NATIONAL FOLDING BOX & PAPER CO. v. PHOENIX PAPER CO., Limited, et al.

(Circuit Court, E. D. New York. May 18, 1893.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—PRIOR ADJUDICATIONS.
In a suit for infringement of a patent, where it appears that the courts of other circuits have already sustained the validity of the patent as against all the defenses now made save that of anticipation by reason of certain patents not before in evidence, and have also found that defendants infringed, the court will accept those decisions, and examine only the anticipation alleged.

2. SAME—VALIDITY—ANTICIPATION—PAPER BOXES.
Letters patent No. 171,866, issued January 4, 1876, to Reuben Ritter for an improvement in paper boxes, were not anticipated by prior inventions, and are valid.

In Equity. Suit by the National Folding Box & Paper Company against the Phoenix Paper Co., Limited, and others, for infringement of a patent. Decree for complainant.

Walter D. Edmonds, for complainant.

Billings & Cardozo, (R. B. McMaster, of counsel,) for defendants.

BENEDICT, District Judge. This is an action founded upon the second claim of letters patent No. 171,866, dated January 4, 1876, issued to Reuben Ritter, for an improvement in paper boxes. The patent has expired. The main defense in the case is a defect in title, although the defenses of lack of novelty in invention and noninfringement are set up in the answer. The patent has been several times examined by the courts of the United States, and the question of the validity of the patent has been passed upon by this court. See Box Co. v. Nugent, 41 Fed. Rep. 139; National Folding Box & Paper Co. v. American Paper Pail & Box Co., 48 Fed. Rep. 913, 51 Fed. Rep. 229. Moreover, the infringement here complained of has been before the circuit court of New Jersey, and also before the circuit court of the southern district of New York. The question of title raised in this case has also been passed upon by the circuit court for the southern district of New York. National Folding Box & Paper Co. v. American Paper Pail & Box Co., 55 Fed. Rep. 488. Under these circumstances, the only question open for consideration on this occasion is whether certain patents set up in this case, which were not set up in the former cases, can affect the decision. At the argument these patents were not seriously relied upon, as it seemed to me, and upon examination I find nothing in them which impugns the validity of the patent. In regard to the title of the complainant in the patent in question, my opinion coincides with that of Judge Coxe, who examined the question.

There must be a decree for the complainant for an accounting.

NORWEGIAN STEAMSHIP CO. v. WASHINGTON.

(Circuit Court of Appeals, Fifth Circuit. June 20, 1893.)

No. 136.

1. MARITIME LIENS—STEVEDORE'S SERVICES—PRESUMPTIONS.
The services of a stevedore in stowing cargo in other than the home port are services of a maritime nature, and the presumption is that they were rendered on the credit of the vessel.

2. SAME—CHARTER PARTY.
The mere fact that a vessel is under charter by a charter party which makes the charterers liable for the expenses of loading and unloading is not sufficient to exempt the vessel from liability to one who renders services as a stevedore at the request of one whom he supposes to be the owner's or charterer's agent. The burden is on the vessel to show that the stevedore had knowledge of the terms of the charter party.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

In Admiralty. Libel by Frederick S. Washington against the steamship Kong Frode (the Norwegian Steamship Company of the South, claimant) to recover for services rendered as a stevedore. There was a decree for libelant, and the claimant appeals. Affirmed.

Statement by LOCKE, District Judge:

The steamship the Kong Frode, owned by the appellant herein, a corporation of Christiana, Norway, was on the 9th of November, 1891, chartered by the United States & Honduras Trading Company for the term of 12 calendar months. The charter party provided that the owners should appoint the master, provide the crew, and pay for all provisions and wages; the charterers to pay for coals, fuel, port charges, pilotages, and all other charges whatsoever, and £700 sterling per month for her use and hire. Before this charter had expired, the charterer, the United States & Honduras Trading Company, rechartered her to Ross, Howe & Merrow, of New Orleans, to load three cargoes of general merchandise to Havana and other ports in Cuba at charterers' option. By this charter party the charterers were to pay freight at fixed rates per sack or bushel; "the vessel to pay for stevedoring, and all other customary charges on cargo." While loading under this charter, the libelant, as he alleges, was hired and employed by the master to load and properly stow the cargo into the steamship, and did load and properly stow the cargo, which, at the agreed rates for which lading and stowing was done, amounted to $369.75. Upon the presentation of the bill the master signed the same, "attesting" it. Upon presenting the bill to the firm whom the libelant supposed to be the agents of the vessel, and at whose place of business,—the master being present,—he had made the agreement to perform the work, payment was refused, and he commenced suit against the steamship in an action in rem. The master gave bonds for the release of his vessel, and filed exceptions to the libel, which being overruled, an answer was filed, admitting that libelant was hired and employed to perform the services charged, and that he did properly store the said cargo, but denies that the price was the agreed price, or that any agreement for price was made, but that the price charged was exorbitant and excessive, and more than the services of libelant were worth, and averring, further, that the steamship was at the time under a time charter, and the services of the stevedore were to be paid for by the charterers, and that the libelant had full knowledge of these facts at the time he performed the services.

The testimony showed that the first charterers, Messrs. Andress & Mitchel, under the name of the United States & Honduras Trading Company, had put their business as charterers into the hands of Hoadly & Co., of New Or-