

this plier with the Russell plier, patented in 1877, which is evidently the strongest reliance of defendants. Its grip is limited, and its strength diminished by the skeleton jaws slotted in two directions, and the object to be gripped is not only outside the center of strain, but substantially outside of the forward ends of the levers. For this reason, and because of said slotted skeleton jaws, said plier is much more liable to break than in complainant's construction, with outside cross levers where the gripping surfaces extend back to the fulcrum.

Defendants are in no position to question the utility of the Bernard device. It is new. The board of examiners have found that it showed invention. The public for six years have acquiesced. Defendants' pliers and punch come within the terms of the claim. I conclude that claim 1 of patent No. 427,220 is valid.

Patent No. 427,497 adds to the pliers of No. 427,220 a punch having its head fixed in one of the parallel jaws, with a screw and thread connection, which punch extends through and is guided by the companion jaw, so that, when the jaws are closed, the end of the punch enters a die or hole in the end of a bracket arm, which is fastened upon the outside of this latter jaw, and so as to be parallel to it. Although both patents were issued on the same day, the application for the punch patent was filed several months after that for the pliers. In view of the many instances of a similar punch added to pliers in the prior art, it is difficult to see any invention in this second patent, distinct from that contained in the first.

Let a decree be entered for an injunction and an accounting as to the first claim of patent No. 427,220.

THE DAYTON.

FLANNERY et al. v. THE DAYTON.

(District Court, E. D. New York. November 18, 1897.)

SALVAGE COMPENSATION—BURNING LIGHTER.

\$2,000 awarded on a salvaged value of \$14,000, for the services of 16 tugs, occupying about two hours, in extinguishing a fire on a lighter and beaching the latter, with slight risk to either the persons or property of the salvors; the amount to be distributed, two-thirds to the various owners of the tugs, and one-third to the crews, in proportion to their wages.

These were libels by the owners of 16 tugs against the steam lighter Dayton and her cargo, to recover salvage. The suits were consolidated on motion.

Cowen, Wing, Putnam & Burlingham, for the Atwood and five other tugs.

Peter S. Carter, for the Hudson and four other tugs.

Alexander & Ash, for the J. & J. McCarthy.

Hyland & Zabriskie, for the Atalanta and two other tugs.

Stewart & Macklin, for the John D. Pratt.

Wilcox, Adams & Green, for claimants.

TENNEY, District Judge. On July 5, 1894, the steam lighter Dayton, about 105 feet in length, was proceeding from the Atlantic

docks to Jersey City, and when near Governor's Island, in the East river, a fire broke out in her cargo. She at once sounded her alarm signal, and 16 tugs, lying in and about the harbor of New York, hastened with commendable promptness to the aid of the imperiled lighter. Her cargo was very inflammable, consisting of 45 bags of nitrate of soda, 51 coils of old rigging, 19 cases of dolls, and 78 bales of old bagging. The day was pleasant; the hour of the fire opportune, being between 3:45 and 5:30 o'clock in the afternoon; the wind was blowing lightly from the northwest; the risk to the property and danger to the persons of the salvors slight; the time employed in extinguishing the flames and beaching the lighter was about two hours. The amount of property saved, including cargo, was a fraction over \$14,000. The claimants' steam tug Van Houten, and the New York Central boat, No. 13, rendered excellent service, but make no claim for same. Taking into consideration this fact, and after a careful consideration of the evidence and all the circumstances attending this fire, I am of the opinion that \$2,000 would be a fair and reasonable award, the same to be apportioned among the several tugs as follows: Hudson and Atalanta, \$325 each; Municipal, \$200; Bentley, \$175; Pratt, \$150; Garrison, Dinsdale, and Dumont, \$125 each; Leader, Fuller, and Petty, \$100 each; Welcome, McCarthy, Atwood, Raymond, and Lohman, \$30 each. The sums awarded to be distributed as follows: Two-thirds to the owners, and one-third to the crew, in proportion to their wages. Let decree be entered accordingly, with costs.

THE LADY FURNESS.

STEINDL v. THE LADY FURNESS.

(District Court, E. D. New York. December 1, 1897.)

1. SEAMEN'S WAGES—DESERTION.

The mere fact that a fireman on a steamship is required to perform extra watches, in place of sick seamen, does not justify desertion, in the absence of any claim of bad treatment or deviation; nor is the desertion justified by the fact that the contract under which he was serving may have been harsh, or the term thereof long (three years). And one so deserting cannot recover wages.

2. SAME—JURISDICTION—FOREIGN SHIPS AND CREWS.

Whether the court shall take jurisdiction of a suit by a foreign seaman against a foreign ship for wages is a matter largely in its own discretion, and it may do so notwithstanding a request to the contrary by the consul of the country to which the ship belongs.

This was a libel in rem by Anton Joseph Steindl against the steamer *Lady Furness* to recover seaman's wages.

Hyland & Zabriskie, for libelant.

Robinson, Biddle & Ward, for claimant.

TENNEY, District Judge. This is a libel against the British steamship *Lady Furness* for seaman's wages. It appears that on or about September 3, 1895, the libelant entered into a contract, or signed certain shipping articles, for a voyage, as fireman on said