important to ascertain if there ever was a judgment in this case. There is no paper on file resembling the *postea* of the old practice, or the summary of verdict and costs of the new procedure, signed by the clerk and the attorney. No formal judgment could have been entered until the motion for a new trial was disposed of. *Tribble* v. *Poore*, 28