

The evidence is that this difference between the pipe and the elbow gives rise to no substantial difficulty in fitting them together; but on the subject of connecting the one with the other the patent is silent, and it is unimportant.

The learned counsel for the complainant contends that, though "he has not claimed the method of making his elbow," Mr. Ritchie "is entitled to the credit of the idea of such an elbow, and to the credit of finding out what no one knew before; that is, how to make it." This well states the case of the complainant, but the answer to it seems to me to be apparent and conclusive. It is: What has not been claimed is not patented. An "idea," however creditable, is not patentable; and that which any skilled mechanic would naturally have done, if possessed of knowledge of what had previously been accomplished, cannot be credited, as an inventive act, to any one; not even to him who first suggests and actually does it. The bill is dismissed, with costs.

RITCHIE v. OBDYKE et al.

(Circuit Court of Appeals, Third Circuit. December 21, 1894.)

No. 27.

1. PATENTABLE INVENTION—SHEET-METAL ELBOWS.

The making of elbows of longitudinally corrugated sheet metal, having only longitudinal seams, *held* to involve no invention, it appearing that conductors of corrugated metal and elbows of plain metal were both previously made with only longitudinal seams, and that corrugated elbows having transverse seams were also old. 65 Fed. 222 affirmed.

2. SAME.

The Ritchie patent, No. 342,465, for a "sheet-metal expansible elbow," *held* void for want of invention. 65 Fed. 222, affirmed.

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

This was a bill by David A. Ritchie against Benjamin P. Obdyke and Austin W. Obdyke for infringement of a patent. The circuit court held the patent void for want of invention (see 65 Fed. 222), and complainant appealed.

Frederick P. Fish, for appellant.

Philip T. Dodge, for appellees.

Before ACHESON, Circuit Judge, and BUTLER and WALES, District Judges.

BUTLER, District Judge. The bill is for infringement of letters patent No. 342,465, issued May 25, 1886, to the plaintiff, for a "sheet-metal expansible elbow."

The claim is as follows:

"As an improved article of manufacture, a sheet-metal elbow, composed of curved and longitudinally corrugated pieces of metal having only longitudinal seams, whereby the said elbow is free to expand uniformly to avoid twisting, substantially as described."

The circuit court dismissed the bill; and this is the error assigned.

Does the elbow show patentable novelty? No other question need be considered. The substance of the claim is for an elbow formed of "curved and longitudinally corrugated pieces of metal, having only longitudinal seams." Conductors (such as these elbows are intended for) formed of "corrugated metal, having only longitudinal seams," were old. Such conductors, formed of plain metal with elbows having only longitudinal seams, were old; corrugated elbows formed by uniting short sections of such conductor pipe, with transverse seams, were also old. The plaintiff applied the longitudinal seams of the old corrugated conductor, and of the plain conductor and elbow, to the corrugated elbow. In this we cannot see invention. It improved the elbow, or cheapened its manufacture, possibly both.—In determining the question of invention utility plays an important part. It is not, however, conclusive. Combined with the presumption arising from the grant of letters it is sufficient to sustain a patent in the absence of evidence disproving invention. Here, however, in our judgment, such evidence is present. All the plaintiff did, substantially, was old. He simply bent and curved two longitudinal sections of corrugated metal, as such sections of plain metal had previously been bent and curved, and united them, as such sections had previously been united in forming pipes, and as had always been practiced in forming elbows of plain metal; or to state it differently, united the metal forming corrugated elbows precisely as it was previously united in corrugated conductors, and as it was always united in plain metal elbows.

Furthermore, every material thought involved in the patent is plainly expressed in Savoral's letters of 1864, for the "manufacture of tubing."

His specification says:

"Tubes made out of sheet metal generally, have many cross seams, which form as many obstructions to the free passage of fluids or gases conducted by such tubes. Curved tubes of sheet metal, made in the common way of several straight tubes of more or less length, according to the size of the sheets and the curvature, have not only many cross joints or seams, but offer far more resistance to the passage of fluids or gases by being polygons instead of real curves. * * * They are not so durable, are more difficult to repair and are more likely to leak. To avoid these obstructions, especially in the manufacture of curved tubes in bents and elbows, I form my tubes of two or more parts, according to the inside diameter required and to the width of the material to be used, which parts are to be punched out of sheet metal and shaped at once by this punching operation, or by the hammer or otherwise, and which parts are connected by single or double overlapping, by rivets or by soldering, as the case may require. These seams are always parallel to the longitudinal axis of the tube to be formed."

"The advantages of my invention are: * * * Secondly, all bents, elbows or curved tubes, such as spiral tubes for heating or cooling fluids or gases, may be made of the exact curvature desired, the inside perfectly smooth, and therefore offering less resistance to the passage of fluids or gases through them, etc. * * * Thirdly, such curved tubes may be made with less or wasted material and with great saving of labor," etc.

If this patent does not belong to the same art as the plaintiff's the two are very close akin.

The judgment is therefore affirmed.

THE SIRIUS.

WILLIAMS v. THE SIRIUS.

(District Court, N. D. California. January 2, 1895.)

No. 11,101.

ADMIRALTY—MARITIME SERVICE—WATCHMAN.

The service rendered by a watchman, employed to care for and clean the machinery and maintain a general care and supervision of a vessel lying at her home port, out of commission, and with no voyage in contemplation, is not maritime.

Libel in rem for balance of wages as ship keeper of a vessel in her home port, and not engaged in navigation, present or prospective. Libel dismissed, the service rendered not being maritime.

Walter G. Holmes, for libelant.

Andros & Frank, for claimant.

MORROW, District Judge. The libel in this case was brought to recover the sum of \$176.25, claimed to be a balance due the libelant for services rendered in taking care of the engine and boilers of the steam vessel *Sirius*. The testimony established that the libelant was employed from May 23, 1893, to September 4, 1894, by claimant, at \$40 per month. His earnings for this period aggregated \$616, of which he acknowledges having received \$439.75, and he now seeks to enforce a lien on the vessel, under the state statute, for the remainder. It is averred in the libel that the *Sirius* is a British vessel. This is denied by the answer, and it is therein alleged that the vessel is now, and was at all the times in the libel mentioned, wholly owned by the claimant, who was then, and still is, a resident and citizen of the city and county of San Francisco, state of California, and that said last-named place is her home port. On the hearing it was developed that the *Sirius* had formerly carried the British flag; that she was sold at this port to the claimant under a venditioni exponas issued out of this court; that her register as a British vessel has been canceled; that she is now, and was during all the time Williams was employed on her, out of commission; and that up to the time of filing the answer she had not been enrolled as an American vessel. The facts of the case show further that Williams had been acting as engineer of the vessel for some 11 months previous to the time of the sale; that when the claimant bought the vessel he engaged the libelant to look after and care for her engine and boilers, and to exercise a general supervision over her. In connection with this employment, he also acted as watchman in relieving the deck watchman. But it would seem that this latter service was rather incidental to his chief occupation of looking after the machinery of the vessel. The deck watchman testified that he watched the deck, while Williams watched the engine. The *Sirius* was not then engaged in navigation, nor, so far as the evidence discloses, were there any immediate pros-