

THE ROMAN.*

District Court, E. D. Pennsylvania. March 31, 1882.

1. ADMIRALTY—COLLISION—FAILURE TO DISPLAY TORCH—INFLAMMABLE CARGO.

The fact that a vessel carries a deck load of pine wood will not relieve her from liability for a collision caused by the failure to exhibit a lighted torch upon the approach of a steamer and the substitution of a less brilliant light in place thereof.

2. SAME—NEGLIGENCE OF STEAMER—FAILURE TO SEE LIGHT.

If in such case the light actually exhibited should have been seen by those in charge of the steamer in time to avoid the collision, and the failure to see such light contributed to cause the collision, the loss will be apportioned between both vessels.

Libel by the master of the schooner Theresa Wood against the steam-ship Roman, to recover damages for injury to the schooner by collision. The following facts appeared from the testimony: The collision occurred in the Atlantic ocean off Great Egg harbor. The night was dark, but not stormy. The schooner was loaded with pine wood, and carried a deck load of the same material. She had only her jib-sail set, the other being lowered. She was standing off shore, heading a little to the E. S. E., and was making no headway. The steamer was on a course N. E. by E., and was seen from the schooner when the vessels were about a mile and a half distant. No lighted torch was shown, as required by act of congress, but instead thereof a globe lantern, containing a bright light, was swung by the mate standing in the stern of the schooner. The respondents alleged that this light was insufficient, and was not seen from the steamer, and that the collision occurred through the failure of the schooner to exhibit a proper light. The libellants alleged that the inflammable nature of the cargo rendered the lighting

of a torch on deck dangerous, and that they were authorized, by a notice of the secretary of the treasury issued September 22, 1871, to substitute in such case a globe light therefor; that the light substituted should have been seen from the steamer, and was actually seen by some of the crew; and that the collision was caused by the bad steering of the steamer. Upon the question as to the sufficiency of the light, and whether it was seen from the steamer, the testimony was conflicting.

John A. Toomey and *Henry R. Edmunds*, for libellant.

Henry G. Ward, for respondents.

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BUTLER, D. J. Both vessels were in fault; the schooner for failing to display a torch, and the steamer for failing to see the light substituted for it. The torch is required by statute; and the circumstances of this case exhibit no excuse for not displaying it. The light substituted was much less brilliant and effective. Still this light could, and should, have been seen by the steamer, if displayed in time; and I believe it was so displayed. The uncertainty of witnesses respecting time and distance is fully appreciated. Still, if the libellant's witnesses are truthful it cannot well be doubted that this light was exhibited when the steamer was some hundreds of yards off. They are corroborated in this by a member of the steamer's crew, who declared, immediately after the collision, that he saw the light and reported it to the mate, in time to avoid the collision. I say "one of the crew," because the circumstances fully justify this inference. The ingenious argument based upon the position of the steamer's lights, as seen, or supposed to have been seen, by libellant's witnesses, is neither conclusive nor safe. There is even more uncertainty here than in the matter of time and distance before referred to. The order in which the respective lights came into view

of the several witness depended upon a variety of circumstances.

Each vessel should bear a part of the loss, and a decree will therefore be entered for half damages.

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Patents.

LEHNBENTER *v.* HOLTHAUS, 21 O. G. 1783. Appeal from the circuit court of the United States for the eastern district of Missouri. The case was determined in the supreme court of the United States on March 6, 1882, Mr. Justice *Woods* delivering the opinion, reversing the decree of the circuit court which dismissed the bill, and remanding the cause for further proceedings in conformity with the opinion of the supreme court.

In an action for infringement of a design patent, where comparison of the drawing appended to the patent with the cut of the circular, which it is admitted represents articles manufactured and sold by defendants, makes it clear that the latter is a servile copy of the former, excepting a slight inclination backward, hardly perceptible, of the glass constituting the front of the elevated portions of the show-case, the subject of the design, it is an infringement of the patented design. The patent is *prima facie* evidence of both novelty and utility, and the fact that it has been infringed by the defendants is sufficient to establish its utility, at least, as to them. Citing *Whitney v. Mowry*, 4 Fish. 207

Patent—Reissues—Enlarging Scope of Original.

MATTHEWS *v.* BOSTON MACHINE Co. Appeal from the circuit court of the United States for the district of Massachusetts. This case was determined on appeal in the supreme court of the United States on March 27, 1882. Mr. Justice *Bradley* delivered the opinion of the court affirming the decree of the circuit court.

