

According to the model, an oar would not serve the purpose of the patented oar, because it could not be rotated in the rowlock. In order to demonstrate this, he has prepared a model representing a rowlock, but with a rectangular opening for the reception of the oar, and so arranged that the side representing one of the pins can be adjusted and clamped at any desired distance from that representing the other pin. He then places the model in this diagrammatic rowlock, so that the "feathering diameter," as it is called, or that diameter which is horizontal when the oar is feathered, lies parallel with the sill of the rowlock, and clamps the side representing the pin at such a point that the two pins exactly touch the sides of the oar model. In this position it appears that the oar model cannot be rotated, by reason of the fact that one diameter is greater than the feathering diameter; whereas, as the complainant contends, in the patented oar the feathering diameter is greater than any other diameter of the section of the oar. As to this argument I observe in the first place that the loom of the oar in actual use with its leather covering is much more elastic than the wooden model, and that the fit of an oar in a rowlock is by no means so exact as the fit of this model oar in the model rowlock. It would therefore be dangerous to draw inferences as to the operation of oars in rowlocks from the operation of these models. But, still further, if the essence of the invention consists in the proportions of the diameters, it is obvious that the patent cannot be sustained, because it nowhere states those proportions. It describes the loom of the oar as being "of a general pentagonal form, as described." The only reference to the length of diameters is that above quoted, and this statement refers only to two diameters, and does not give the relative length of these, either expressly or by implication. It is indeed inferable from the patent that the oar is to be so constructed as to rotate in the rowlock. But to direct that an oar shall be so made as to fit in all particulars the rowlock in which it is to be used, without describing by what means this is to be accomplished, certainly does not require the exercise of the inventive faculty.

In the second case, therefore, the bill will be dismissed, with costs.

DUEBER WATCH-CASE MANUF'G CO. v. FAHYS WATCH-CASE CO.

(Circuit Court, E. D. New York. March, 1891.)

LETTERS PATENT—INFRINGEMENT—TITLE OF PATENT.

A suit for infringement of letters patent cannot be maintained where it appears that the complainant has not the legal title to any of the patents, but has merely the defendant's contract to convey them; and complainant's position is not strengthened by a decree in his favor in another suit brought to compel a conveyance of the patents by the defendant, or by the fact that the conveyance had been executed and delivered to the clerk in escrow, which decree and conveyance were both suspended by appeal and *supersedeas*.

In Equity.

Edward T. Oldham, for orator.

Edmund Wetmore, for defendant.

WHEELER, J. This suit is brought for infringement of patents 329,-284, 329,285, 348,620, and 355,114, granted to Allan C. Dalzell for improvements concerning watch-crowns. For title the bill alleges that Dalzell made these inventions while in the employ of the orator; that he obtained the patents at the expense of, and under a contract to assign them to, the orator; that he made assignments and licenses to, and entered the employ of, the defendant; that the orator has got a decree in the circuit court of the United States for the southern district of New York (38 Fed. Rep. 597) for an assignment by them of the patents to the orator; and that an assignment has been made pursuant to the decree. The defendant has pleaded an appeal from, and a *supersedeas* of, this decree, and that the assignment is held in escrow by the clerk of that court pending the appeal. This plea has now been argued. The orator insists, perhaps correctly, that the pendency of the former suit is no bar to this. It does not, however, appear to be relied upon as such. The point of the plea seems to be that without the decree the orator does not show sufficient title to the patents for maintaining a suit for an infringement of them, and that the appeal and *supersedeas* vacate the decree. Without the decree the orator has none of the patents; it has merely a contract for them with Dalzell, which may be enforced in equity. This suit is not brought to enforce it, and, as Dalzell is not a party, it cannot be enforced here. This suit is brought upon the patents, not to obtain them. The decree is essential to the orator's case. Without its force, the case fails. That an appeal and *supersedeas* stop the effect and operation of a decree is elementary. *U. S. v. Addison*, 22 How. 174; *Jerome v. McCarter*, 21 Wall. 17; *Railroad Co. v. Schutte*, 100 U. S. 644; *Draper v. Davis*, 102 U. S. 370; *Sharon v. Hill*, 26 Fed. Rep. 337. The operative part of the decree in respect to title was that the defendant and Dalzell by proper assignment in writing should convey the patents to the orator. It would take effect from delivery. It was made and delivered to the clerk in escrow, and the appeal stopped further delivery. The orator is not entitled to it yet, and has taken no title by it. The plea exactly meets this point of the bill, and appears for these reasons to be good.

Plea allowed.

THE CITY OF PITTSBURGH.

MOSSER v. THE CITY OF PITTSBURGH

(District Court, W. D. Pennsylvania. March 26, 1891.)

1. MARITIME LIENS—REPAIRS.

An old steam-boat from which the boilers, wheel, engines, and machinery had been removed, and which had been changed into a pleasure barge, having no independent means of propulsion, but intended to be towed by a tow-boat, and to be used in the transportation of excursion parties in the neighborhood of a city, and having her cabins fitted up and used as dancing halls by those who engaged her, is a vessel within the language of Act Pa. April 20, 1858, (P. L. 363,) and Act Pa. June 13, 1836, (P. L. 616,) and as such subject to a lien for materials furnished and work done in fitting and repairing her.

2. SAME—JURISDICTION.

Such a craft, being intended for the transportation of persons, and therefore engaged in commerce, is a vessel within the maritime law also, and a court of admiralty will take jurisdiction for the enforcement of such lien.

In Admiralty. Libel for repairs.

Joseph Briel, for libelant.

George W. Acklin, for claimants.

REED, J. This was a libel filed against the City of Pittsburgh, described in the libel as a pleasure barge or boat, by John Mosser, for materials furnished and labor done in and about the fitting and repairing of the said barge or boat, amounting to the sum, after deducting all payments, of \$377.45, with interest from July 28, 1890. The amount claimed is not disputed, nor is there any question as to the fact that the materials were furnished and work done as claimed by the libelant. The owners of the boat defend upon the ground that the City of Pittsburgh was not such a vessel as could be proceeded against *in rem*, that the libelant has no lien against a boat of her character and description, and that this court has no jurisdiction, therefore, in this proceeding.

It appears without dispute from the testimony that the City of Pittsburgh, if a vessel, was a domestic vessel, owned and having her home port in the city of Pittsburgh, where the libelant furnished the materials and did the work claimed for in this proceeding. She was originally a steam-boat known as the "Katie Stockdale," engaged in a general freight and passenger business on the Monongahela and Ohio rivers, but some time before these proceedings were commenced her boilers, wheel, engines, and machinery were removed, and the boat was altered and changed into a pleasure barge, still retaining portions of her cabins and upper decks. She has no independent means of propulsion, but when in motion is towed by a steam tow-boat engaged for that purpose. Since her alteration the City of Pittsburgh has been used in the transportation of picnic and excursion parties upon the rivers in the vicinity of Pittsburgh, and her cabins are fitted up and used as restaurants and dancing halls by those who engage her. She was under the care of a master, who, as agent for her owners, contracted for the repairs and alterations made by the libelant.