

by the defendant. Numerous witnesses have been examined touching their prior knowledge and use of fuses embodying the essential features of those described in both patents. If this testimony is believed, it is decisive against the complainant. While it would serve no useful purpose to consider it in detail, it is sufficient to say that we are unable to discredit it, and hence the bill is dismissed, with costs.

DEPLANQUE *v.* RIPKA and others.

(*Circuit Court, E. D. Pennsylvania.* April 28, 1885.)

PATENTS FOR INVENTIONS—PLAQUES FOR PAINTING AND DECORATION—INFRINGEMENT.

The evidence failing to satisfy the court that the Deplanque Plaque is infringed by the plaque of Ripka, the bill is dismissed.

In Equity.

Jerome Carty, for plaintiff.

J. Cooke Longstreth, contra.

BUTLER, J. The parties may stand upon the presumptions arising out of the respective patents involved. The evidence touching the validity of the plaintiff's letters (aside from this presumption) is not conclusive. It seems probable that he got his ideas, and instruction how to carry them out, from Mr. Ripka. This question cannot be settled by the witnesses' recollections of dates, on which the plaintiff relies. If Ripka tells the truth, there can be little doubt that he communicated the information on which the plaintiff proceeded. If the plaintiff had made the discovery at the time Ripka refers to, the conversation could not, it would seem, have occurred. The plaintiff would not have listened to the suggestions without revealing his discovery, especially would not have replied as Mr. Ripka swears he did. This testimony must therefore be accepted, or discarded for want of integrity in the witness. He is, however, corroborated in part by Miss Brightenbaugh. But granting that the plaintiff did not thus get his information, it is extremely doubtful whether any invention or discovery is involved in what he did. The materials used, and the combination employed, are old. Panels for decoration were made of the same materials, combined in the same way, long before. The moulding of similar substances was common; and in most instances this seems to have been done as the plaintiff does it,—that is, by the use of some liquid, or the application of heat, to moisten the substance, and render it pliable. The only thing which clearly seems to be new is the application of the material to the formation of a plaque; and this was simply moulding it in a particular form, which certainly is not patentable of itself. Still, in the view we entertain of the case,

the validity of the plaintiff's patent need not be passed upon. The evidence does not satisfy us that the respondent's plaque is an infringement. We are not convinced that the materials used are the same as those employed by the plaintiff. The testimony relied upon by the plaintiff is inconclusive, and should not, therefore, be held to overcome the presumption arising from the contrary judgment pronounced by the patent-office.

The bills must be dismissed.

YOUNG v. UNION INS. CO.

(District Court, N. D. Illinois. June 15, 1885.)

1. MARINE INSURANCE—INSURABLE INTEREST—TRUST.

When the legal title to a vessel is wholly in a party as trustee, he may insure her for the use of his beneficiary.

2. SAME—RIGHT TO ABANDON—LOSS IN EXCESS OF HALF AMOUNT INSURED—STRANDED VESSEL—ADDING EXPENSE OF REPAIRS AND COST OF GETTING VESSEL AFLOAT.

When a vessel has stranded, the insured may add the cost of repairs to the cost of getting her off the beach, and getting her to a port of safety and repair, for the purpose of making such an amount as to equal or exceed half the amount insured.

3. SAME—DELAY OF INSURED IN GIVING NOTICE OF ABANDONMENT.

When the delay of the insured in giving notice of abandonment has not prejudiced the insurer, such delay will not impair or affect the rights of the insured.

4. SAME—"SUE AND LABOR" CLAUSE IN POLICY—UNDERWRITER TAKING POSSESSION—CONSTRUCTION—TOTAL LOSS.

Where the underwriter takes possession of insured property under the "sue and labor" clause in a policy, for the purpose of saving, and, if necessary, repairing the property, he must make reparation and return within a reasonable time, or he makes the property his own, and is liable for a total loss.

In Admiralty.

W. L. Mitchell and *G. D. Van Dyke*, for libelant.

Schuyler & Kremer, for respondent.

BLODGETT, J. In this case, libelant seeks to hold respondent for a constructive total loss upon a policy, by which respondent insured to libelant a half-interest in the schooner *H. D. Moore*, her tackle, apparel, and furniture, for the sum of \$2,500, against the perils of navigation upon the lakes, rivers, etc., from the first day of April, 1883, to the thirtieth day of November of that year; loss payable to libelant or to his order. The defenses set up are: (1) That libelant had no insurable interest in the schooner, but that he held the legal title as naked trustee for one *James T. Young*; (2) that, under the facts in the case, and the terms of the contract of insurance, the libelant was not entitled to abandon the schooner as for a constructive total loss; and respondent is not liable on said policy for such loss.