

passed and allowed, and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld." It is possible that this provision was inserted simply for the purpose of securing payment of the final fee; but upon this point I express no opinion. This is undoubtedly a very hard case for the patentee. He has apparently invented a valuable improvement; he has satisfied the patent-office of his right to a monopoly for 17 years; he has complied with all the preliminary conditions, has paid his fees, and has received what he supposed to be a valid patent. By an oversight of the department, however, he has lost his exclusive right to manufacture and sell his invention. But the case seems to be beyond the reach of the judicial power. I find myself unable to hold that this patent was valid at the time the suit was commenced, without disregarding well-established principles of law.

A decree will be entered dismissing the bill.

---

SHARP v. RIESSNER and others.\*

(Circuit Court, S. D. New York. March 14, 1883.)

PATENTS FOR INVENTIONS—HYDROCARBON STOVES.

Where defendants' combination lacks essential elements of the plaintiff's invention, the bill for an infringement will be dismissed.

In Equity.

*Arthur v. Briesen*, for plaintiff.

*Benj. F. Lee*, for defendants.

SHIPMAN, J. This is a bill in equity to restrain the defendants from the alleged infringement of letters patent, now owned by the plaintiff, which were issued on May 16, 1876, to Abner B. Hutchins, for an improvement in hydrocarbon stoves. The invention is said in the specification to consist of the following devices: "The vessel or chamber containing the oil or hydrocarbon is submerged in water, so as to always keep the said oil vessel or chamber cool, and thereby free from explosion or other accident. The water vessel is covered with a perforated metal plate, which forms the base of the hot-air cylinder, on the top of which the culinary or other vessels to be heated are to be placed. Vertical tubes or flues are placed in the hot-air cylinder in such positions as to act as chimneys for the

\*Affirmed. See 7 Sup. Ct. Rep. 417.

burners. Mica windows are placed in the sides of these flues' so as to enable the operator to watch the flames. The method of construction of so much of the stove as is material to this case is described in the specification as follows:

"The base of the stove consists of a vessel, A, resting for convenience on short legs, *a*. This vessel is intended to contain water, and has a top plate, A', which is preferably made of cast metal, and strong enough to support all the parts of the stove which are above it. This plate, A', is annular in form if the stove is of general cylindrical construction, (which is preferable to other forms,) the central opening in the said plate being nearly equal in area to the sectional area of the hot-air cylinder, C, which rests upon it. Concentrically arranged around this central opening is a series of perforations, *a'*, through which atmospheric air passes down into the top part of the vessel, A, and thence up through the hot-air cylinder and its chimneys. \* \* \* The hot-air cylinder, C, is preferably built of sheet-metal, and is hinged to its base-plate, A', by the hinge, *c*, at the back side of the stove, so as to permit the top parts of the stove to be tipped back out of the way of trimming the wick, or for other purposes."

The first claim, and the only one which is said to have been infringed, is as follows:

"The water vessel, A, with its perforated top plate, A, and hot-air cylinder, C, hinged at *c* to plate A', and top perforated plate, L, all arranged and connected together substantially as and for the purpose set forth."

The perforated plate, A', and the hinge at *c* to plate, A' are the important features of this combination.

In the defendants' stove the cylinder rests upon three struts, which extend from the base-ring of the cylinder to the wall of the water chamber, so that the weight of the cylinder and the utensils which may be placed upon it is thrown against the wall instead of upon the bottom of the water chamber. The cylinder is hinged to its base-ring. The contention of the defendants is that they make their stove in accordance with the construction shown or pointed out in the Canadian letters patent of May 15, 1873, to James Henry Thorp, as assignee of John A. Frey, for "The Summer Queen Improved Coal-oil Stove," and as such stoves were made in New York in 1873 by Mr. Frey, the inventor. Whatever may be said by the plaintiff in regard to Frey's hinging his cylinder upon the base-ring, I think that it will not be denied that he used the defendants' three struts before 1873. It is sufficient for the purpose of this case to say that the three struts are not the plaintiff's perforated base-plate, A'. The object of this perforated plate was to perform a peculiar and material function in addition to that of supporting the cylinder, and which was to admit air through the

perforations to the flame in a certain way, viz., by passing "down into the top part of the vessel, A, and thence up through the hot-air cylinder and its chimneys." The defendants' struts do not perform the office which required perforations and a plate.

It is not necessary to determine whether the location of the defendants' hinge was described in the Canadian patent with such accuracy as to show to the public how or where it was to be placed, or whether it was a mere vague suggestion of what might be done, or whether, as is claimed by the defendants, the hinging to the base-ring in the manner now used was in fact adopted and was in public use in the city of New York in 1873, because the defendants' structure does not contain the perforated plate, A', of the patented combination.

Let the bill be dismissed.

---

### THE PEGASUS.

(District Court, D. Connecticut. March 31, 1883.)

#### COLLISION—DANGER SIGNALS—DUTY TO REPEAT.

Where a tug and her tow were meeting a steamer about head on, and the captain of the tug saw the approaching steamer and blew two whistles to indicate his intention to go to the left, but the signal was not answered by the steamer, it was his duty not to go forward upon his proposed course without either renewing his whistles or making an effort to get out of the way of the steamer, when he had good reason to know that it was a steam-boat which was upon her regular route, and was taking the ordinary way to make her usual landing.

In Admiralty.

*Franklin A. Wilcox*, for libellant.

*William S. Macfarlane*, for claimants.

SHIPMAN, J. This is a libel *in rem* to recover damages for a collision. About half past 10 o'clock on the evening of July 21, 1882, the steam-tug H. B. Whipple left the long dock at Jersey City, having in tow the barge Allendale, fastened to her starboard side, and bound for pier 8, East river. The tug and barge were owned by the libellant. The night was dark and lights were easily seen. The tide was running flood. The tug and tow had all their regulation lights properly set and brightly burning. The course of tug and tow, before and at the time of passing pier 1, on the North river, was about S., and their speed was about three knots an hour. As the vessels passed pier 1, and were about 100 yards out in the river from the