GOEBEL v. AMERICAN RAILWAY SUPPLY CO. et al.

SAME v. GOLDMANN.

(Circuit Court, S. D. New York. May 13, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Letters patent No. 345,965, issued to John C. Goebel July 20, 1886, for an improvement in hats or caps, claimed "in a hat or cap having a flexible tip, the body or skeleton of the side crown, formed of wire cloth, the ends of which are connected by an angular seam." In a suit for infringing this patent defendants produced affidavits that this mode of making hats and caps had been known and used during several years before the date of the patent; and a British patent, granted in 1864, showed metal threads or wires cut obliquely into strips similar to those claimed in the patent. *Held*, that a preliminary injunction would not be granted.

In Equity. On motion for preliminary injunction. Demurrers to the bills were heretofore passed upon. See 55 Fed. Rep. 825.

Thos. F. Byrne, for plaintiff.

Wm. C. Hauff, for defendants.

TOWNSEND, District Judge. These are applications for preliminary injunctions to restrain the alleged infringement of letters patent No. 345,965, granted to complainant July 20, 1886, for an improvement in hats or caps. The defendants have already demurred to the complaints on the ground that the patent in suit is void on its face for want of patentable novelty, and because it does not claim a combination, and said demurrers have been overruled. The claim of said patent is as follows:

"In a cap or hat having a flexible tip, the body or skeleton of the side crown, formed of wire cloth, the ends of which are connected by angular seam, A, as set forth."

The patents and affidavits introduced by defendants as to the state of the art show that complainant's patent is not for a primary or important invention. It is claimed in the affidavits that this mode of making caps was publicly known and used by various persons during several years prior to the date of said patent. The British patent No. 309, of the year 1864, granted to R. A. Brooman, for bonnets and caps, shows metal threads or wires cut obliquely into strips, similar to those claimed in the patent in suit. It does not seem necessary to discuss the various defenses presented on the preliminary hearing, further than to say that they have raised such a doubt in my mind as to the validity of the patent that I think a preliminary injunction should not be granted. The applications are denied.

THE VIOLA.

MURRAY v. UNITED STATES.

(Circuit Court of Appeals, Third Circuit. May 17, 1893.)

No. 8.

1. SALVAGE—EXTRAORDINARY TOWAGE—EVIDENCE.
A light-ship was broken from her moorings off the coast of Delaware, and driven before the wind 130 miles southward. She was a new vessel, schooner-rigged, well-provisioned, fully equipped and officered, and had a crew of six men. She displayed no signals of distress, and refused assistance from passing vessels, but afterwards signaled for a tow. She was taken in tow during mild weather by the sugar-laden steamer V., bound from Matanzas to New York, who carried her inside of Cape Henry, neither vessel sustaining injuries of any consequence, and the V. incurring no risks to property or lives, and but trifling expense. There was evidence to show that the light-ship was at no time in serious danger. *Held*, that the V. was not entitled to salvage. 52 Fed. Rep. 172, affirmed.

2. EXTRAORDINARY TOWAGE.
In such case the V. was entitled only to extraordinary towage, and, as she was detained two days, and her value was $250,000, while the value of the light-ship was $50,000, the sum of $2,500 was a sufficient allowance for her services. 52 Fed. Rep. 172, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

In Admiralty. Libel by Lawrence Murray, master of the steamship Viola, against the United States, for salvage. The court below held that the service rendered was not a salvage service, but gave libelant a decree for $2,500 as for towage. 52 Fed. Rep. 172. Libelant appeals. Affirmed.

John F. Lewis and Curtis Tilton, for appellant.

Robert Ralston and Ellery P. Ingham, for the United States.

Before ACHESON and DALLAS, Circuit Judges, and WALES, District Judge.

WALES, District Judge. This is an appeal from a decree of the United States circuit court for the eastern district of Pennsylvania, refusing the libelant's claim for salvage, and allowing inadequate compensation for towage services. Eight assignments of error have been filed, but all of them may be included in the second and third, which are as follows:

"(2) In holding that the services rendered by the Viola to the light-ship were extraordinary towage services, and in not holding that said services were salvage services, and so compensating them. (3) In not awarding adequate compensation for said services, and in not awarding interest upon the sum allowed from the date of said services."

The history of the case is this: At 5 o'clock on Sunday morning, April 7, 1889, during the height of a northeast storm, the winter quarter light-ship, No. 45, broke loose from her moorings, off the coast of Delaware, about 26 miles from Chincoteague, and was driven before the gale 130 miles southward from her station.