

vention is what the patentee loses by the use of the invention in violation of the patent without license, and a proper measure of damages for such infringement. An account of damages for the same infringement was being taken on each occasion when this case was before the master. The orator was on each occasion proving his damages for that infringement. Had he proved a different infringement on the latter occasion from what he did on the former, he would have had a new case. But he did not; the infringing guides used by the defendants were the same subjects of proof all the while. On the former hearing, as the proofs were left, they showed a license fee, and the master reported damages for, a larger use of the patented invention than the defendants were guilty of. The case was referred back to the master, with liberty to the complainant to reopen his proofs. This was, of course, to enable him to make his proof of damages conform to the defendant's infringement. This he accomplished by showing that the license fee was for exactly such use as the defendants had. The amount of the license fee was exactly what the defendants would have to pay for a lawful use of the same extent, and exactly what the orator lost by their use without making the payment. The amount of the license fee for such use of the patented invention as the defendants had, was a question of fact to be proved by any competent evidence. Such licenses are not required to be in writing, neither is the amount of the fee required to be shown by writing. The whole may be shown by parol. The written contracts of license between the orator and others might be evidence between the orator and the defendants; but this suit is not brought upon those licenses; the defendants are not parties to them, and they are not conclusive upon either the defendants or the orator, as they would be upon the parties to them in suits between those parties upon them. 1 Greenl. Ev. § 279. The exceptions by which these objections are raised do not appear to be well founded.

The exceptions are overruled, and the report is accepted and confirmed.

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GOULD v. SPICERS and another.

(Circuit Court, D. Rhode Island. April 9, 1884.)

**PATENT—INFRINGEMENT—FURNACE—GRATE-BARS—CAM-SHAFTS.**

A combination patent is not infringed by another patent unless all of the elements composing the combination in the first patent, or equivalents therefor, are employed in the second patent.

**In Equity.**

*Thos. Wm. Clarke*, for complainant.

*W. H. Thurston and B. F. Thurston*, for defendants.

COLT, J. This is a bill in equity brought for the alleged infringement of reissued letters patent, No. 9,959, granted to David R. Gould, December 6, 1881, for an improvement in grates. The invention relates to agitating the coal-bed of a furnace by lifting the grate-bars and letting them fall suddenly by means of two shafts provided with cams arranged under and near the ends of the grate-bars. The general principle of agitating the fire surface of a furnace by the employment of a series of loose grate-bars operated by one or more cam-shafts, is not new. The same principle we find in various older patents, and it is illustrated in the Cass English patent, the Watson English patent, and the Allen and Hudson American patent. The patent under consideration must, therefore, in view of the prior state of the art, be limited in its scope to the particular combination of devices described in the patent. Nor do we understand the patentee to claim more than this. The specification declares that the object of his invention "is to provide means for gradually lifting the grate-bars, with their load, and letting them fall suddenly and alternately as the cams are rotated, thus producing a sufficient agitation of the coal-bed without the exercise of undue strength in turning the cam-shaft." The first claim, embodying the combination of devices by which this result is secured, is as follows:

"The loose grate-bars, A, having enlargements, C, and projections, *d*, in combination with the wiper-shafts, D, having the alternate curved cam projections terminated by abrupt shoulders, as and for the purposes described."

It is clear that the main improvement contemplated by this invention is such a construction of loose grate-bars and cam-shafts that upon turning the shafts the bars will fall suddenly; this result being accomplished by means of projections on the under side of the grate-bars near the end, in connection with the abrupt shoulders of the cams. Now, in the defendants' grate we find neither grate-bars nor cams of this peculiar construction. The bars have no such projection at either end, and no equivalent therefor. In the absence of such projections they resemble the bars of the Cass and Watson patents. The cams in defendants' grate are not terminated by abrupt shoulders, but are curved on both faces much like the Watson patent. In consequence of this, the cam-shaft can be revolved in either direction, or oscillated; while, in the plaintiff's grate, the shaft can be turned only one way, owing to the peculiar shape of the cams and the projections on the bars, such shape being necessary to produce the sudden fall described in the patent. In the place of two cam-shafts,—one at each end of the grate-bars,—the defendants use only a single shaft arranged under the centers of the bars.

The combination described in the first claim of the patent is made up of several elements. One of these consists of the projections on the grate-bars; another, of the abrupt shoulders of the cams. These features are wanting in the defendants' grate. The claim in the patent also embraces two cam-shafts; the defendants use only one. Un-

der these circumstances, there can be no infringement. It is well settled that a claim for a combination is not infringed unless all of the elements composing the combination, or equivalents therefor, are employed.

### THE LA FAYETTE LAMB.

(District Court, W. D. Wisconsin. 1884.)

#### 1. COLLISION — LIBEL — BURDEN OF PROOF — FAILURE TO COMPLY WITH LAW — DAMAGES.

When the law provides that lights shall be carried by barges at certain hours and in certain positions, and a barge is run into which has not complied with the law, the burden of proof is upon the owners of the barge, in a libel for damages, to show that the damage did not result from the failure to comply with the law, and they cannot recover unless they so show.

#### 2. SAME — DEROGATION OF LAW — CUSTOM.

A custom cannot be set up in derogation of the strict requirements of a law, by those whose duty it is to comply with the law.

In Admiralty.

*John J. Cole*, for libellant.

*Wing & Prentiss*, for respondent.

BUNN, J. This is a libel brought by Jacob Richtman against the steam-boat *La Fayette Lamb* to recover damages sustained in the sinking of a barge loaded with stone through a collision between the said steam-boat and said barge upon the Mississippi river near Island No. 69, above Winona, on October 8, 1879. The libellant was engaged in carrying stone from Fountain City, Wisconsin, down the Mississippi river to the government works at Argo island, a little above Winona, and on the occasion when the collision occurred had the two barges loaded with stone in tow of the steam-boat *Express*, Capt. Peter E. Schneider being in charge, taking them down the river after dark on the evening of October 8, 1879, to deliver at Argo island. The steam-boat *La Fayette Lamb* was a raft-boat engaged in making regular trips between Beef slough, in Wisconsin, and Clinton, Iowa. The collision occurred near Island No. 69, on the Wisconsin side, about 9 or 10 o'clock of a rather dark night.

Capt. Schneider testifies that he had his signal lights on the *Express*, one red and one green; that he first saw the *Lamb* when the *Express* was crossing from one side of the river to the other, and waited for the *Lamb* to blow the signal, but that she came pretty close without blowing, and that then he (Schneider) blew a signal for the *Lamb* to keep to the right, and that then the *Lamb* was far enough off to keep away from a collision; that it was the duty of the ascending boat to signal first, but the *Lamb* did not signal nor answer the signal of the *Express*. There were no lights at all upon either of the barges which projected about 25 to 30 feet in front of