

BLAIR CAMERA CO. v. ROBEY et al.  
(Circuit Court, D. Massachusetts. January 19, 1893.)

No. 2,741.

PATENTS FOR INVENTIONS—ANTICIPATION—PHOTOGRAPH CAMERAS.

The third claim of letters patent No. 159,537, issued February 9, 1875, to Stewart L. Bergstresser for a camera having a plate holder closed on all sides except the one where the picture is inserted, is void because of anticipation by letters patent No. 116,771, issued July 4, 1871, to John and Jacob Stork.

In Equity. Suit by the Blair Camera Company against William H. Robey and others for infringement of a patent. Bill dismissed.

John L. S. Roberts, for complainant.  
Edwin H. Brown, for defendants.

CARPENTER, District Judge. This is a bill in equity to enjoin an alleged infringement of the third claim of letters patent No. 159,537, granted February 9, 1875, to Stewart L. Bergstresser, as follows: "(3) A plate holder closed on all sides except the one where the picture is inserted, substantially as set forth." In the plate holder shown in the patent the photographic plate is inserted through the front, and the holder has no other opening through which light could come to the sensitized plate. A plate holder exactly similar, in this regard, is shown in the letters patent No. 116,771, granted July 4, 1871, to John Stork and Jacob Stork, in which there is no opening except that through which the plate is inserted. The complainant points out that in the Stork holder the plate is drawn into the box by means of a plunger or handle passing through a hole in the back of the box, and that light may be admitted around this plunger; but the drawing annexed to the patent here in suit also shows a handle for operating a flexible shutter, which handle passes through a slot in the back of the box, and around which light may be admitted. It is thus evident that such an opening is not excluded by the words "closed on all sides." The structure described in the third claim of the Bergstresser patent is therefore fully shown in the Stork patent. The claim is invalid, for want of novelty, and the bill must be dismissed.

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PACIFIC CABLE RY. CO. v. BUTTE CITY ST. RY. CO.

(Circuit Court, D. Montana. December 5, 1892.)

No. 17.

PATENTS FOR INVENTIONS—VALIDITY—INVENTION.

Claims 2 and 3 of letters patent No. 203,249, issued May 7, 1878, to T. H. Day for a rope tramway and apparatus, are void for want of patentable invention in the conduit or tube covered thereby.

In Equity. Suit by the Pacific Cable Railway Company against the Butte City Street Railway Company for infringement of a patent. Bill dismissed.

Wm. F. Booth and Dixon & Drennen, for complainant.  
Geo. H. Knight, F. T. McBride, and Geo. Haldorn, for defendant.  
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KNOWLES, District Judge. This is a suit in equity, brought for the alleged infringement of United States letters patent No. 203,249, issued May 7, 1878, to T. H. Day for rope tramway and apparatus. The patent was assigned to the complainant. The defendant is charged with infringing the second and third claims of the patent. These claims relate to the construction of the conduit, and are in the following words:

"(2) In combination with the rope channel or tube, C, built upon the surface of the ties, as shown, the gutter, B, beneath the tube and ties, substantially as herein described. (3) The rope channel or tube, C, built upon the surface of the ties, A, and provided with the gutter, B, beneath, in combination with the pulleys, T, having their journal boxes secured beneath the timbers, O, substantially as herein described."

The court is of the opinion that the conduit or tube of the Day patent cannot be said to disclose invention, and that it was not patentable, and the bill is therefore dismissed.

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THE WASCO.

MELLQUIST v. THE WASCO et al.

(District Court, D. Washington, N. D. Dec. 9, 1892.)

No. 479.

1. CARRIERS—WHO ARE PASSENGERS—NEGLIGENCE.

One who, after boarding a steamer, learns that a certain landing where he intends to stop is off the steamer's route, and that he must pay extra fare in order to stop there, and who declines to do so, but does not change his purpose of taking passage, is a passenger from the time he goes on board, and as such can hold the steamer responsible for negligence whereby he is injured, although he does not prepay his fare or purchase a ticket, it being the custom for the purser to collect fares on board.

2. SAME—DEFECTIVE APPLIANCES—NEGLIGENCE OF EMPLOYEES.

A passenger on a steamer, while on the stairway from the main deck to the cabin deck, was injured by the fall of a heavy lantern, caused by the breaking of a halyard by which it was being hoisted to its place. The cause of such breaking did not appear. *Held*, that the injury was caused by a defect in the appliances, or by the negligence of the men in charge of the lantern, and that the steamer was liable therefor in an action in rem.

3. ADMIRALTY—VEXATIOUS ARREST—LOSS OF BUSINESS.

Damages should not be awarded to the claimants of a vessel for an injury to her business by an arrest at a point on her route far from her owner's residence, and at a time when her detention over Sunday necessarily follows, unless there is proof of malice or bad faith on the part of the libellant. *The Adolph*, 5 Fed. Rep. 114; *Kemp v. Brown*, 43 Fed. Rep. 391; *The Alex Gibson*, 44 Fed. Rep. 374, followed.

4. SAME—PLEADING—SET-OFF.

The proof of such an arrest, without any foundation in the pleadings for a crossdemand or set-off, should not decrease the amount of the libellant's recovery.

In Admiralty. Suit in rem by J. A. Mellquist against the passenger steamer Wasco, to recover damages for a personal injury to libellant while a passenger, caused by negligence. Findings and decree for the libellant.