DECISIONS OF THE UNITED STATES COURTS.

Supreme Court of the United States.

A TRADE MARK CASE.

THE LIGGETT & MYERS TOBACCO COMPANY *vs.* FINZER.

Decided November 5, 1888.

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

The Liggett & Myers Tobacco Company, a corporation created under the laws of Missouri, manufactures plug tobacco at St. Louis, in that State. This tobacco is put up for sale, marked with a star made of tin, having five points, and a round hole in the center, and attached to the plug by prongs at its back. The bill alleges that the complainant has for many years been extensively engaged in manufacturing this plug tobacco and in selling the same in large quantities in St. Louis, Louisville, and throughout the United States, and that every plug has been marked with such a star; that from the care taken in its manufacture the tobacco has acquired a great reputation, and large quantities are constantly required to supply the regular demand; that by reason of the distinguishing mark of the star upon the plugs it has become known to the trade and the public as "star plug tobacco;" that the complainant was the original manufacturer of this tobacco with the design of a star affixed to the plugs, and that the defendant, knowing all this, is manufacturing and selling at Louisville, Kentucky, plug tobacco to which is affixed a round piece of gilded paper having on it a red star, under which the word "Light" is printed, and that this mark is calculated to mislead the trade and public and induce them to purchase tobacco from the defendant as star tobacco of the complainant, to his manifest injury, all of which is contrary to equity and good conscience. He therefore prays that the defendant may be enjoined from using that star on any plug tobacco manufactured by him.

The defendant admits these several allegations, except the one asserting that the complainant was the original manufacturer of plug tobacco with a star attached to the plug and the one asserting that the star used by him is calculated to mislead the trade and public to purchase the tobacco manufactured by him for the tobacco manufactured by the complainant. Upon the first of these two points the testimony establishes the fact that the complainant was the first person to use a star made of tin and fastened upon plug tobacco as described above, but that he was not the first person to use the design of a star upon plug tobacco. The priority of use, therefore, by the complainant extended only to the tin star, and not to the design of a star generally. Upon the second of the two points there is even less ground to sustain the position of the complainant. The two stars, the one used by the complainant and the one used by the defendant, are so different in form and surroundings that it would not be possible for any person not afflicted with color blindness to mistake the one for the other. They differ in size and color. The star used by the complainant on its manufactured goods is only a little over half an inch in diameter, with a hole in the center. The mark used by the defendant consists of a round paper label over three-fourths of an inch in diameter, with a red star and the word "Trade" on one side and the work "Mark" on the other, in gilded letters on a red background, and having beneath the star the word "Light," thus forming by the figure and the letters the word "Starlight." One star has the silvery appearance of tin foil, the other has the glare of a red and yellow gilded background. The judgment of the eye upon the two is more satisfactory than evidence from any other source as to the possibility of parties being misled so as to take one tobacco for the other, and this judgment is against any such possibility.

Seeing in such case is believing, existing differences being at once perceived and remaining on the mind of the observer. There is no evidence that any one was ever misled by the alleged resemblance between the two designs. But, in addition to the want of resemblance in the stars, the plugs to which they are respectively attached are of different size and weight. And it appears, also, that the name which the defendant has given to his plug tobacco is "Starlight," instead of "Star," tobacco, and is thus distinguished in name not only from other tobacco manufactured by him, which he calls "Sunlight" and "Moonlight" tobacco, but also from all plug tobacco manufactured by the complainant.

Decree affirmed.

Mr. Justice Field delivered the opinion of the court.

Supreme Court of the United States.

THE CRESCENT BREWING COMPANY *vs.* GOTTFRIED.

Decided November 5, 1888.

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

The first claim of Letters Patent No. 42,530, granted May 3, 1864, to J. F. T. Holbeck and Matthew Gottfried, for an improved mode of pitching barrels, is, so far as it is a claim to a process, fully anticipated in the process carried on by means of the Seibel apparatus, and so far as it is a claim to an apparatus used for applying a heated blast to the interior of a cask, the apparatus existed before.

