

BUEL v. KNAPPMAN et al.

(Circuit Court, E. D. New York. February 26, 1895.)

PATENTS—INFRINGEMENT OF COMBINATION PATENT—CHALK-DROP MACHINE.

The Buel patent, No. 343,755, for a machine for making and drying chalk drops, the claim being for a combination of several elements, held not infringed by a machine which lacked some of the elements of the combination.

This was a bill by Arthur Buel against William Knappman and others for infringement of a patent.

H. Albertus West, for complainant.
Franham & Stevens, for defendants.

WHEELER, District Judge. This suit is brought upon the first claim of letters patent No. 343,755, dated June 15, 1886, and granted to the plaintiff for a machine for making and drying chalk drops. These drops had been made before with a funnel-shaped vessel, having a handle and rubber stop for, by a blow, forming them upon boards, where they were dried. The specification sets forth that the "invention relates to an apparatus designed more especially for drying white lead and other pigments or comminuted pasty substances; and the invention consists principally of means for depositing the substance to be dried in small cones or hillocks upon a traveling belt or apron to which heat is applied," and describes a machine having "an endless belt or apron placed upon drums, one of which may be revolved by hand or other power for causing the belt to travel slowly, which is heated by hot air or steam supplied through a pipe; and the pigment or other material to be dried is supplied to the upper surface of the belt in small cones or piles, from a hopper which has a series of openings made in its bottom, and is given an up and down motion for that purpose. The hopper is held by trunnions in slots in uprights of the main frame, and is given a slow upward and a sudden drop or downward motion by means of cams on the drive shaft. The drop motion of the hopper may be accomplished in various other ways, and, in order to cause the material to be dropped in perfectly formed cones, the outlets are made conical."

The claim is for:

"(1) In a drying apparatus, an endless drying belt, and a hopper having holes in its bottom, combined with means, substantially as described, for lifting and dropping the hopper for depositing the material to be dried in small cones or hillocks upon the drying belt, substantially as and for the purposes set forth."

In the alleged infringing machine no drums or endless belt or heat were used. The hopper was raised and let fall by a string over the uprights, and the drops were formed on slides, on which they were taken away and dried. It lacks the drying belt of the combination of this claim, construed with the specification or by itself; and really has nothing of that combination but the moving

hopper, and the uprights, which are not patented by themselves. This claim, therefore, does not appear to be infringed. Let the bill be dismissed.

THE WALTER D. WALLET.

TRACEY v. THE WALTER D. WALLET.

(District Court, S. D. Alabama. March 20, 1895.)

No. 720.

ADMIRALTY JURISDICTION—COMITY—LIBEL BY FOREIGN SEAMAN AGAINST FOREIGN VESSEL.

Where a British seaman, injured on a British ship on the high seas, was placed in a hospital by the master on arrival here, to be cared for at the expense of the ship, and the British consul signified his intention of sending the seaman home by the ship, which at the time was loading for a return voyage direct to England, *held*, that a court of this country would decline, on the ground of comity, to assume jurisdiction of a libel for damages, in opposition to the wishes of the consul, especially as the voyage was not completed, or the seaman discharged, and as the rights of the parties must be determined by the English law.

This was a libel by John Tracey, a seaman, against the British ship Walter D. Wallet to recover for personal injuries.

Smith & Gaynor, for libellant.

Pillans, Torrey & Hanaw, for claimant.

TOULMIN, District Judge. The libel sets forth:

"That while the vessel was on the high seas, six days out from Liverpool, England, bound for Mobile, libellant, a seaman on board, was ordered aloft on the foreyard to do some work there, which required him to stand on the foot ropes of said yard, and the becket ropes, regular appurtenances provided to hold on to to secure his safety while doing his work, by the negligence of the owner or master, whose duty it was to use due care to provide and keep there good, safe, and strong becket ropes, were allowed to get and remain in a rotten, unsound, and unsafe condition, so that they were insufficient to answer the purposes they were intended for, and by reason thereof gave way while libellant was using them in performance of his duties, and thereby he fell to the deck, broke his thigh, dislocated his elbow, and cut his head so that he will probably be disabled for life from the pursuit of his present calling; therefore, libellant sues for damages in the sum of \$10,000."

The courts of the United States in admiralty may, in their discretion, take jurisdiction in cases of complaints made by foreign seamen. But the supreme court, in the case of *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, say that:

"Circumstances often exist which render it inexpedient for the court to take jurisdiction of controversies between foreigners in cases not arising in the country of the forum; as where they are governed by the laws of the country to which the parties belong, and there is no difficulty in a resort to its courts. * * * The cases of foreign seamen suing for wages, or because of ill treatment, are often in this category; and the consent of their consul is frequently required before the court will proceed to entertain jurisdiction, not on the ground that it has not jurisdiction, but that, from motives of convenience or international comity, it will use its discretion whether to exercise jurisdiction or not; and where the voyage is ended, or the seamen have