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to enforce the contract as one continuing during the time claimed by the libellants would be highly inequitable; and that, as against the insurers of the cargo, the right of the boats to compensation must be regarded as having terminated when the ship and cargo were raised, and the boats must be regarded as having been then discharged, within any fair interpretation which can be given to the contract. A compensation of \$50 per hour for the eighteen hours of actual pumping would amount to \$900. Every agreement for salvage compensation is subject, as to amount, to the judgment of the court as to its being equitable and conformable to the merits of the case. *Parsons on Shipping*, 306; *The Helen and George*, Swabey, 368; *Jones on Salvage*, 94 *et seq.*

The final decree of the circuit court was entered on the 24th of May, 1880. On the 26th of June following, the underwriters on the cargo filed a petition in the circuit court praying a cross-appeal to this court from the decree, and it was allowed, returnable at the October term, 1880. On the 5th of July following, the bond on the cross-appeal was filed in the circuit court. But the appellants in the cross-appeal did not docket it or enter their appearance on it, in this court, until September 27th, 1883; and the appellees in it are entitled to have it dismissed. *Grigsby v. Purcell*, 99 U. S. 505; *The S. S. Osborne*, 105 U. S. 447.

The cross-appeal is dismissed, and on the appeal of the libellants, the decree of the circuit court is affirmed.

DOUBLE-POINTED TACK COMPANY v. TWO RIVERS MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

Argued October 25th, 1883.—Decided November 5th, 1883.

Patent.

The first claim of letters-patent No. 147,343, granted February 10th, 1874, to the Double-Pointed Tack Company, as assignee of Purches Miles, the in-

Statement of Facts.

ventor, for an "improvement in bail-ears," namely, "1. The compound staple-fastening *d*, for bails, made with the diagonally cut penetrating points 2 and 3, loop 4, and body 5, said diagonally cut points being positioned as set forth, so as to bend upwardly in driving into the wood, as set forth," does not, in view of what existed before in the art, set forth any patentable invention.

It was commonly known that the effect of a diagonal cut on a penetrating point was to force the point, in being driven, in a direction away from the cut. Double-pointed staples, with a diagonal cut on each point, but the diagonal cut on one point on the upper and outer side, and on the other point on the lower and outer side, as the staple was driven, were old, the effect in driving being to bring the points together; and there was nothing more than mechanical skill in putting the diagonal cuts on the same side of each leg, so as to incline both points, in driving, in the same direction.

The second claim of the patent, namely: "2. The convex metallic washer *e*, in combination with the compound bail-fastening staple *d*, having upwardly penetrating points 2, 3, and loop 4, as and for the purposes specified," does not set forth a patentable combination, but only an aggregation of parts. Neither the staple nor the washer affects or modifies the action of the other.

This was a suit in equity brought in the Circuit Court of the United States for the Eastern District of Wisconsin, for the infringement of letters-patent No. 147,343, granted February 10th, 1874, to the plaintiff, the Double-Pointed Tack Company, as assignee of Purches Miles, the inventor, for an "improvement in bail-ears." The circuit court dismissed the bill, and the plaintiff appealed to this court.

The specification of the patent says:

"Wire-staples have been employed to form the fastening eyes for bails, and these have been driven into the wood with the penetrating points nearly at right angles to the surface, and in use they are liable to pull out by the weight. My invention consists in a bail-fastening staple made of wire, with the penetrating ends cut at such an angle that, in driving them into the wood, they will assume an upward inclination, so that the weight will tend to force such points inwardly rather than to draw them out, and the bending of the ends in clinching will always be upwardly, thus making a better and more reliable article than heretofore; and I combine with such fastening a convex metallic washer to keep the bail from contact with the wood or the paint thereon. In the drawing, Figure 1 is a section of the fastening complete;

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Figure 2 shows the compound staple fastening separately; and Figure 3 is an elevation of the washer. The wood work, *a*, represents part of a pail or tub, and the bail, *b*, is of wire, having eyes, *c*, at the ends, which are bent so as to stand parallel, or nearly so, to each other. The compound staple-fastening, *d*, is made with the penetrating points 2, 3, loop 4 for the eye *c*, and the body 5. The ends 2, 3, of the wire are cut diagonally, so that, in driving them into the wood, the tendency is to bend upwardly and clinch, and they will usually be long enough to pass through the wood and be clinched. The body of the fastening stands vertically or nearly so, and will usually be partially imbedded in the wood. The sheet-metal washer *e* prevents the eye *c* coming against the wood. The points of the staple penetrate the wood upwardly so as effectually to prevent the staple pulling out under the ordinary strain to which it is subjected."

