

a valid patent only for his specific improvements upon them in these respects. *Railway Co. v. Sayles*, 97 U. S. 554. In that case Mr. Justice Bradley said:

"If one inventor precedes all the rest, and strikes out something which includes and underlies all that they produce, he acquires a monopoly, and subjects them to tribute. But if the advance towards the thing desired is gradual, and proceeds step by step, so that no one can claim the complete whole, then each is entitled only to the specific form of device which he produces, and every other inventor is entitled to his own specific form, so long as it differs from those of his competitors, and does not include theirs."

The plaintiff's improvement here consisted in making the back higher. The alleged infringement consists in using wide, crossed suspenders. If his improvement could be said to cover extending the back of the overalls upward as high as the bib for the protection of the back of the wearer, the extension would be like the bib at the front, and would be merely putting that device to the same use, in a new place, in the same garment, for the same purpose. Such putting to a new use does not constitute patentable invention. The cases to this effect in the supreme court of the United States are too numerous for citation in detail, and this principle of patent law is too well settled to justify it. In *Potts v. Creager*, 155 U. S. 597, 15 Sup. Ct. 194, several of these cases were examined, and Mr. Justice Brown said:

"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, but if the relations between them be remote, and especially if the use of the old device produce a new result, it may at least involve an exercise of the inventive faculty."

As soon as the want of a high back, as well as a high front, should be felt, the exercise of mechanical skill, without inventive genius, would provide it. The plaintiff appears to have exercised good judgment and high skill about this, but not inventive genius or faculty in construction or discovery. And, with high backs to any fair extent, the making them higher would be merely carrying forward the same idea, although to a result more perfect, and would not seem to be patentable. *Wright v. Yuengling*, 155 U. S. 47, 15 Sup. Ct. 1.

These considerations make the examination of other questions urged unnecessary. Bill dismissed.

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CORSER v. BRATTLEBORO OVERALL CO.

(Circuit Court, D. Vermont. April 1, 1899.)

1. PATENTS—VALIDITY—SUGGESTION OF INVENTION BY OTHERS.

A merely oral and casual suggestion by another to the patentee of a part of the improvement covered by the patent is not sufficient to make the same invalid.

2. SAME—METALLIC BUCKLE AND BUTTON HOLDER.

The Corser patent, No. 372,062, for a combined metallic buckle and button holder or hole, discloses patentable invention, and is valid.

This was a suit in equity by Brackett G. Corser against the Brattleboro Overall Company for alleged infringement of a patent.

James L. Martin, for plaintiff.

Kittredge Haskins and William E. Simonds, for defendant.

**WHEELER**, District Judge. This suit is brought upon patent No. 372,062, dated October 25, 1887, and granted to the plaintiff for a combined metallic buckle and button holder or hole. The principal improvement is a shoulder in each side of the loop that goes over the button, formed by bends in the metal, to rest upon the button, and prevent unbuttoning, when loose. The evidence shows that he had conversation with others about this device while making it, and they testify to suggesting this improvement, but not to doing anything about it. The principal questions are whether it amounts to a patentable invention, and whether the suggestion defeats his right to the patent. This shoulder had to be contrived for preventing unbuttoning in this way: To have told a skilled workman to fix the prior flat loop so it would not unbutton when loose would not have produced this device, unless he had, in addition to his mechanical skill, sufficient ingenuity which he should exercise to contrive it. Invention was necessary to make it; when made, it seems to have been very useful, and also to have been patentable.

A patent is *prima facie* evidence of the invention of the thing patented by the patentee. This is elementary. Among the defenses allowed by statute to meet this presumption is that the supposed inventor "had surreptitiously or unjustly obtained the patent for that which was in fact invented by another who was using reasonable diligence in adapting and perfecting the same." Rev. St. § 4920, par. 2. The one who made the suggestion in respect to this improvement does not appear to have used any diligence at all in adapting or perfecting it, or to have understood that he was inventing anything like it, but rather to the contrary; for he appears to have afterwards made an application for an improvement upon these articles without including it. Such a suggestion is mere information, the receiving and acting upon which are not surreptitious or unjust. People are continually acquiring information. And Chief Justice Taney said, with reference to an inventor, in *O'Reilly v. Morse*, 15 How. 62, at page 111, "It can make no difference, in this respect, whether he derives his information from books or from conversation with men skilled in the science. If it were otherwise, no patent in which a combination of elements is used could ever be obtained. For no man ever made such an invention without having first obtained this information, unless it was discovered by some fortunate accident." In *Agawam Co. v. Jordan*, 7 Wall. 583, a claimed suggestion of an important part of the patented invention was held not to constitute the person making it and the patentee joint inventors, nor to afford any defense for infringement. This merely oral and casual suggestion, if made as claimed, would not appear to be sufficient to defeat this patent. Besides this, such a defense is affirmative, and must be made out beyond reasonable doubt. The plaintiff admits conversation on the subject, but denies such suggestion. In view of all the circumstances, a doubt that it was so made as to give full information of the invention remains and seems reasonable. Decree for plaintiff.

## CORSER v. BRATTLEBORO OVERALL CO.

(Circuit Court, D. Vermont. April 1, 1899.)

## 1. PATENTS—INVENTION—IMPROVEMENTS IN COATS.

It having been customary, in putting on the collars of coats, to sew the underside to the coat, and then sew the upper side down over the seam, there was no invention in making the outside of the collar a "seam" larger than the inside, and seam both to the coat at the same time, and then turn the wide part under and seam it. This is simply a change in the form and arrangement of the constituent parts, and not patentable.

## 2. SAME.

In cutting coats, there can be no invention in laying on the patterns in a particular way, for the purpose of economizing material. This is merely a matter of judgment, producing good workmanship, and not a matter of invention.

## 3. SAME.

The Corser patent, No. 364,219, for improvements in coats and the methods of making them, *held* valid and infringed as to claim 3, and void as to the remaining claims for want of invention.

## 4. SAME—APPORTIONMENT OF COSTS.

Where three patent cases were heard upon the same testimony, and in one case the decree was for plaintiff, in another for defendant, and in the third for plaintiff on one claim, and for defendant on the three others, *held*, that in each case costs would be allowed to the recovering party for all but the evidence, and the costs for the evidence would be disallowed in all of the cases.

This was a suit in equity by Brackett G. Corser against the Brattleboro Overall Company for alleged infringement of a patent for improvements in coats and the methods of making them.

James L. Martin, for plaintiff.

Kittredge Haskins and William E. Simonds, for defendant.

WHEELER, District Judge. This suit is brought upon patent No. 364,219, dated June 7, 1887, and granted to the plaintiff for an alleged improvement in coats and method of making them. The improvement in coats relates to the putting on of the collars, and is thus described in the specification:

"It has been customary to sew the underside to the coat, and then sew the upper side down over this seam, which latter is a difficult operation, and usually leaves the collar awry or twisted and deformed by plaits. I make the outside of the collar a 'seam' larger than the inside, and seam both to the coat at the same time, after which the wide part is turned under and seamed."

There are four claims for this alleged improvement,—two for a coat provided with a collar composed of these parts, and connected to the coat in this way; and two for "the improvement in the art of attaching collars to coats, which consists in providing" these parts and sewing them to the neck of the coat in this way. A part of the method of making is a sleeve pattern, with longitudinal lines where the seam under the arm would come, or notches where the ends of the lines would be, either whole, or divided there with the lines along the edges of the parts, for conveniently varying that seam, and the sizes of the parts, and allowing economy in material, by placing the seam along lines at equal distances each way from the middle, and so preserving the size.