

were not satisfied with the same, they might refuse to go further, as they did: But it appears probable that the master did not really intend to ship the men formally before the British vice-consul at Astoria, as he should, but was about to take them along as and for the men who had signed the articles and failed to report for duty.

These had signed as able-bodied seamen, and Armstrong and Kelly, not being such, were liable to be disrated by the master on the voyage, and receive only what he saw proper to give them.

In this respect they would have been inveigled out of the state against their will, but by the misconduct of the master, rather than the petitioner, unless he acted with knowledge of the master's ulterior purpose. Against this conclusion is the fact that the master told him on leaving that he would "sign the men at Astoria."

My conclusion, therefore, is that this process, although sufficient on its face, is, upon the facts, unfounded, not "due process of law," and the petitioner must be discharged.

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GRIFFITH *et al.* v. MURRAY *et al.*

(Circuit Court, D. New Jersey. May 8, 1891.)

**PATENTS FOR INVENTIONS—NOVELTY.**

Though the use of circular rings for the packing of piston-rods, cut from sheets built up of alternate layers of India-rubber and cloth, with an oblique slit at one side for the purpose of springing the ring upon the piston-rod, was old, yet a patent covering the product obtained by boiling such rings in oil with plumbago held in suspension, so as to drive the lubricant thoroughly into the fibers of the cloth and the interstices of the India-rubber, softening them both, and rendering them a sort of reservoir for the lubricant, is not invalid for want of novelty.

In Equity. Suit for infringement.

*Randolph Parmly, D. H. Driscoll, and Stewart Chaplin*, for complainants.

*John Griffin*, for defendants.

ACHESON, J. The defendants are sued for the infringement of letters patent No. 334,579, granted to Olin J. Garlock January 19, 1886, for an improvement in piston-rod packing. The patent has but one claim, which is as follows:

"What I claim as my invention is: Circular rings of packing for piston-rods, cut from sheets built up of alternate layers in India-rubber and cloth, said rings being cut obliquely across at one side, so as to be opened, as shown, and boiled in oil with plumbago held in suspension, as and for the purpose specified."

While the claim calls for the use of circular packing rings constructed of alternate layers of India-rubber and cloth, with an oblique slit at one side for the purpose of springing the ring upon the piston-rod, the packing

rings themselves are not claimed. The gist of Garlock's invention consists in subjecting the packing rings to the described boiling process, whereby valuable qualities are imparted to them, and the claim is for the improved and finished product. The specification states that during the boiling process the substance of the ring becomes thoroughly impregnated with the oil and plumbago, which together lubricate the packing ring, and permit the piston-rod to slide through the same with the least possible degree of friction; that the thorough boiling of the packing rings in oil with plumbago drives the latter lubricant thoroughly into the fibers of the cloth and interstices of the India-rubber, while it softens both, and renders them peculiarly adapted for packing piston-rods; and that by this treatment the India-rubber, as well as the cloth, becomes a reservoir for the lubricants, holding them, to be gradually drawn upon as the friction of the moving rod requires. Any extended recital or discussion of the proofs in the case would be unprofitable, and I shall do little more than state the conclusions I have reached.

The defendants contest the validity of the patent, first, for want of novelty. Now it may be conceded that packing rings built up of the materials and constructed in the manner and form described in the specification and claim of the patent were old, and it was well known, also, that a composition of oil and plumbago was a useful lubricant. But Garlock was the first to practice the described boiling operation, whereby the character of the packing is changed and improved. I do not find that his process was anticipated by the English patent to Dudgeon. That patent does not describe or disclose any boiling process, or suggest the application of heat to promote the absorption of the lubricating compound.

Again, absence of utility is asserted as a ground of defense. But besides the presumption of usefulness arising from the mere grant of the patent, the proofs, I think, sufficiently show that the process of boiling the packing in oil with plumbago produces highly beneficial results, the product being both new and useful. Even the defendant Murray upon his cross-examination admitted that, "for certain purposes, the boiling process is good." The proofs, it seems to me, are ample to establish utility, and they also justify the conclusion that the production of the Garlock packing involved invention.

Upon the question of infringement, I need only say that there is satisfactory proof that the defendants practiced Garlock's boiling process as set forth in his specification and claim, and thereby produced the patented packing. Let a decree be drawn in favor of the plaintiffs.

## MELLOR v. COX.

(Circuit Court, D. South Carolina. June 22, 1891.)

## 1. ADMIRALTY—TAXATION OF COSTS.

A decree of a circuit court simply affirming a decree of the district court in admiralty "with costs" means that costs are to be paid by the losing party.

## 2. SAME—PROCTOR'S FEES.

Where, in the discussion before the district court, a person was recognized as proctor for the successful party, he must be allowed his costs, though there was no entry of appearance by him within the time required by rule.

## 3. SAME—DOCKET FEES.

In admiralty there can be but one docket fee, though the case is appealed from the district to the circuit court.

In Admiralty.

C. B. Northrop, for libellant.

I. N. Nathans, for respondent.

SIMONTON, J. The case comes up on the taxation of costs. The district court dismissed the libel, with costs. 45 Fed Rep. 115. Libellant carried the case to the circuit court, and the decree of the district court was affirmed, with costs. The clerk has taxed a docket fee for Mr. Nathans, proctor of respondent, and to this libellant excepts. He bases his objections on these grounds:

1. That the decree of this court is vague and uncertain in this: that it does not say who shall pay the costs. The decree of the district court is affirmed, simply "with costs." The rule is that the losing party pay the costs. To this rule there are exceptions in equity and admiralty. But when either of these courts desire to modify the rule it says so. When the expression is used, "with costs," it means costs to the losing party, unless other words are used. In this case libellant appealed, and his appeal was dismissed. He must pay the costs.

2. Because there is no entry of appearance by Mr. Nathans for appellee in the circuit court, within the two first days in term succeeding the filing of the appeal and proceedings and affidavit of service of notice thereof on him, as required by rule 9, and that libellant could thus proceed *ex parte*. Mr. Nathans, therefore, cannot get costs. Upon examining the docket of the circuit court the name of Mr. Nathans appears as proctor for respondent. It is admitted that he took part in the discussion before the court, and the order is in his handwriting, signed by the circuit judge on his submission. He thus was recognized as proctor for respondent. No objection seemed to have been made at the hearing. He must be treated as the proctor and allowed his costs.

3. Because but one docket fee can be charged, and that for a final hearing. This docket fee has already been charged in the costs of the district court. I confess that I have some doubt on this point. But Judge TOULMIN, in a well-considered case, (*The Lillie*, 42 Fed. Rep. 179,) holds that there can be but one final hearing in admiralty, and