

NORTHERN SHIRT COMPANY,

PLAINTIFF,

1917

Dec. 20.

v.

CHESTER E. CLARK,

DEFENDANT.

Patents—New invention.

The application of a well-known contrivance to an analagous purpose, without novelty in the mode of application, is not invention and is not good ground for a patent.

ACTION to set aside patent of invention.

T. J. Murray and *E. K. Williams*, for plaintiff.

Russel S. Smart, for defendant.

AUDETTE, J. (December 20, 1917) delivered judgment.

This is an action to impeach or annul patent of invention, No. 166,462, for "an alleged new and useful improvement in methods of producing overalls" granted to the defendant, who, by his statement in defence, avers the letters patent in question is valid and in full force and effect. Further, the patentee by way of counter-claim, alleges the plaintiff has infringed the said letters patent, and concludes by asking that his patent be declared good and valid, with the usual conclusions for damages, of an account of profits and for an injunction to restrain the plaintiff from making, using or selling the invention claimed by the letters patent.

The defendant's petition for the grant of the letters patent is dated June 5, 1915, and appears to

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have been received at the patent office on July 10, 1915.

The letters patent bears date December 7, 1915, and on February 20, 1917, the defendant filed, in the patent office, at Ottawa, a disclaimer alleging that “through mistake, accident, or inadvertence, without any wilful intent to defraud or mislead the public, he has, in the specification, claimed that he was the inventor of a material, or substantial part of the invention patented, of which he was not the inventor, and to which he had no legal right.”

Therefore disclaiming that part of the invention patented as claimed in claims 1, 2, 3, 4, 5, 6, and 7 of the specifications to the said letters patent.

The letters patent as they stand to-day are exclusive of the first 7 claims, and therefore are in respect of the following claims:

(8) The method of constructing the side opening in overalls between the front and back legs which consists in slitting the front leg and then applying a band on the edges of the slit.

(9) The method of constructing the side opening in overalls between the front and back legs, which consists in slitting the front leg in advance of the seam connecting the front and rear legs and then applying a protective band on the edges of the slit.

(10) The method of constructing the side opening in overalls between the front and back legs, which consists in slitting the front leg in advance of the seam connecting the legs, applying inner and outer bands on the edges of the slit and finally sewing, in a single operation, the bands together and to the trouser legs by parallel rows of stitches.

(11) The method of constructing the side opening in overalls between the front and back legs, which consists in vertically slitting the front leg at the top in advance of the seam connecting the trouser legs, opening up the slit to bring the edges thereof in a straight line, then applying a protecting band on the edges of the opened up slit and finally sewing the band to the edges of the slit.

(12) The method of constructing the side opening in overalls between the front and back legs, which consists in vertically slitting the front leg at the top in advance of the seam connecting the trouser legs, opening up the slit to bring the edges thereof in a straight line, applying an inner and an outer band on the opened up edges of the slit and finally sewing, in a single operation and with parallel rows of stitches, the edges of the bands together and to the edges of the slit.

(13) As a new article of manufacture, an overall having a side seam passing from top to bottom of the trouser leg and a side slit in advance of the seam.

(14) As a new article of manufacture, an overall having a side slit in advance of the side seam connecting the front and back legs.

(15) As a new article of manufacture, an overall having the front and back legs connected by a side seam passing from top to bottom of the legs and provided, further, in the front legs and at the top with side slits.

(16) As a new article of manufacture, an overall having the front and back legs connected by a side seam passing from top to bottom of the legs and provided, further, at the top, with side slits located in advance of the leg seam and having the edges of the slit suitably bound with a protecting band.