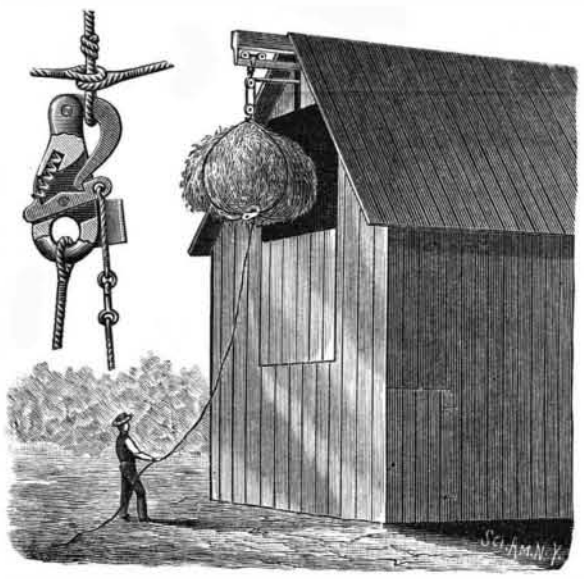
The second claim is not infringed by the defendant's apparatus, it having no removable conductor corresponding to the conductor, E, of said claim.

Decree of the Circuit Court reversed and the case remanded to that court, with directions to dismiss the bill of complaint, with costs.

Mr. Justice Blatchford delivered the opinion of the court.

AN IMPROVED BOTTOM-TRIP SLING.

A tripping device adapted more particularly for attachment to the several binding strands of a rope or chain used for hoisting hay, etc., and whereby the load may be readily released after it is deposited in the desired place, is illustrated herewith, and has been patented by Messrs. Joseph W. Wood, of Baraboo, Wis., and Alvinus B. Wood, of Tacoma, Washington Ter. The body of the clamp is preferably of metal, cast in one piece, a hook being pivoted between ears in its upper end, an outwardly extending lip on the lower end of the hook being adapted to engage a recess in the outer end of a lever pivoted near the lower end of



WOOD'S BOTTOM-TRIP STRAW SLING.

the device, this lever being held in engagement with the lip of the hook by means of a spring secured at its opposite end. The illustration shows the use of the device where four binding ropes are employed, to be united in any approved manner about the bundle of hay or other material, the four ropes to be united in the center by the clamp, while a trip rope is connected with the outer end of the pivoted, spring-held lever, engaging the lip of the hook. When the load is carried to the desired place, a quick jerk on the trip rope releases the hook, permitting the ready detachment of three of the ropes therefrom, while the weight of the load releases the eyes of the other strands, thus depositing the load.

For further information relative to this invention address Mr. J. W. Wood, Baraboo, Wis.

Mr. Keely's Motor.

The Philadelphia court which thought it could keep Mr. Keely in confinement has seen its error. As the *Tribune* has already remarked, Mr. Keely is out of jail and has returned to his motor. Some of the earlier of the stockholders are not yet out of the poorhouse—but this is neither here nor there.

The short and simple annals of Mr. Keely's motor are soon told. Some twenty years ago, more or less, Mr. Keely built his motor. There are a number of pipes, wheels, pulleys, rods, belts, levers, cocks, cams, and cogs visible, besides, it is darkly hinted, a vastly greater number of the same sort of thing under the floor and back of the partition. In front of the motor is Mr. Keely's office, in which there is a large slot. The stockholders drop their money in the slot, and Mr. Keely looks out and watches them walk away. Naturally Mr. Keely is sometimes called upon to explain the workings of his motor by some doubting stockholder. On such occasions he is all smiles, and, conducting the victim into the presence of the machine, he says: "You see, my friend, the way we operate the motor is this: Taking hold of this lever we pull it toward us. This causes the small flip-flap you see there to be withdrawn, allowing the flibber snatcher to fall into its place on the ramrod. As soon as this happens, it acts directly on the hatchway and the slam-bang, causing them to make a half-revolution and start the get-up-and-get motion of the flunker-flopper, which in turn communicates its energy to the button hook and the wapperchock. After these things have run for about five minutes they cause the jig-jag valve to turn, and the asthmatic gas flows through the pipe to the cylinder and gives the wiggle motion to the gilder fluke. That's the point we are striving after—the wiggle motion of the gilder fluke. Why, my dear sir, without the wiggle motion of the gilder fluke you wouldn't think of putting your money into the motor. But, with it, sir, we are—eh, another share? All right, come into the office and I'll have it made out for you inside of a minute."