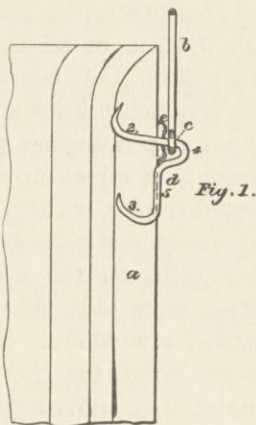


Fig. 2.

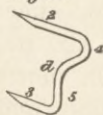


Fig. 3.



The claims of the patent were these :

"1. The compound staple-fastening *d* for bails, made with the diagonally cut penetrating points 2 and 3, loop 4, and body 5, said diagonally cut points being positioned as set forth, so as to bend upwardly in driving into the wood, as set forth. 2. The convex metallic washer *e*, in combination with the compound bail-fastening staple *d*, having upwardly penetrating points 2, 3, and loop 4, as and for the purposes specified."

The case was argued by *Mr. Arthur v. Briesen*, for the appellant; *Mr. Wm. P. Lynde*, for the appellee.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

The gist of the invention set forth in the descriptive part of

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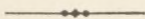
the specification, so far as the first claim is concerned, is to cut the two penetrating ends of the wire diagonally, and in such a way that, while the staple is being driven, the cut faces will both of them be on the lower side, and the two penetrating ends will both of them incline upwardly. It is shown to have been commonly known that the effect of a bevel or a diagonal cut on a penetrating point was to force the point, in being driven, in a direction away from the bevel or cut. Double-pointed staples, with a diagonal cut on each point, but the diagonal cut on one point on the upper and outer side and on the other point on the lower and outer side, as the staple was driven, were old. They were used to secure wire screens as guards for windows. The effect in driving them was to bring the two points together, by throwing them towards each other, through their movements in opposite directions. The mechanical action embodied was the forcing each point, in being driven, in a direction away from its bevel or cut. The result was that the legs of the staple were bent and came together, and were thus clinched in the driving, and it was more difficult to pull out the staple than if the legs had gone in without bending. In view of this state of the art, there was no patentable invention, and nothing more than mechanical skill, in putting the diagonal cuts or bevels on the same side of each leg of the staple, so as to give both points, in driving, an inclination in the same direction, that direction being one away from both bevels, and in using the device to fasten a bail. This was the view taken by the circuit court. There is no suggestion in the specification or claims as to any invention or novelty in the form of the loop, or of the body, or in the relative lengths of the two penetrating points, or as to the angles formed by such points with the loop or the body, before driving. The so cutting the penetrating ends that they will both of them incline upwardly in driving is the only feature of invention set forth, and to this the patent must be limited, so far as the first claim is concerned.

The second claim is for the washer in combination with the staple of the first claim. This is not a patentable combination. There is only an aggregation of parts when the staple is used

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with the washer. The use of the washer is stated in the specification to be to keep the eye at the end of the bail from contact with the wood or the paint thereon. The upper point or leg of the staple goes through the eye and through the centre of the washer. But, the presence of the washer does not modify or affect the action of the staple, nor does the staple modify or affect the action of the washer. The washer keeps the eye of the bail from rubbing the wood of the pail. It would have the same effect if it were fastened in some other way than by having the leg of the staple pass through it, and the staple would in such case have the same operation which it now has.

The decree of the circuit court is affirmed.



MANHATTAN LIFE INSURANCE CO. v. BROUGHTON,
Trustee.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

Argued October 22d, 1883.—Decided November 5th, 1883.

Evidence—Insanity—Insurance—Judgment—Parties—Statutes—Suicide.

1. A judgment of nonsuit is no bar to a new action, and of no weight as evidence at the trial of that action.
2. Pending an action in a court of the State of New York against a corporation established in that State, by a widow, a citizen of New Jersey, upon a policy of insurance on the life of her husband, the plaintiff assigned the policy to a citizen of New York in trust for her benefit, and was afterwards nonsuited by order of the court. Upon a subsequent petition by the trustee to another court of the State to be relieved of his trust, a citizen of New Jersey was at her request appointed trustee in his stead. One object of this appointment was to enable a suit on the policy to be brought in the Circuit Court of the United States, which was afterwards brought accordingly: *Held*, that the suit should not be dismissed under the act of 3d March, 1875, c. 137, §§ 1, 5.
3. A self-killing by an insane person, understanding the physical nature and consequences of his act, but not its moral aspect, is not a death by suicide, within the meaning of a condition in a policy of insurance upon his life, that the policy shall be void in case he shall die by suicide, or by the hands of justice, or in consequence of a duel, or of the violation of any law.