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The patentee testified that in the spring of 1914 he was called over to the office of the T. Eaton Co., Ltd., and shewn an overall, manufactured by a competitor in the trade, which carried a *continuous* side facing in the opening put on by a single needle machine, and was asked to duplicate the garment. He refused to duplicate this garment (a sample of which is marked as Ex. No. 8) at the same price he was then selling his own overalls—he believed some extra charge should be made as he thought it involved extra cost over and above what he was manufacturing and selling his overalls at the time. From that time on, he says, “I tried to scheme out some way “of overcoming the difficulty in cost of producing “a garment with a continuous side facing on the “side seam.” At that period he was not using the continuous side facing but a two-piece side facing tacked at the bottom of the vent, but not continuous clear across the bottom of the opening.

He had not so far tried the operation of sewing the facing on the vent with a double needle machine, because, he says, he thought it was impossible owing to the thickness of the cloth at the bottom of the opening, so he conceived the idea of moving the seam back one inch and leaving the opening in the same position as before—and that is what is all through called a slit in advance of the seam, involving making—after the garment has been sewn from the bottom to the waist band—an opening or slit in the same place where the former opening and seam were—thus taking away the extra surplus thicknesses of cloth from the bottom of the opening.

In September, 1914, he started manufacturing this alleged new garment as described in the patent. He filed in the patent office his petition for a patent

on July 10, 1915, and obtained his letters patent on December 7, 1915.

On the other hand, some time in January, 1915, witness McKelvie was approached by witness Foster, who was anxious to push his trade, and who endeavoured to convince McKelvie to purchase some double needle machines. At the time the plaintiff was using a narrow gauge two needle machine in the manufacture of shirts, in sewing the facing on the slit of the cuff. Witness Foster represented to witness McKelvie that a saving would be accomplished by using a two-needle machine of the proper gauge, in thereby making the operation at one time instead of twice on the back band (that part disclaimed by the patentee) and on the continuous side facing, with a proper folder. On witness Foster representing that, with a double needle machine, the continuous band on the slit could be thus sewn in one operation,—witness McKelvie interjected, he thought the thickness of the material at the bottom of the vent would not go through the folder. However, witness Foster, who was familiar with the making of shirts, asked him to go down to the shirt department of their factory to demonstrate on a double needle machine which was in use in the factory for shirts. In thus experimenting, on this machine they encountered difficulty in crossing over a seam on that machine. The folders were too close together (p. 89),—they being made that way for finer material, such as shirt material. He then took off two screws which held the folders, and inserted a piece of cardboard between them, thus separating the folder a little more, and then ran the overall material through. He had thus relieved the folder which then allowed the material to pass, which it did

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not do before,—and regarding the facing, it was then suggested putting it off the seam, not directly upon the seam, but to one side or another, the same as a placket on a shirt—that is, having a seam and making a continuous facing. The witness further adds, it was because he was familiar with the manufacture of shirts he suggested it could be put forward or back of the seam, as *in shirt sleeves*.

Somewhere about in June, 1915, witness McKelvie went over to Minneapolis and bought two of those double needle machines and received them at Winnipeg some time in the following July; when he at once applied himself to the manufacture of overalls therewith. He first manufactured a two-seam overall, as ex. “P,” with a continuous side piece put on the seam with a double needle machine.

Not being satisfied with the first attempt on account of the thickness of the material, his second attempt was to run the seam up to the band, make an opening in front of the seam, and in doing so really took the idea, as he says, from the shirts we were manufacturing.

Then in the third attempt, he ran the seam right up to the band and made a slit at the back of the seam,—when, however, he finally decided to place the slit in front of the seam. And in doing so, again he says, that idea of putting the slit other than on the seam, he obtained from the knowledge of what he had done on shirts following up witness Foster’s suggestion.

Then the plaintiff began manufacturing, but without taking any patent, and in the fall of 1915, in September or October, the plaintiff received a notice similar to ex. “S,” advising them as follows:

“September 2nd, 1915.

“The Northern Shirt Co.

“It has come to our notice through reliable channels that some of the manufacturers in Canada are contemplating manufacturing an overall similar to one we have marketed.

“We take it that it is not their intention or desire to infringe our rights, and that you are possibly not aware that we have protected our improved garments by patent application.

“We accordingly desire to advise you that it is our intention to protect ourselves in every way possible in this matter, and we trust that this advice may guide any manufacturer who contemplates copying our improved garment.”

