

the glass chimney operating to close them for all mechanical functions, it must be held that the defendant does not infringe the claims of No. 419,827.

It is also clear that the claims of No. 420,225 are not infringed. The defendant does not use an illuminated shell above the burner. The glass chimney is not an equivalent for this shell, for it is not conical or dome-shaped, it is not adjustable, and it is not supported or suspended above the burner in the sense of the patent. Its mechanical function is the direct opposite of that attributed to the patented shell. Neither can it be said that the cast-iron radiators at the top of the defendant's stove are equivalents because they sometimes become red hot. The object of the Carrington shell is to prevent this maximum of heat at the top of the stove. In material, position, shape and function the radiators are totally different from the shell of the patent. It follows that the bill must be dismissed.

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**BONSACK MACH. CO. v. NATIONAL CIGARETTE CO.**

(Circuit Court, S. D. New York. October 2, 1894.)

**PATENTS—INJUNCTION AGAINST INFRINGEMENT—MOTION TO PUNISH FOR CONTEMPT.**

The question whether defendant infringes by making a machine differing in some respects from one previously held by the court to be an infringement cannot be tried on a motion to punish for contempt, when the new machine is made under a patent issued after the injunction was granted.

This was a suit by the Bonsack Machine Company against the National Cigarette Company for the infringement of certain letters patent for cigarette machines. An injunction was heretofore granted (63 Fed. 835), and a motion is now made to punish for contempt for alleged violation thereof.

Duncan & Page, for complainant.

Cowen, Dickerson & Brown, for defendant.

**LACOMBE**, Circuit Judge. This is a motion to punish for contempt. When the suit was originally brought, defendants were using a machine which the court has, after argument, held to be an infringement of complainants' patents. The defendants are now using a machine which in some respects differs from the infringing machine already passed upon, and it appears that it is made under a patent issued subsequent to the decree. The weight of authority is clearly against the proposition that in such a case the question of infringement is to be settled on a motion to punish for contempt. The new machine is brought into court with prima facie proof that, in the opinion of the patent office, it is patentably different from the machine of complainants. Whether it is an infringement or not should be settled by the proposition for injunction, not for commitment for contempt. *Buerk v. Imhaeuser*, 2 Ban. & A. 465, Fed. Cas. No. 2,107; *Onderdonk v. Fanning*, 2 Fed. 568; *Wirt v. Brown*, 30 Fed. 187; *Truax v. Detweiler*, 46 Fed. 117. Motion denied.

## NEW DEPARTURE BELL CO. v. BEVIN BROS. MANUF'G CO.

(Circuit Court, D. Connecticut. November 16, 1894.)

No. 748.

## 1. PATENTS—LOOSELY PIVOTED BELL STRIKER—LIMITATION OF CLAIM.

The Rockwell patent, No. 456,062, for a loosely pivoted bell striker, adapted to rotate and wear evenly, should be limited to the specific construction claimed, since loosely pivoted bell strikers are old, and are not infringed by a loosely pivoted bell striker which presents each time the same point to the gong. *Manufacturing Co. v. Weeks*, 9 C. C. A. 555, 61 Fed. 405.

## 2. SAME—CONSTRUCTION OF CLAIM.

Claim 2 of the Rockwell patent, No. 471,982, for a bicycle bell which accomplishes results shown by the previous art to be desired, is not anticipated by the futile attempts of others, and such patent should not be construed so narrowly as to be fatal to it.

## 3. SAME—INFRINGEMENT.

Such claim is infringed by a device which, though not identical in structure, contains all the elements claimed, and operates to perform the same function in substantially the same way, the alleged differences of operation being merely such colorable and formal ones as result from the use of mechanical equivalents. *National Typographic Co. v. New York Typograph Co.*, 46 Fed. 114.

## 4. PATENTS—PRIOR ART.

The Rockwell patent, No. 471,983, for a bell having a striker arm with free rotary movement in either direction, is limited by the previous art to the precise construction described and claimed, and is not infringed by a device which cannot be rotated in either direction at will.

## 5. SAME—DIVISION OF INVENTIONS—CONSTRUCTION.

Where an inventor divides up his invention so as to present certain elements in different patents, he is thereby "limited to a more strict and narrow construction than might otherwise have been necessary" (*Electrical Accumulator Co. v. Brush Electric Co.*, 2 C. C. A. 682, 695, 52 Fed. 130), and the construction of the patents must be in conformity with the self-imposed limitations which are contained in the claims (*Groth v. Supply Co.*, 9 C. C. A. 507, 61 Fed. 284, 287; *Judd v. Fowler*, 10 C. C. A. 100, 61 Fed. 821).

## 6. SAME—AMENDMENT.

A bill of complaint failed to allege any sale of the infringing goods, or that the infringing goods were marked "Patented," or that the defendant had notice that they were patented, but the evidence showed the sale of the infringing goods. An amendment had been offered before the hearing, containing an averment of the sale, the answer containing no averment of want of knowledge, and it appeared that the defendant had actual knowledge of the patents and notice of the claim of infringement. *Held*, that the bill may be amended in accordance with these facts after issue tried and infringement declared.

This was a bill in equity by the New Departure Bell Company against the Bevin Bros. Manufacturing Company to restrain the infringement of certain letters patent, and for an accounting.

Newell & Jennings, for complainant.

C. L. Burdett, for defendant.

TOWNSEND, District Judge. This is a bill in equity for an injunction and accounting by reason of the alleged infringement of patents No. 456,062, dated July 14, 1891, and Nos. 471,982 and