

Schedule M of the same act at the rate of 15 per centum ad valorem, as "manufactures of paper, or of which paper is a component material, not specially enumerated or provided for." We conclude that the screens referred to in the paragraph of the wool section, as well those "not exclusively of vegetable material," as all others, are articles ejusdem generis with the other articles named in the group. Consequently, we are of the opinion that the importations in question should have been classified as manufactures of paper, and that the ruling of the circuit court, directing a verdict for the plaintiff upon that ground, was right.

The judgment is affirmed.

BONNELL et al. v. STOLL et al.

(Circuit Court, D. New Jersey. July 8, 1893.)

PATENTS FOR INVENTIONS—ANTICIPATION—BED SPRINGS.

Claim 2 of letters patent No. 405,821, issued June 25, 1889, to Bonnell & Lambing, covers "a spring bed bottom formed in sections, and having the top whirls of springs at the adjacent ends of the sections united by a spiral wire wound loosely around them, so as to allow the sections to fold, and yet afford a yielding connection." *Held*, that the claim was anticipated by the prior constructions known as "Lace-Web Spring" and the "Maler Bed."

In Equity. Suit by Elliot M. Bonnell and John S. Lambing against Robert P. Stoll and others for infringement of a patent. Bill dismissed.

James A. Whitney, for complainants.

F. C. Lowthrop, for defendants.

ACHESON, Circuit Judge. The plaintiffs sue for the infringement of letters patent No. 405,821, for improvements in bed springs, granted them on June 25, 1889. The patent shows a bed bottom composed of spiral or helical springs arranged in parallel rows, and connected by spiral wires running lengthwise of the bed bottom, which is formed by two sections, so as to fold the one upon the other. There are two claims, but, upon the argument, infringement of the second claim, only, was insisted on. That claim is as follows:

"(2) A spring bed bottom formed in sections, and having the top whirls of springs at the adjacent ends of the sections united by a spiral wire wound loosely around them, so as to allow the sections to fold, and yet afford a yielding connection, substantially as specified."

The functions of this connecting spiral wire, as declared by the specification, are threefold, namely, "loosely and yieldingly connecting the springs," furnishing "a spiral filling for the interspaces" between the four adjacent springs, and "serving as a hinge" for folding the sections. The specification states, and the prior patents show, that it was not new to connect the tops and bottoms of bed springs with spiral wires, and that springs had been furnished

with hinged connections. It is not, however, deemed necessary to refer particularly to the earlier patents. It is enough to consider two prior constructions designated in the proofs as "Defendants' Exhibits Lace-Web Spring and Maier Bed." The former is a spring bed bottom constructed of helical springs joined together by coiled wires, made in two sections, united by five spiral wires forming a longitudinal strip of wire netting, which acts as a hinge to allow the two sections to fold together. The "Maier Bed" is composed of two spiral spring bed-bottom sections, with a spiral wire hinge connection, consisting of three spiral wires; the two outer ones intermeshing with the spiral hinge wire, and being wrapped, respectively, in a loose manner, about the top portion of the whirls of the adjacent rows of springs of the two sections. These two constructions possess, respectively, all the distinguishing characteristics of the plaintiffs' patented improvement. In each the two bed sections are united by a yielding spiral wire connection between the top whirls of the adjacent rows of springs, permitting the two sections to fold the one upon the other, and affording a spiral filling for the interspaces between each adjacent set of four springs along the connecting line. Neither in function nor in operation is there any substantial difference between the spiral wire connections of the two sections of these old constructions and that of the patented bed spring. The employment of a single spiral wire to form the connection, instead of several, conduces to simplicity and cheapness of manufacture, but it introduces no new principle, and does not involve invention, in a patentable sense. At the most, it was the mere carrying forward of the original idea or method, resulting in an improvement in degree, only. *Smith v. Nichols*, 21 Wall. 112, 119. The court there said:

"But a mere carrying forward, or new or more extended application of the original thought; a change only in form, proportions, or degree; the substitution of equivalents, doing substantially the same thing in the same way by substantially the same means with better results,—is not such invention as will sustain a patent."

This principle has been enforced in many more recent cases. *Estey v. Burdett*, 109 U. S. 633, 3 Sup. Ct. Rep. 531; *Burt v. Ivory*, 133 U. S. 349, 10 Sup. Ct. Rep. 394; *French v. Carter*, 137 U. S. 239, 11 Sup. Ct. Rep. 90; *Grant v. Walter*, 148 U. S. 547, 553, 13 Sup. Ct. Rep. 699. These and other like decisions of the supreme court lead to a conclusion adverse to these plaintiffs.

Let a decree be drawn, dismissing the bill, with costs.

THE LURLINE.

WETMORE v. HAWKINS.

(Circuit Court of Appeals, Second Circuit. 1892.)

No. 45.

ADMIRALTY APPEALS—NEW EVIDENCE—WHEN RECEIVED.

In an admiralty case the circuit court of appeals will, on motion, strike from the files depositions taken on appeal by a party who might easily have produced it in the trial court, and who was as well informed then as now as to its materiality and necessity.

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

In Admiralty. Libel by John P. Hawkins against the yacht Lurline, (William B. Wetmore, claimant.) There was a decree for libelant, and the claimant appeals. Heard on motion of the claimant to strike from the files certain depositions taken by libelant on appeal. Granted.

An application subsequently made to the supreme court for a writ of mandamus to compel the judges of this court to receive and consider these depositions was denied. See 13 Sup. Ct. Rep. 512.

John Murray Mitchell, for appellant.

Geo. A. Black, for appellee.

Argued before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER OURIAM. Motion granted, for the reason that the testimony taken on deposition in this court was available to libelant on the trial in the district court, witness and books being both present there; that it does not appear that he was prevented from presenting such testimony except by his own choice; that he was as well informed as to its materiality under the issues when he closed his case as he is now, and was expressly notified by respondent's motion to dismiss that the latter contended libelant's proof as to the amount of labor performed was insufficient.

THE DENNIS VALENTINE.

LAVERTY et al. v. THE DENNIS VALENTINE.

(Circuit Court of Appeals, Second Circuit. August 1, 1893.)

ADMIRALTY—TENDER—COSTS.

A libel for salvage having been filed by the owners of a steam tug in their behalf only, claimants paid into court the full amount claimed by libelants, with accrued costs. *Held*, that libelants, thereafter failing to establish a right to more than the amount so paid, were properly charged with costs accruing subsequent to such payment. 47 Fed. Rep. 664, affirmed.