A copy of this letter was sent to Western King Mfg. Co., Leadley Mfg. Co., Monarch Overall Co., Western Shirt & Overall Co., Canadian Shirt & Overall Co.

Following this notice the present action was instituted asking for the cancellation of the defendant's patent as above set forth.

Under the *Canadian Patent Act*, s. 7, a patent may be granted to any person who has invented any *new* and useful art, machine, *manufacture* or composition of matter; or any new and useful improvement therein, which was not *known* or *used* by any other person before his invention thereof and which has not been in public use or sale with the consent or allowance of the inventor thereof, for more than one year previously to the application for the patent.

Therefore in so far as relating to the present case the subject matter of the letters patent must be a manufacture that must be new, useful and involving ingenuity of invention. There must be a new art.

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“The primary test of invention, and the question as to whether there has been invention is one of fact in each case.”

And as was said in the *British Vacuum* case,¹ different minds may arrive at different conclusions on the point as to whether or not there has been invention. In the present case, however, we must enquire whether the alleged combination imply invention and whether the result therefrom has not been anticipated. Commercial success as contended in this case is not a test of invention, although it may be of usefulness. Can it be said that the patentee practically brought on a new result, even if his overall is compared with ex. 8, the one shewn him by Eaton & Co.? A more than doubtful matter.

Counsel for the defendant contends that the combination covered by the patent is composed of the three following elements: 1. Continuous seam running from top to bottom of garment. 2. Slit in advance of the seam. 3. Continuous facing put around slit.

All and each of these three devices, I may say, were old, and the question is whether this combination involved ingenuity of invention, and actually produced something that was new and involved invention.

When the patentee was examined the following evidence was adduced:

When making some explanation he was asked:

“Q. HIS LORDSHIP—You did not really change the pattern of the overall (No. 8) as it was turned out, but you did change what I may call the internal distribution of the seams?—A. Yes.

¹ 89 R.P.C. 209.

“Q. HIS LORDSHIP—As it was before, excepting
 “the seams were in a different position?—A. As it
 “was before, excepting the seams were in a differ-
 “ent position.”

Therefore it is clear we had in the trade, before the patent was ever thought of, a two-seam overall, like ex. No. 8, which carried a *continuous side facing* in the opening, but put on with a single needle machine. True, it was not sewn with a two-needle machine, but what of that. There was no slit in advance of the seam, but after all the practical result, with whatever difference or change there existed, resided only, as patentee himself states, in the internal distribution of the seams. Is it conceivable that one can claim ingenuity of invention for so changing the seam in a garment? Can there be invention after all if these devices claimed in the combination were old and that both functions and result had *all been used* in other garments?

And what is the paramount feature of the overall, in common with ex. No. 8—what is its most beneficial feature, if not the continuous side facing which is not claimed by the patent and yet relied upon by counsel. The defendant put in the witness box a commercial traveller named Jamieson, who was selling the defendant's overalls covered by his patent,—and at p. 110 he is asked:

“Q. Just tell me your experience in the sale of
 “that overall?—A. Well, my experience was in sell-
 “ing the overall that the *talking point* of the over-
 “all, the thing that helped to sell it, was the *con-*
 “*tinuous* side facing on the overall. It was the talk-
 “ing point—perhaps it did not have anything to do
 “with the wearing of it—but it helped to sell the

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“overall. That has been my experience since I “started to sell the overall.”

Then at p. 111, after detailing his success in so selling the overall, he again says, that this very overall had to do with this success: “Because the “continuous side facing on the overall was certainly “a talking point for me . . . I sold the goods on “the strength of the continuous side facing.”

All of this evidence on behalf of the defendant again sets out that the conspicuous feature of the overall was the *continuous* side facing which he was not formerly manufacturing, but which he had seen in ex. 8, shewn him by the Eaton Co., and which had been in existence and manufactured for years before the patent. The internal distribution of the seams had nothing to do with the selling and disposing of the goods; but it was the continuous side facing which is not part of any of the subsisting claims of the patent and which the defendant himself, when heard as a witness, declared he did not invent the continuous side facing, and, obviously enough, since it was in evidence long before he obtained his patent.

