

On the whole, the weight of reason and authority seems to be against depriving an inventor, using due diligence by experiment about perfecting his invention, of a patent for it because of construction and sale of a form of it by another, without his knowledge, during the time of the experiments, and before its completion, although more than two years before his application for a patent; especially when the other obtains knowledge of it from being intrusted with it by the inventor merely for the construction of one of his own experiments for him; and more especially when the infringement contains a part not made till within two years before the application.

Several motions founded on objections to evidence and otherwise have been brought along to the hearing, none of which appear to be well founded, and all of which are overruled. Upon the case as it now stands, the orator and those standing in his right appear to be entitled to the same decree that was entered before it was opened; and, as the accounting to that time was saved when it was opened, to have that proceed. Let a decree be entered confirming the former decree, and that the accounting proceed.

NATHAN MANUF'G Co. *et al.* v. CRAIG *et al.*

(Circuit Court, D. Massachusetts. September 13, 1889.)

1. PATENTS FOR INVENTIONS—ACTION FOR INFRINGEMENT—DEMURRER.

A complaint for the infringement of letters patent, which does not show that the invention was not in public use or on sale for more than two years prior to the application for patent, is insufficient on demurrer. *Blessing v. Copper-Works*, 34 Fed. Rep. 753, followed.

2. SAME—OWNERSHIP OF INFRINGING PATENT.

A complaint for the infringement of letters patent, which does not disclose that defendants are the owners of the alleged interfering patent, is insufficient on special demurrer.

3. SAME—PRIORITY OF INVENTION.

Rev. St. U. S. § 4918, provides that, "whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void; in whole or in part." *Held*, that in an action under this statute the only question to be determined is the priority of invention.

In Equity.

Bill by Nathan Manufacturing Company and others against Warren H. Craig and others, for an infringement of a patent. Defendants filed the following demurrer:

"These defendants, by protestation, not confessing all or any of the matters and things in the complainants' amended bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to said bill, and for causes of demurrer show that the complainants

have not, in and by their said bill, made or stated such a case as entitles them in a court of equity to any discovery from these defendants, or either of them, or to any relief from them, or either of them; as to the matters contained in the said bill, or any of such matters. That it does not appear by the said bill that the letters therein alleged to have been issued to Kaczander and Ruddy and to Kaczander, respectively, of which patents the complainant Ricks is alleged now to be the owner, are letters patent of the United States. Neither does it appear that the above-named letters patent were issued in the name of the United States of America, nor that they were issued under the seal of the patent-office, nor that they were signed by the secretary of the interior and countersigned by the commissioner of patents, nor that they were delivered to the patentee. That, furthermore, it does not appear by said bill for what term the letters patent above mentioned were issued, nor does it appear that either of said letters patent granted to the patentee the exclusive right to make, use, and vend the invention covered thereby throughout the United States and territories thereof. And furthermore, that it does not appear by said bill that the improvements in lubricators, alleged therein to have been the subjects of the two patents above mentioned, were not known and used in this country, and not patented or described in any printed publication in this or any foreign country, before the alleged invention thereof by Kaczander and Ruddy and Kaczander, respectively; and that it does not appear that said alleged inventions were not in public use or on sale more than two years prior to the respective applications of Kaczander and Ruddy and Kaczander, aforesaid, for letters patent. And further, that it appears by said bill and by the printed matter filed therewith that the invention described and shown in the patent issued to Warren H. Craig, No. 398,583, is not the same as the invention shown in either the Kaczander and Ruddy or Kaczander letters patent, nor any part thereof, but that, on the contrary, it appears that the said letters patent are not interfering patents, as alleged, and the complainants are not entitled to any remedy in equity, as granted by section 4918 of the Revised Statutes of the United States, upon the ground that the complainants' patents and defendants' patent are interfering patents. And furthermore, that it does not appear by said bill that the defendants Craig and Robinson are the owners of the alleged interfering patent, as required by the statute aforesaid. And furthermore, that it is not alleged by the said bill that the invention described in the aforesaid Craig patent is shown and described in the said Kaczander and Ruddy patent, No. 337,500. And furthermore, the defendants aforesaid demur to the said bill because it appears by the said bill that the same is exhibited against the defendants thereto for distinct matters and causes, and that so much of the bill as complains of two circulars, thereto annexed, is wholly irrelevant and immaterial, and has no relation to the aforesaid Kaczander and Ruddy and Kaczander patents, with which the Craig patent is alleged to interfere. And further, that it does not appear by said bill that the issuing and distribution of said circulars by defendants was in any way wrongful, or entitles the complainants to any remedy in equity. And further, the defendants demur to so much of said bill as alleges that the invention described in the Craig letters patent was made and sold by the complainants before the issue of the said letters patent, and to so much of said bill as alleges the prior knowledge, use, or manufacture of the invention set forth in the said Craig patent by various persons in Chicago, Detroit, and elsewhere, especially that part of said bill beginning with the words, 'and that long before,' on page 3, line 27, down to the words, 'or under its authority,' page 4, line 8, as wholly impertinent, irrelevant, and immaterial. And the defendants further demur to so much of said bill as avers that said invention shown in said Craig letters patent is of very slight importance, as being

wholly immaterial and irrelevant. Wherefore, and for divers other good causes of demurrer, appearing in the said bill, the defendants do demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed, with their costs and charges in this behalf most wrongfully sustained."

