

part of the tug cannot, therefore, be sustained. The burden of proof in this case was upon the appellant to show affirmatively, by a clear preponderance of the evidence, that the tug was guilty of negligence. 1 Shear. & R. Neg. § 57. This he failed to do, and he is not, therefore, entitled to recover any damages. It is true, as was said in *The Webb*, supra, that:

“There may be cases in which the result is a safe criterion by which to judge of the character of the act which has caused it.”

In *The Joseph B. Thomas*, 86 Fed. 662, this court said:

“There are cases where the fact that the accident happened under given conditions, and in connection with certain circumstances, will amount to evidence of negligence sufficient to charge the defendant.”

See, also, 1 Shear. & R. Neg. § 59.

In cases where no questions are raised as to what caused the accident or the injury, and the circumstances are of such a character as to show that the thing which did happen would not have occurred unless there was negligence upon the part of the person having charge and control of such thing, then the presumption contended for would apply. But it would be a strange construction of this rule to apply it to a case like the one under consideration, where all the facts as to the cause of the accident are in dispute, and nothing occurred which, of itself, tended to show that the tug was at fault. On the other hand, it was the chock on the schooner that first gave way and caused the line to hit appellant, and this was the real cause of the injury to him. The presumption, therefore, if any is to be indulged in, would be that the breast chock was defective, because it broke. The line did not part for several minutes after the accident occurred, and its parting had nothing whatever to do with the injury complained of. Moreover, the testimony tended very strongly to show that it did not part on account of the speed of the tug, but was caused by chafing after the breaking of the chock.

Numerous other minor questions were discussed by counsel, which we deem unnecessary to refer to, as the views already expressed are decisive of the case. Upon the whole case, we are of opinion that the accident was caused by the negligence of those having charge of the schooner, and that the tug was not in any wise at fault. The decree of the district court is affirmed.

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GORMULLY & JEFFREY MFG. CO. v. SAGER MFG. CO. et al.

(Circuit Court, N. D. New York. June 20, 1898.)

1. PATENTS—INVENTION.

In a patent for a bicycle saddle, no invention is involved in merely omitting a coiled spring at the pommel end of a prior construction.

2. SAME.

The Duryea patent, No. 293,725, for an improved bicycle saddle (designed for the old high-wheel vehicle), is void because of anticipation by the Kelley saddle.

This was a suit in equity by the Gormully & Jeffrey Manufacturing Company against the Sager Manufacturing Company and others for alleged infringement of a patent for a bicycle saddle.

Charles K. Offield, for complainant.

Edmund Wetmore, Howard L. Osgood, and Lawrence E. Sexton, for defendants.

COXE, District Judge. This is an equity action based upon letters patent, No. 293,725, owned by the complainant and granted February 19, 1884, to Charles E. Duryea for an improved bicycle saddle designed for the "ordinary," or high-wheeled vehicle which was in vogue at the date of the patent. The specification and drawings describe and show the saddle attached to the "backbone" or long arm which carries the small rear wheel. The alleged infringing saddle is designed solely for use upon a "safety" bicycle. The specification says that the structure of the patent "consists, essentially, in a flexible seat or saddle having its two extremities attached to an elastic supporting-frame composed, essentially, of two longitudinal parallel springs arranged in such manner as to admit of their passing downward on opposite sides of the backbone or reach, and of their maintaining a longitudinal strain or tension to the seat." The patent contains eight claims. The first five are alleged to be infringed. The first claim is the broadest and sufficiently describes the invention. It is as follows:

"(1) The improved saddle for bicycle, consisting of a flexible seat or saddle proper, and a supporting-spring having two substantially parallel arms with upturned ends attached to the seat, and adapted, as described, to apply a longitudinal tension thereto."

The defenses are the usual ones,—anticipation, want of patentability, noninfringement and defective title. A large number of patents and devices have been introduced by the defendants but the discussion at the argument makes it unnecessary to consider them. The great bulk of the anticipatory literature is condensed in the exhibits known as the "Star" or "Kelley" saddles, which are conceded to be prior to the Duryea. To spend time in the examination of the other exhibits would be like studying with laborious care a multitude of antique and musty volumes when everything contained therein, which bears upon the subject in hand, has been condensed and can be found in the encyclopedia in one short and concise statement.

The Kelley saddles are the best references offered by the defendants and possess all of the features of the Duryea saddle with the single exception that the Kelley saddle, as illustrated by the Exhibit No. 6, is provided with a coiled spring at the narrow, or pommel, end. This proposition is undisputed. The sole question, therefore, upon this branch of the controversy, is this: Assuming that the Kelley saddle is not an exact anticipation, did it require invention to copy the Kelley saddle omitting only the coiled spring? It is thought not. If Duryea had been first in the art it might, possibly, have involved invention to add the coiled spring to his structure. Surely it did not require invention to leave off that feature. The attempt to prove patentable distinction in favor of Duryea by reason of the omission of

this single coil is based upon the most technical and visionary considerations. The only conceivable difference is one of degree. The Kelley saddle may have a greater spring action than the Duryea saddle, but there can be no question that Exhibit No. 6, if made after the Duryea patent, would infringe. The court would not listen with toleration to an argument that Kelley had escaped infringement by the addition of the coil in question. Being made prior, if not an exact anticipation, the change to the Duryea structure was wholly within the province of the skilled mechanic. The situation seems similar to that which was disposed of by this court in *Manufacturing Co. v. Walbridge*, 60 Fed. 91. The bill is dismissed.

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AMERICAN ORDNANCE CO. v. DRIGGS-SEABURY CO.

(Circuit Court, D. Connecticut. June 20, 1898.)

No. 962

PATENTS—PRELIMINARY INJUNCTION.

A preliminary injunction on a patent for guns will be denied where defendant is financially responsible, and is under contract to furnish the guns in question to the government, within a limited time, for use in time of war for coast defense, under pressure of impending danger.

This was a suit in equity by the American Ordnance Company against the Driggs-Seabury Company for alleged infringement of a patent. The cause was heard on motion for preliminary injunction.

W. H. Singleton, for complainant.

Wilson & Wallace, for defendant.

TOWNSEND, District Judge. On this motion for a preliminary injunction, complainant claims public acquiescence in the validity of its patent, infringement, and that defendant is estopped to deny validity by reason of the previous relations of the parties in interest. I am not satisfied that defendant's proposed construction will not infringe certain claims of the patent in suit. But, as it is admitted that defendant is financially responsible, the motion will be denied on the ground that defendant is under contract to furnish the guns in question to the government of the United States within six weeks from the present time, for use in time of war for coast defense, and under the pressure of immediate and impending danger. In these circumstances, the defendant should not be restrained from delivering such necessary war material to the government.