

against other infringers. The same rule is stated in general terms in Walk. Pat. (3d Ed.) § 559. There are always differences in circumstances, but no such differences can be successfully urged by the plaintiff in the case at bar, because the rule that a compromise of litigation affords no satisfactory evidence of the value of the property litigated is an underlying one, and recognizes no distinctions not of a fundamental character. However all this may be, the demurrers to these two extracts must be sustained, because the latter do not contain allegations of parts of the plaintiff's case, but only of what he proposes to offer in evidence. The probability is that what parties seek to ascertain in this case by a ruling on these demurrers is practically covered by the opinion in *City of Boston v. Allen*, 91 Fed. 248. However this may be, it has long appeared to the court, as constituted for the hearing of this cause, that a patent for an invention which the patentee refuses to make available himself, and refuses to allow others to make useful, is not within the spirit of the provision of the constitution which assigns as a reason for securing exclusive rights to authors and inventors a desire "to promote the progress of science and the useful arts," and that patents so held are entitled to scant recognition at law, though necessarily to some, but to none whatever in equity. They are not, as claimed by the plaintiff, the equivalent of a highly-cultivated field, surveyed, plotted, and fenced in by the owner; but they constitute, for all useful purposes, a waste from which the public is sought to be excluded for reasons of which equity takes no cognizance. Let there be an interlocutory judgment sustaining the demurrers to the two portions of the declaration relating to the royalty paid Baldwin, and to the payments made in settlement of demands against others than the defendants, and overruling the demurrer in all other respects.

ROSS v. CITY OF CHICAGO.

(Circuit Court, N. D. Illinois. November 28, 1898.)

No. 22,392.

1. **PATENTS — SUITS FOR INFRINGEMENT — EFFECT OF DECISIONS OF OTHER COURTS.**

On the trial in a circuit court of a suit involving the validity of a patent it is the duty of the court to determine such question on its merits, independently of the rulings of other circuit courts thereon, except as such decisions may be instructive upon the subject. *Stover Mfg. Co. v. Mast, Foos & Co.*, 32 C. C. A. 231, 89 Fed. 333, followed.¹

2. **SAME—ELECTRO-MAGNETIC POWER GENERATOR.**

The Bragg patent, No. 173,261, for an electro-magnetic power generator, is void as to claim 2, for want of invention.

This was a suit in equity by Nathan O. Ross, trustee, against the city of Chicago, for infringement of a patent.

¹ For effect of decisions of other circuit courts, see note to *National Cash Register Co. v. American Cash Register Co.*, 3 C. C. A. 565; also note to *Thomson-Houston Electric Co. v. Hoosick Ry. Co.*, 27 C. C. A. 427.

Dwight B. Cheever and Robert H. Parkinson, for complainant.
Charles S. Thornton, Corp. Counsel, Granville W. Browning, Asst.
Corp. Counsel, and James H. Raymond, for defendant.

