

CAMPBELL PRINTING-PRESS & MANUF'G CO. v. MANHATTAN RY. CO.

(Circuit Court, S. D. New York. September 21, 1891.)

PATENTS FOR INVENTIONS—INFRINGEMENT—TEMPORARY INJUNCTION.

Where the owner of a patent for an invention used in car-couplings is not merely a user of the patent, but licenses its use by others, a railroad company will not be temporarily enjoined, in a suit for infringement and damages, from using such infringing couplings as it already has in use, where the parties are wide apart in their views as to the proper amount of royalty, but may be enjoined from the use of any others which may infringe.

In Equity.

Suit by the Campbell Printing-Press & Manufacturing Company against the Manhattan Railway Company, to compel defendant to account for and pay over all profits derived by it from the use of an improvement in valves, used in its car-couplings, the patent on which was owned by complainant, and for a preliminary and permanent injunction to enjoin defendant from making, using, or selling any apparatus containing the invention covered by the patent.

Chas. De Hart Brower, for complainant.

Davies, Short & Townsend, for defendant.

LACOMBE, Circuit Judge. The validity of the patent being practically conceded, and it being apparently easy for the defendants to substitute other couplings quite as efficient as the infringing devices, I should be inclined to grant this injunction in such form as would allow the change to be made without undue inconvenience to the traveling public. It appears, however, that complainant is not merely a user of the patented article, but seeks to benefit under the patent by licensing the use of the couplings by others, and that the parties are wide apart in their views as to the proper amount of royalty. I feel constrained, therefore, to refuse a preliminary injunction as against such infringing couplings as are now in use. *Hoe v. Knap*, 27 Fed. Rep. 204; *Hoe v. Daily Advertiser Corp.*, 14 Fed. Rep. 914; *New York Grape Sugar Co. v. American Grape Sugar Co.*, 10 Fed. Rep. 835; *Pullman v. Railroad Co.*, 5 Fed. Rep. 72; *Morris v. Lowell Manuf'g Co.*, 3 Fish. Pat. Cas. 67. Complainant may, however, take an injunction against the use of any others which may infringe his patent, and of course, if he can show any ground for distrusting defendant's ability to pay the damages and profits, may apply for security.

THE DENNIS VALENTINE.

LAVERTY *et al.* v. THE DENNIS VALENTINE.

(District Court, D. Connecticut. September 21, 1891.)

1. SALVAGE—AMOUNT OF COMPENSATION.

A steam-lighter, upon her machinery becoming totally disabled, went ashore in New York harbor. A steam-tug, by request, came to her assistance as it was passing, and without danger to itself pulled her off, and towed her to a place designated. The lighter was not in imminent danger, and would in time have found other assistance. The tug was only engaged one and a half hours in the work, and its other business was not interfered with or injured. *Held*, that \$100 was a sufficient allowance as salvage for the services of the vessel.

2. SAME—COSTS.

A libel for salvage was filed by the owners only of a vessel, and not also on behalf of the master and crew. When the answer was filed a tender was made and refused, which by the decree was held sufficient and awarded libelants, with costs up to the time the answer was filed, less the amount of claimants' costs since that time. The decree also provided that a certain amount should be paid the master and crew on the libel being amended so as to make them parties. *Held*, that the master and crew should not be allowed any costs except clerk's fees which accrued since the filing of the answer, since they were not parties to the libel before its amendment; and that, as they were not responsible for the refusal of the tender, their compensation should not be diminished by claimants' costs.

In Admiralty.

Carpenter & Mosher, for claimants.

A. L. Shipman and J. A. Hyland, for libelants.

SHIPMAN, J. This is a libel for salvage. The Dennis Valentine, a steam-lighter worth \$5,000, on the morning of April 7, 1891, while on her way from Elizabethport to Stamford, Conn., with a cargo of iron water-pipes, worth, with the freight, \$3,930, "slipped an eccentric," whereby her machinery was wholly disabled. The accident happened after the lighter had passed through Hell Gate, and was between the Middle Ground and Lawrence Point. Her captain thought it best to let the vessel drift ashore, which she did, and went ashore, about 9:20 A. M., about 100 feet southward and eastward of Woolsey's dock, heading eastward, and broadside to the shore, upon a bottom which was sand interspersed with cobble stones from the size of a man's head to 100 pounds in weight. The Valentine, with her cargo, drew about 7½ feet. The tide rises at this point about 7 feet, and was beginning to run ebb. The wind was north-west; there was a good sailing breeze, and the weather was fair. The captain caused the lighter to list inshore, and she lay easily and without pounding. Immediately after she grounded her captain signaled for help to the steam-tug Thomas Y. Boyd, which was coming to the westward with a schooner in tow. The Boyd heard the signal, but proceeded on her way, and when she reached Negro point, about a mile from Woolsey's dock, met the ferry-boat F. P. James, on her regular trip from Ninety-Ninth street to College Point. The master of the Boyd informed the captain of the James of the Valentine's mishap, and that she needed help. The James, a side-wheel ferry-boat, 147 feet long, went to the assistance of the Valentine, backed