

"An examination of the various patents put in evidence to show the prior art discloses the fact that it was old to support the shafts above the axle by springs extending longitudinally beneath them, and that such a device was used in combination with a transverse spring supporting the seat. Reference to the patents of Bach, No. 288,757, November 20, 1883; Bach, No. 299,319, May 27, 1884; Barber, No. 316,934, May 5, 1885; Barber & Croft, No. 342,993, June 1, 1886; not to mention others,—shows that the field of invention was much restricted when the complainant entered it, and that the combination claimed by him can be sustained only when the patent is construed so as to confine them to the particular form of longitudinal spring which he has described, and which, in the precise form shown in his specification and drawings, seems not to have been used in road wagons. As the defendants use no such two-part spring, the bill as to this patent is dismissed."

The improvement shown in patent No. 459,098 consisted in a construction of the longitudinal springs, which permitted increased longitudinal motion. The specification says:

"As customary in such carts, the seat is supported from the axle through the medium of the shafts and suitable springs. * * * The connection of the shafts to the axle is clearly shown in Figs. IV, V, and VI. 5, 5, are heavy plate springs, bolted or otherwise clamped at their forward ends to the shafts. Their rear ends run loosely through eyes, 6, 6, bolted to the shafts. A cushion, 7, preferably of soft rubber, surrounding the end of spring, 5, in each eye, and having the greater portion of its body above said springs, prevents rattling, and also takes up the jar. The springs, 5, 5, are clamped to the axle."

The circuit judge sufficiently points out the precise and narrow character of this improvement, and the defendants' construction, which avoids infringement, as follows:

"It was old in the art to give play to a spring by running one or both of its ends through an eye or slot with rubber packing, washers, or cushions in the eye to obviate rattling or noise, and prevent too free play of the ends of the spring. Such a device is found applied to a spring supporting a wagon seat in the patent to Naramore,—No. 174,288, February 29, 1876. The defendants' structure has plates or bars, bolted to the shafts forward of the axle, bending downward to the axle, where they are clamped, and thence bending upward with their ends inserted into boxes which are secured to the rear ends of the shafts. The interior of each box is packed with rubber, which acts as a cushion for the plate or bar. The bar impinges rearwardly upon this rubber cushion, which permits a slight vibration, sufficient to prevent granulation or fracture consequent upon shock, but does not admit that free play through the box, and consequent longitudinal movement, which is the characteristic of the complainant's device. The differences between defendants' and complainant's shaft supports are slight, it is true, but the field of invention was a very narrow one, and complainant's claim can be sustained only under a construction which will restrict it closely to the precise combination of his patent."

The decree of the circuit court is affirmed, with costs.

OFFICE SPECIALTY MANUF'G CO. v. COOKE & COBB CO.

(Circuit Court, S. D. New York. April 14, 1896.)

1. PATENTS—VALIDITY—PAPER HOLDER.

The Smith & Shannon patent, No. 217,909, for a paper holder, *held* valid and infringed (following prior adjudication).

2. SAME—LIMITATION OF FOREIGN PATENT—COMPRESSOR FOR PAPER FILES.

The Cleague patent, No. 312,086, for a compressor for paper files, *held* to have expired with a previous German patent, obtained, not in the

name of the inventor or the owners, but in connection with the interests of the owners.

3. SAME—INVENTION—ALPHABETICAL INDEX.

There is no patentable invention in extending every other letter of an alphabetical index, outward from, instead of in front of, the one above, making two rows instead of one, and thus shortening by one-half the length of the exposed parts of the sheets.

4. SAME—INDEX FOR PAPER FILES.

The Shannon patent, No. 331,259, for an index for paper files, held void for want of invention.

This was a suit by the Office Specialty Manufacturing Company against the Cooke & Cobb Company for alleged infringement of three patents relating to paper files.

Frederick F. Church, for plaintiff.

Wilton C. Donn, for defendant.

