

surface of the cone, and united above its apex in a hollow collar, through which, from the guide tube, the rod is introduced and directed to the surface of the cone at its apex, and is taken up by one or the other of the wings as the cone and wings rotate, and is coiled beneath the base. The rotating machinery is applied at the hollow collar. If I am correct in holding valid the first claim of Roberts' first patent and the third claim of his second patent, the language of both these claims exactly describes what is found in respondent's coiler. But even suppose that I am wrong with respect to the claims mentioned, respondent's machine is a clear infringement of the second claim of Roberts' second patent, to wit:

"In metal-coiling apparatus, a rotary coiling cone, having two longitudinal ribs with lateral flanges, substantially as and for the purposes described."

Respondent, in his answer, set up a license to use the machine which he was using, from McIlvried and Chisholm, the owners of the McIlvried patent. The McIlvried patent, so far as it relates to the device already described, is clearly an infringement of the second claim above. Counsel for respondent practically admits that it is. The evidence leaves little doubt that McIlvried saw the first Roberts device in operation, and the model of the second device, before he made his application, and that he simply copied the improvement in the second machine. The device of the McIlvried patent has ribs wider than the Roberts machine, but it has the lateral flanges of that device on the exterior edge of these ribs. During the pendency of the suit the respondent cut off the lateral flanges, and now the court is vigorously pressed with the argument that, in the absence of the flanges, though the device is the same in every other respect, there is no infringement. The point has no merit. The wings of the McIlvried coiler correspond exactly to the ribs of the Roberts second patent. The necessity for lateral flanges in the McIlvried machine has been obviated by widening the ribs into wings, and by making the angle at which they meet the surface of the cone somewhat more acute. The widening of the wings and the lessening of the angle are purely mechanical equivalents of the lateral flanges of the longitudinal ribs in the Roberts second patent, and would suggest themselves to a mechanic or any other person at all familiar with the operation of the machine. It follows, therefore, that in any view the machine of the respondent is an infringement of both the Roberts patents.

The finding will be against the respondent, sustaining the validity of the patents, and finding that the respondent has infringed them, with a decree for perpetual injunction, and with the usual reference to a master for an accounting.

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STOHLMANN et al. v. PARKER et al.

(Circuit Court of Appeals, Second Circuit. February 7, 1893.)

PATENTS FOR INVENTIONS—INVENTION—SURGICAL TUBES.

Letters patent No. 181,879, issued June 12, 1877, to Edward Pfarre, for an India-rubber surgical tube having a rounded point, and an opening or eye with rounded, polished edges, show patentable invention in the forma-

tion of the eye, and the claim is not so broad, when read in the light of the specifications, as to be void for anticipation.

Appeal from the Circuit Court of the United States for the Eastern District of New York.

In Equity. Bill by Frederick A. Stohlmann and others, trading as George Tieman & Co., against Russell Parker and others, trading as Parker, Stearns & Sutton, for infringement of a patent. The circuit court dismissed the bill, and complainants appealed. Reversed.

Arthur v. Briesen, for complainants.

Edwin H. Brown, for defendants.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal from the decree of the circuit court for the eastern district of New York, which dismissed the complainants' bill in equity, founded upon the alleged infringement of letters patent No. 181,879, dated June 12, 1877, to Edward Pfarre, for an improvement in India-rubber surgical tubes.

Before the date of the invention which is the subject of the letters patent, three kinds of catheters and similar surgical tubes were in use. The first was made of soft metal. Its eye was counter-sunk in order to make the instrument perfectly smooth, and to prevent laceration of the parts to which it might be applied. The depressed eye was formed by cutting out and bending the metal, and rounding the edges of the eye after the tube was formed. The second kind was made of cotton or linen gummed webbing, and also had depressed eyes, rounded during the process of covering the webbing with gum. The third class was made of soft India rubber, and was of two kinds, which were known by the names of the respective makers, Nelaton and Jacques. The Jacques tube differed from the Nelaton simply in the smoothness of its polish, which was caused by the fact that the tube was vulcanized while under pressure within a tubular glass mold. After the tubes were formed, the eyes of each kind were punched or cut, and consequently were left with sharp edges, which caused urethral irritation. The sharpness of these edges was sometimes mitigated by burning them with a hot glass rod, or by rubbing and rounding them with sandpaper, but the burning impaired the strength of the tube, and neither operation removed the injurious tendency. The proper cure of the fault was greatly desired by physicians, inasmuch as rubber tubes, if made safe, could be used conveniently by patients themselves. The patentee's invention, which is clearly described in the specification, consisted in making a depression in the tubular glass mold, which Jacques had employed, at the place required for the eye, so that a depressed eye with rounded and smooth edges is formed during the process of vulcanization. After the tube has been removed from the glass mold, "the eye is finished by passing a soft metal rod into the tube, and cutting against the same in removing the film of India rubber remaining at the inner surface of the eye." The claim of the patent is for "the India-rubber surgical tube having a rounded point, and an opening or eye having

rounded polished edges, as a new article of manufacture." The patented or "velvet-eyed" catheter, as it is called, has been received with great favor.

This statement of the history and nature of the invention shows that it did not consist in a mere change of material. It was not an India-rubber surgical instrument, as distinguished from an instrument made of metal or of webbing, but it was an improvement upon an existing India-rubber tube, which was valuable, and which the record shows had evaded inventive study and skill. Whatever weakness there is in the patent consists in the general language of the claim. It is urged that the edges of the eye of the Nelaton and Jacques tubes, when these edges had been burned or abraded and smoothed, became rounded and polished, and that consequently the broad language of the claim was anticipated. It is true that the claim does not specify the fact that the eye is rounded by having been formed in a depression of the tube, and therefore does not minutely point out wherein the novelty of the patented article consists. The complainants suggest that the objection could be removed by a disclaimer. In our opinion the claim, read by the sufficient light which the specification already furnishes, does not need a disclaimer, for it would naturally be considered to relate only to an India-rubber tube, the eye of which was formed in a mechanically made indentation or depression in the wall of the tube. The adequate proof of infringement which was given in the complainants' prima facie case was not thereafter overcome. The decree of the circuit court is reversed, and the case is remanded to that court, to the end that a decree may be entered for an accounting and for an injunction, with costs in this and the circuit court.

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THE RICHARD J. CARNEY.

STOUT v. THE RICHARD J. CARNEY et al.

(Circuit Court of Appeals, Seventh Circuit. January 16, 1893.)

No. 35.

1. CHATTEL MORTGAGES—BONA FIDE PURCHASER—NOTICE—BURDEN OF PROOF

On a question as to whether the purchaser of a vessel took the same without notice of a prior unrecorded chattel mortgage, the fact that the mortgagee failed to record his mortgage places the burden of proof upon him.

2. SAME—EVIDENCE.

On a question as to whether libelant, in buying a vessel, took the same as a bona fide purchaser without notice of a prior unrecorded chattel mortgage given by his vendor, it appeared that libelant and his vendor had offices together; that libelant was present when his vendor purchased the vessel and gave the mortgage in question to secure a balance of purchase money; and the mortgagee testified that libelant then had knowledge of the whole transaction. It further appeared that libelant took the vessel in consideration of a pre-existing indebtedness, only three days before his vendor made an assignment, and did not record his bills of sale until the day thereafter; that some time afterwards the mortgagee took possession of the vessel; that he subsequently met libelant, who expressed no surprise at the existence of his claim, and an arrangement was then entered into between them whereby libelant paid a large amount of insurance upon