

Between

THE CHAMBERLIN METAL
 WEATHER STRIP COMPANY }
 OF DETROIT; AND THE CHAM- } PLAINTIFFS;
 BERLIN METAL WEATHER }
 STRIP COMPANY, (LIMITED). ... }

1905
 May 8.

AND

WILLIAM PEACE, AND THE PEACE }
 METAL WEATHER STRIP COM- } DEFENDANTS.
 PANY

*Canadian Patent No. 74,708—Infringement—Metal weather strips—Prior
 American Patent—Narrow construction.*

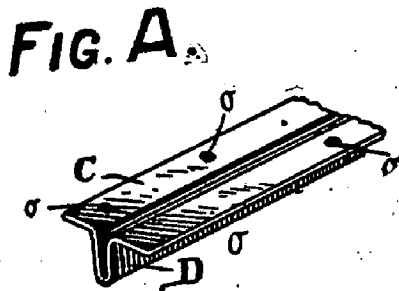
The defendants had manufactured a form of metallic weather strip in Canada very much nearer to that shown and described in an American patent of a date prior to the Canadian patent, owned by the plaintiffs, than it was to any of the forms shown and described in the plaintiffs' patent.

Held, that if the plaintiffs' patent was good, it was good only for the particular forms of weather strips shown and described therein; and that upon the facts proved the defendants had not infringed.

THIS was an action for the alleged infringement of a patent for invention.

The facts of the case are stated in the reasons for judgment, but for a clearer understanding of the forms of the conflicting devices the following diagrams have been made:

Figure A is a perspective detail view of a portion of the Sims improved metallic weather strip.



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Statement
 of Facts.

The following drawings are copied from the tracing attached to the patent sued upon, the several figures being thus described in the specification:—

Figure B is a transverse section through a portion of a frame and sash, showing the improved weather strip in position. Fig. C is a sectional detail view on an enlarged scale, showing the form of strip shown in Fig. B. Figs. D, E and F are views similar to Fig. C, illustrating modifications in the form of the strips.

FIG. B.

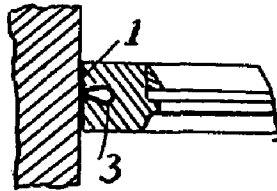


FIG. C.

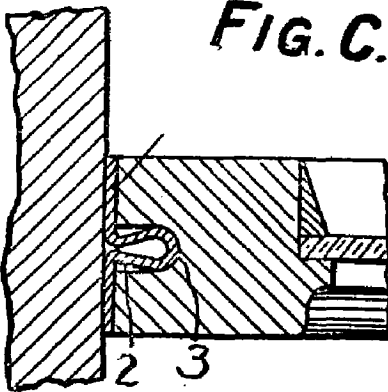


FIG. D.

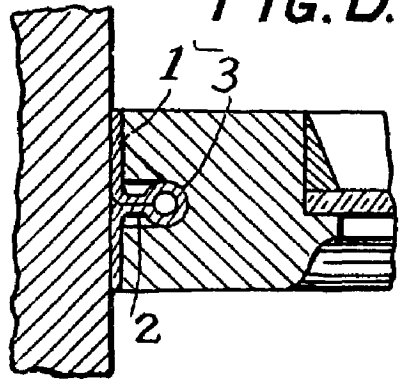


FIG. E.

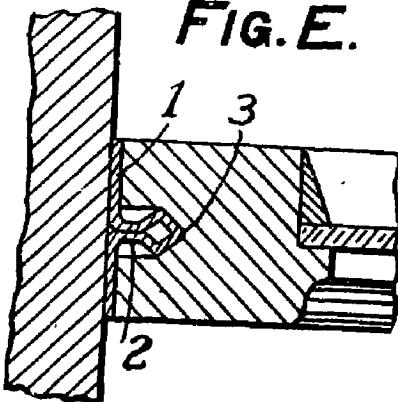
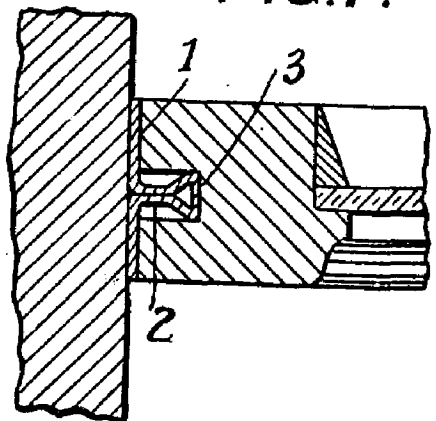
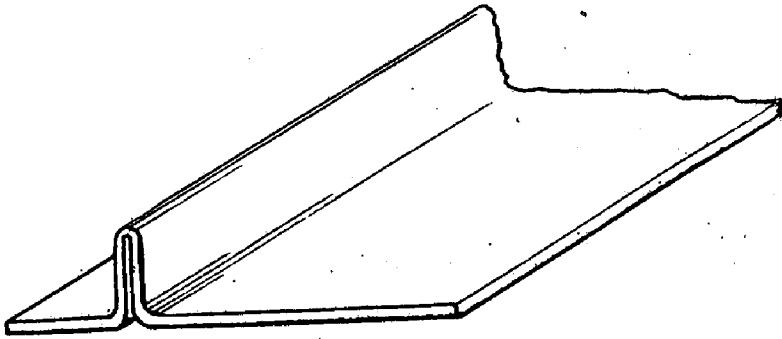


