

BRUSH ELECTRIC CO. v. NEW AMERICAN ELECTRICAL ARC LIGHT CO.

(Circuit Court, S. D. New York. April 14, 1891.)

PATENTS FOR INVENTIONS—ELECTRIC LAMPS—INFRINGEMENT.

Letters patent No. 219,208, issued September 2, 1879, to Charles F. Brush for an improvement in electric lamps, are valid, and cover all forms of mechanism constructed to separate two or more pairs or sets of carbons dissimultaneously or successively, so that the light is established between the members of but one pair or set at a time. Following *Brush Electric Co. v. Western Electric Light, etc., Co.*, 43 Fed. Rep. 533, and *Same v. Ft. Wayne Electric Co.*, 44 Fed. Rep. 284.

In Equity.

H. A. Seymour, for plaintiff.*Homer A. Nelson*, for defendant.

SHIPMAN, J. This is a bill in equity to restrain the infringement of letters patent No. 219,208, dated September 2, 1879, to Charles F. Brush for an improvement in electric lamps. The defendant took no testimony, and did not appear at the hearing. The questions in the case seem to have been previously adjudicated, and to be fully stated in the opinion of Judge GRESHAM in *Brush Electric Co. v. Ft. Wayne Electric Light Co.*, 40 Fed. Rep. 826; of Judge BROWN, in *Same v. Western Electric Light, etc., Co.*, 43 Fed. Rep. 533; and of Judge BLODGETT upon a motion for an injunction in *Same v. Ft. Wayne Electric Co.*, 44 Fed. Rep. 284.

Let there be a decree for the complainant for an injunction and an accounting.

THE ISAAC MAY.

(District Court, N. D. New York. April 24, 1891.)

1. SALVAGE—AMOUNT.

Where a steel propeller, which is thoroughly equipped with all the modern appliances for extinguishing fires, saves in the day-time, and with little danger to herself or crew, a barge worth about \$4,000, after about five hours' labor, and then tows the barge into port, without deviating from her course, an allowance of \$1,000 for salvage is sufficient.

2. SAME—APPORTIONMENT.

In such case the salvage will be divided as follows: To the owners, \$325; to the master, \$90; to the first mate, \$50; to the chief engineer, who took an active part in the work, \$50; to the second mate, \$40; to the second engineer, \$25; and the balance, of \$420, equally among the rest of the crew, their services being nearly equal.

In Admiralty.

George J. Sicard, for Lehigh Valley Transportation Company and James W. Todd, libelants.

Josiah Cook, for Thomas Wynne, David Gibbs, and others, libelants.

Benjamin H. Williams, for claimant.

COXE, J. At about half-past 4 on the morning of July 16, 1890, the steel propeller Saranac, owned by the libelant, the Lehigh Valley Transportation Company, discovered the steam lumber barge Isaac May on fire, at a point on Lake Erie about 100 miles W. S. W. from Buffalo. The May was wrapped in flames. Her crew had abandoned her, and she would have burned to the water's edge but for the assistance of the Saranac. The latter was admirably equipped for such work, being provided with all the modern appliances, and, after about five hours' labor, her master and crew succeeded in extinguishing the flames. The Saranac was bound for Buffalo, and towed the May to that city. On the following day a libel for salvage was filed by the owners of the Saranac. Subsequently two libels and a petition were filed on behalf of several members of the crew of the Saranac. The libels have been consolidated and tried in one action.

The testimony as to value is conflicting, but the impression left upon my mind, after taking everything into consideration, is that the property saved was worth about the sum of \$4,000. In view of the fact that the salvage service, though promptly and gallantly rendered, took place in the day-time, with very little danger to the Saranac or her crew, and that in towing the wreck to Buffalo she was not required to deviate from her course, it is thought \$1,000 will be a liberal allowance for the entire service.

It seems to be expected that the court will apportion this sum among the libelants upon the testimony already taken, without further proceedings before a commissioner. In my opinion the sum awarded should be divided as follows: To the owners, \$325; to the master, \$90; to the first mate, \$50; to the chief engineer, who took an active part in extinguishing the flames, \$50; to the second mate, \$40; and to the second engineer, \$25. As all of the crew participated in the salvage, and as their services were equally meritorious; or nearly so, the remaining sum of \$420 should be evenly divided among them. The proof submitted does not warrant the court in discriminating in favor of a portion of the crew as against the rest, although it is apparent that some, at times, occupied positions of greater hazard than others.

It is thought that there is insufficient warrant for the assertion that the libelants should be deprived of costs, because the libels were prematurely or improperly filed. The libels filed by the seamen, however, should entitle them to but one bill of costs. There should be a decree for the libelants as above stated.

CAMPRELLÉ v. BALBACH.

(Circuit Court, S. D. New York. March 20, 1891.)

1. REMOVAL OF CAUSES—CITIZENSHIP—PETITION.

Under the removal act of 1887, (24 St. U. S. 552,) which provides that certain actions may be removed from the state to the federal courts, "by the defendant or defendants therein, being non-residents of that state," a removal cannot be had unless the petition shows on its face that the defendant was a non-resident when the action was begun.

2. SAME—MOTION TO REMAND—AFFIDAVITS.

On motion to remand, defects in the petition for removal cannot be supplied by affidavits.

At Law. On motion to remand.

H. F. Lawrence, for plaintiff.

S. Mallet-Prevost, for defendant.

LACOMBE, Circuit Judge. This is a motion to remand. The action was begun in the superior court of the city of New York by the service of a summons on June 11, 1890. By reason of various motions to make the complaint more definite, and for bills of particulars, and by extensions, the time to answer the complaint (or rather the amended complaint) did not expire until December 5th. The cause was removed into this court, December 4, 1890. The record in the state court showed that the controversy was one between citizens of different states, such difference of citizenship existing when the action was begun; and that the defendant was a non-resident of the state of New York when the petition for removal was verified, December 4, 1890; but did not show that he was such non-resident when the action was begun. The removal act of 1887 (chapter 373, 24 St. 552) provides that—

"Any suit of a civil nature [other than those involving a federal question] of which the circuit courts of the United States are given jurisdiction [including controversies between citizens of different states,] * * * brought in any state court, may be removed into the circuit courts of the United States * * * by the defendant or defendants therein, being non-residents of that state."

The act does not expressly state whether a defendant, in order to be entitled to removal, must show non-residence from the beginning of the action, or need show only non-residence at the time of filing the petition. Which construction shall be given to the language used in the act is the question presented on this motion. The precise point seems never to have been decided. In *Freeman v. Butler*, 39 Fed. Rep. 1, it was referred to, but not disposed of; the petition in that case not showing non-residence, even at the time of removal. Inasmuch as the removal act of 1887 manifestly shows that it was the purpose of congress to restrict the jurisdiction of the circuit courts, (*Smith v. Lyon*, 133 U. S. 319, 10 Sup. Ct. Rep. 303,) the interpretation apparently most in accord with the intention of congress is that which holds that the *status* of parties, so far as the right to removal is concerned, is to be