

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.

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.

JAKOBSEN v. SPRINGER et al.

SPRINGER v. JAKOBSEN et al.

(Circuit Court of Appeals, Fifth Circuit. May 17, 1898.)

No. 687.

1. COLLISION—STEAMERS IN RIVER—VIOLATION OF NAVIGATION RULES.

Two steamers, one ascending and the other descending along the left bank of a broad, straight stretch of the Mississippi river, *held* both in fault for a collision between them,—the descending vessel for faulty construction, rendering it difficult to check her speed, and for being out of her proper course, in the path of ascending vessels; the ascending vessel for starboarding her helm instead of porting, as required by navigation rules 18 and 19 (Rev. St. § 4233).

2. SAME—MUTUAL FAULT—DAMAGES—LOSSES OF CREW.

In case of mutual fault, members of the crew of one vessel, who lose personal effects, may recover from the other only half their damages.

3. SAME—PASSENGERS.

In cases of mutual fault, the personal representatives of passengers lost with one of the vessels may recover full damages from the other, but the latter may recoup one-half thereof from the half damages awarded to the owners of the former vessel.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

This cause arises from a collision on the night of January 27, 1897, between the steam yacht *Argo*, 101 feet long, 6 feet draft, and the Norwegian steamer *Albert Dumois*, a freight vessel, 210 feet long, and 17 feet draft, in a straight stretch of the Mississippi river, half a mile wide, and about 80 miles below the city of New Orleans. The *Argo* was under special charter of a newspaper company to make a quick trip to the mouth of the Mississippi river and return. She started about 7 o'clock p. m. on that day, and had on board at the time a master, who served also as a pilot; an engineer; a fireman; one deckhand; one steward, who served also as a cook. The undertaking was under the direction of H. G. Hester, representative of the newspaper company; and his party consisted of himself, A. Faure Bourgeois de Blesine, A. C. Lindauer, newspaper correspondents, and one Cranz, an invited guest. According to her inspection certificate, the *Argo* should have had one pilot, one engineer, and a crew of five men; but as there was great hurry to get her away, so as to be present at the mouth of the river at the time of the arrival of a congressional committee to inspect the jetties (which had preceded them on the steamship *Whitney*), to report said committee's proceedings, Messrs. Hester, Lindauer, and Blesine, all of whom were said to be familiar with the management of water craft, agreed in case of necessity to lend a hand and act as part of the crew. The *Argo* sped rapidly down the river, without delay or accident, until, between 12 and 1 o'clock in the morning of January 28, 1897, she came in collision with the *Albert Dumois*, striking her on the starboard bow 10 or 12 feet abaft the stem, damaging herself so badly that she sunk in a few minutes thereafter; her crew and passengers all escaping, except Hester and Blesine, who were drowned. The *Dumois* made a search of an hour or more, trying to find the missing men, and then brought the remainder of the crew and passengers to the city of New Orleans. On the same day the *Dumois* reached New Orleans, Oscar M. Springer, owner of the *Argo*, filed his libel in rem against the *Dumois*, claiming that she was entirely in fault, asking \$40,000 damages. Shortly thereafter the crew of the *Argo* filed their intervention, claiming various small sums, to the value of their personal effects lost by the sinking of the *Argo*; and thereafter Mrs. Blesine, mother of the deceased Blesine, filed her libel in personam against Anders Jakobsen, who had appeared, through the steamship's master, and claimed to be the sole owner of said steamship; alleging that said Blesine died without