

9 S.Ct. 389

129 U.S. 530

32 L.Ed. 738

PETERS

v.

ACTIVE MANUF'G CO.<sup>1</sup>

*March 5, 1889.*

*William Hubbell Fisher and Benj. Butterworth*, for appellant.

*Arthur Stem*, for appellee.

BLATCHFORD, J.

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This is a suit in equity, brought in the circuit court of the United States for the Southern district of Ohio, in January, 1882, by George M. Peters against the Active Manufacturing Company, for the alleged infringement of letters patent No. 178,463, granted June 6, 1876, to the plaintiff, George M. Peters, for an improvement in tools for attaching sheet-metal mouldings, on an application filed March 7, 1876. The specification, drawings, and claims of the patent are as follows: My invention comprises a peculiarly constructed sheath or holder, wherewith the ornamental moulding on the top of the carriage dashes may be applied in the most expeditious manner, and without bending or buckling, or otherwise injuring or marring, either said moulding or its supporting dash-board. In its preferred form, said sheath consists of a two-part holder or receiver, connected together with bolts and washers, and provided with a longitudinal groove or channel of such size and shape as to readily inclose the moulding that is to be applied to the upper edge of the dash, a key or other suitable stop being fitted within the sheath, to prevent the moulding slipping through said longitudinal groove when the device is in use. The sheath is rendered capable of carrying mouldings of various lengths and sizes by an arrangement of adjusting devices, whose details of construction will be hereinafter more fully explained. In the accompanying drawing, forming part of this specification, Fig. 1 is a perspective view of a two-part sheath in an inverted position, the middle portion and rear end of the device being broken away. Fig. 2 is a perspective view of the moulding detached from sheath. Fig. 3 is a plan showing the moulding located within the sheath. Fig. 4 is a longitudinal section through the rear end of the sheath, with a screw-stop for the moulding to bear against. Fig. 5 is a transverse section at the line, *x, x*, showing the moulding encased within the sheath; and Figs. 6 and 7 represent modifications of the holder. A and B represent two metallic bars of any appropriate size, and having their lower outer edges slightly beveled off at *a* and *b*. These bars are maintained in a parallel position with reference to each other by means of bolts or screws, C, and washers or fillings, D. Instead of washers and bolts or screws, C, the bars may be maintained in parallel position, and separated or brought nearer together, by means of right and left screws, the right-hand thread of said screw engaging a female screw in one bar, and the left-hand thread engaging a female screw in the other. The bar, A, has a longitudinal groove, E, formed along its inner surface, and near the lower edge of said bar. E' is a precisely similar groove, made in a other bar, B, and when the two members, A, B, of the sheath are joined together the grooves, E, E', form a channel that is approximately circular in its transverse section. F represents a hook, shackle, or link, pivoted to the front end of the sheath, and guttered at *f*, to avoid contact with the upper edge of the dash. The bars are furnished with undercut notches, *g, g'*, to receive a detachable key, G, which lat serves as a stop or abutment for the rear

end of the moulding to rest against. A series of similar notches may be made in the bars, A, B, at such distances from the front end of the sheath as will correspond with the various lengths of mouldings; or, if preferred, the notches and key may be dispensed with, and a screw, H, may be arranged for the moulding to bear against, as seen in Fig. 4. This screw may be adjusted out or in to agree with the length of moulding. The advancing end of the sheath is rounded off at I, so as not to tear up the leather coverings of the dash while the moulding is being applied. The moulding consists of a sheet-metal tube, J, having a longitudinal slot or parting, K, and a flaring or trumpet-mouthed end, L. This trumpet mouth is located at the forward end of the moulding. As represented in Fig. 7, the sides of the moulding, M, are straight and have an outward flare, the top of said moulding being somewhat crowning. This illustration shows a three-part sheath, the two outer bars, N, N', being secured to the central member, O, by right and left hand screws, *n*, *n'*, and nuts P. Fig. 6 represents the sheath as made of a single piece of metal, or other suitable material.

