

that the patent office recognized him as an inventor, and issued him a patent.

Standing by themselves, the complainant's claims are too broad to be sustained; but, by reading into them his specifications, they are limited to producing shank stiffeners from leather board, leather, or like material. The only question raised in this case, or, indeed, by the present state of the art, relates to leather board; and we therefore limit our conclusions to this substance, without inquiring concerning leather or other material like leather board or leather.

The decree of the circuit court is reversed, the first and sixth claims of complainant's patent are sustained for use in producing shank stiffeners from leather board, and the case is remanded to the circuit court, with instructions to enter a decree for the complainant for an accounting and for a perpetual injunction against making, vending, or using, for producing shank stiffeners from leather board, any machine or method infringing the first or sixth claims, and for other proceedings in conformity with this opinion; the complainant to recover his costs in this and the circuit court.

JOHNSON CO. v. PACIFIC ROLLING MILLS CO.

SAME v. SUTTER ST. RY. CO.

(Circuit Court of Appeals, Ninth Circuit. July 18, 1892.)

Nos. 33, 34.

PATENTS FOR INVENTIONS—PATENTABILITY—INVENTION.

Letters patent No. 272,554, issued February 20, 1883, to Tom L. Johnson for a street railroad rail, combining the principal features of the tram and T rails, but with a different disposition of metal and combination of parts, so as to allow the advantage of even fish plating, are void for want of patentable invention, as the change in form was merely the result of mechanical skill. 47 Fed. Rep. 586, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of California.

In Equity. These are two suits brought by the Johnson Company against the Pacific Rolling Mills Company and the Sutter Street Railway Company, respectively, for infringement of letters patent No. 272,554, issued February 20, 1883, to Tom L. Johnson for street railroad rails. The circuit court dismissed the bills, holding that there was no infringement, and that the patent was void for want of invention. See 47 Fed. Rep. 586, where a full statement of the facts will be found in the opinion delivered by HAWLEY, J. Complainant appeals. Affirmed.

George Harding, George J. Harding, and Wm. F. Booth, for appellant.
M. A. Wheaton, I. M. Kalloch, and F. J. Kierce, for appellee.

Before McKENNA and GILBERT, Circuit Judges, and DEADY, District Judge.

MCKENNA, Circuit Judge. The patent in this case is for a form of street rails. The patentee in his specifications admits that rails embodying the general features of his rail were old, and we think his special form involved no invention. It was but an obvious application of what had preceded. Judgment is therefore affirmed.

H. TIBBE & SONS MANUF'G Co v. LAMPARTER.

(Circuit Court E. D. Missouri, E. D. September 5, 1892.)

1. PATENTS FOR INVENTIONS—INVENTION—INTERPRETATION—CORNCOB PIPES.

Letters patent No. 205,816, issued July 9, 1878, to Henry Tibbe, claiming "a smoking pipe made of corncob, in which the interstices are filled with a plastic, self-hardening cement," must be interpreted as for corncob pipe in which the exterior interstices of the cob are filled with a self-hardening cement; and though the invention is not of a high order, yet, in view of the generally recognized merit of the article, the patent is valid. *Manufacturing Co. v. Heineken*, 43 Fed. Rep. 75, followed.

2. SAME—ANTICIPATION.

The fact that prior to the application the bowls of corncob pipes had been varnished with shellac, unmixed with other substances, does not constitute anticipation.

3. SAME.

Nor is it sufficient to show anticipation that plaster of Paris had been used to fill small cavities or cracks occasionally found in the cob.

4. SAME—INFRINGEMENT.

The patent is not limited to the use of plaster of Paris for the filling material, and it is an infringement to use either a mixture of finely pulverized corncob mixed with cornstarch, and moistened in the act of putting on by saturating the cob in alcohol, or a mixture of pulverized corncob and shellac.

In Equity. Bill by the H. Tibbe & Sons Manufacturing Company against Henry Lamparter for infringement of letters patent No. 205,816, issued July 9, 1878, to Henry Tibbe, for an improvement in corncob pipes. Decree for complainant.

Paul Bakewell and *R. A. Bakewell*, for complainant.

J. Hugo Grimm, for defendant.

THAYER, District Judge. The patent involved in this suit was considered and sustained in the case of *Manufacturing Co. v. Heineken*, 43 Fed. Rep. 75. It was there held that the claim of the patent should be interpreted as one for a corncob pipe in which the exterior interstices of the cob are filled with a plastic, self-hardening cement; that the making of such a pipe did not involve invention of a very high order. Nevertheless, as the result had been to convert a poor article into a good one, and to supply something to the trade which was new, and the merits of which were generally recognized, there was enough of invention to sustain the patent. The views thus expressed in the *Heineken Case* commend themselves to this court, and they are accordingly adopted.