Professor Keely has been much more successful in the mechanical manipulation of the stockholders' money than in the management of his motor. Taking hold of the middle of a bill, of any denomination, with the thumb and forefinger of each hand, he bolds the end of the bill toward his person. By a dexterous movement of the fingers he causes the bill to fold across the center. Repeating the process, he has it reduced to the proper compass for wadding into his pocket book, which is the next movement. This most ingenious gentleman, Don Keely, then places the purse in his right hand trousers pocket and smiles quietly. The mechanical action is perfect, and leaves nothing to be desired.

Mr. Keely's mental endowments seem to run in particular lines. He appears to have no mechanical ingenuity, his strong point being his ability as a collector. He has one of the largest and best arranged collections of other people's money to be found in the United States. Having, a number of years ago, during a fit of temporary insanity, constructed a machine which, if any power on earth could start it, would explode and pierce the startled dome of heaven with flying fragments of cog wheels and cranks, he now sits down calmly and allows this same mechanical nightmare to make his living for him. This is genius. The man who can create a company, stock in which is placed among the holder's liabilities when he fails, and then continues to sell this stock every day, is doing something that ordinary men of talent cannot do. He has risen above them. This is Keely. He toils not, neither does he spin; but he has got a hysterical collection of crooked pipes and lop-sided wheels tied up in his back room that extract the reluctant dollar from the pocket of avarice without fail.

The Forests of Alaska.

The prevailing forest tree of Alaska, says Mr. George Davidson, of the Coast Survey, is the Sitka spruce, growing to great size, covering every part of the ground, and climbing the steepest mountain sides to the height of 2,000 or 2,500 feet above the sea.

This tree resembles in form and foilage the silver firs of California. In the Archipelago Alexander, *with a shore line of more than* 7,800 *statute miles*, the land is densely wooded from the water's edge. It can never be devastated by forest fires, because the carpet of wet *sphagnum* over the surface of the country effectually prevents fires from spreading.

We measured felled spruce trees that were 180 feet long and 4 feet thick at the butt; while adjacent standing trees measured over 6 feet in diameter, were branchless for over 50 feet, and estimated to be 250 feet high.

Hemlock, alders, and willows are found; but the most remarkable wood of the country is the yellow cedar, with fine, even texture, fragrant smell, good size, and greater strength than the spruce. It is readily worked, takes a smooth surface, and is remarkably durable. It is a valuable addition to the cabinet woods, and is *superior as a ship timber to any on the coast.*

It can be obtained of ample size for frames and knees of ordinary sized vessels. We measured one 18 feet in circumference, and estimated it to be over 125 feet in height. We collected part of the keelson and frame of a Russian vessel built of this wood thirty-two years before, and which had been lying a wreck on the beach for several years. It exhibited no signs of decay nor of *teredo* attacks, and the wood around the copper and iron bolts is nearly as well preserved as on the day they were driven.

On Kadiak Island the forests cease toward the south. The yellow cedar does not grow on the northeast part of the island; but the average size of the spruce is less than two feet in diameter.

Hemlock is found in abundance, and has its value for tanning purposes.

When the forests of Washington Territory and Oregon are exhausted, Alaska will be the great and our almost inexhaustible resource in the future.

The Source of the Mississippi.

J. V. Brower, who has just returned to St. Paul from Itasca Lake, the source of the Mississippi River, will soon make public a map and detailed report of his examination of the Itasca basin. It includes a measurement of the inflow and outflow of all the streams at that point. The true source of the river is disputed, and Dr. Brower's researches locate it in the interior of section 21 of the government survey, in a small lake laid down on the maps and charts of Jean N. Nicollet in 1836, four years after the visit of Schoolcraft, who fixed the outlet of Itasca as the proper point of commencement. The claims made by Willard Glazier in 1881 are found to be false. Mr. Brower was formerly register of the St. Cloud Land Office, and is fully posted in regard to the history and exploration of the locality.