

HYATT *v.* SOUTHWORTH.*(Circuit Court, N. D. Ohio. February Term, 1883.)*

PATENTS—REISSUE INVALID—CLAIM TOO BROAD—LACHES.

In Equity.

Arnold Green, for complainant.*M. D. & L. L. Leggett*, for defendant.

DECREE.

This cause came on to be heard on this fourteenth day of February, 1883, upon the bill of complaint, the plea of the defendant, certified copies of original patent No. 68,332, granted to Elizabeth Adelaide Lake, August 27, 1867, and of the reissue of the same, No. 9,883, granted September 27, 1881, to Elizabeth A. L. Hyatt, and argument of counsel; and thereupon it is ordered, adjudged, and decreed as follows, to-wit:

(1) That said reissued letters patent No. 9,883, upon which said bill of complaint is based, is invalid and of no effect, for these reasons: *First*, because said reissue contains matter not embraced in the original; *second*, because the claims in said reissue are broader than the claims of the original; *third*, because the patentee has been guilty of laches in permitting more than 14 years to lapse between the date of the original and that of the reissue.

(2) That said plea be sustained, and said bill of complaint be dismissed.

(3) That the costs in this suit be assessed against the said complainant, and that an execution issue therefor as in a case at law.

THE ACORN.

(District Court, W. D. Pennsylvania. May Term, 1883.)

SEAMEN'S WAGES—SHIPPING WITHOUT ARTICLES—VERBAL AGREEMENT.

If the master of a vessel dispenses with shipping articles and disputes arise as to the rate of wages to be paid the mariners, the court will incline to allow their claim to the rate paid by other like vessels leaving the same port at the same time on the like voyage. If the seamen can be held to a less rate, by reason of a verbal contract, such contract must be clearly established.

In Admiralty.

Geo. C. Wilson, for libelants.

D. T. Watson, for respondent.

ACHESON, J. The evidence shows, and, indeed, the answer admits, that when Duffy and Poe, two of the libelants, were shipped on the *Acorn*, no express agreement was entered into, and nothing was said as to the rate of compensation for their services. But, according to the clear weight of the evidence, on the first evening after the voyage commenced, Cavanaugh, the first mate, who had hired the hands, stated in the presence of all the libelants, in answer to an inquiry of another of the crew, that the boat would pay the deck hands the same wages as other boats going out on that rise did. It is established beyond dispute that other boats like the *Acorn*, on that rise, paid their deck hands the rate of wages claimed by the libelants, viz., at the rate of \$45 per month. This seems to have been the prevailing rate, and clearly Duffy and Poe are entitled to be paid at that rate.

It is, however, alleged, and Cavanaugh testifies, that Conway was expressly hired at the rate of \$40 a month. This the latter denies, and testifies that when he shipped nothing was said as to the rate of compensation. It is certain that no express bargain was made with any other of the deck hands on that trip; and Cavanaugh is successfully contradicted as to what transpired, in respect to the rate of wages, between him and Roger Williams, in the presence of the other deck hands, the first evening the boat was out. Upon the whole I think the weight of evidence is on the side of Conway. Moreover, if the master of a vessel dispenses with shipping articles, and disputes arise as to the rate of wages to be paid the mariners, the court will incline to allow their claim to payment at the rate paid by other like vessels leaving the same port at the same time on the like voyage. If the seamen can be held to a less rate by reason of a verbal contract, such contract must be clearly established.

Let a decree be drawn in favor of the libelants for the amount of their respective claims, with interest and costs.

SPEIDELL v. HENRICI and others, Trustees, etc.*

(Circuit Court, W. D. Pennsylvania. February 28, 1888.)

1. EQUITY—LIMITATION OF SUITS.

Courts of equity refuse to interfere where the suitor has allowed a considerable lapse of time before bringing his action, from considerations of public policy and from the difficulty of doing justice, when the original transactions have become obscured by time and evidence is lost.

2. SAME—DILIGENCE AN ESSENTIAL CONDITION TO EQUITABLE RELIEF—LACHES.

A suitor in equity is required to be "prompt, eager, and ready" in the pursuit of his rights. Diligence is an essential condition of equitable relief, and laches and negligence are always discountenanced.

3. SAME—TRUSTS—OPERATION OF LAW OF LACHES.

Where a valid express trust has been created, and is recognized or treated by both parties to it as subsisting, mere delay upon the part of the *cestui que trust* may not defeat his remedy for the enforcement of his rights under the trust; but when a trustee denies the right of the *cestui que trust*, and his relation to the latter in respect to the trust property becomes adverse, from that time the right of the *cestui que trust* to relief is subject to the operation of the law of laches.

In Equity.

John Barton, H. Markworth, and Wm. Reinecke, for complainant.
George Shiras, Jr., and C. S. Fetterman, for defendants.

Before MCKENNAN and ACHESON, JJ.

MCKENNAN, J. This bill is filed by Elias Speidell, a citizen of the state of Ohio, against Jacob Henrici and Jonathan Lenz, as trustees of the Harmony Society, located in Beaver county, Pennsylvania. It alleges—

That the complainant's father and mother resided in the kingdom of wuerttemberg, Germany, up to about the year 1804, were engaged in farming, were without any education, but were devout Christians and members of the established Protestant church of the country, and earnest seekers after spiritual light and their own salvation. That, at the same time, one George Rapp lived in the same neighborhood and was a man of education superior to that of the simple farming people, "of great intellectual power, clear-sighted, sharp-witted, eager for superiority, and a born leader of men." That about the year 1800 the said Rapp began to preach clandestinely to many of his fellow-countrymen, including the complainant's parents, that the Lord had chosen him as their spiritual leader; that the second advent of Christ and the beginning of the millenium, as taught by the revelation of St. John, were near at hand, and that in order to be saved from eternal damnation it was necessary for them to separate from the established church of their country and to form a settlement of themselves under his guidance and control. That by means of his preaching and personal influence over his disciples he caused about 300