

fringement, but admits that if the arms, instead of being secured to the smoothing boards, were attached to bars extending laterally from the runners, they would not be within the claims, "unless the bars were very near the smoothing planks." Neither infringement nor patentability can reasonably be made to depend upon the distances between the parts of such a combination, nor upon any consideration so insignificant and void of effect upon the operation of the device.

The decree below should be affirmed, with costs, and it is so ordered.

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KENNEDY v. CHICAGO CITY RY. CO. et al.

(Circuit Court of Appeals, Seventh Circuit. May 10, 1893.)

No. 63.

1. PATENTS FOR INVENTIONS—BOILERS—INFRINGEMENT.

The third claim of letters patent No. 224,685, issued February 17, 1880, to Hazelton & Kennedy, for a new and improved sectional boiler, consisting of the combination of horizontal hot-water pipes and steam pipes set inside of a fire chamber, with vertical drums and mud drum set outside of the fire chamber, W, covers merely the particular combination therein described, and is not infringed by a device consisting of a "porcupine" boiler, having a central standpipe, in which numerous hollow tubes are inserted so as to radiate horizontally, and having three larger tubes riveted to the standpipe, and extending horizontally through the brickwork surrounding the fire chamber. 50 Fed. Rep. 196, affirmed.

2. SAME—BOILER DEFLECTORS—NOVELTY—PATENTABLE INVENTION.

Letters patent No. 349,720, issued September 28, 1886, to Edward S. T. Kennedy, for an improvement in boiler deflectors consisting of the combination of a "porcupine" boiler and its jacket with horizontal flame deflectors of segmental form, placed within the combustion chamber in position for protecting the exposed ends of the tubes, and deflecting the heated products of combustion towards the boiler cylinder, are void for want of novelty and patentable invention. 50 Fed. Rep. 196, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Bill by Edward S. T. Kennedy against the Chicago City Railway Company and others to restrain the alleged infringement of certain patents. Decree for defendants. Complainant appeals. Affirmed.

Banning, Banning & Paysen, for appellant.

Bond, Adams & Pickard, for appellees.

Before WOODS, Circuit Judge, and BUNN and BAKER, District Judges.

PER CURIAM. We concur in the conclusions of the circuit court as stated in the opinion reported in 50 Fed. Rep. 196. The decree, therefore, should be affirmed, with costs, and it is so ordered.

## BODEN v. DEMWOLF et al.

(District Court, E. D. Louisiana. June 16, 1893.)

No. 13,004.

## 1. ADMIRALTY PLEADING—LIBEL—AMENDMENT.

A libel having been filed against a ship and a person named as owner, a third person appeared, and claimed as owner, setting up in his answer that he was the true owner. A release bond was given, signed by the master, as lawful bailee of such third person, and by sureties. *Held*, that the sureties would not be affected by the allowance of an amendment making the third person a party respondent to the libel, and such amendment may be made.

## 2. SHIPPING—NEGLIGENCE—INJURY TO STEVEDORE'S EMPLOYE.

A stevedore's employe, who, after the work of loading is either finished or suspended, goes into the hold to get his coat, is lawfully there, and the shipowner is under obligation to avoid injuring him by want of reasonable care.

## 3. SAME—FELLOW SERVANTS.

Where a stevedore's employe is killed by the fall of a block and tackle because but one man is managing the same, the wrong cannot be laid to the negligence of a fellow servant, but is chargeable to the general management of the ship, for which the owners are responsible.

## 4. DEATH BY WRONGFUL ACT—MEASURE OF DAMAGES.

Under a libel to recover for the wrongful death of a stevedore's employe, it appeared that deceased was about 50 years old, had a wife and four children, and received 50 cents an hour when he worked, but there was nothing further to show the amount of his earnings. *Held*, that \$1,500 should be awarded to the next of kin.

In Admiralty. Libel to recover damages for alleged negligence causing death. Decree for libelant.

McGloin & Louque, for libelant.

Farrar, Jonas & Kruttschnitt, for claimant.

BILLINGS, District Judge. This is a suit brought by Bertha Boden, as widow of Joseph Brown, and as mother and natural tutrix of his minor children, against Capt. C. Demwolf, master of the German steamship Kerwieder, and against Hausa, Dempfschiff & Rhederic, owners of said steamship, for damages occasioned by the death of the husband and father, Joseph Brown. The process in this case was that authorized by rule No. 2 in admiralty, and, in default of the defendants being found, the steamship itself was attached.

The first question to be considered is as to the propriety of allowing an amendment which comes up in this way. Upon the seizure of the steamship Kerwieder, the Hamburg-American Packet Company appeared as claimants, and bonded the steamship. The application is to amend the libel by substituting as defendant the name of this corporation in place of the persons named as owners in the libel. There would be difficulty in allowing this, but for the peculiar character of the answer, and of the bond of release of the steamship. The answer in the case is that of this corporation, Hamburg-American Packet Company, which proceeds to state that