

fails to show, in any event, any understanding other than that the royalties should be paid in case the patents should be sustained. It does not appear that the idea of a modification of the agreement by reason of a limited construction of said patents ever occurred to the parties until after the final decision of the suit against Gormully & Jeffery in the United States supreme court. If the defendant intended to be bound, and understood that it would be bound, only to pay royalties on such saddles as should be included under the claims of said patents, as they might be construed by the supreme court in the suit by the defendant against the Gormully & Jeffery Company, it was its duty to notify the plaintiff of such intention; and, having failed to do so, such undisclosed intention, not known or assented to by the plaintiff, lacks the essential element of a contract, and therefore no such contract, or modification of the original contract, can be held to exist between the parties.

Upon the foregoing facts, I hold, as matter of law, that the contract is to be construed as an agreement to pay royalties on all the said hammock or flexible saddles sold by defendant, and included in said returns. I therefore find that the defendant is indebted to the plaintiff in the sum of \$8,663, with interest thereon from the date when payment was demanded, namely July 1, 1892, to the date of the entry of the judgment.

TRAVERS v. AMERICAN CORDAGE CO.

(Circuit Court, S. D. New York. April 24, 1894.)

PATENT—PLATE FOR SECURING ROPES—LACK OF INVENTION.

Patent to Taylor (No. 322,501) for an elongated metal plate, provided with three eyes in line, and two projections corrugated on their inner faces, for securing a rope firmly in place, involves no new principle, result, or function, and is not entitled to protection, since both the plate and the projections are old. *Sargent v. Covert*, 14 Sup. Ct. 676, 67 O. G. 403.

This was an action by Vincent P. Travers against the American Cordage Company for alleged infringement of certain letters patent, and is now before the court on final hearing.

Arthur v. Briesen, for complainant.

Frederic H. Betts and Samuel R. Betts, for defendant.

COXE, District Judge. This is an equity action for infringement of letters patent No. 322,501, granted July 21, 1885, to Theodore Taylor, for improvements in rope fasteners. The patent relates to that class of fasteners in which the rope is held by friction in jaws of suitable formation. The fastener is adapted to be used where it is desired to secure a rope firmly in place without knotting. It is an elongated metal plate having three eyes placed in a line. Between the middle eye and one of the end eyes there are two projections having corrugations on their inner faces, these form, what the patent calls, "jaws." These jaws hold the bight of rope between them and, in connection with the eyes adjacent thereto, through which the rope is passed, prevent it from

slipping. The claims, three in number, are designed to protect the fastener and all its features. The defenses are lack of novelty and invention, noninfringement and failure to mark the fasteners "Patented" pursuant to section 4900 of the Revised Statutes. It appears that plates precisely like the patented plate, minus the holding jaws, had long been used as rope fasteners. Holding jaws for ropes were also old. Did it involve invention to place the old holding jaws upon the old plate? No new principle is invoked, no new result is accomplished, no new function is performed by this simple device for obtaining more friction. A mechanic finding that a rope held by the Sier or Sawyer fastener slipped under certain conditions would know that greater frictional surface was needed. The complainant's expert suggests one thing that he might have done, but the thing which Taylor did do seems the more natural and obvious. Augmenting and decreasing friction according as the motion of the device in hand is to be retarded or accelerated is one of the oldest principles of mechanics. Taylor invented no new remedy, he simply gave a little larger dose of a very old remedy. It is thought that the defendant's expert is correct in saying:

"In other words, in laying the Newell jaws onto the back of the Sier rope fastener, Taylor not only did not secure any different result or any new mode of operation, but did not even produce a new combination of parts, for this same combination was both suggested by, and substantially embodied in, the Whiteman bale tie, the Johnson clothesline fastener and the Sherman fire escape."

In the recent case of *Sargent v. Covert*, 152 U. S. 516, 14 Sup. Ct. 676, the supreme court say of a device which, like the device of the patent, was a clasp or rope fastener:

"Each of these screws compresses the rope within the socket, but the Covert screw, being sharpened, penetrates further than the other. The change is in degree and not in function. * * * We are of the opinion upon this record that the alleged improvement was such a one as would have occurred to any one practically interested in the subject, and that it did not involve such an exercise of the inventive faculty as entitled it to protection."

It is thought that this language is equally applicable to the patent in suit. The bill is dismissed.

DALBY v. LYNES.

(Circuit Court, D. Massachusetts. July 12, 1894.)

No. 2,561.

1. PATENTS—DEFENSE OF PRIOR USE—EVIDENCE TO ESTABLISH.

Proof that certain articles anticipating the patent in every particular, and capable of practical use, were made for use as samples, *held* sufficient to establish the defense of prior use, although it was not shown that they ever became known to any others than the person who made them, his daughter, who helped finish them, and the person for whom they were made. *Egbert v. Lippmann*, 104 U. S. 333, followed.