WHEELER, District Judge. This suit is brought upon patents Nos. 217,909, granted July 20, 1879, to Frederick Smith and James S. Shannon, for a paper holder; 312,086, granted to W. H. H. Cleague, February 10, 1886, for a compressor for paper files; and 331,259, granted to James S. Shannon, November 24, 1885, for an index for paper files. The first has been thrice adjudged valid. *Shannon v. Jones*, 9 Fed. 205; *Schlicht & Field Co. v. Chicago Sewing-Mach. Co.*, 36 Fed. 585; *Office Specialty Manuf'g Co. v. Winternight & Cornyn Manuf'g Co.*, 67 Fed. 928. Nothing new that appears sufficient to have changed those results has been brought in here, and those decisions are followed.

The invention of Cleague appears to have been made while he was in the employ of Schlicht & Field, and to have belonged to them, and to have been patented in Germany, not in his or their name, but in connection with their interests, by a patent which had expired before this bill was brought. This was not done adversely, nor by a stranger, and nothing surreptitious about it appears; and by force of the statute, which is not confined to the inventor, this patent would expire with the foreign patent. Rev. St. U. S. § 4887.

The third patent is for extending every other letter of an alphabetical index outward from, instead of in front of, the one above, making two rows down instead of one, whereby, as the patent states, "the index-characters upon each two adjacent sheets appear side by side, so that the total length of the exposed parts of the sheets bearing the index-characters is twice as wide, but only half as long, as in similar indexes as heretofore usually constructed." This bringing of the letters into two rows to shorten the length of a single row seems to be too common and mechanical to be patentable.

Decree for plaintiff as to first patent only.

THE FRANK GILMORE.

WALTON et al. v. THE FRANK GILMORE.

(District Court, W. D. Pennsylvania. March 10, 1896.)

1. ADMIRALTY JURISDICTION—CROSS CLAIM—UNLIQUIDATED DAMAGES.

In a suit in rem to recover damages resulting from a collision, admiralty has no jurisdiction of a cross libel for unliquidated damages caused by an entirely different collision.

2. SAME—SET-OFF—INDEPENDENT ACCOUNT.

The admiralty has no jurisdiction of an independent set-off, and hence, in a suit in rem for collision, a so-called "cross bill," seeking to set off a running account, cannot be maintained.

This was a libel in rem for collision. Libelants have excepted to a "cross bill" filed by the claimants.

Watson & McCleave and C. P. Davis, for libelants.

Knox & Reed and Edwin W. Smith, for respondents.

BUFFINGTON, District Judge. Joseph Walton & Co. file this libel against the steamboat Frank Gilmore to recover \$733 damages alleged to have been sustained by the sinking of their coal barge No. 457 on May 20, 1893, in a collision caused by the negligence of the Gilmore. The respondents filed a paper indorsed an "answer and cross bill." They deny the allegations of the libel, and set up that libelants are indebted to them upon a running account in a balance of \$192.93 as of June 14, 1893. They further allege that on September 12, 1890, their coal flat No. 135 and cargo was negligently sunk by libelants' steamboat the Samuel Clark, to their damage \$586; that the aggregate of said items, less a credit of \$70, viz. the net sum of \$516, is due respondents from libelants and for it they pray a decree. Exceptions are filed to the cross bill, alleging it sets up causes of action separate and distinct from the one set forth in the libel, and praying its dismissal.

Upon argument respondents' counsel concede there could not be a balance decreed in respondents' favor under rule 53 of the admiralty, but claim to offset their damages sustained and account due as stated. So far as the damages in the Samuel Clark collision are concerned, no reason is shown for their allowance here. The principle is well settled, both in law and equity, that unliquidated damages are not a subject of set-off (*The Zouave*, 29 Fed. 298); and where they are not connected with the accident on which a libel is based they cannot be the subject of a cross bill. This principle is set forth in *The Dove*, 91 U. S. 385, in which it is said:

"New and distinct matters, not included in the original bill or libel, should not be embraced in the cross suit, as they cannot be properly examined in such a suit, for the reason that they constitute the proper subject-matter of a new original bill or libel. Matters auxiliary to the cause of action set forth in the original libel or bill may be included in the cross suit, and no others, as the cross suit is, in general, incidental to and dependent upon the original suit. *Ayres v. Carver*, 17 How. 595; *Field v. Schieffelin*, 7 Johns. Ch. 252; *Shields v. Barrow*, 17 How. 145."

The account here sought to be set off covers some seven years' mutual dealings between the parties. It embraces a variety of