

it is a great convenience to the parties to bring supposed infringements to the notice of the court by motion; and, if a patent has been fully discussed and understood in the trial of the case, and if, in the light of that discussion, it is clear to the court that the change which has been made in a machine or a manufacture is merely colorable, there is no objection to this course. When a case has not been closed, but an account is being taken, an arrangement may sometimes be made to instruct the master to include the profits received from the alleged violation in his account, together with such evidence as may be given of its construction and mode of operation; and if the issues are reformed so far as need be to meet this new case, there is a great saving of expense. The case upon the patent was closed months since, and, upon the present motion for an attachment, no regular issues are made up, and the evidence is taken *ex parte*; and it is understood that no appeal can be taken from my order. *Hayes v. Fischer*, 102 U. S. 121.

Under the circumstances of the case, the plaintiff cannot justly assert that the consent of the defendants amounts to a general decree in his favor, or will aid me to construe the patent. If he wishes to enjoin the bustle now complained of, he must do it by bill in the usual way.

Motion denied.

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### SNOW and others v. LAKE SHORE & M. S. RY. CO.

(Circuit Court, N. D. New York. December 4, 1883.)

#### PATENT—INFRINGEMENT—DETACHED PISTON-ROD.

Where the specifications for a patent showed that one material part of the invention was the detachment of the piston from the piston-rod, held, that a steam bell-ringer not containing this contrivance did not infringe the patent, although the most important features of the bell-ringer were suggested by the invention of the patentee.

#### In Equity.

*James A. Allen*, for plaintiffs.

*Geo. Payson, J. H. Raymond*, and *E. S. Jenney*, for defendant.

WALLACE, J. Although the complainant's patent of June 11, 1872, suggests the principal and the most valuable parts of the combination found in the defendant's steam bell-ringer, the plain and explicit language of the specification requires a construction of the first claim which will enable the defendant to escape liability as an infringer. The first claim must be limited to a combination in which the piston and piston-rod are detached from each other. The patentee doubtless considered that the detachment of the piston and piston-rod would assist materially in effecting one of the two expressed objects of his invention, viz., the prevention of leakage of steam. To prevent the

<sup>1</sup>Affirmed. See 7 Sup. Ct. Rep. 1843.

escape of steam around the piston-rod, he proposed to confine the steam behind the piston, instead of introducing it into the cylinder in front of the piston, as was done in his earlier invention. Accordingly he located the steam passages behind the piston, and adopted a tightly-fitting piston, and in order that the piston might remain tight he adopted a detached piston-rod to relieve the piston from lateral strain. The specification states that "the piston is disconnected from its rod to prevent any lateral strain being communicated to it, thereby decreasing to some extent the wear of the piston in the cylinder;" and further, "if the piston is closely fitted it will wear a long time with very little leakage, and what there may be will be caught in the annular grooves in the side of the piston and passed at once through the exhaust passages, thus preventing any leakage through the piston-rod." The drawings show a detached piston-rod, and all the co-operative devices are conformed and adjusted to a detached rod, such as the long sleeve in the cylinder to guide it, and the collar on the end of the rod to limit its movements. It is impossible to ignore the particular construction of these two parts which is thus pointed out as material. As the defendant's bell-ringer does not contain such a piston or piston-rod, infringement is not shown.

The bill is therefore dismissed.

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### THE CITY OF CHESTER. (Two Cases.)

(District Court, S. D. New York. November 12, 1883.)

#### COLLISION—IDENTITY OF COLLIDING VESSEL—PREPONDERANCE OF PROOF.

The canal-boat B. F. W. being moored in the slip 100 feet inside of the end of the wharf, some other steam-tug in a high wind got wedged in and across the slip, and was for a few minutes thumping and pounding upon the stern quarter of the B. F. W., from which four hours afterwards a leak was first discovered, and the City of Chester was afterwards libeled as the colliding vessel. She had been past the slip the same morning, but all her evidence was that she had not touched the wharf or entered the slip at all. Upon her testimony, her hourly log, and the libelants' testimony as to the time of the occurrence, *held*, that the libelants had not established the identity of the City of Chester as the colliding vessel by any such preponderance of evidence as entitled them to recover, and the libels were dismissed.

In Admiralty.

*J. A. Hyland*, for libelants.

*Shipman, Barlow, Larocque & Choate*, for claimants.

Brown, J. The testimony in these cases is irreconcilable as to the identity of the vessel which collided with the libelants' boat, the B. F. Wade, on March 11, 1881. On the part of the libelants several witnesses testify that the B. F. Wade was moored on the north side of pier 46, bows in, with her stern about 100 feet from the end of the