

the patent in suit was also used in these signals. Different lines of steamers adopted, each for itself, a special arrangement of colored lights, which was made known to the other lines and to the life-saving service. These signals were stationary; that is, the composition of which they were made was not projected to a distance in the air. Letters patent No. 175,359, dated March 28, 1876, were issued to Edward F. Linton for a pyrotechnic signal, designed to be an improvement upon the Coston signal, which consisted of a fire-work, to be held in the hand, and from which, when ignited, colored signal balls were projected into the air in accordance with what the patentee says is the "well-known principle of the Roman candle." In the signal of the patent in suit, the successive stationary lights of the old Coston signal are first displayed, and afterwards the aerial balls or stars of the Linton signal or of the Roman candle are discharged and burned in the air. The main object of the invention was to add something to the Coston successive stationary colored lights, and thus materially enlarge the number of signals, so as to supply the demands of individual ship-owners for distinguishing signals. The mechanical difficulties in the way of carrying out the conception of the new signal were such as the skilled mechanic in fire-works could surmount. I can see nothing of inventive thought in the original idea, and nothing of patentable invention in the embodiment, irrespective of novel means of construction, of the idea of adding to the old Coston signal, the aerial signal of Linton, or of the Roman candle. Such a signal, however constructed, is the thing which is described in the first claim of the patent in suit; for it is admitted that the claim is for the described compound signal, irrespective of the mechanism which may be employed. The conception of the addition of the well-known aerial balls or stars to the stationary Coston light, for the purpose of varying or enlarging the number of signals, or of improving the method of signaling, was a perfectly natural one to the maker of fire-works, and the means by which the idea could be successfully carried into practice were well known, and could be applied without serious difficulty. The particular means by which Coston carried out the idea and which are described in the five original claims of the patent may be both novel and patentable, but they are not used by the defendants. The bill is dismissed.

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ANDERSON v. PITTSBURGH LUMBER CO.

(Circuit Court, W. D. Pennsylvania. July 2, 1891.)

**PATENT FOR DESIGN—PENALTY FOR UNLICENSED SALE—EVIDENCE.**

Complainant deposited in the mail, properly addressed to defendant company, a circular reciting that complainant's mantels had been patented by design patents, and that parties manufacturing after such designs would be prosecuted. Two of the three members of defendant firm testified that they had no knowledge of the receipt of the circular by their firm. Complainant's agent testified that he had a conversation with S., one of defendant firm, at its office, and said to such member

that he saw they had some mantels made by one G. after complainant's design; that S. admitted the fact, and, when asked if he knew that complainant had design patents, admitted that he did, and asked what complainant intended to do about the matter, to which the agent replied that he would try to protect his rights. *Held* that, while the presumption that defendant firm received the circular was not overcome, the testimony did not warrant the conclusion that defendant knew that G. had manufactured mantels in imitation of complainant's design without license, so as to make defendant liable for the penalty prescribed by Act Cong. Feb. 4, 1887.

### In Equity.

*Wm. L. Pierce*, for complainant.

*Levi Bird Duff*, for defendants.

REED, J. The bill in this case alleges infringement of design patent No. 19,876, being new and useful improvements in a design for mantels. The answer raises the same issues as are involved in the case of *Anderson v. Saint*, 46 Fed. Rep. 760, (No. 20, Nov. Term, 1890,) and upon those questions, for the reasons set forth in the opinion in that case, I think the plaintiff is entitled to a decree. The facts as to the knowledge by the defendants that Germain, the manufacturer, had applied plaintiff's design without license, are somewhat different from those in the case of *Anderson v. Saint*, and require consideration before it can be decided whether the plaintiff is entitled to the penalty under the act of February 4, 1887. The patent in this case was granted June 3, 1890. In the latter part of June, 1890, a circular signed by the complainant was sent to the defendants, in which he said: "Our mantels are now patented by design patents, and which means that any parties manufacturing after any of our designs will be prosecuted for infringement." The testimony shows that this circular, properly addressed, was put in the post-office, and the presumption is that it was duly delivered to defendants. The defendant firm is composed of L. D. Strouse, L. L. Sattler, and L. Moeser. Mr. Strouse says that his firm did not to his knowledge receive the circular. Mr. Sattler says he never saw the letter, and has no knowledge of such a letter being received by the firm. The third partner was not examined. This testimony does not rebut the presumption that the defendant firm received the notice. Mr. Turner, then acting for the complainant, testifies that on or about August 25, 1890, he had a conversation with Mr. Sattler at the office of the firm, and said to the latter that he saw they had some of Germain's mantels made after Anderson's design, (the design in question in this case.) Mr. Sattler admitted the fact, and Mr. Turner asked if he knew that Anderson had design patents. Sattler said he knew that Anderson had patents, and asked what complainant proposed to do about the matter, and Turner says he gave him to understand that complainant would try to protect his rights in the matter. Mr. Sattler says he cannot remember any such conversation. The conversation probably occurred, but, in my judgment, the testimony will not justify the application of the act of 1887 in this case. Nothing has been shown to warrant the conclusion that the defendants knew that Germain had manufactured mantels in imitation of

complainant's design, without license from the complainant, and the burden is upon the latter to show this. He is not, therefore, entitled to the penalty as against these defendants.

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THE MATTIE MAY.<sup>1</sup>

GILIS *v.* THE MATTIE MAY.

(*District Court, E. D. New York. July 10, 1891.*)

**MARITIME LIEN—DISCHARGING VESSEL—CONTRACT WITH MASTER.**

When libelant, a longshoreman, began discharging a vessel he was in the employ of a stevedore, but, the stevedore having left, libelant continued the work with the crew of the vessel, and on a verbal contract with the master. *Held*, that the service was maritime, and rendered on the credit of the vessel, and that libelant had acquired a lien on the vessel for the amount of the compensation.

**In Admiralty.** Suit to enforce a lien for services.  
*Goodrich, Deady & Goodrich*, for libelant.  
*A. B. Stewart*, for claimant.

BENEDICT, J. This is an action to recover of the schooner *Mattie May* compensation for services rendered in assisting the crew of the schooner in discharging a cargo of lumber. The evidence shows that the master of the schooner employed a stevedore to take the lumber as it was passed over the side of the vessel by his crew, and pile it on the pier. The stevedore employed the libelant to work for him in performing this contract, and he worked one day for the stevedore. The next morning no stevedore appeared, and the master of the vessel was informed that the stevedore had gone off on a drunk, and would not come back. Whereupon, according to the testimony of the libelant, confirmed by another witness who heard the transaction, the master employed the libelant to take the lumber from the hands of the crew, and pile it on the pier, and promised to pay him for such labor at the rate of 40 cents an hour. Under this contract with the master, which the master is not called to deny, the libelant worked after the first day, taking the lumber as it was passed to him by the crew of the schooner, and piling it upon the pier. It was part of the duty of the schooner in discharging her obligation as carrier of the lumber to pile the lumber on the pier. Passing it over the side of the vessel, and piling it on the pier, was one transaction, so far as the schooner was concerned, in which the libelant worked with the crew of the vessel, and as one of the crew. The service so rendered in discharging the cargo was maritime, and by the maritime law the libelant acquired a lien upon the vessel for the amount of his compensation. The answer sets up that the service was performed under a contract with

<sup>1</sup>Reported by E. G. Benedict, Esq., of the New York bar.