That would therefore establish that what is claimed as constituting invention—such as the slit in advance of the seam—was not of any importance or benefit in the garment as a whole when placed on the market for sale, and again as a whole did not practically produce a new result as distinguished from ex. No. 8, since that in shewing the merit of their product for the purposes of sale it was, as it had been established by the patentee's evidence, relied upon on the continuous side facing and not on the slit in advance of the seam, and if the merchants bought on the strength of the continuous side facing

alone, how could one expect that the common labourer buying an overall would look to the slit in advance of the seam? And after all comparing exs. 8 and E, both two-seam garments, with in one case the slit on the seam and with the other the slit in advance of the seam—do they not both effect the same purpose? The continuous side piece whether put on the slit with a single needle machine or with a double needle machine, effects the same purpose or the same function. That is, it reinforces the opening, the great and advantageous feature, *the talking point* for the sale of the garment. Both fulfilled the function as in the *Pencil* case. And a large sale of the product of a patented process is not in itself a proof of utility: *Hatmaker v. Nathan*.¹ And the patentee really claims his patent is for a combination in manufacture and the process of turning out the manufactured article.

However, it would appear the patentee claims, as another feature of his patent in his method of constructing an overall,—in fact as its principal object, “the saving of time and labour.” In his specification he says:

“The present invention is wholly directed towards
 “a method of construction of overalls which has as
 “its principal object the saving of time and labour
 “which allows the overalls to be produced at less
 “cost than has heretofore been possible. In carry-
 “ing out my invention I make three distinct changes
 “in the construction of the ordinary overall: (1) one
 “being in connection with the side facing; (2) an-
 “other being in connection with the attachment of
 “the apron; (3) and the other in connection with
 “the attachment of the back band. Heretofore in

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“sewing these parts, several operations have been required which rendered the construction expensive. With my method of construction, the cost of assembling is cheapened.”

Taking into consideration that all that which is claimed by Numbers 2nd and 3rd above recited, and all that is contained in claims 1 to 7, have been disclaimed, does not all that is claimed “in respect of what heretofore in sewing these parts, several operations have been required which rendered the construction expensive. With my method of construction the cost of assembling is cheapened”—as well as other claims made in the specification, in respect of, when using the double needle machine, only *one* operation being required when a second operation was formerly required and others—does it not equally apply as well to what has been disclaimed as to what is still claimed in the remaining claims? If so, then all of what has been disclaimed has necessarily been given to the public and could not again or still be claimed in the remaining claims Nos. 8 to 16: *Copeland-Chatterson Co. v. Paquette*.¹ The disclaimer under the statute become part of the original specification. (*Patent Act*, s. 25 (2)).

The patent is “for an alleged new and useful improvement in the methods of producing overalls.” Subsequent to the granting of the patent the patentee has disclaimed claims Nos. 1 to 7 inclusively. The patentee now claims the product of his patent for the overall as the result of combining all the claims which are left. No one of the claims still remaining valid in the patent would by itself be sufficient to produce the complete overall, which is manifestly what the patentee is aiming at. The in-

¹ 10 Can. Ex. 410, 38 Can. S.C.R. 451.

vention is the result of obtaining a complete overall by the process described in the patent. The case is something like *Hunter v. Carrick*.¹

The patent is an indivisible grant and if some of the claims are incomplete, defective or bad, subject to the provisions of sec. 29 of the *Patent Act*, the patent cannot be sustained. *Cropper v. Smith*,² *Hunter v. Carrick, supra*.

The method of producing overalls, as claimed by the patent, cannot be exclusively found within the four corners of any of the remaining claims of the patent. For instance, claims 9 and 10, standing by themselves, are absolutely invalid, they require other elements to be added to the construction in order to make an effective claim.

