

of the chamber, as it does in Giles' patent of 1872, and as it does in the Ashton patent in suit, there is necessarily a venting of the chamber. In Ashton's locomotive feed-water device, in No. 181,624, there was need of additional venting on account of the great back-pressure caused by forcing the steam into the water-reservoir of the tender. We are of opinion that in the second claim of complainant's patent, No. 200,119, the venting of the spring-chamber, if claimed at all, is claimed only in combination with the other elements of the claim, including complainant's peculiar form of pop-valve; and, as defendant does not use complainant's peculiar form of pop-valve there is no infringement.

As to complainant's patent, No. 299,503, for a combination of a muffling chamber surrounding a safety-valve, with a pipe communicating from the spring-chamber to the outside air, if defendant could be held to infringe it, we think it a sufficient answer to cite the Coale patent, No. 297,066, granted April 15, 1884, on application filed January 17, 1884. This muffler patent is prior to complainant's patent, No. 299,503, and defendant's device is made substantially in conformity with it. Complainant has endeavored to carry the date of the invention of Ashton's patent, No. 299,503, back prior to the invention of Coale's, No. 297,066; but the burden is upon the complainant to establish this by a clear preponderance of proof sufficient to overcome the presumption arising from the grant of the prior patent. We do not think the complainant has succeeded in doing so. The testimony as to the dates is purely from memory, unaided by any drawings or models or records which identify the device. In our judgment, the complainant's bill must be dismissed.

TAPPAN v. BEAN *et al.*

(Circuit Court, E. D. Pennsylvania. December 8, 1891.)

1. PATENTS FOR INVENTIONS—EXTENT OF CLAIM.

In view of the state of the art, patent No 432,451, to Herman Tappan for perfume holder, must be strictly construed, and is not infringed by a device not containing the specific elements of the claims.

2. SAME—NOVELTY.

Patent No. 432,451, containing no new element except "a cap held on the neck of the bottle to engage a collar" around this neck, is invalid for want of patentable novelty.

In Equity.

Bill by Herman Tappan to restrain Bean & Vail Bros. from an alleged infringement of letters patent No. 432,451, for improvement in perfume holders. The patented device had the general form of a lantern, comprising a bottle or flask to hold the perfume, a base piece, a collar around the neck of the bottle, a cap adapted to fit upon the neck of the

¹Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.

flask, and screwed down thereon, and pressing a packing ring down on the cork and on the upper part of the flask. The collar and the base were connected by curved rods, provided with hooks, adapted to be sprung into suitable openings in the collar and base, and serving the double purpose of holding the parts together and forming a cage for the glass flask. The alleged infringing device did not contain a packing ring adapted to pass over the cork of the bottle or a cap screwing on the neck, or rods fitting as described on the collar and base. All the elements of the claims were old in similar combinations, except the cap held on the neck of the flask, and adapted to engage the collar. Bill dismissed.

Allen H. Gangewer, for complainant.

George J. Harding and George Harding, for respondent.

PER CURIAM. The bill must be dismissed. If the patent is valid, the history of the art before us shows that its scope must be confined within limits so narrow as to exclude the respondent's device. In our judgment, however, the patent is not valid. The alleged invention described seems to be entirely wanting in patentable novelty.

SINGLEHURST v. LA COMPAGNIE GENERALE TRANSATLANTIQUE.

(Circuit Court of Appeals, Second Circuit. January 18, 1892.)

ADMIRALTY—PRACTICE—SECOND CIRCUIT—NEW EVIDENCE ON APPEAL.

On an appeal in admiralty, it is not a matter of course to allow parties who have withheld evidence available to them in the district court to present such evidence on appeal. It has, however, been the practice on appeals in the second circuit to take such testimony, without excusing its nonproduction below, where neither side has objected. In view of such practice, where no objection was interposed by an appellee to the taking of new proof until such taking was completed, *held*, that a motion thereafter made, to suppress such depositions, would be denied.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. On motion to suppress depositions. For former report, see 47 Fed. Rep. 122.

Jones & Govin, (*Edward K. Jones*, of counsel,) for the motion.

Sidney Chubb, (*Robert D. Benedict*, of counsel,) opposed.

Before WALLACE and LACOMBE, Circuit Judges.

LACOMBE, Circuit Judge. This is a motion to suppress certain testimony taken in this court by the libellant and appellant in an admiralty suit, after appeal from the district court under the forty-ninth rule in admiralty. All of the witnesses, whose testimony is the subject of this motion, were accessible to the appellant, and could have been called by him, at the trial in the district court. They are the counsel for the appellee; two of the clerks in the office of the appellee; two per-