

participating in it as directors. A part of the paragraph set out in the assignment refers to the first theory, and is favorable to the plaintiff. A part may refer to the second theory, though this is not altogether clear. As the exception was taken to the paragraph as a whole, it was not sufficiently specific, and cannot be sustained.

The remaining assignments of error were not urged in argument.

The following judgment is entered in each of these cases: The judgment of the circuit court is reversed, the verdict set aside, and the case remitted to that court for further proceedings in accordance with law; the plaintiff in error to recover of the defendants in error its costs in this court.

BROWN, District Judge, agrees with so much of the opinion as relates to interrogatories, but does not concur with the views of a majority of the court as to the liability of directors, nor in the conclusion.

CROSBY STEAM GAGE & VALVE CO. v. ASHTON VALVE CO.

(Circuit Court of Appeals, First Circuit. May 4, 1896.)

No. 264.

1. PATENTS—INVENTION.

In a safety valve, the making of an extension consisting of two rods, upward, within and through the top of the valve case, and above the muffler, for the purpose of affording means for controlling from the outside the steam-regulating device, does not, under the circumstances of this case, involve patentable invention.

2. SAME—SAFETY VALVES.

The Lobbiller patent, No. 496,058, for improvements in safety valves, is void for want of invention.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by the Crosby Steam Gage & Valve Company against the Ashton Valve Company for alleged infringement of a patent for improvements in safety valves. The circuit court adjudged that the patent was valid, and had been infringed by defendant, and entered a decree for complainant. From this decree, the defendant has appealed.

Ralph W. Foster (Joshua H. Millett, on the brief), for appellant.

James E. Maynadier and William Maynadier, for appellee.

Before COLT and PUTNAM, Circuit Judges, and WEBB, District Judge.

PUTNAM, Circuit Judge. This is a suit against an alleged infringer by the holder of letters patent, issued April 25, 1893, to Anton Lobbiller, for improvements in safety valves. Only one claim is in issue (the third), as follows:

"The combination in a safety valve and muffler of a valve seat, valve, and a steam-regulating device encircling the valve seat, and extending upward within and through the top of the valve case, and above the muffler, whereby the regulating device may be operated without removing the muffler or any part of the valve case, all substantially as specified."

The case was heard in the circuit court, on the merits, on bill, answer, and proofs, and an interlocutory decree was entered for a master and an injunction, although the learned judge who sat in that court expressed doubt as to the validity of the patent. The only novelty covered by the claim in issue is the extension upward within and through the top of the valve case, and above the muffler, of means of controlling from the outside the regulating device. This extension, as shown in the drawings and specification, is by means of two straight rods passing vertically from the regulating ring, through the valve casing and the muffler, to points above the muffler and exterior to it. It is claimed that this was the first time in which such an extension appears in connection with a pop valve having a muffler. There is, perhaps, no doubt on the question of mere novelty; also, there is no doubt on the question of utility, as the device permits the regulating of the valve without removing the muffler, as stated in the claim.

The difficulty is on the question of invention. It is admitted that in the earlier art such extensions had been made through the casings of valves which had no mufflers. The thought involved in the mere idea of having some contrivance by which any interior work can be controlled through a rod extending exteriorly, thus avoiding the necessity of taking apart, is, of course, a primary one in all the arts; so that the suggestion of making such a connection in this case clearly involved no invention. This is illustrated by a patent taken out by the same patentee, dated November 17, 1891, for a safety valve without a muffler, in the specification of which, after describing a rod, called there a "pin," which serves the same purpose as the rods in the case at bar, and which pin did not extend through the upper part of the safety-valve case, he said:

"It is obvious that the pin might be extended upward, and have its wrench block secured at the top of the highest part of the casing if desired."

He added that great advantage would be derived therefrom when the valve is used on locomotive boilers. Moreover, there is nothing called to our attention, or which we have found, which shows that there was any difficulty in making the extension, or any ingenuity involved in doing it. We therefore necessarily conclude that no inventive idea is covered by the claim in issue; and, inasmuch as the decree of the court below, although an interlocutory one, followed a hearing of the merits on bill, answer, and proofs, and the whole record is before us, we are able to dispose finally of the case, in accordance with what is now the settled rule of practice. The decree of the court below is reversed, and the case is remanded to that court, with directions to dismiss the bill with costs; and the costs of appeal are awarded to the appellant.

HOGG v. GIMBEL et al.

(Circuit Court, E. D. Pennsylvania. May 26, 1896.)

DESIGN PATENTS—NOTICE OF PATENT—MARKING ARTICLES.

Under Rev. St. § 4900, if the patented articles sold by complainant are properly marked "Patented," either on the articles themselves or the inclosing package, this is general notice to the public, so that one who makes or sells such articles is liable for infringement, though he may in fact have been ignorant of the patent.

This was a suit in equity by William James Hogg against Gimbel Bros. for alleged infringement of a patent for a design for carpets.

Southgate & Southgate, for complainant.

John G. Johnson, for defendants.

McPHERSON, District Judge. This case was heard upon bill and answer. The complainant, who is a manufacturer of carpets, is the owner of design patent No. 25,907, and has made and sold large quantities of carpeting embodying such design. The patent embraces two claims,—one for a carpet body, and the other for a carpet border; and, as the answer admits, both claims have been infringed by the defendants. They made sales of a body and a border that were exact copies of the complainant's design, but they seek to avoid liability by denying actual knowledge of the patent at the time the sales were made. This denial of knowledge in fact must be accepted as true,—no testimony having been taken,—and the question for decision, therefore, is whether other facts averred in the bill, and not denied by the answer, are sufficient to visit the defendants with the consequences of constructive knowledge. These facts are, as averred in paragraph 4 of the bill, that the complainant gave "sufficient notice to the public that the [design] is patented by affixing thereon the word 'Patented,' together with the date and year the patent was granted, or by affixing to it, or the package wherein said carpeting was inclosed, a label containing a like notice, and has complied in all respects with the statute in such case made and provided."

Upon these facts, I think that the complainant has fulfilled the obligation imposed upon him by section 4900 of the Revised Statutes. The point was decided in *Dunlap v. Schofield*, 152 U. S. 248, 14 Sup. Ct. 577, in which the supreme court declare that this section makes it the duty of every patentee or his assignee, and of all persons vending any patented article for or under them, to give the public sufficient notice that it is patented, by putting the word "Patented" upon it, or upon the package inclosing it, and then go on to say:

"The clear meaning of this section is that the patentee or his assignee, if he makes or sells the article patented, cannot recover damages against the infringers of the patent, unless he has given notice of his right, either to the whole public by marking his article 'Patented,' or to the particular defendants by informing them of his patent and of their infringement of it. One of these two things—marking the articles, or notice to the infringers—is made by the statute a prerequisite to the patentee's right to recover damages against them. Each is an affirmative fact, and is something to be done by him."