

leaf, where the bearing takes place, a little deeper, the leaves and the link may all be made in one plane. While one particular form of attaching the leaf to the plate may be essential in the Atwood hinge in order to obtain the Atwood bearing, the defendant only uses that form to obtain a different bearing.

Upon the whole, we have grave doubt whether there is anything patentable in the combination claim of the Atwood patent, but if the so-called "bearing feature," in combination with the other elements of the claim, is sufficient to sustain the patent, then there is no infringement shown, because the defendant's hinge is constructed with a different bearing. On the question of patentable novelty, it is somewhat significant that the application for the Atwood patent was filed in the patent-office, April 4, 1884, and that the patent was not granted until March 6, 1888; that the application was three times rejected by the patent-office on reference to the Jenness patent of 1873, and that the evidence goes to prove that it was finally granted by an examiner who had not previously dealt with the application, and to whom the matter was new.

This case is pending in this court upon an appeal from an interlocutory decree of the circuit court of the United States for the district of Massachusetts, granting an injunction. In the opinion of this court, the complainant is not entitled to an injunction, and the decree of the circuit court is accordingly reversed.

NATIONAL FOLDING BOX & PAPER CO. v. AMERICAN PAPER PAIL & BOX CO.

(Circuit Court, S. D. New York. January 15, 1892.)

PATENTS FOR INVENTIONS—CONSTRUCTION—RES JUDICATA.

The construction of a patent in an action is conclusive in another action by the patentee against a third person, where no new defenses are interposed.

In Equity. Suit by the National Folding Box & Paper Company against the American Paper Pail & Box Company for infringement of letters patent No. 171,866, granted January 4, 1876, to Reuben Ritter, for an improvement in paper boxes. Heard on motion for a preliminary injunction. Granted.

Walter D. Edmunds, for complainant.

Billings & Cardozo, (*R. Bach McMaster*, of counsel,) for defendant.

LACOMBE, Circuit Judge. The patent sued upon was construed by this court in *Box Co. v. Nugent*, 41 Fed. Rep. 140. For the purposes of this motion, that construction is to be accepted; especially in view of the fact that no new defenses are interposed. The patent was limited to a locking device, which operated by the engagement of a hooking device with a slot, not at a single point of contact, but where the hook and slot

were so arranged as to be brought in contact, straight edge to straight edge. The defendant's box, shown in Exhibit A, operates, and seems devised to operate, in that way, as much as did the one made by Nugent, and before the court in the former suit. The projection does not sink down to the end of the slot, and there hook over the material in which the slot is cut, as in so many other devices, but engages with the edge of the slot itself at several points, successively or continuously, as the pressure upon the parts varies. Complainant may take a preliminary injunction.

THE WILLIAM BRANFOOT.

HAMILTON v. THE WILLIAM BRANFOOT.

(District Court, D. South Carolina. January 15, 1892.)

1. SHIPPING—LIABILITY FOR PERSONAL INJURIES—DEFECTIVE APPLIANCES.

A ship is liable in damages to one of a stevedore's gang who is injured while unloading cargo by the unexpected falling of a stanchion because of defects in the fastening not observed by him, and not apparent to the eye.

2. MEASURE OF DAMAGES—PERSONAL INJURIES.

By an accident on a vessel, for which the ship was liable, a stevedore's laborer received a comminuted fracture of the bones of his leg, and had his leg amputated below the knee, being treated in a free hospital. He was between 30 and 35 years old, and earned \$1.25 a day, or \$375 a year. *Held*, that he would be allowed \$500 for sufferings, and it would be assumed that his earning capacity was reduced two-thirds, and that his life-interest in the capitalized value of his income was worth one-half the amount thereof, on which theory he was entitled to recover \$1,786, or \$2,286 in all.

In Admiralty. Libel by John Hamilton against the British steamship William Branfoot for damages for personal injuries. Decree for libellant.

Northrop & Mamminger, for libellant.

Trenholm & Rhett, for respondent.

SIMONTON, J. This libel is for personal injuries received on ship-board. Libellant was one of a stevedore's gang employed in discharging pyrites from the British steamship William Branfoot. While he and others were working in the lower hold, an iron stanchion supporting the between-decks fell and broke his leg. Amputation became necessary. The leg was cut off about six inches below the knee. The stanchion was on the starboard side of the main hatchway, midway. It was 18 feet high, and weighed 660 pounds. It rested on an iron tank at the bottom of the hold, and had two flanges at its lower end, through each of which was an iron bolt, riveting it to the tank. The top of the stanchion was riveted to the iron beam, upon which the between-decks rested. This was by a sort of flap pierced with two holes for rivets. After the stanchion had fallen, its upper end was examined. The concurrence of testimony is that one of the rivets originally in this part of