And this is not a case where the judicial discretion of the court should be used to discriminate as contemplated by s. 29.

The fact of being enabled with a double needle machine to do in one operation what a one needle machine had to do in two, is no innovation. The advantage resulting in using the double needle machine and which consists in saving labour and increases production is not new, it having been in use for over 35 years. And that very advantage which is claimed in respect of the remaining claim was also claimed in respect of the disclaimed claims—and, indeed, if any one could claim such advantage or benefit in its abstract operation, would it not be the inventor of the machine, instead of the one who is making use of the machine?

Moreover, it is established by witness Jacob's testimony that some years ago his company was

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¹ 10 A.R. (Ont.) 449, 452, 11 Can. S.C.R. 300.

² 26 Ch. D. 700.

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manufacturing (ex. "A.") a one-seam overall with continuous side facing or band (a lining and an upper) sewn in one operation with a two needle machine, fed on the folders—and no claim, in the patent, is necessarily or specifically made for a two-seam overall, but it is for an overall generally.

It may also be casually mentioned that plaintiff's counsel, at the trial, pleaded insufficiency of the specification, contending that as the patentee testified it was impossible to produce the garment without possessing the art of cutting; that it was necessary to take an inch off one side and put it on the other; that it was necessary to move the seam back to get the slit in the vent where it was wanted; therefore, in other words, that that second process was not disclosed in the specification. That it was something which the patentee kept to himself, and that without which the patented garment could not be manufactured. That as the moving an inch back did not appear in the specification, an ordinary workman taking the specification, could not on the patentee's own showing, produce the garment that he claims he produced. In other words, the contention is, no sufficient directions are given to obtain the described result.

Coming now to the claim in respect of the slit in advance of the seam it is clear on the evidence before the court, it had been in use in garments such as shirts long prior to the patent in question in this case, and would have undoubtedly suggested itself to any housewife, or to any person of ordinary skill and knowledge of the subject, when encountering bulky thicknesses of cloth.

Referring to the evidence of David Hepton, heard on commission, it will be seen that he was a fore-

man cutter at Seibert & Co., in 1910 or 1911, and that witness, besides explaining the operation in respect of the continuous side facing, is very illuminating also on the question of the slit in advance of the seam, as he established clearly that while it was not in use in an overall, that it had been in full use with shirts.

The following parts of his testimony are very enlightening, viz.:—

“Q. If you were going to cut the garment (ex. “E”), could you use the patterns that have been used for garment (ex. “D”)?”—A. Yes. Q. Would you have to make any change in the patterns to produce “E”?”—A. No. Only with the slit. The balance of the pattern would not be altered. Q. Just tell us what you would do with the slit, what change would be needed?”—A. There is no change whatever. The pocket is merely moved forward, that is, the pocket at the corner of the opening. “The seam in ex. “E” is run right up to the band. Q. How would that affect the position of the pocket?”—A. It would mean the advancing of the pocket in front of the seam. Q. Why was it advanced?”—A. *It is the same as used in shirt sleeves.*”

After stating the two needle machine could not be used in sewing the continuous side facing on the seam on account of the thickness of the cloth at the bottom of the opening, he is further asked:

“Q. As a practical cutter, taking the garment, ex. “D”, could you alter the position of the slit so that it would open off of and in advance of the seam without making any change in your pattern, except to move your pocket an inch or two neces-

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“sary to bring it away from the seam?—A. Yes.
“you can do that.

“Q. Now, Mr. Hepton, as a practical cutter, if
“you came to apply the continuous side piece on the
“seam with a two-needle machine and found, as you
“have stated that you would have too large a bulk
“of cloth, what would you do?—A. I would have to
“do just as in ex. “E”. I could not advance it back
“on account of the seam being in the way of putting
“the hand in the pocket. Q. Now, you did a few
“moments ago, if I understand you correctly, refer
“to the opening in the sleeve of a shirt. *Does the*
“*opening in the sleeve of a shirt bear any similarity*
“*to the overall which we are now discussing?*—A.
“Nearly all shirts have the continuous band opening
“on the sleeve. Q. Just explain how you cut the
“sleeve of a shirt that has the continuous band on the
“seam?—A. As a rule it is moved similar to ex.
““E.” The opening in the sleeve is moved from
“the seam to wherever you care to put it, so as to
“bring the opening on a line with the little finger.
“Just as on ex. “F”.”

