JOHNSON CO. v. TIDEWATER STEEL WORKS.

(Circuit Court of Appeals, Third Circuit. June 6, 1893.)

1. PATENTS FOR INVENTIONS—ROLLING RAILS—INVENTION.
   Claim 1 of patent No. 360,036, issued March 29, 1887, to Arthur J. Moxham, for a method of rolling side-bearing girder rails, consisting in rolling down the metal forming the side tram in rolls provided with passes, in one or more of which that portion of metal forming the offset or head of the rail is subjected to elongating action, and that portion only forming its side tram is subjected to displacing or dummy action, does not involve patentable invention, since it was old to roll girder rails with a dummy action on both the head side and the tram side, and it was old, in other forms of rails, to turn the whole lateral flow of metal to the tram side, and the changes necessary to accomplish this result in the rolls used for rolling girder rails were obvious to a skilled mechanic.
2. SAME—LIMITATION OF CLAIM—INFRINGEMENT.
   Even if the claim is valid it must be limited to a process in which all the rolls described in the specification are employed, and in the specific form shown and described, and is not infringed by a process of rolling in which the rolling of the rails, prior to their insertion into the dummy pass, is performed by rolls of a substantially different construction.

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

In Equity. Suit by the Johnson Company to enjoin the Tidewater Steel Works from infringing letters patent No. 360,036, granted March 29, 1887, to Arthur J. Moxham for a method of, and rolls for, rolling side-bearing girder rails. In the court below the bill was dismissed by Acheson, circuit judge. For a full statement of the case, see 50 Fed. Rep. 90, for his opinion, which is here adopted by the circuit court of appeals. Affirmed.

George J. Harding and George Harding, for appellant.

William A. Redding, (Theodore P. Matthews, on the brief,) for appellee.

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

BUTLER, District Judge. A careful examination of the assignments of error has convinced us that the decree of the circuit court should be affirmed; and we are satisfied to rest this conclusion on the reasons stated in the opinion filed by that court. To restate or enlarge upon them would be a waste of time and labor.

THE LISCARD.

COMPANHIA DE MOAGENS DO BARRIERO v. LONDON ASSUR. CO.

SAME v. MANHEIM INS. CO.

(District Court, E. D. Pennsylvania. May 12, 1893.)

1. MARINE INSURANCE—CARGO—WHEN POLICY ATTACHES.
   A marine policy on a cargo of wheat "at and from New York and bound for Lisbon" attaches while the wheat is in harbor at New York, immediately upon loading.
2. SAME—PARTICULAR AVERAGE CLAUSE.
   Under a marine policy against all sea peril, loss and damage to cargo, except as provided in the clause, "Free of particular average unless the vessel be stranded, sunk, burned, or in collision," the exception ceases to operate as soon as the vessel had been stranded or in collision, whether the subsequent loss is caused thereby, or by some other cause.
3. SAME—COLLISION IN HARBOR.
   There is a "collision," within the meaning of such a policy, when the vessel, being fully loaded, has once cast off her moorings, but has returned to her dock because of a difficulty with her engines, and is there struck by a scow, which makes a slight break in her bulwarks.

In Admiralty. Libels by the Companhia de Moagens do Barriero against the London Assurance Company and the Manheim Insurance Company of Manheim on marine policies on the cargo of the steamer Liscard. Decrees for libelants.

Curtis Tilton and John F. Lewis, for libelants.
Morton P. Henry, for respondents.

BUTLER, District Judge. I find the libelants' statement of facts substantially correct. On December 10, 1890, the libelants, through Lawrence Johnson & Co., of Philadelphia, shipped on board the steamer Liscard, at New York, bound for Lisbon, Portugal, 33,000 bushels of wheat in bulk, and 1,542 bags, valued at $40,887; and for and at the expense and request of libelants the said Lawrence Johnson & Co. insured the said wheat in the Manheim Insurance Company for said voyage, in the sum of $10,000. The wheat was purchased by libelants from Lawrence Johnson & Co., and as soon as loaded on board ship was by the terms of sale, the property of libelants. The bills of lading and certificates of insurance were made out in the names Lawrence Johnson & Co., the cargo being delivered and insurance payable to their order, and the papers were by them indorsed in bank. The payment for cargo was made through a credit opened by the libelants with London bankers, to whom the bills of lading and certificates of insurance went in passing from Lawrence Johnson & Co. to the libelants. The wheat was invoiced to libelants and the premium for insurance charged against them in the invoice.

Another lot of 33,000 bushels of wheat, valued at $40,887, was shipped on the same steamer by libelants, and insured by the London Assurance Co., for said voyage, for the sum of $20,000, the terms, conditions, and manner of shipment and insurance being the same