in position. The arm is downwardly, not upwardly, pressed; but, even if this form of upward pressure had not been already disclosed, any skilled mechanic would see that, to effect this change, it was only necessary to shift the position of the spring. Provision is made in said patent for locking the arm in operative position. When so locked, there is no rotating movement of the support or spring.

Patents No. 197,195, granted November 13, 1877, to Wolf, for an improved tilting chair, and No. 221,651, granted November 11, 1879, to E. Wright, for an animal tether, show that rotary spring devices attached to reversible supports were old.

As Mr. Brevoort, one of defendant's experts, says:

"Now, it was clearly old to use trailing trolley arms. Parish and Munn showed how to make any one of these reversible, and the chair patent and the animal tether patent show mechanisms which any mechanic could utilize had he wished to, and had he desired to obtain that class of reversibility to which Parish and Munn referred, or that class of reversibility which is found in complainant's structure, where in one case, to wit, in Fig. 5, the springs are always attached to the support, and moved therewith, this being the class of mechanisms of the Parish and Munn earlier patent, the chair patent, and the cow tether patent."

He adds that the office chair construction was so universally known and understood, and reversibility of a structure such as a trolley pole was so fully described and shown in the Parish and Munn patent, that "after this it became merely a matter of selection on the part of a mechanic as to what mechanism he would employ to obtain the old and well-known result."

I am constrained, with some hesitation, to adopt this view.

In Potts & Co. v. Creager, supra, Mr. Justice Brown says:

"As a result of the authorities upon this subject, it may be said that, if the new use be so nearly analogous to the former one that the applicability of the device to its new use would occur to a person of ordinary mechanical skill, it is only a case of double use."

Bearing in mind that the means herein claimed merely consisted in so attaching the lower end of the spring to the rotating support that they would revolve together there was no solution of a problem in electrical railway propulsion, and no electrical effect. The prior devices were designed, adapted, and actually used for the performance of the same function. Topliff v. Topliff, 145 U. S. 156, 12 Sup. Ct. 825. The transfer was not to a branch of industry, but remotely allied (Potts & Co. v. Creager, supra); for the art of transmission of electricity showed the practical application of the principle in reversible springs. It did not require any peculiar inventive genius to perceive the relations between cause and effect, and to grasp the idea that the device might be adapted to a new art (Potts & Co. v. Creager, supra); for the same mechanical construction and effect shown in the ordinary office chair was substantially common to the field of practical arts as a whole (Consolidated Electric Manuf'g Co. v. Holtzer, 15 C. C. A. 63, 67 Fed. 910).

But it is urged in support of the argument in favor of patentable novelty that "it is also difficult to believe that Siemens, Edison,

Daft, Henry, and others were not familiar with office chairs and animal tethers; yet they all missed large fortunes by failing to learn therefrom how to make the Van Depoele trolley." This argument seems plausible. The fact that one alone of several inventors successfully solves a problem, the solution of which all were seeking after, strongly supports the presumption of invention. In the earlier Siemens device, contact was obtained by means of rollers, and there was no occasion for the use of a reversible spring-pressed arm. In the later device the contact slides were drawn along by a flexible conductor and a sliding sleeve, and an arrangement much more practicable for such a construction than a reversible spring is provided. The Henry patents have no bearing on this question.

But an examination of the patents of all the above-named inventors shows that the two Siemens patents, two of the Edison patents, and three of the Daft patents cover constructions where the conductor and contact devices are underneath the cars, and where either contact was maintained by gravity, or, for other reasons, there was no occasion for the use of a reversible spring. In Edison's later patent and in Daft's fourth patent, for overhead connections, devices for reversal were provided, which were better adapted to said constructions than a reversible spring would have been.

These facts, together with the considerations already discussed, showing that Van Depoele was the inventor of the novel construction of the first patent, effectually dispose of the foregoing argument of complainant. Until Van Depoele had disclosed the overhead underrunning spring-pressed laterally swinging contact arm, there was no problem presented of reversibility of a rotating spring device, or of unrestricted lateral motion.

The reason for the universal adoption of the device of this second patent follows as a corollary from the foregoing conclusions. Its adoption results, not from its patentable novelty, but from its practical utility in connection with the main invention. The doctrine that utility, in the absence of patentable novelty, is immaterial, is especially applicable where the sole foundation for the claim of utility lies in the mere mechanical adaptability of a well-known device to a novel invention protected by a valid patent.

Let a decree be entered for an injunction and an accounting as to the claims in patent No. 495,443, and dismissing the bill as to patent No. 495,383. Let costs be taxed in favor of each party, as each succeeds as to one patent, but let judgment be entered only for the excess of the costs of one party over the other.

FLINT & P. M. R. CO. v. MARINE INS. CO., Limited.

(Circuit Court, E. D. Michigan. October 7, 1895.)

1. RULES OF NAVIGATION—SPEED IN FOG.
The word "fog," as used in Rev. St. § 4233, providing that "every steam vessel shall, when in a fog, go at a moderate speed" applies to all atmospheric conditions increasing the perils of navigation, such as mist or falling snow.

2. MARINE INSURANCE—NEGLIGENT NAVIGATION.
A steamer, while running at her ordinary speed of 10 miles per hour, in heavy snow squalls, in the general direction of the land, which her officers had reason to believe was close aboard on the port side, it being dark, with a heavy sea, and the wind following her, ran aground, and remained fast. She had shortly before starboarded her helm so as to swing 13 points, the soundings having shown that she was too close in shore. *Held*, that the stranding of the steamer was the result of her excessive speed, so as to prevent recovery on a marine insurance policy excepting losses caused by want of ordinary skill and care in navigation.

3. SAME—UNSEAWORTHINESS.
The improper starboarding of the wheel and excessive speed of the steamer were not excusable on the ground that her rudder stock had been so twisted on a previous trip that the rudder could not be thrown hard over under a hard a-port wheel, and that her speed aided her in swinging around, in view of the fact that the speed was necessitated by the defective condition of the rudder, and that this was within an exception in the policy of risks arising from the unseaworthiness of the vessel.

4. RULES OF SUPERVISING INSPECTORS—LOOKOUT ON VESSEL.
The rule of the supervising inspectors that all passenger and freight steamers shall have one of the crew on watch in or near the pilot house is authorized by Rev. St. § 4405, requiring the inspectors to establish rules necessary to carry out the statutory provisions as to steam vessels, among which is one that the vessel shall carry "a full crew, sufficient at all times to manage the vessel."

5. SAME.
Apart from any statutory regulation, there is a want of ordinary care and skill in navigation, within the meaning of an exception in an insurance policy, if the vessel fails to have a lookout properly stationed.

6. SAME.
The failure to have a lookout cannot be excused on the ground that the darkness was so great and the storm so severe that he could not have been of any use.

7. NEW TRIAL—NEWLY-DISCOVERED EVIDENCE.
A new trial will not be granted for newly-discovered testimony which is cumulative, was easily obtainable at the first trial, and is manifestly insufficient to change the result.

8. SAME—SURPRISE.
One cannot obtain a new trial on the ground that he was surprised by certain evidence, unless he applied for a postponement or continuance.

9. SAME.
The failure of plaintiff, if dissatisfied with the evidence, to take a nonsuit, with leave to move to set it aside, or to apply for permission to withdraw a juror, in cases in which this is permissible, is ground for refusing his application for a new trial on the ground of surprise.

This is an action of assumpsit, brought upon the policy of marine insurance issued by the defendant, August 1, 1892, upon the propeller "Flint and Pere Marquette, No. 2," styled in the pleadings