

HARLAN, Justice, (*orally*.) The findings of the master in this case are correct. The infringement by defendants of complainant's patent was neither wilful nor malicious. The case does not justify a decree against them beyond the net profits realized from the manufacture and sale of the patented articles. That sum is found to be \$28.06. For that sum the complainant may have a decree.

In reference to the costs the conclusion is justified by the record that the defendants were willing at the outset, and through their attorney offered, to pay to the complainant the amount of the net profits realized by them, but the complainant was desirous of mulcting them in damages, under circumstances not calling for such a course. Costs have been unnecessarily accumulated, and I think it just that the parties be required to pay their own costs, and each party must pay one-half of the master's fee, as it may hereafter be fixed by the circuit judge.

WALLICKS *v.* CANTRELL and others.*

(Circuit Court, E. D. Pennsylvania. May 3, 1882.)

PATENT—APPARATUS FOR ENAMELLING MOULDINGS.

Letters patent No. 163,825 for an improvement in apparatus for enamelling mouldings sustained.

Bill for an Injunction to Restrain the Infringement of a Patent.

Charles Howson, for complainant.

J. W. Shortlidge, for defendants.

BUTLER, D. J. A very few lines will explain our views of this case. Letters patent No. 163,825, for an "improvement in apparatus for enamelling mouldings" were issued to the plaintiff May 25, 1875, containing a single claim, as follows: "An enamelling-box divided into two compartments by a slotted partition, and having openings at the end, in a line with the slot in the partition, all substantially as, and for, the purpose set forth." The bill charges infringement of this patent. The defences set up, and urged at the hearing, were *first*, that the patent is invalid, and, *second*, that the defendants have not infringed. The first was based principally on an allegation of prior use. As respects this it is sufficient to say that in our judgment, the allegation is not sustained. A written review of the testimony would be of no value.

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

A careful examination has satisfied us that its weight is against the defendants, while the burden of proof is on them.

The suggested objection to the claim, is unfounded. The claim embraces nothing that should not have been included. It covers simply the peculiar enamelling-box invented and constructed by the plaintiff, and shown by the model.

That the defendants' device infringes the plaintiff's we cannot doubt. It was designed for the same purpose, and accomplishes it in the same way, and substantially by the same means. The mechanical appliances are virtually undistinguishable, and the mode of operation and result are identical. Without the expert testimony,—which is very positive,—this conclusion is fully sustained by inspection of the two boxes and their work.

A decree must be entered accordingly,

THE PIERREPONT.*

THE MARY MORGAN.*

(*District Court, E. D. Pennsylvania. March 31, 1882.*)

ADMIRALTY—COLLISION—MUTUAL FAULT.

A steam-barge and a steam-boat collided on the Delaware river. The testimony as to the circumstances under which the collision occurred was in direct and irreconcilable conflict. It appeared, however, that the lamps of the barge were partially obscured by smoke, and that she did not signal until too late to prevent a collision, and that on the other hand the steam-boat had seen only the white light of the barge, and supposing it to belong to a vessel at anchor, had steered accordingly, until the signal of the barge was heard. *Held*, that the barge was negligent in not having her lights in proper condition, and in not signaling in time; that the steam-boat was also negligent in not discovering earlier that the barge was in motion; and that the damages should, therefore, be equally divided.

Cross-litigations—one by the owners of the steam-barge *Pierrepont* against the steam-boat *Mary Morgan*, and the other by the owners of the *Morgan* against the *Pierrepont*—to recover damages caused by a collision. The evidence was as follows: On August 8, 1879, at about 10 o'clock p. m., the *Pierrepont*, bound up the Delaware river, collided with the *Morgan*, which was coming down. The night was cloudy, but not stormy. The testimony, as to the circumstances

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