“Q. What is the objection to the piece coming
“where the opening is?—A. It is *on account of the*
“*two-needle operation* on this continuous band on
“the opening. Q. Why could not the two-needle
“operation be used on the continuous side piece on
“the opening if the piece inserted came in at the
“same place?—A. *Because the material is too bulky.*
“The continuous side piece is fed through folders
“and a seam would interfere with the flow of the
“material through the folder.”

From this, perhaps over-lengthy, extract, it appears clearly that there was nothing new, when the patentee applied for his patent in the operation of

a slit in advance of the seam in sewing a continuous band on the vent or any kind of opening in a garment. That the same process or operation had long been in use in the manufacture of such garments as shirts, and that what the patentee, a person as familiar with the manufacturing of shirts as with overalls, has done was only to adopt without invention the old contrivance of a similar nature in the manufacture of overalls. The adaptation of an old function or contrivance to a new purpose is not invention—there is no subject matter when no ingenuity of invention has been exercised. *Terrell*, p. 38.

The same contrivance has also been in use for a number of years in the sewing of a placket on the front part of a shirt; and it is contended by witnesses it was also used in a petticoat, and this slit in advance of the seam also appears in some of the American patents filed of record and more especially in ex. "V4."

The case of *Abell v. McPherson*,¹ abundantly confirms my views concerning the present patent. The head note in that case reads as follows:

"The plaintiff had obtained a patent for an improved gearing for driving the cylinder of threshing machines; and the gearing was a considerable improvement; but, it appearing that the same gearing had been previously used for other machines, though no one had before applied it to a threshing machine—it was held (affirming the decree of the Court below) that the novelty was not sufficient under the statute to sustain a patent."

And using the very words of Mowat, V.-C., in the conclusion of his judgment, it must be said that the use of the slit, etc., in an overall, similar to that one

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¹ 17 Gr. 23, 18 Gr. 437.

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on a shirt "is thus an old and well-known contrivance, applied to an analagous purpose (on an over-all instead of a shirt) and the settled rule is that such an application cannot be patented."

Again, in the case of *Harwood v. G.N.R. Co.*¹ it was held that:

"A slight difference in the mode of application is not sufficient, nor will it be sufficient to take a well-known mechanical contrivance and apply it to a subject to which it has not been hitherto applied."

The transfer of a known thing from one use to another, or to an analagous use, is not a good ground for a patent. See also *Bush v. Fox*,² and *Brook v. Aston*.³

The saving of labour and expense, and the production of a new and useful result cannot alone support a patent; there must be some "invention" was held in *Waterous v. Bishop*.⁴

And in the present case the conflicting evidence on the question of cost of manufacture could not be satisfactorily used in support of the patent. It would under the evidence be practically impossible to ascertain which mode of manufacturing cost more. The placing of known contrivances to a use that is new, but analagous to the uses to which they had been previously put, without overcoming any fresh difficulty, is no invention. *Re Mertens' Patent*;⁵ *Layland v. Boldy & Sons*.⁶

"There is no patentable invention where the peculiar structure necessarily resulted from the fact

¹ 11 H.L. Cas. 654, 11 E.R. 1488.

² 9 Ex. 651.

³ 8 El. & Bl. 478, 120 E.R. 178.

⁴ 20 U.C.C.P. 29.

⁵ 31 R.P.C. 373.

⁶ 30 R.P.C. 548.