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'Previous to using the sheath the key, G, is first inserted in the notches, *g*, *g'*, at such a distance from the end, I, as will correspond with the length of moulding J, which latter is then slid into the groove, E, E', the rear end of said moulding being brought in contact with the vertical edge of said key. When thus located within the sheath, the flaring mouth, L, of the moulding has a slight projection beyond the chamfered end, I, of the bars, A, B, as represented in Fig. 3. The carriage dash is then held perfectly rigid, and the upper margins of the coverings of the same are inserted in the flaring end, L, of the moulding, after which any suitable power is applied to the hook, F, to draw the sheath along the top of said margins or projections. As the sheath advances, the flaring mouth serves to conduct the leather margins into the slot, K, of the moulding, and as the grooves, E, E', prevent any radial distension of the tube, J, it is evident that the moulding is caused to embrace said margins in the most uniform and secure manner. After the moulding has traversed the entire length of the dash, the sheath can then be retracted, thereby leaving the tube, J, in its proper position upon the dash, the flaring end, L, being either filed off or else disposed of in any other suitable manner. During the progress of the sheath along the top of dash, the moulding is impelled forward by the key, G, and consequently no strain whatever is brought to bear upon the flaring end, L, of the tube. As a considerable degree of force is required to anchor the moulding, J, securely to the leathern margins, it is evident that the driving action of key, G, would have a tendency to buckle said tube; but this defect is obviated by making the channel of the sheath of such capacity as to allow a pretty snug fit of the moulding within it. When a longer moulding is to be applied to a dash, the key, G, is driven out and inserted in another set of notches nearer the rear end of the sheath; or the same results may be effected by causing the moulding to abut against the end of screw, H, the latter being adjusted either out or in, so as to agree with the length of moulding that the sheath is to carry. The width of channel, E, E', may be increased, to receive a moulding of greater diameter, by removing washers or filling, and inserting thicker ones in their place, or by turning the right and left hand screws, where the latter are employed. It is preferred to make the sheath of two pieces, on account of the facility of grooving them; but it is evident the holder may be made of a greater or less number, if desired. (See Figs. 6 and 7.) It is also preferred to have the sheath embrace the moulding as completely as possible, so as to bring the lower edges of the bars, A, B, near the parting, K, and thereby prevent any spreading of the tube at said slot; but, if the tube is sufficiently stiff to prevent such spreading, the sheath need not surround the moulding so completely. This modified form of sheath is shown in Fig. 6. Furthermore, the sheath may be composed of wood lined with a metallic bushing. It is evident that this form of sheath may be advantageously employed for attaching sheet-metal mouldings for bubes to various articles; and I reserve the right to use it for any and every purpose that it is capable of. What I claim as new,

and desire to secure by letters patent, is: (1) A sheath for applying metallic mouldings, said sheath being furnished with a stop for advancing the moulding, all substantially as and for the purpose specified. (2) The within-described sheath for applying metallic mouldings, said sheath being furnished with recesses, *f*, *g*', and a key, G, or their equivalent stops, as and for the purposes explained. (3) A sheath composed of two grooved bars, A, E, B, E', bolts or screws, C, and washers, D, whereby the sheath is rendered capable of adjustment to contain mouldings of different diameters, as herein set forth. (4) The combination of bars, A, E, B, E', and guttered hook or shackle, F *f*, for the object stated.'

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Infringement is alleged of claims 1, 2, and 3. The defenses insisted upon are want of invention, want of novelty, and non-infringement of claim 3.

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The substance of the invention set forth in the specification is the use of a sheath or holder or receiver having in it a longitudinal groove or channel, in which is placed the moulding that is to be applied to the upper edge of the dash-board, the sheath or holder, when pulled, drawing with it the moulding over the upper edge of the dash-board, and the key or stop being fitted within the sheath or holder, to prevent the moulding from slipping through the groove. One useful effect of the sheath is to support the moulding laterally, and prevent it from bending or buckling, or injuring the dash-board. Claim 1 covers the use of a sheath furnished with a stop, which operates to prevent the further advancing of the moulding when it reaches the stop. Claim 2 covers the use of a sheath with a stop formed by means of notches or recesses, and a detachable key to be inserted in the notches. Claim 3 covers a sheath composed of two grooved bars, parallel to each other, and having bolts or screws connecting them, and washers between them, so as to render the apparatus capable of being adjusted to contain mouldings of different diameters.

