

his conception to one who, in a sense, was but a draftsman, acting for him.

The line between that which is invention and that which is but the exercise of mere mechanical skill is sometimes difficult to trace. But we have come from the reading of the arguments of counsel, and the disquisitions of the experts, with a more or less decided impression that that which remained imperfect in the Ligowsky sketches was remediable by the exercise of the technical knowledge of mechanics familiar with the construction and operation of the old Peters machine. It certainly is not clear that the defects which are observable in those sketches are greater than would be found in any rough experimental drawings of complicated machinery,—drawings not intended to do more than suggest what was then in the mind of the inventor. This impression requires that that which has been done shall stand. The complainant has not produced that “thorough conviction” that he is the first inventor of these improvements, which he must do to justify a decree annulling the deliberate and well-considered action of the patent office. The assumption that Ligowsky did and said all that is ascribed to him leads to the conviction that all the knowledge which Hisey had when he produced his original drawing of May 10, 1888, or his working drawings in the summer of that year, was derived from Ligowsky, and that the disclosures to him were sufficiently full and clear to enable him, as a good mechanic, to complete that which was defective, and construct a machine upon the description which had been given him. There are many inexplicable things tending to cast a doubt as to who is the first inventor. Some of them we have stated, and others have not been specifically referred to. On the whole case, however, we lean to the correctness of the judgment of the circuit court, and of the action of the patent office. This mental attitude is one which requires that the decree of the circuit court shall stand. It is therefore affirmed, with costs.

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THE CITY OF KINGSTON.

BUTLER v. THE CITY OF KINGSTON.

(District Court, D. Washington, N. D. November 24, 1896.)

SHIPPING—INJURY TO PASSENGER—BURDEN OF PROOF.

The law imposes upon carriers of passengers the duty of exercising a high degree of care for their safety, and, in particular, of seeing that all openings in the decks of vessels, upon which passengers are permitted to walk, are securely closed or guarded; and, where a passenger is injured by the giving way of the cover of an opening in the deck, it is incumbent upon the owner of the vessel to show, affirmatively, that there was no fault or negligence on the part of the officers and crew, causing the injury.

In Admiralty. Libel by Lawrence P. Butler, claiming damages for a personal injury, suffered while a passenger on the steamer City of Kingston. Decree for libellant, awarding \$1,200, with interest and costs.

R. W. Jennings and Wm. H. Gorham, for libellant.  
James M. Ashton, for claimant.

HANFORD, District Judge. The libellant, while traveling as a passenger on the steamer City of Kingston, from Seattle to Port Townsend, stepped upon an iron lid, covering a round opening in the main deck, used for passing coal into the coal bunkers below. The lid was usually secure in its position, and flush with the surface of the deck, so that persons were in no danger of falling into the coal chute; but on this occasion, when Mr. Butler stepped there, the lid tipped, so that he fell partially into the hole, and was severely injured. The evidence shows affirmatively that the captain and officers were in the habit of carefully inspecting the vessel daily, but no officer made any particular examination of this opening in the deck after coal had been passed in a short time previous to the accident. The first mate, after testifying that he was on duty when the coal was passed in, and that he saw one of the crew, named Wilson, carefully remove the particles of coal from the edges of the opening, and put the cover in place, and stamp upon it, to make sure of its being in its proper position, afterwards corrected his testimony, admitting that he was entirely mistaken in regard to Wilson being the man who closed the opening. There is no satisfactory or convincing testimony as to the exact manner in which the covering was replaced. It is certain that the accident could not have happened if the lid had been in its proper place when the libellant stepped upon it, and there is no evidence to raise even a suspicion that Mr. Butler himself was in fault, or in any way contributed to his injury.

The law imposes upon carriers of passengers the general duty of exercising a high degree of care for their safety, and, in particular, the duty of seeing that all openings in the decks upon which passengers are permitted to walk are securely closed or properly guarded, so that they cannot become traps to catch the unwary; and I hold that, where a passenger is injured in the manner in which Mr. Butler was injured, it is incumbent upon the defendant to show affirmatively that there was no fault or negligence on the part of the officers and crew of the vessel causing the injury. In this case, the defendant having failed to show how the cover to this coal bunker came to be in a position which would admit of its tipping when Mr. Butler stepped upon it, it must pay damages to compensate him for his injury.

I find that the sum of \$1,200 will be a reasonable compensation for the injury. A decree will be entered, awarding that sum and interest at 7 per cent. per annum from the date of filing the libel, and costs.

## PIERCE et al. v. CORRIGAN et al.

(Circuit Court, W. D. Pennsylvania. December 28, 1896.)

## No. 2.

## REMOVAL OF CAUSES—DELAY IN FILING COPY OF RECORD.

Failure to file a copy of the record on or before the first day of the session next after the order of the state court that it proceed no further, etc., does not deprive the federal court of jurisdiction, and it will not remand the case when satisfied that the delay was due to the erroneous belief that the district was divided into divisions, and that defendants had the right to file the record at the next session held in the place most convenient to them,—the failure not having caused any delay in the trial.

This was a suit by Walter Pierce and others against Corrigan, McKinney & Co. The case was heard upon a rule to show cause why it should not be remanded to the state court, from which it had been removed.

I. M. Imbrie, for plaintiffs.

J. E. Ingersoll and Tanner & Whitla, for defendants.

ACHESON, Circuit Judge. The ground upon which the court is asked to remand this case is the defendants' failure to file a copy of the record on or before the first day of the session of the court next after July 21, 1896, the date of the order of the state court that it proceed no further, etc. The first succeeding term was that at Scranton, beginning the first Monday of September; the second was that at Williamsport, beginning the third Monday of September; the third was that at Pittsburgh, beginning the second Monday of November, 1896; and the fourth term that at Erie, beginning the second Monday of January, 1897. A copy of the record was filed at Erie, immediately after the granting of this rule, on November 19, 1896. In their answer to the rule the defendants set up that they were advised by their counsel that there were divisions of the Western district of Pennsylvania, and that they had the right to take their removal to such division as was most convenient to them for trial; that Erie was the most convenient place, and they were advised that they had until the second Monday of January to file the copy of the record there.

I am convinced of the truth of these allegations, and also of the entire good faith of the defendants. The statements of the defendants' counsel satisfy me that the delay in filing the record was altogether in consequence of their supposition that this judicial district was cut up into divisions, and that the practice here was the same as that which prevails in the Northern district of Ohio, where the defendants and their home counsel reside. The delay in filing a copy of the record has not caused any delay in the trial. Now, influenced by these considerations, I am indisposed to remand the cause. It is settled that, where a copy of the record is filed out of time, it is within the sound legal discretion of the circuit court to proceed as if it had been filed within the time prescribed by the statute. Rail-