

5 were without merit as involving invention and that the action of the Circuit Court of Appeals should be

*Affirmed.*

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CONCRETE STEEL COMPANY *v.* VANDENBURGH.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 238. Argued January 17, 1923.—Decided February 19, 1923.

Decided upon the grounds expressed in *Vandenburg v. Truscon Steel Co.*, *ante*, 6.

278 Fed. 607, reversed.

CERTIORARI to a decree of the Circuit Court of Appeals sustaining a patent and awarding damages for infringement.

*Mr. Thomas J. Johnston*, with whom *Mr. Lucius E. Varney* was on the brief, for petitioner.

*Mr. O. Ellery Edwards* and *Mr. Carlos P. Griffin*, with whom *Mr. Joseph W. Cox* was on the brief, for respondent.

*Mr. Solicitor General Beck*, *Mr. Assistant Attorney General Lovett* and *Mr. Melville D. Church*, by leave of court, filed a brief on behalf of the United States, as *amici curiae*.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is a review of the decree of the Circuit Court of Appeals of the Second Circuit sustaining the validity of claim No. 3 of the Vandenburg patent, just considered in the previous case of *Vandenburg v. Truscon Steel Co.*, *ante*, 6, and awarding \$15,000 for profits to Vandenburg for defendant's infringement. The two cases can not be distinguished. We must, therefore, reverse

the decree of the Circuit Court of Appeals of the Second Circuit and direct the dismissal of the bill.

*Reversed.*

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CHARLES NELSON COMPANY v. UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 287. Argued January 25, 26, 1923.—Decided February 19, 1923.

A contract for furnishing lumber to the Government at a specified price contained a clause obliging the contractor to deliver any quantities ordered in a certain period irrespective of the estimated quantity named in the contract. *Held* that the contractor, in furnishing lumber in excess of that quantity and in accepting the contract price therefor without protest, knowing that the Government was relying on the contract, waived his right to insist that the clause was void for lack of mutuality and could not recover the difference between the contract and higher, market prices for the excess so furnished. P. 19.

56 Ct. Clms. 448, affirmed.

APPEAL from a judgment of the Court of Claims.

*Mr. William E. Humphrey* and *Mr. William C. Prentiss* for appellant.

*Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is an appeal from a judgment of the Court of Claims dismissing the petition of the plaintiff, the Charles Nelson Company, after a hearing of the evidence and upon findings made. The plaintiff was the lowest and accepted bidder upon advertised solicitation of the Navy