Where complainants, in their reissue, split up and divided the elements of their invention, and claimed them separably and not in combination, it is an enlargement of the scope of their patent; and where no one could infringe the original patent unless he uses all the elements of the combination, and any one will infringe the reissue who uses any of the elements which, in the reissue, are separably claimed, such reissue is void. Where there is a wide departure from the original invention, and not only for a broader claim made many years after the original was granted, but for a different invention, the reissue cannot be sustained.

George Harding and George L. Roberts, for appellants.

Causten Browne, for appellees.

Patents—Reissues—Laches.

BANTZ v. FRANTZ. Appeal from the circuit court of the United States for the district of Kentucky. This case was determined in the supreme court of the United States on March 20, 1882, Mr. Justice *Woods* delivering the opinion of the court and affirming the judgment of the circuit court.

Where, under the original patent, suit could be maintained only against those who employed the combination embracing all the distinct contrivances described in the reissued patent, a reissue which claims each device separably is too broad, and consequently void. If any correction was desired it should have been applied for immediately—the right is abandoned and lost by unreasonable delay. *Miller v. Bridgeport Brass Co.* 3 Morr. Trans. 419, followed.

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Patents—Terms of Art—Extrinsic Evidence.

HEALD v. RICE. Error to the circuit court of the United States for the district of California. This was an action at law brought to recover damages for an alleged infringement of reissued letters patent granted for improvements in steam-boilers. The invention

consisted, among other things, of a combination of a straw-feeding attachment with the furnace door of a return-flue steam-boiler for the use of straw alone as fuel in generating steam ample for practically operating steam-engines. The case was tried by a jury and resulted in a verdict and judgment for plaintiff, to reverse which the writ of error is prosecuted. The supreme court of the United States rendered its decision on March 6, 1882, reversing the decision of the circuit court. Mr. *Justice Matthews* delivered the opinion of the court.

Where the question of identity of the invention in the original and reissued patents is to be determined by their face from mere comparison, and if it appears from the face of the instruments that extrinsic evidence is not needed to explain terms of art or to apply the descriptions to the subject-matter, so that the court is able from mere comparison to say what are the inventions described in each, and to affirm from such comparison that they are not the same, then the question of identity is one of pure construction and not of evidence, and consequently is matter of law for the court, without any auxiliary matter of fact to be passed on by the jury, where the action is at law. Where it appears from the mere reading of the two specifications that the invention described in the first was for a return-flue boiler, while that described in the second, abandoning the claim for the boiler itself, is for a particular mode of using it, with straw as fuel, by means of an attachment to the furnace door for that purpose, they are essentially diverse, and the patent lawfully issued for one cannot be surrendered as the basis for a reissue for the other. A new and analogous use of an old device operating in the very manner intended by its inventor, and its use in the new application, is not the subject of a patent.

George Harding and John H. Boalt, for plaintiff in error.

M. A. Wheaton, for defendant in error.

Patents—Change of Method.

WILSON PACKING Co. v. CHICAGO PACKING & PROV. Co., AND WILSON PACKING Co. v. HUNTER, (two cases.)

Appeals—the former from the United States circuit court of the northern, and the latter (two cases) for the southern district of Illinois. By stipulation of the parties these cases were argued together as one case. They were decided in the supreme court of the United States on May 8, 1882. Mr. Justice *Woods* delivered the opinion of the court affirming the decrees of the court below dismissing the bills. In reissued letters patent granted for improvements in processes of preserving and packing cooked meats, a change in the mode of cooking the meat from broiling, roasting, or steaming, to boiling, all the other parts of the process remaining unchanged, is not an invention which will entitle the party who suggests the change to a patent for the process. Where all the elements in the process are old and are merely aggregated, and the aggregation brings out no new product, nor any old product in a cheaper or otherwise more advantageous way, the 223 claim cannot stand; and where the second claim is for the product made by the process described in the first claim, it is invalid for want of invention and for want of novelty. Where there is nothing new in the shape, construction, or material of the cans used in packing the meats there is no invention, and the patent is invalid for want of novelty.

Wm. Henry Clifford and John N. Jewett, for appellants.