FIG. F.



The following is a tracing of a section of the metallic weather trip used by the defendants :—

FIG. G.



February 21st 1905.

The case was heard at Toronto.

J. G. Ridout, for the plaintiff, contended that the American cases requiring great particularity of description in the claims do not apply to cases arising under the Canadian Patent Act. The American Patent Act of 1836 was like ours, but in 1870 this Act was repealed and provision was made for the specifications and claims as two distinct things. Cites *Toronto Auer Light Co. v. Colling* (1).

G. Lynch Staunton, K.C. and *J. Chisholm* for the defendants argued that if the plaintiff's patent was to be upheld at all, it could only be good for the precise device claimed. The defendants had not infringed that device. *Gadd v. Mayor of Manchester* (2).

THE JUDGE OF THE EXCHEQUER COURT (now May 8th, 1905,) delivered judgment.

The action is brought to restrain an alleged infringement of letters patent No. 74,708 for alleged new and

(1) 31 Ont. R. at p. 28.

(2) 9 T. L. R. 42.

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Reasons for
 Judgment.

useful improvements in weather strips and guides for windows, which were granted, on the 4th of February, 1902, to Hugh Edward Kenny and subsequently assigned to the plaintiffs. The invention claimed relates, as stated in the specification, to certain improvements in weather strips of the class or kind in which a thin bead or rib of metal is secured to the window frames and projects into a groove in the sash. It is claimed that as previously constructed the groove was made of such a width relative to the thickness of the bead or rib that the side walls of the groove would bear against the rib to form a tight joint; and in damp weather the wood of the sash would swell, causing the rib to be gripped laterally by the walls of the groove, thereby rendering it difficult to raise and lower the sash. The object of the invention, as explained in the specification, was to so construct the rib and groove that ample bearing spaces to effect a tight joint would be formed along the edge of the ribs and sides closely adjacent thereto and the bottom of the groove, while the side walls of the groove would not bear against the rib, thereby avoiding any gripping of the ribs by the sash. There is nothing new in this alleged invention, except the particular forms of the beads shown, and as to that the claim made is for a metal weather strip consisting of a base and a rib, formed integral with each other, said rib being formed with a bead or enlargement along its edge substantially as set forth; and then the drawing shows five different forms of weather strips, or modifications of the general form described. A form of metallic weather strip previously in use is shown in Exhibit "A," being a copy of a patent issued in 1890, from the United States patent office to one Albert Clinton Sims. It consisted of a flat base and a longitudinally raised part or rib at right angles to the flat base; or a flat strip of suitable metal bent or

doubled longitudinally to form a raised rib at right angles to the flat base.

It is, I think, doubtful whether the forms of weather strips shown in the Kenny patent are really improvements upon the form shown in the Sims patent; whether there is in fact either invention or utility to support the patent in question here. But I do not rest my judgment on that aspect of the case, or express any opinion in respect thereof. If, however, the patent is good, it is good only for the particular forms of weather strips shown and described therein; and those which the defendants have been using, as illustrated by the exhibits on file in this case, are very much nearer the form shown and described in the Sims patent than they are to any of the forms shown or described in the Kenny patent. I think it was open to the defendants to use in Canada the form of weather strip that they have been using, and of which the plaintiffs complain, and that they have not infringed the patent on which the action is brought.

There will be judgment for the defendants, with costs.

Judgment accordingly.

Solicitor for the plaintiffs: *J. G. Ridout.*

Solicitors for the defendants: *Chisholm & Logie.*

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