Thomas W. Clarke, for complainants.

Livermore, Fish & Richardson, for defendants.

COLT, J. The grounds of demurrer which relate to the formal parts of the bill are sustained under the authority of *Cutting v. Myers*, 4 Wash. C. C. 220; *Blessing v. Copper-Works*, 34 Fed. Rep. 753. The special grounds of demurrer which allege that it does not appear by the bill that Craig and Robinson are the owners of the alleged interfering patents, that the bill is multifarious in respect to so much of the bill as complains of the two circulars annexed thereto, and that the bill alleges that the invention described in the Craig patent was made and sold by complainants before the issue of that patent, or which alleges prior knowledge or use of the invention set forth in the Craig patent, or that the invention is of slight importance, are sustained upon the ground that this suit is brought under section 4918¹ of the Revised Statutes; and that the only point in issue under this statutory remedy is the question of priority of invention between the owners of interfering patents. *Pentlarge v. Pentlarge*, 19 Fed. Rep. 817; *Lockwood v. Cleveland*, 20 Fed. Rep. 164; *American Clay-Bird Co. v. Ligowski Clay-Pigeon Co.*, 31 Fed. Rep. 466. The other grounds of demurrer are overruled. The complainants have leave to amend their bill within 20 days.

¹Section 4918. "Whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented; but no such judgment or adjudication shall affect the right of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment."

THE ANNA.

Ex parte WEHMANN.*Ex parte* COHEN.

(District Court, D. South Carolina. September 15, 1891.)

1. SHIPPING—NEGLIGENT LOSS OF CARGO—LIMITING OWNER'S LIABILITY.

A vessel carrying freight ran on a snag and sank in shallow water, near the landing for which she was destined, but, after part of her cargo had been taken off, she was raised, taken to the landing, and the balance of the cargo delivered. *Held* that, in ascertaining the owner's liability under Rev. St. U. S. § 4283, providing that his liability for the loss of property shipped on the vessel shall not exceed the value of the interest in the vessel and her freight then pending, if the loss be occasioned without his privity or knowledge, the value of the vessel should be determined at the period when the voyage actually terminated, and that this was when she reached the landing, and not just after she had sunk.

2. SAME.

In ascertaining the owner's liability in such case, he should be allowed a deduction for the expense incurred in raising the vessel.

3. SAME—INCOMPETENCY OF MASTER—KNOWLEDGE OF OWNER.

In an action by the owner of a vessel to limit his liability for loss and damage to freight by the sinking of the vessel, under Rev. St. U. S. § 4283, on the ground that the loss was not caused with his privity or knowledge, it was shown that whisky was smelt on the breath of the master of the vessel on the morning it was sunk, and one or two witnesses testified that he was drunk on one occasion, when he was not on duty. All other witnesses testified to his general sobriety, and the owner of the vessel swore he had never known him to be drunk. Liquor was forbidden on the boat, except a small flask in bad weather. *Held*, that it was not shown that the master was an habitual drunkard, within the knowledge, or means of knowledge, of the owner.

4. SAME—SEAWORTHINESS OF VESSEL.

In such action it appeared that the master on the morning of the disaster gave as his reason for getting ashore that the vessel was leaking, but both he and his crew afterwards testified that it was not leaking. It was shown that the owner carefully examined the vessel from time to time; that for some time he had carried rice in bulk in her hold. The shipwright who repaired the hole in her hull caused by the accident testified that she was tight, staunch, and seaworthy in other respects. After the hole was stopped, she sailed back to her dock without assistance. *Held*, that the vessel was not unseaworthy or leaky within the means of knowledge of the owner.

In Admiralty.

J. P. K. Bryan, for the Anna and Wehmann.*Asher D. Cohen* and *J. E. Burke*, for McDuff Cohen.

SIMONTON, J. F. Wehman is the owner of a number of vessels of small burden plying between the city of Charleston and points on the coast of South Carolina lying on and adjacent to the bays, creeks, and estuaries penetrating that coast. Among these vessels is the schooner Anna. McDuff Cohen is a planter, cultivating a tract of land on Wadmalaw island, on the waters of Leadenwah creek. On this tract, and upon the creek, is a regular landing, at which vessels deliver their freight. In March of this year he contracted with Wehmann for the transportation of plantation supplies from Charleston to his landing on Wadmalaw island. Wehmann furnished the Anna for this purpose, and she was loaded accordingly; the freight being \$60. Mr. Cohen's supplies