

final judgment of the court on the legal questions, as if they had been brought out on demurrer, or, it may be added, upon the hearing. There are presented to the court upon this application affidavits of experts and exhibits of letters patent, and the court is asked to consider these ex parte statements, and upon them announce a conclusion, at this stage of the case, whether, on the one hand, the complainant's patent is valid, and, on the other, the defendants' manufacture an infringement. That question will have to go over until the final hearing.

2. A second reason for overruling this motion is that the complainant waited nearly two months after filing its bill, and until it must have known that the defendant would be stocked up with a full supply for the year's business, which is practically over at the close of the haymaking season, and then presented its motion for an injunction. The courts of the United States are vested with power to grant injunctions in patent causes according to the course and principles of equity. It is not according to equity for a complainant to delay the assertion of his right to an injunction until the time when it will most embarrass and injure the respondent. Such a proceeding savors of a disposition to use the right of a patentee to oppress an alleged infringer, or to force him into a position where he may be compelled to incur heavy losses or to yield to hard demands. The granting or withholding of a preliminary injunction is within the proper discretion of the court. It will be withheld when apparently sought for the purpose of obtaining an undue advantage. It has been withheld when, in the opinion of the court, it would be used for the purpose of creating mischief, (*Neilson v. Thompson*, 1 *Webst. Pat. Cas.* 275;) or when it would give the complainant the means of coercing a compromise, (*Parker v. Sears*, 1 *Fish. Pat. Cas.* 93;) and so I think it should be here, where the result of granting it now would do more harm to the respondents than good to the complainant, whereas, if the application had been made promptly, special harm to the respondents would have been avoided.

The costs of the motion will be taxed against the complainant.

---

COLL et al. v. SENECA.

(Circuit Court, D. Maryland. May 6, 1893.)

1. PATENTS FOR INVENTIONS—LIMITATION OF CLAIM—TIN CANS.

Letters patent No. 207,053, issued August 13, 1878, to Miller & Coll, for an improvement in sheet-metal cans, is, by reason of the rejection and abandonment of a broader claim, strictly limited to the form therein described, namely, a can having the body portion straight from end to end, combined with heads which have a flange consisting of two parts, one binding closely the straight side of the can, and the other offsetting therefrom so as to be of greater diameter, thus forming a U-shaped groove to receive the solder.

2. SAME—INFRINGEMENT.

The above patent is not infringed by the use of cans having the flange of the heads slightly flared, so as to form a V-shaped groove for the solder.

In Equity. Bill by Bernard Coll and Philip C. Sanderson against Stephen J. Seneca for infringement of letters patent No. 207,058, granted August 13, 1878, to Miller & Coll, for an "improvement in sheet-metal cans." Bill dismissed.

J. W. & H. Bryant, for complainants.

William M. Marine and John T. Mason, for respondents.

MORRIS, District Judge. The subject-matter of this invention is the form of the flange of the heads and bottoms of the cylindrical shaped tin cans, used for packing oysters and vegetables. The claim of the patent is as follows:

"As a new article of manufacture, a sheet-metal can constructed of a body portion straight from end to end, combined with heads flanged as described, i. e. with the portion, a, of the flange, of less diameter than the marginal portion, and binding closely against the straight side of the can, and the portion, 'a,' of greater diameter than a, and setting off from the body of the can in parallel position therewith, as shown and described."

It appears that ordinarily the heads and bottoms of such cans are made with the flanges fitting as closely as possible, and parallel to the body of the can. From the application, and from the file wrapper and contents, it appears that the original claim was for

"A sheet-metal can having a head, B, flanged at a, a, with the portion, a, binding closely against the body of the can, and the portion, a, offsetting therefrom, and filled with solder, substantially as described."

This claim was rejected by the patent examiner, who cited as anticipations several patents showing an offset in the flange, and forming an annular V-shaped space or trough between the flange and the can, which could receive the solder. Acquiescing in this rejection, the applicants, through their attorney, amended the specifications, and inserted the following, which now appears in the specifications of the granted patent:

"We are aware of the fact that cans have been heretofore constructed with joints having a degree of similarity to ours; reference being had by way of example to that shown in patent No. 183,507, in which the edge of the body portion and the heads are beaded, while the edge of the head is flared outwardly to an angle to form a V groove for solder. We therefore limit our invention to the can constructed as shown and described, which is distinctive in the following features: The body portion is straight from end to end. The portion of the flange near the ends of the body portion is of less diameter than the edge or marginal portion, and binds tightly with the straight body portion, and the portion of the flange having the greatest diameter is arranged parallel with the sides of the can in forming the trough to receive the solder. This construction and arrangement of parts of the can permits it to be easily and cheaply made; the heads being struck up in dies, and the peculiar form of flange securing, in connection with the solder, a strong joint, and good finish."

The original claim was canceled, and the claim of the granted patent hereinbefore quoted was substituted.

It thus clearly appears that the patentees disclaimed as old the form of flange which, by its offset from the can body, formed a V-shaped trough to receive the solder, and distinctly restricted their claim to the form which, at the bottom, fitted closely around and

parallel to the can, and then had an offset, and then was formed parallel to the can, resulting in an annular U-shaped trough for the solder, and not a V shape. The V-shaped was expressly disclaimed. The contention now made in behalf of the complainants, that the real invention was an annular trough of any shape, cannot be entertained. The patentee, not having appealed from the rejection of his original claim, is now irrevocably restricted to the limitations put upon his invention by the disclaimer in his amended specifications, and the withdrawal of his broad claim, and his acceptance of the narrow claim, as granted to him. *Leggett v. Avery*, 101 U. S. 256; *Shepard v. Carrigan*, 116 U. S. 593, 6 Sup. Ct. Rep. 493; *Roemer v. Peddie*, 132 U. S. 313, 10 Sup. Ct. Rep. 98; *Caster Co. v. Spiegel*, 133 U. S. 360, 10 Sup. Ct. Rep. 409; *Dobson v. Lees*, 137 U. S. 258, 11 Sup. Ct. Rep. 71.

The proof shows that the can manufactured by the defendant has no such annular U-shaped trough as is described in the patent. The flanges of the tops and bottoms of defendant's cans are very nearly closely fitting, and parallel, without any offset at all, except that upon close examination, in some there is found, almost at the very edge of the flange, a slight flare away from the can. This almost imperceptible flare, the witnesses for the defendant testify, is not intentional, and is not desirable, and arises solely from the fact that in stamping out the circular ends, and turning up the flange by a drawing die, there results, in consequence of the crimping of the metal, this slight flare. This, if it is anything worth considering, forms a V-shaped annular trough, such as was disclaimed by the patentees. I think it is quite clear that there is no infringement.

The bill must be dismissed.

---

THE JOSEPH STICKNEY.

LOWELL et al. v. THE JOSEPH STICKNEY.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

**COLLISION—EVIDENCE—APPEAL.**

Where, in a collision case, the controversy turns wholly on questions of fact depending upon testimony which is so conflicting that no safe opinion can be formed of the merits, a decree dismissing the libel will be affirmed on the ground that libelants failed to establish their case by a preponderance of evidence.

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

In Admiralty. Libel by Lowell and others against the steam tug *Joseph Stickney* to recover for a collision resulting in damage to the schooner *Harry White*. The court below dismissed the libel. See 50 Fed. Rep. 624, where a full statement of the facts will be found in the opinion of Judge Brown. Libelants appeal. Affirmed.

Eugene P. Carver, for appellants Lowell.

Mr. Berrier, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.