

**In Equity.** Suit by William Hanlon against George H. Primrose and William H. West for infringement of a patent. On demurrer to the bill. Overruled in part, and sustained in part.

Emile Schultze, Jr., for complainant.  
W. C. Hauff, for defendants.

TOWNSEND, District Judge. This is a bill in equity for the alleged infringement of letters patent No. 263,900, granted to complainant September 5, 1882, for theatrical scenery and appliances. Defendants demur to the bill of complainant on the ground that the patent is void for want of patentable novelty, and is a claim for a mere aggregation. That these questions may properly be raised and disposed of on demurrer, where the patent is invalid on its face, is well settled. *Brown v. Piper*, 91 U. S. 44; *Blessing v. Copper Works*, 34 Fed. Rep. 753; *Fougeres v. Murbarger*, 44 Fed. Rep. 292; *Bottle Seal Co. v. De La Vergne Bottle & Seal Co.*, 47 Fed. Rep. 59. But the numerous decisions to this effect also show that the court will only sustain such a demurrer where the case is entirely free from doubt, and it will only take judicial notice of matters within the field of common knowledge. *Manufacturing Co. v. Adkins*, 36 Fed. Rep. 554. "A demurrer for such cause can only be sustained where the court can adjudge the device described and claimed in the letters patent to be without patentable novelty, without the least scintilla of evidence." *Bottle Seal Co. v. De La Vergne Bottle & Seal Co.*, supra. "In almost all cases the nature of the subject demands that the triers should be instructed by the testimony of those skilled in the art to which the patent relates, and therefore a demurrer for nonpatentability apparent upon the face of the instrument should not ordinarily be allowed." *Blessing v. Copper Works*, supra.

The patent in suit is for certain mechanical devices for producing various stage effects. Such a device may be the proper subject of a patent. *Burgess v. Chapman*, 44 Fed. Rep. 427. It consists of a stationary frame, representing a ship on rockers, so arranged, in combination with sliding wings, curtains, and other contrivances, as to present the illusion to the audience of a ship moving out of a dock into rough water, and putting to sea. It is true that scenic effects, whereby stationary objects appear to move upon the stage, are not new. But it is not matter of common knowledge that the combination claimed in this patent has been used to produce a complete series of stage effects, such as are claimed under this patent; and it does not appear, upon the face of the patent, that such effects, if produced, are not due to the combined operation of the various elements which are claimed as essential.

The defendants further demur to the bill of complaint because it does not aver that the invention had not been patented or described in any printed publication in this or any foreign country before the date of said invention or discovery. This is a defect in form, which may be taken advantage of by a special demurrer.

Coop v. Development Institute, 47 Fed. Rep. 899. Overman Wheel Co. v. Elliott Hickory Cycle Co., 49 Fed. Rep. 859.

The 1st, 2d, 3d, 4th, and 6th grounds of demurrer are overruled. The 5th ground of demurrer is sustained, with leave to amend within 15 days upon payment of costs to be taxed.

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LEWISOHN et al. v. NATIONAL STEAMSHIP CO.

(District Court, E. D. New York. June 20, 1893.)

SHIPPING—BILL OF LADING—STIPULATION AS TO NEGLIGENCE—LAW OF THE FLAG.

Stipulations held void because against the public policy of the United States are not made valid by the stipulation of the parties; hence, where libelant's goods were damaged by negligent stowage in a vessel, the carrier was held liable, although the ship was English, the bill of lading contained the stipulation, valid in England, exempting the carrier from the consequences of his negligence, and also provided that, in accepting it, the shipper expressly agreed that the contract should be governed by the law of the flag.

In Admiralty. Libel by Raphael LewisoHN and another against the National Steamship Company to recover for damage to cargo. Decree for libelant.

George A. Black, for libelant.

John Chetwood, for claimants.

BENEDICT, District Judge. This is an action upon a bill of lading to recover for injuries to certain bales of hair shipped in London on board the steamship Spain, and transported therein to the port of New York. The evidence warrants the conclusion that the hair was damaged on the voyage of importation by the gas and odor from barrels of ale over which the hair was stowed on board the ship. The liability of the claimants for this damage seems clear, unless they are exempted by the provision of the bill of lading. These bales were originally intended to be transported in the steamship Greece, owned by the claimants, but were left over from that vessel for the Spain. As seems to be admitted by both sides, the bill of lading given for the Greece was deemed to be the bill of lading for the Spain, in which ship the goods were actually transported.

The bill of lading exempts the ship from liability for damage by stowage or contact with or smell or evaporation from other goods, and provides, in terms, for exemption from liability for damage, loss, or injury arising from such causes, whether caused by the negligence, default, or error in judgment of the pilot, master, mariners, engineers, stevedores, lightermen, or their servants, or any persons in the service of or employed by the shipowner. The bill of lading also contains this clause:

"In accepting this bill of lading, the shipper, or other agent of the owner of the property carried, expressly agrees that this contract shall be governed

<sup>1</sup> Reported by E. G. Benedict, Esq., of the New York bar.