

ing presented by his conjointly-made triangular folds and side laps, which used a part of the material of the bellows folds, economized the paper, and made the bottom less bulky than when these triangular folds were turned in by the turning over of the bottom and the flattening of the tube. We concur with Mr. Edward S. Renwick, the complainants' expert, who says, in view of the preceding machine-made bags and of the Wittkorn bag, that the distinguishing feature of the Deering process is "that the inwardly triangular folds and the side laps adjacent thereto are completely formed by a conjoined operation, simultaneously, or thereabouts, before the last two laps of the satchel bottom of the bag are made." Was it, then, invention, the Wittkorn system being obvious to the public, and the successive steps by which it produced a bag ready for the market being known, to change the order in which, and the manner of folding by which, the triangular folds were made? Wittkorn's were made after the bottom was closed and pasted, by flattening the bellows sides and turning the bottom. Deering formed his folds and side laps by a conjoint operation before the last two laps were folded. After the Wittkorn method of manufacture had been in public use, it could not need inventive genius in a skilled bag maker to change the sequence of operations so as to bend inward the material of the bellows fold as soon as the tube was distended, and thus economize material. We are clearly of opinion that, in view of the knowledge which the Wittkorn bag had added to the art of paper-bag manufacture, the Deering process was a mechanical, and not an inventive, modification of pre-existing methods.

The record and the briefs of counsel plentifully presented other questions of law, which we think do not, in view of the character of the improvement, demand a decision. The point was made by the complainants that sufficient proof was not made under the bill of review that the Wittkorn and Besserer defenses were in fact newly discovered, and could not have been ascertained earlier by the exercise of due diligence. We concur with Judge Coxe that it sufficiently appears that the evidence was not only discovered after the hearing before Judge Wallace, but that it could not, by the exercise of ordinary diligence, have been discovered sooner. The decree of the circuit court dismissing the bill without costs is affirmed, with costs of this court.

JOHNSON CO. v. PENNSYLVANIA STEEL CO.

(Circuit Court of Appeals, Third Circuit. October 28, 1895.)

No. 20.

PATENTS—INVENTION—STREET-RAILWAY SWITCH.

The Moxham patent, No. 333,474, for a railway switch for street cars, and which covers a device that is merely an adaptation of a previous railroad switch, is void for want of invention over the previous patent of May, 1885, to the same inventor, for a switch intended for the same purpose. 67 Fed. 940, affirmed.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

This was a bill in equity by Johnson Company against the Pennsylvania Steel Company for alleged infringement of a patent for a street-railway switch. The patent was held invalid by the circuit court, and the bill dismissed. 67 Fed. 940. Complainant appeals.

Geo. J. Harding, for appellant.

Joshua Pusey, for appellee.

Before SHIRAS, Circuit Justice, ACHESON, Circuit Judge, and BUTLER, District Judge.

BUTLER, District Judge. The plaintiff, as assignee, sues to recover compensation for infringement of letters patent No. 333,474, issued to Arthur J. Moxham, December 29, 1885, "for railroad switches."

The only question for consideration is, Does the patented device show invention?

Railroad switches containing the same elements were old. A fair sample of them is shown by the Reynolds' model. Further reference to the state of the art is rendered unnecessary by the plaintiff's admission that Moxham did no more than change the "cutting and fitting together" of the old parts, as shown by the model of his device, so as to adapt the old switch to use in street railroads. As said in the plaintiff's brief, "it is the difference of cutting and fitting in which both the utility and invention of Moxham's device reside." The old switch, which had long been employed on steam roads, was not adapted to use on streets, or other public highways, as without change in structure it would seriously interfere with ordinary travel, if not be dangerous to the passage of common vehicles. Moxham made such change by varying the cutting and fitting of the parts. If we were left to a comparison of the old switch, as shown by the Reynolds' model, with the plaintiff's, and the testimony respecting them, there might be room for doubt at least whether the change exhibited does not show invention; and in such case the presumption arising from the judgment of the patent office should prevail. The adaptation of the old switch to the new use was very complete; and the patentee's work conferred an important service on the public. Others had attempted such adaptation, as appears by the device used in San Francisco, with but partial success. The defendant acknowledges the value of Moxham's work by manufacturing and selling his switches. We are not left, however, to a comparison with the old steam-road switches, and the evidence above referred to. The device involved here is not the first fruit of Mr. Moxham's efforts to adapt the old switch to street railroads. In May 1885 he obtained a patent for switches intended for this use; and the question now arises does the difference between the later device, here involved, and the former, covered by his previous patent, show invention? We are constrained to believe that it does not. Here again, as the plaintiff says, the only difference between the two devices, is in "cutting and

fitting" the parts; and we are unable to see any material difference in this respect. In the earlier device a guard is constructed on the outer rail, which is omitted on the later one, and this (which is conceded to be immaterial) is the only substantial difference we can discover. Barring this difference the descriptive language of the specifications and claims in each patent, as well as the model of the two devices, are substantially identical.

The decree is therefore affirmed.

THE MEXICAN PRINCE.

STOFFREGAN et al. v. THE MEXICAN PRINCE.

(District Court, S. D. New York. October 14, 1895.)

ADMIRALTY—PRACTICE—INTERROGATORIES ANNEXED TO ANSWER TO DEFINE THE ISSUE.

In a suit for damage to cargo, the libel stated a contract, by bill of lading, to deliver the cargo in good order, and the failure to do so. The defendant set up numerous exceptions in the bill of lading, as well as the Harter act of 1893, and averred that the loss happened from a failure to close the valve of No. 3 tank in the necessary discharge of one of the ballast tanks on the voyage, and annexed to the answer interrogatories under rule 32 of the supreme court in admiralty, calling upon the libelants to specify any charges of negligence, other than that alleged in the answer, or of unseaworthiness, or of lack of due diligence in equipping the ship, if any such matters were relied on. On exceptions to the interrogatories: *Held*, that the libel being evidently designed to avoid stating any particulars of the claim, in the first instance, and the absence of any other appropriate means for ascertaining and defining the issue to be tried, the interrogatories should be allowed.

These were three libels filed by Charles Stoffregan and others against the steamship Mexican Prince to recover damages to cargo. The cause was heard upon exceptions filed by the libelants to certain interrogatories annexed to the answer.

George A. Black, Wing, Putnam & Burlingham, and Carter & Ledyard, for libelants.

Convers & Kirlin, for claimants.

BROWN, District Judge. The above libels were filed to recover damages to coffee stowed in one of the water tanks of the Mexican Prince upon a voyage from Brazil to New York. The libels averred the shipment under bills of lading reciting the receipt of the coffee in good condition, and an agreement to deliver it in like good order and condition; whereas, in fact, it was not delivered in like good order, or to the full amount thereof; that the shipments were short delivered and a portion thereof in a damaged condition.

The answer avers that the coffee damaged or lost was stowed in No. 3 starboard and port tanks; that the No. 2 tank immediately ahead having been previously filled with water for ballast, it became necessary on the voyage to pump out that water, and that the damage and loss in question resulted from the omission to close the valve of No. 3 tank before opening the valve in No. 2 tank and re-