

DEERING v. WINONA HARVESTER WORKS and others.<sup>1</sup>

(Circuit Court, D. Minnesota. June Term, 1885.)

PATENTS FOR INVENTIONS—PRACTICE—INFRINGEMENT OF SEVERAL PATENTS—  
CONSOLIDATION OF SUITS—EXTENDING TIME TO ANSWER.

D. filed a bill on May 25, 1885, alleging an infringement of two of the patents issued for improvements in grain-binders, both relating to the cord-binding mechanism; and on June 1, 1885, he filed another bill against the same defendants for an infringement of five patents relating to grain-binding and harvesting machines,—all of the devices alleged to be infringed being used in one machine. Defendant on June 18, 1885, moved to consolidate the two suits, and that the time to answer both bills be extended to the first rule-day in September. *Held*, that the motion should be granted.

## In Equity.

*Banning & Banning*, for complainant.

*Dyrenforth & Dyrenforth*, for defendants.

NELSON, J. The defendants are engaged in manufacturing and selling grain harvesters and binders, both operated conjointly as one machine. The complainant files his bill May 25, 1885, alleging an infringement of two of his patents issued for improvements in grain binders, both relating to the cord-holding mechanism; and on June 10, 1885, he files another bill against the same defendants for an infringement of five patents, relating to grain-binding and harvesting machines. All of the mechanical devices which are alleged to be infringed, are used in one machine. On June 18, 1885, a motion is made by defendant's solicitors that the two suits be consolidated, and, for the purposes of answer, proofs, and hearing, be treated as one and the same suit; also that the time to answer both bills of complaint be extended to the first rule-day in September. The motion is opposed by the complainant's solicitors on the ground (1) that the several alleged infringements of seven different patents could not be joined in the same bill, as it would be on demurrer bad for multifariousness; (2) that the voluminous testimony in the consolidated cases would tend to confusion on the hearing, and seriously inconvenience the court. The charge of multifariousness against a bill counting upon infringements of the seven separate patents embraced in the two bills, would not be sustained. The principles announced in *Nourse v. Allen*, 3 Fisher, Pat. Cas. 63, and followed in *Gillespie v. Cummings*, 3 Sawy. 260, and other cases, permits such joining of separate and distinct causes of action.

The defendants are engaged in the manufacture of harvesting and binding machines, containing mechanism infringing all the patents, if the allegations of the complainant in both bills are true. I think the convenience of the court will be served if the two suits proceed as one, and certainly the labor of the solicitors of both parties will be lightened.

<sup>1</sup> Reported by Robertson Howard, Esq., of the St. Paul bar.

The delay asked for by defendants is reasonable, and cannot prejudice the complainant. The motion to consolidate, and for time to answer, is granted; and it is so ordered.

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CONOVER v. THE CITY OF CHESTER.

HECKMAN v. SAME.

(District Court, S. D. New York. May 5, 1885.)

1. COLLISION—RUNNING NEAR PIERS.

Ferry-boats passing up and down the East river, and having no call to go in the immediate vicinity of piers 3 to 7, appropriated by law to the special uses of canal-boats, will be held in fault for a collision resulting from attempting to pass between tugs lying off those docks waiting for canal-boats, within 200 or 300 feet of the shore.

2. SAME—DISSENTING SIGNALS.

A signal of two whistles given by a ferry-boat to indicate that she would pass inside, but not assented to, does not relieve her from fault.

3. SAME—FAULT.

A tug in waiting as above, not over 200 or 300 feet from shore, hearing a signal of two whistles, replied with one, and proceeded towards the shore, but, observing that the ferry-boat continued her course inside, backed. *Held*, that the tug was not in fault, and that the ferry-boat was solely responsible for the collision that ensued.

In Admiralty.

*Edward D. McCarthy*, for libelants.

*Beebe & Wilcox*, for claimants.

BROWN, J. At about half past 7 in the evening of January 3, 1884, the tug-boat Skeer, belonging to the libelant Conover, having the libelant Heckman's canal-barge Hammill lashed to her starboard side, was waiting near pier 7, East river, in the flood-tide, for the tug-boat Amboy, which lay across the slip below, to get out of the way, so that she might pick up another canal-boat in the slip on the southerly side of pier 7. While thus waiting, and, as I find, substantially at rest, the City of Chester, an Annex ferry-boat running from Jersey City to the bridge pier at Brooklyn, rounded the Battery, and, seeing the Skeer ahead, undertook to pass between her and the New York shore. In doing so, she struck the Skeer a violent blow on her port side, and also injured the Hammill by the blow communicated to her.

The City of Chester must be held solely answerable for this collision. The docks near which the Skeer was lying are devoted specially by statute to the use of canal-boats, where tugs are in the habit of picking up and landing such boats, and of making up their tows. The pilot of the City of Chester was familiar with these facts. Tugs lying in this vicinity, whether their colored lights are seen or not,