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The circuit court entered a decree dismissing the bill, from which the plaintiff has appealed. The opinion of that court, reported in 21 Fed. Rep. 319, says in regard to claims 1 and 2: 'The respondents' evidence establishes that, as early as September, 1867, Joseph P. Noyes, a manufacturer of combs at Binghamton, New York, used a machine for putting mouldings on combs, in which the moulding was held in a sheath fitting it closely, and having an extension enough smaller to fit the comb. In this extension there was a sliding follower fitted to abut against the end of the comb. At the extreme opposite end of the larger part of the sheath there was a slot across the sheath, containing a key or stop to prevent the sliding of the moulding. The follower was attached to a slide and lever, so that when a moulding was laid in the larger part of the sheath, and the comb in the smaller part, the comb, being prevented from bending by the walls of the sheath, could be forced into the moulding by the action of the slide and lever upon the follower, the moulding being prevented from bending by the walls of the part of the sheath within which it was placed. This machine was in use more than three years before the date of the complainant's invention. That this was a comparatively small machine, and used only for applying mouldings to combs, is not material. *Planing-Machine v. Keith*, 101 U. S. 490. Nor is it material that the groove or gutter was so open in cross-section that the moulding could be dropped into it. Fig. 6 of the drawings accompanying the letters patent issued to complainant shows a sheath of like shape, and is referred to in the specifications as a modified form of the sheath patented, and the claim is so broad as to cover any sheath, of any material, shape, or size,

for applying mouldings to any article. There is nothing more in the sheath patented to the complainant than an adaptation of the sheath used at Binghamton to the application of mouldings to carriage dash-boards—an adaptation which would have occurred to a skilled mechanic without the exercise of the inventive faculty. Had the complainant's invention been first in time and patented, the Binghamton sheath would have been an infringement; and, conversely, had the Binghamton sheath been patented, the complainant's would have been an infringement. That which infringes, if later, would anticipate, if earlier.' We concur in these views.

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The affirmative evidence on the part of the defendant in regard to the Noyes apparatus consists of the testimony of Noyes and Yingling, their testimony having been taken in August, 1882. Noyes testified that he had been engaged in making combs, at Binghamton, Broome county, N. Y., since 1860, and had, since 1864, made combs with metallic mouldings for stiffening the backs. He produced one of such combs, marked 'A,' and one of such mouldings, marked 'B.' He further testified as follows: '*Question 6.* State whether or not you have ever used any machinery for putting these mouldings on combs. *Answer.* I have. *Q. 7.* Can you describe any of the machines used by you for putting mouldings on combs? *A.* Yes. I have one machine in which the moulding is held in a groove, which fits it closely, and the same groove has an extension enough smaller to fit the comb closely, and in this extension there slides a follower, which is fitted abut against the end of the comb. At the extreme opposite end of the larger part of the groove there is a slot across the groove, containing a key or stop to prevent the moulding sliding through the groove. The follower before mentioned is attached to a suitable slide and lever, so that when a moulding is laid in the larger part of the groove, and the comb in the smaller part, the comb, being prevented from bending by the walls of the groove, can be forced tightly into the moulding by the action of the follower and its connected parts, the moulding being at the same time prevented from bending by the walls of the larger part of the groove. *Q. 8.* Can you produce a drawing illustrating the machine above described, and its operation? *A.* I here produce a drawing which illustrates said machine. In this drawing, Fig. 1, A, represents the main body of the machine. In the part A is the groove, C, and its smaller extension, D, in which are placed the moulding and the comb, as described in my previous answer. O represents the slot in which is placed the key, marked 'Fig. 2.' E, Fig. 1, represents the follower, B, the slide of which the follower forms a part; L, K, M, and H, the lever and connecting parts by which E and B are operated. Fig. 3 shows an end view of the slide and follower. *Q. 9.* Into which of the grooves do you place the metallic moulding? *A.* Into the groove, C. *Q. 10.* And into which the comb? *A.* Into the groove, D. *Q. 11.* In use, the key or stop, Fig. 2, is placed in the slot, O, to prevent the metallic moulding sliding, is it not? *A.* It is. *Q. 12.* State whether the groove, C, in the sheath, A, effectually prevents the metallic moulding from bending as it is forced over the back of the comb. *A.* It does. *Q. 13.* State how long you have used the above-described machine for putting metallic mouldings on combs in the manner described. *A.* Since September, 1867. *Q. 14.* Can you fix the date by any positive evidence besides your memory? *A.* I can; I have referred to the time-book of the men who made the machines, and find the machine to have been finished at the date named, and remember that it was put into immediate use. *Q. 15.* Has it been used ever since? *A.* It has been in continued use ever since, without any alteration. *q. 16.* Have you ever made any effort to keep its use a secret, or has it always been open to the inspection of any person who might come into your shop? *A.* I have made no effort to keep it secret, but the shop has always been open to visitors, and any one could see the machine who cared to look at it.' The drawing so produced, marked 'C,' shows a machine substantially like that of the plaintiff. Yingling testified that he was, at the time of testifying, in the employ of Noyes, and since 1868, or for about 14 years, had used a machine like that shown by the drawing C, above referred to, for putting metallic mouldings

