

The defenses are noninfringement and anticipation by reason of prior public and common use of the device within this country prior to complainant's invention, and more than two years prior to the application for the patent upon which this suit is brought. Also lack of patentable novelty. This last defense, it is stated, is insisted upon merely for the purpose of limiting claims 1, 2, and 4 of the patent to the specific elements set forth therein. As to claims 2 and 4, which are the only ones relied upon, the elements which go to make them up are mentioned specifically and by reference letters, which fact operates to restrict the claims to the particular devices described. *McCormick Harvesting Mach. Co. v. C. Aultman & Co.*, 58 Fed. 773; *Weir v. Morden*, 125 U. S. 105, 8 Sup. Ct. 869; *Hendy v. Iron Works*, 127 U. S. 375, 8 Sup. Ct. 1275. The first claim is defective in that it omits the crosspiece, which is necessary to the structure.

The defendant's device has not the swivel screw of complainant's patent, but instead a longitudinally movable screw, which is not threaded its entire length to receive nuts that would so clamp the bridge between them as to permit any adjustment within the limits of the lost motion of the main spindle. It has neither the nut, H, nor the nut, H', nor has it any equivalent of this device that could be employed to accomplish the result aimed at and attained by the patented device. It has instead a stop gauge. The defendant's device could not, therefore, work the same as complainant's, as is admitted by complainant's expert in answer to questions 243 and 279 in his deposition. The defendant therefore does not infringe. The claims being limited to the specific device described, and the defenses of anticipation and lack of novelty having been avowedly made for the purpose of so limiting the claims, it is not necessary to consider them. The bill will be dismissed, at the costs of the complainant.

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CALIFORNIA FIG SYRUP CO. v. PUTNAM et al.

(Circuit Court of Appeals, First Circuit. July 26, 1895.)

No. 131.

TRADE-MARKS—DECEPTIVE LABELS—INFRINGEMENT—EQUITABLE RELIEF—66  
FED. 750, AFFIRMED.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by the California Fig Syrup Company against Kate Gardner Putnam and others to restrain the infringement of a trade-mark. The circuit court dismissed the bill for want of equity (66 Fed. 750), and the complainant appeals.

R. A. Bakewell, Paul Bakewell, Warren & Brandeis, and Louis D. Brandeis, for appellant.

Fish, Richardson & Storrow, Frederick P. Fish, and James J. Storrow, Jr., for appellees.

Before PUTNAM, Circuit Judge, and NELSON and ALDRICH, District Judges.

**PER CURIAM.** We agree with the reasoning and the conclusions of the circuit court in this cause, but we do not wish to be understood to approve all the cases cited in its opinion. It is sufficient to refer to *Medicine Co. v. Wood*, 108 U. S. 218, 2 Sup. Ct. 436, and to the underlying principles of *Church v. Proctor*, 13 C. C. A. 426, 66 Fed. 240, decided by this court February 2, 1895, as supporting the line of reasoning found in that opinion. The decree of the circuit court is affirmed.

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THE MARY H. PACKER.

EASTON & A. R. CO. v. NEW ENGLAND TRANSP. CO.

(Circuit Court of Appeals, Second Circuit. February 9, 1894.)

TOWAGE—LOSS OF COAL BARGE—EVIDENCE.

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

This was a libel by the New England Transportation Company against the steam tug *Mary H. Packer*, the Eastern & Amboy Railroad Company, claimant, to recover damages resulting from the sinking of libelant's coal box N. E. T. Co. No. 42 while in tow of the *Packer*. The district court rendered a decree for libelant in the sum of \$2,988.80, with interest and costs. The claimant appealed.

On the 18th of December, 1891, the tug, which had been engaged in towing fleets of coal barges, etc., between Perth Amboy and New York, had in tow a fleet of several tiers of boats, the libelant's coal box No. 42, loaded with coal, being the outside boat on the port side of the first tier. The tow left the oil dock near Port Johnson in the Kills early in the morning of the 18th for New York, and shortly afterwards libelant's boat sank. The evidence of libelant's witnesses was substantially to the effect that the tug and tow had reached a point in the Kill von Kull near the New Jersey shore, about opposite New Brighton, Staten Island, and abreast of the beacon opposite Constable Hook; that the tow was carried very close to the beacon, and that, when just about abreast of it, a shock was felt upon libelant's boat, and shortly afterwards she began to sink; that the tug was hailed, the towing line cast off from the injured barge, and the whole tow allowed to drift westward with the tide some distance, until the boat sank. The testimony in behalf of the claimant tended to show that the boat was unseaworthy, and was leaking at the time