

in the patent, but a bent lever of a substantially different form. Comparing the devices of the patentee and of the defendant, Mr. Stetson, the plaintiff's expert, states:

"There is a substantial difference in the hooks in the fact that the complainant's hook has a part D<sup>1</sup>, which extends from the axis of motion away from the point, then has a part D<sup>2</sup>, which extends up to a sufficient height to allow for two thicknesses of cuff, and then extends to the point by a long arm, D<sup>3</sup>, while defendant's hook omits the part D<sup>1</sup>, and extends from the center upwards, corresponding to the part D<sup>2</sup>, and thence forward to the point corresponding to the part D<sup>3</sup>."

Mr. Stetson further states that the peculiar form of hook of the patent "gives a quality of enduring very hard pulls," but that this feature is not important in this device for holding cuffs to shirt sleeves, and that the part D<sup>1</sup> is not essential. The patentee, however, seems to have been of a different opinion. At any rate, he has made D<sup>1</sup> a material part of his hook. Waiving the question of patentability, we sustain the defense of noninfringement. Let a decree be drawn dismissing the bill, with costs.

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ABRAHAMSON v. THE CANONICUS.

(District Court, E. D. New York. January 8, 1895.)

PAYMENT TO ATTORNEY.

Payment of \$250 by the owner of a ship to an attorney employed to collect a bill against the ship, for which amount the attorney at the time gave a receipt on account of the bill, is payment of that amount on the bill, though the attorney paid only \$100 thereof to his client, and some weeks thereafter gave the owner of the ship another receipt for the \$250, stating that \$100 of the \$250 was for services as attorney of the owner of the ship.

Libel by Andrew Abrahamson against the steamship Canonicus.

Foley & Wray, for libelant.

George E. Kent, for claimants.

BENEDICT, District Judge. The payment on June 2, 1893, of \$250 by the owner of the ship to Francis S. Turner, an attorney at law employed by the libelant to collect the bill now sued for, for which sum the attorney then gave a receipt on account of this bill, was, in my opinion, payment pro tanto of the bill sued on, notwithstanding the fact that only \$100 of the \$250 was paid over by the attorney to the libelant, and that, some two weeks after the \$250 was so paid to the attorney, he gave to the owner of the ship another receipt for the \$250, which stated that \$100 of the \$250 was for services as attorney of the owner of the ship. The claimants are, in my opinion, entitled to have \$250 credited on the bill sued for. This being the only question presented for decision, the decree must be for the libelant, for the amount of the bill, with interest, after crediting \$250 as paid on June 2, 1893. The recovery must be without costs.

## MOORE et al. v. CLARK et al.

(Circuit Court, S. D. New York. June 29, 1894.)

## PATENTS—NOVELTY.

Patent No. 236,905, granted to Charles H. Moore, in claim 10, which is for a water-closet bowl formed into a square at the top, and having but one serviceable outlet, does not show patentable novelty. *Burt v. Evory*, 10 Sup. Ct. 394, 133 U. S. 349, followed.

This was a suit in equity by Carrie L. Moore and another against Alexander Clark and another for the infringement of the tenth claim of letters patent No. 236,905, granted January 25, 1881, to Charles H. Moore for an improved water-closet bowl.

Frank J. Mather, for plaintiffs.

W. P. Preble, Jr., for defendants.

WHEELER, District Judge. This suit is brought upon the tenth claim of patent No. 236,905, dated January 25, 1881, and granted to Charles H. Moore, with 12 claims for a water-closet, consisting of various suitable devices, including a bowl. The other claims are for various arrangements of these devices. This is for:

"(10) A water-closet bowl formed into a square shape at the top by the corners, b, b, b, b, of the bowl, and having but one serviceable outlet."

One figure of the drawings shows a plan view of the bowl, marked "A," in square form, but with rounded corners at the top, becoming more circular downward, having the sloping parts from the corners inward, each marked "b." The specification states one object to be "to provide a bowl of a form at the top to answer as a urinal and slop sink"; that "the closet can be made in separate parts, but I prefer making it in one jointless piece, of any suitable material"; and that in the drawings "A represents a closet bowl, formed into a square shape at the top by the lips, b, b, b, b." These are the only parts of the specification and drawings referring in any manner to the bowl. Before this water-closet bowls had been made with circular and oval tops and one "serviceable" outlet, and slop sinks had been made with square tops. Quite obviously this claim rests upon the square top of the bowl as an improvement upon the circular or oval tops. The carrying out of the top from a circular or oval to a square form altered the form, but did not affect the operation, of the bowl. The change was in degree only, and not in principle, and the form produced had no new function. The advantages claimed are due more to dispensing with a slop tray and to the other changes in the form of the bowl than to the change in the top. In view of *Burt v. Evory*, 133 U. S. 349, 10 Sup. Ct. 394, this square top does not appear to be patentable, and, as this claim covers nothing else, it does not appear to be valid. Bill dismissed.