GROSSCUP, District Judge (orally). The bill is to restrain infringement of letters patent No. 173,261, granted February 8, 1876, to Robert Bragg, for an electro-magnetic power generator. The claim relied upon is claim 2 in the letters patent. This claim has been upheld by Judge Nelson in a case heard and tried in his circuit against both the city of St. Paul and the city of Minneapolis. 64 Fed. 592. Under the rule of comity that prevailed previous to the recent decision of the circuit court of appeals, I would have felt myself obliged to come probably to a conclusion different from the one I will announce this morning. The rule of comity, as laid down by our circuit court of appeals in *Electric Mfg. Co. v. Edison Electric-Light Co.*, 10 C. C. A. 106, 61 Fed. 834, was that, in any case at trial before a circuit judge, the ruling of the courts of the other circuits upon the validity of the patent should be followed, unless there was new evidence in the cause, which, in the judgment of the court, would have changed the judgment of the other court, had it been in the case before the other court. But in the recent case of *Stover Mfg. Co. v. Mast, Foos & Co.*, 32 C. C. A. 231, 89 Fed. 333, the circuit court of appeals laid down the rule that the circuit court of appeals, and, by virtue of the logic of the situation, as they say, the circuit court also, must take up all of these cases upon their merits, and determine them independently of the rulings of other circuits. That leaves me to take up this case and examine it as if it had not been passed upon in any other circuit, except as the decision in such other circuit is instructive upon the subject under consideration. Looking at the case in that light, I have come to the conclusion that the second claim of the patent,—the one insisted upon,—which is for a specific device, is, considering the state of the art, too broad. The state of the art was such that the merit of the complainant, whatever it was, consisted in introducing into fire-alarm devices what was previously known for analogous (if not identical) uses in other departments of the industrial field. I do not think that this new adaptation of an old device is so far removed from obviousness that it ought to be regarded as patentable. I do not pass upon the question as to whether Bragg was the first man to use it in this field, or whether the city of Chicago, in fact, antedated him. I simply hold that the step he took, as broadly claimed by him, was so obvious and natural in the development of the uses of electricity that it does not merit the dignity of an invention. The bill will therefore be dismissed.

KEYSER v. BLUE STAR S. S. CO., Limited.

(Circuit Court of Appeals, Fifth Circuit. January 3, 1899.)

No. 683.

1. ADMIRALTY JURISDICTION—ACTION FOR BREACH OF PROVISION OF CHARTER PARTY.

Where a provision of a charter party for a foreign vessel, though not in itself maritime in character, is so connected with the other stipulations therein as to render it an essential part of the contract, and it appears probable that without it the contract would not have been entered into by the owners, a court of admiralty has jurisdiction of an action for an alleged breach of such provision.

2. SHIPPING—ACTION ON CHARTER PARTY—PLEADING.

In an action by the owners of a foreign vessel against a charterer to recover for an alleged overcharge in a draft for expense money advanced the master in the port of loading, under a clause of the charter party requiring such advances "at current rate of exchange," an answer alleging that the charge made was in accordance with an established custom of the port, in regard to such drafts and the rate of exchange thereon, states a defense, and is not subject to exception for insufficiency; the current rate of exchange as expressed being always a matter of proof.

3. SAME—AUTHORITY OF MASTER UNDER CHARTER PARTY—SETTLEMENT OF ACCOUNTS.

Where, by a provision of a charter party for a foreign vessel to be loaded at a port in this country, the charterer was required to advance expense money to the master at the port of loading, for which the master should give drafts on the owners, and the contract further provided that any dispute thereunder should be settled at the port where it arose, the master was thereby authorized to make settlement with the charterer for advances; and such settlement, in the absence of fraud or mistake, was binding on the owners.

Appeal from the District Court of the United States for the Northern District of Florida.

For opinion in district court, see 81 Fed. 507.

John C. Avery, for appellant.

J. Parker Kirlin and John Eagan, for appellee.

Before PARDEE and McCORMICK, Circuit Judges, and PAR-LANGE, District Judge.

McCORMICK, Circuit Judge. The Blue Star Steamship Company, Limited, filed its libel in personam against W. S. Keyser, charging that the steamship company had chartered its steamship to Keyser to load at Pensacola, from the charterer, a cargo of timber to be taken to Manchester, for an agreed freight. Among other provisions of the charter are these:

"(7) Sufficient cash for ship's disbursements at port of loading, to be advanced the master by charterers or their agents, at current rate of exchange, subject to 2½ per cent. commissions; master to give his draft at thirty days' sight on owners to cover same, which owners agree to accept on presentation, and to protect, ship lost or not lost. * * * (17) The vessel to be consigned to charterers or their agents at port of loading, paying them 2½ per cent. address commissions on amount of freight earned. * * * (20) Any dispute under this charter shall be settled at port where it arises: the custom of each port to be observed in all cases where not specially expressed."