upon combs. Noyes had stated, on cross-examination, in answer to a question as to who made the machine he had described as made in 1867, that William Knopp and his son were in his (Noyes') employ as machinists at that time, and worked some on it; that his time-book, kept at that time, which he had consulted, contained a record of the fact that Knopp and his son so worked on the machine; and that the machine was built during the first week in September, 1867. In rebuttal, the first week in September, 1867. In rebuttal, Knopp and three persons named Newman, Coyle, and McAuley.

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Knopp testified that he was employed in Noyes's comb factory from 1865 to 1869, and was familiar with the kind of machinery manufactured by them during that time for use in their comb factory. He then proceeded: 'Question 5. In September, 1867, or at any other time, did you make machinery for putting metallic backs on combs? Answer. I did. Q. 6. Without going into detail as to the kind you did make, I will ask you whether, in September, 1867, a you made, or helped to make, a machine for putting mouldings on the backs of combs, where the moulding is held in a groove which fits it closely, and the same groove has an extension enough smaller to fit the comb closely, and in this extension there slides a 'follower,' which is fitted to abut against the end of the comb. At the extreme opposite end of the groove there is a slot across the groove, containing a key, or stop, to prevent the moulding from sliding through the groove. The follower is attached to a suitable slide or lever, so that, when a moulding is laid in the larger part of the groove, and the comb in the smaller part, the comb is prevented from bending by the walls of the groove, and can be forced tightly into the moulding, by the action of the follower and of the connecting parts. A. I do not remember that I made anything of that kind. Q. 7. Did you at any other time make such a machine? A. I don't remember that I did. Q. 8. Please examine the comb I now hand you, and state whether Noyes Bros. & Co., at that time when you worked for them, and since, manufactured a comb with metallic back similar to this one, and, if so, state how said matallic back was put on the comb? [Comb marked 'Exhibit A' shown witness, and offered in evidence by solicitor for complainant.] A. They manufactured a comb in general appearance similar. The metallic back was put on and fastened to the comb by Sum. 251, 256; 'If the new citizenship is vice to make it fit in a groove in the comb tightly. The moulding was placed on the comb by hand, and then put in a vice, and the moulding pressed up tightly against the compression. The back was compressed in a or making machinery for compressing the moulding on the comb, as above described? A. I do. Q. 10. Is the mode above described the only way Noyes Bros. & Co. put metallic mouldings on that kind of a comb? A. It is. Q. 11. You were familiar at that time with the mode employed by them for putting mouldings on combs, were you? A. I was.'

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This testimony of Knopp is very inconclusive. He merely testifies, 13 years after he had left Noyes's establishment, that he does not remember that he made, 15 years before the time when he was testifying, a machine like that described in question 6, put to him. The drawing produced by Noyes was not shown to Knopp. The testimony of Newman, Coyle, and McAuley amounts to nothing. Although they were employed in the comb factory of Noyes at the time they gave their testimony, in December, 1882, and had been employed their, Newman from 1862, Coyle for 14 or 15 years, and McAuley for about 30 years, neither of them was shown the comb, A, nor the moulding, B, nor the drawing, C, above mentioned, nor was a distinct question put to either of them as to the use of a machine like that described in question 6 put to the witness Knopp. The only difference between Noyes' device and that of the plaintiff is that in Noyes' the stop holds the moulding stationary, while the comb is forced into the moulding by the action of the follower.

But its action is substantially the same as that of the stop in the plaintiff's patent, which prevents the moulding from slipping through the groove.

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The case falls within the principle applied in *Railroad Co. v. Truck Co.*, 110 U. S. 490, 4 Sup. Ct. Rep. 220, and cases there cited.

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As to the third claim, it is not infringed, because, in the defendant's apparatus, no washers are used for adjustment. The decree of the circuit court is affirmed.

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Affirming 21 Fed. Rep. 319.