

HOWES and others *v.* McNEAL.

(*Circuit Court, N. D. New York.* ———, 1880.)

1. **PATENT—EVIDENCE—FILE WRAPPERS.**—File wrappers are not competent as evidence, in a suit on a patent, to show the reduction to practice and use of inventions claimed to be prior, so as to invalidate such patent.

C. E. Sprague, for plaintiffs.

W. S. Farwell, for defendant.

BLATCHFORD, C. J. In this case a motion is made by the defendant that copies of three file wrappers, contents, and drawings, in the matter of three several letters patent, may be made a part of defendant's exhibits and proofs, with the same effect as if they had been put in evidence when said three letters patent were put in evidence, or that the suit be referred back to the examiner, with leave to the defendant to introduce such evidence, or that it be referred back for both parties to introduce further proofs; and that the interlocutory decree made herein be so far opened as that the defendant have leave to reargue the case, after such new evidence shall have been received, with the same effect as though the same had never been argued.

The object of introducing in evidence such file wrappers is stated to be to show that the inventions described in the several patents were made at dates as early as the oaths to the specifications. That is not the proper way to show the reduction to practice and use of the inventions claimed to be prior, so as to invalidate the plaintiffs' patent. That must be shown by direct evidence of the construction and use of the machines. Nothing from the patent-office can be admitted in evidence of earlier dates than the patents. All such evidence would be hearsay and secondary. A patent is allowed, by statute, to speak as a public grant; but the preliminary papers are merely the declarations of third persons not parties to this suit, or connected with them in interest or title. The evidence is not competent.

It may be added that if the three file wrappers were competent as evidence, no sufficient legal excuse is shown for not having sooner applied for leave to introduce them.

The motion is denied in all its branches.

CROWELL, MASTER OF STEAM-SHIP ROMAN *v.* THE SCHOONER
THERESA WOLF.*

(District Court, E. D. Pennsylvania. October 1, 1880.)

- I. ADMIRALTY—CROSS LIBEL—ADMIRALTY RULE 53—WHEN CLAIMS DO NOT ARISE FROM SAME CAUSE OF ACTION.—Upon a libel *in rem*, filed for damages caused by a collision, a cross libel cannot be sustained for salvage on account of services rendered to the injured vessel after the collision. Such a claim does not arise out of the cause of action on which the libel is founded, within the meaning of the fifty-third admiralty rule.

In Admiralty.

In this case a libel *in rem* had been filed by the master of the schooner Theresa Wolf against the steam-ship Roman, for damages caused by a collision off Great Egg harbor, alleged to have been occasioned by the negligence of those in charge of the steam-ship. The owners of the latter filed an answer denying negligence on the part of the steamer, and alleging that the cause of the accident was the neglect of those in charge of the schooner to exhibit a torch. Subsequently, the schooner not being within the jurisdiction of the court, a cross libel was filed by the master of the steam-ship, on behalf of himself and of the crew and of the owners of the steam-ship, alleging that when the collision occurred the master and crew of the schooner abandoned her, whereupon the master of the steam-ship sent men on board, fastened a line to her, and towed her into New York harbor, for which services he claimed salvage, and asked that the original libellant might be ordered to enter security in the usual form and amount,

*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.