MOORE et al. v. CLARK et al.

(Circuit Court, S. D. New York. June 29, 1894.)

PATENTS—NOVELTY.

Patent No. 236,905, granted to Charles H. Moore, in claim 10, which is for a water-closet bowl formed into a square at the top, and having but one serviceable outlet, does not show patentable novelty. Burt v. Evory, 10 Sup. Ct. 394, 133 U. S. 349, followed.

This was a suit in equity by Carrie L. Moore and another against Alexander Clark and another for the infringement of the tenth claim of letters patent No. 236,905, granted January 25, 1881, to Charles H. Moore for an improved water-closet bowl.

Frank J. Mather, for plaintiffs.
W. P. Preble, Jr., for defendants.

WHEELER, District Judge. This suit is brought upon the tenth claim of patent No. 236,905, dated January 25, 1881, and granted to Charles H. Moore, with 12 claims for a water-closet, consisting of various suitable devices, including a bowl. The other claims are for various arrangements of these devices. This is for:

"(10) A water-closet bowl formed into a square shape at the top by the corners, b, b, b, b, of the bowl, and having but one serviceable outlet."

One figure of the drawings shows a plan view of the bowl, marked "A," in square form, but with rounded corners at the top, becoming more circular downward, having the sloping parts from the corners inward, each marked "b." The specification states one object to be "to provide a bowl of a form at the top to answer as a urinal and slop sink"; that "the closet can be made in separate parts, but I prefer making it in one jointless piece, of any suitable material"; and that in the drawings "A represents a closet bowl, formed into a square shape at the top by the lips, b, b, b, b." These are the only parts of the specification and drawings referring in any manner to the bowl. Before this water-closet bowls had been made with circular and oval tops and one "serviceable" outlet, and slop sinks had been made with square tops. Quite obviously this claim rests upon the square top of the bowl as an improvement upon the circular or oval tops. The carrying out of the top from a circular or oval to a square form altered the form, but did not affect the operation, of the bowl. The change was in degree only, and not in principle, and the form produced had no new function. The advantages claimed are due more to dispensing with a slop tray and to the other changes in the form of the bowl than to the change in the top. In view of Burt v. Evory, 133 U. S. 349, 10 Sup. Ct. 394, this square top does not appear to be patentable, and, as this claim covers nothing else, it does not appear to be valid. Bill dismissed.

McCALDIN v. THE EDGEWATER.

ELLIS et al. v. THE McCALDIN BROS.

(District Court, E. D. New York. January 15, 1895.)

COLLISION—STEAMERS—NEGLIGENCE—STARBOARD-HAND RULE.

As a tug moved from her pier to cross the river, two tows were passing, one up, the other down. Having stopped and waited for these to pass, she, without giving any warning signal, rang her jingle to go ahead at full speed, as soon as there was space between the tows, and was immediately placed where collision with a steamer, coming down stream at full speed just outside the upgoing tow, was inevitable. The steamer carried a mast more than 50 feet high, which, with proper care, could have been seen over the tow. *Held*, that the collision was caused solely by the fault of the tug, though it would not have happened had the steamer been keeping the middle of the stream, as required by statute; and that the starboard-hand rule did not apply, the unwarranted action of the tug having made it impossible for the steamer to avoid her.

Libels, one by James McCaldin against the steam lighter Edgewater, the other by George A. Ellis and others against the steamtug McCaldin Bros.

Goodrich, Deady & Goodrich, for the McCaldin Bros.
Wing, Shoudy & Putnam, for the Edgewater.

BENEDICT, District Judge. In my opinion, the collision in question was caused solely by the fault of the tug McCaldin Bros. When she moved out of pier 4, East river, to cross to Brooklyn, two tows were passing outside of her, one bound up and the other down the river. The libel of the McCaldin states: That she stopped and waited for these tows to pass, the westward-bound tow passing first, and the eastward-bound tow afterwards. That as soon as there came a space between the two tows, the McCaldin rang a jingle to go ahead at full speed. This carried the McCaldin under the stern of the east-bound tow, within 30 feet thereof, and at full speed. At this time the steam lighter Edgewater was proceeding at full speed down the river, just outside of the up-bound tow. She was not seen by the McCaldin until the McCaldin passed by the stern of the east-bound tow, and was then within 30 or 40 feet, so that it was impossible for either vessel to avoid collision. It was broad daylight. The Edgewater carried a mast more than 50 feet high, and with proper care could have been seen over the east-bound tow. It was fault in the McCaldin not to have seen the lighter sooner. If she had done so, she would not have rung her jingle when she did. By her jingle she changed from a drifting vessel to one going at full speed, and she did this without any signal, and it carried her at full speed across the bows of the Edgewater, and so near that the collision was imminent as soon as the jingle rang. The starboard-hand rule does not apply in such a case, when, by the unwarranted action of the tug, it was rendered impossible for the Edgewater to avoid her. The Edgewater was not keeping the middle of the river, as required by statute, but that in no way tended to produce the collision. Of