“that the patentee wanted to combine certain old
“elements and a person skilled in the art would
“naturally group the elements in the way the pat-
“entee adopted”: *Eagle Lock Co. v. Corbin Cabinet
Lock Co.*¹

“And there is no invention in applying to the
“making of undershirts a peculiar stitch and
“method of putting together already well known in
“the making of cardigan jackets”: *Dalby v. Lynes.*²

See also *Wisner v. Coulthard*;³ *Carter v. Hamil-
ton*;⁴ *Nicholas on Patents*, p. 23; *Saxby v. Glouces-
ter*;⁵ *Riekmann v. Thierry*;⁶ *Penn v. Bidby*;⁷ and
*Kemp v. Chown.*⁸

And in *Blake v. San Francisco*,⁹ Wood, J., deliver-
ing the opinion of the Court, says:

“It is settled, says Gray, J., that the application of
“an old process, or machine, to a similar or *analag-
“ous subject*, with no change in the manner of ap-
“plication, and no result substantially distinct in its
“nature, will not sustain a patent, even if the new
“form of result has not been before contemplated.”

I have had the advantage in the course of the
trial, at the request and in company of counsel for
both parties, of visiting the plaintiff's factory, and
seeing and viewing the one needle machines, and
two needle sewing machine and folders in question,
and to witness the process of manufacturing the
principal parts of overalls in question in this case.

¹ 64 F.R. 789.

² 64 F.R. 376.

³ 22 Can. S.C.R. 178.

⁴ 23 Can. S.C.R. 172.

⁵ 7 Q.B.D. 305.

⁶ 14 R.P.C. 105, 114 and 116.

⁷ L.R. 2 Ch. App. 127.

⁸ 7 Can. Ex. 306.

⁹ 113 U.S.R. 682.

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Does not, in the result, the problem of this patent resume itself in manufacturing two-seam overalls with a continuous band, or side facing, sewn, with a double needle machine, on a slit in advance of the seam?

Two-seam overalls are old. The continuous band or side facing in an overall—one-seam and two-seam overalls is not new, nor is it claimed by this patent. The sewing of the continuous band with a two needle machine is an operation which might properly be the subject of a claim by the inventor of the sewing machine, but not, as far as I can see, by the one using the machine. Then there remains the slit in advance of the seam; but the slit in advance of the seam has been anticipated in shirts and other garments—*though no one, so far as the evidence discloses, had applied it to an overall*—and following the case of *Abell v. McPherson, supra*, I am of the opinion that the novelty of using it on an overall did not evolve invention or ingenuity of invention and is not sufficient under the statute to sustain the patent. What the defendant did was to apply a well-known contrivance to an analagous purpose—to an overall instead of to a shirt. Why then should, at this stage of the art, the public be deprived, by monopoly founded on unmeritorious grounds, of a device or contrivance well known in the past, and for which none ever dreamt of asking a patent, and which, again repeating myself, any housewife or person of ordinary skill and knowledge of the subject would have readily solved.

The patent is made up of a group of well-known old devices and contrivances, the result of which had long been anticipated on analagous garments, and discloses no invention. No new result is obtained

from the patent, save perhaps the display of a function in an overall which was in existence in other garments before and was thus anticipated.

The mere carrying forward or the extended application of the original thought—the slit in advance of the seam—from a shirt to an overall, doing substantially the same thing in the same manner by substantially the same means even with better results, is not such invention as will sustain a patent. The patent does not possess any element of invention. It does not involve, in any sense, a creative work of inventive faculty, which the patent laws are intended to encourage and reward. *Hinks v. Safety Lighting Co.*;¹ *Smith v. Nichols.*²

The patent, read with the disclaimer, disentangled and freed from the redundancy and repetitions of the specifications and claims, appears to me to be invalid for want of subject-matter, exercise of inventive faculties or ingenuity of invention; therefore the action is maintained with costs, the patent is declared void and of no effect and the counterclaim is dismissed with costs.

Judgment for plaintiff.

¹ 4 Ch. D. 607.

² 21 Wall. 118.

1917

NORTHERN
SHIRT CO.
v.
CLARK.

Reasons for
Judgment.