L. L. Coburn and John W. Noble, for appellees.

The cases cited in the opinion were: *Pearce v. Mulford*, 102 U. S. 112; *Rubber Tip Pencil Co. v. Howard*, 20 Wall. 498; *Hotchkiss v. Greenwood*, 11 How. 248; *Stimpson v. Hardman*, 10 Wall. 117.

The case of *WILSON PACKING Co. v. CLAPP*, on appeal from the circuit court of the United States for the northern district of Illinois, was disposed of at the same time, upon the views expressed in the above cases.

Patents—Reissue—Abandonment of Invention.

GUIDET v. CITY OF BROOKLYN. Appeal from the circuit court of the United States for the eastern district of New York. The invention in this case covered by the reissue was for chamfered edges of the broadsides of paralleloiped blocks of stone used in street pavements. The specification in the claim on the reissue is that if blocks are selected with their sides rough enough, joints can be made that will furnish a suitable foothold without the use of strips and without chamfering. The case was determined in the supreme court of the United States on April 17, 1882, Mr. Chief Justice *Waite* delivering the opinion of the court affirming the decree.

Where it was shown that if stone were used with rougher side surfaces than those found in old pavements, and that all artificial means of keeping the transverse joints open might be abandoned and the requisite surface secured, it was simply carrying forward an old idea, and doing what had been substantially done before, but with better results. Such a change is only in degree, and is not patentable.

Admiralty—Jurisdiction.

EX PARTE GORDON. This was an application by the owner of the British steamer *Leversons* for a writ of prohibition to restrain the district court of the United States for the district of Maryland, sitting in admiralty, from proceeding further in a cause begun against his vessel to recover damages for the drowning of certain persons in consequence of a collision on Chesapeake bay, caused by the fault of the steamer. The case was decided in the supreme court on January 9, 1882, when the petition for the writ of prohibition

was denied. Mr. Chief Justice *Waite* delivered the opinion of the court.

The district courts having the power to hear and decide all cases arising under this jurisdiction when a prohibition is applied for, the question presented is not whether a libellant can recover in the suit he has begun, but whether he can go into a court of admiralty to have his rights determined. Where the injury complained of was the result of a collision it is a subject of admiralty jurisdiction; and the question whether pecuniary damages are to be awarded for the loss of life in the collision may properly be decided by the admiralty 224 court. If the district court entertains such a suit, appeal lies from its decision to the circuit court, and from there, here, if the value of the matter in dispute is sufficient.

Stewart Brown and Arthur Geo. Brown, for petitioner.

John H. Thomas, contra.

The cases cited in the opinion were: *The Belfast*, 7 Wall. 637; *Smith v. Brown*, Law Rep. 6 Q. B. 729; *The Franconia*, Law Rep. 2 P. D. 163; *The Guldfaxe*, Law Rep. 2 Adm. & Ec. 325; *The Explorer*, Law Rep. 3 Adm. & Ec. 289; *The Charkieh*, Law Rep. 8 Q. B. 197.

See The Leversons, 10 FED. REP. 763.

Admiralty—Jurisdiction—Prohibition.

EX PARTE DETROIT RIVER FERRY Co. Petition for writ of prohibition. This case is in all its material facts like that of *Ex parte Gordon*, just decided. It was determined on the same day, and the decision was delivered by Mr. Chief Justice *Waite*, denying the writ.

In an action for damages for death caused by a collision, an appeal will lie to the circuit court in favor of libellant if he is defeated, and in favor of respondent if the recovery exceeds \$50. It is no ground for relief by prohibition that provision has not been

made for a review of the decision of the court of original jurisdiction, by appeal or otherwise

Same.

EX PARTE HAGAR. This was a hearing on petition for a writ of prohibition brought to restrain proceeding in the district court of the district of Delaware, sitting in admiralty, from further action in a suit pending for the recovery of half pilotage claimed to be due under the statutory regulations of Delaware. Mr. Chief Justice *Waite* delivered the opinion of the court denying the writ.

Claims for pilotage fees are within the jurisdiction of the admiralty, and such being the case under the decision just rendered *Ex parte Gordon*, the district court can properly hear and decide the matters in dispute, and prohibition will be denied.

H. G. Ward and R. C. McMurtrie, for petition.

George Gray, Edward G. Bradford, Henry Flanders, and Thomas F. Bayard, Contra.

Cases cited: *Ex parte McNeil*, 13 Wall. 236; *Hobart v. Drogan*, 10 Pet. 108.

* Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

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