

has been laches in moving to amend the answer, and in seeking to introduce the deposition of Tucker taken in the *New York Times* suit. Moreover, in the view taken of the case, that deposition is immaterial; and it does not show what is claimed for it by the defendant. The deposition was taken in October, 1876. In it Mr. Tucker states that he engaged in the construction of a "perfecting press" in 1850 or 1851, in R. Hoe & Co.'s establishment in New York, and does not think it is finished "yet," they having been at work on perfecting machines up to that time. Nor would it be competent to put in evidence a copy of the deposition, with the fact that Mr. Tucker made it, as this case now stands. Mr. Tucker was examined as a witness for the defendant in this case in December, 1880, and as a witness for the plaintiffs in May, 1881. On neither occasion was he inquired of as to the making of the deposition in the *New York Times Case*, so that he could explain what he said in it. The deposition was taken in a suit to which the present plaintiffs were not parties, and, as a deposition, it is not competent evidence in this case.

Confirmation of the correctness of the views announced in the former decision herein is afforded by the decision of Judge LOWELL in *Hoe v. Boston Daily Advertiser Corp.*, 14 Fed. Rep. 914, which was a suit brought on claim 3 of the same patent. He states that he has examined the record in this suit, and the opinion of this court in it, and agrees with the conclusions arrived at.

The motions and the prayer of the petition are denied.

FILLEY v. LITTLEFIELD.¹

(Circuit Court, E. D. Missouri. October 9, 1885.)

1. PATENTS—INFRINGEMENT—IMPROVEMENT.

In a suit for infringement, the fact that the infringing device is an improvement upon the one described in the complainant's patent is no defense.

2. SAME—STOVES.

Letters patent No. 236,425, and letters patent No. 246,606, issued to Giles F. Filley, for improvements in cooking stoves, held, infringed by stoves constructed in accordance with the specifications of letters patent No. 313,874, granted to D. G. Littlefield.

In Equity.

Paul Bakewell, for complainant.

D. G. Littlefield, pro se.

TREAT, J., (orally.) This is an action upon two patents. The only inquiry involved is as to the infringement by the defendant of plaintiff's patents. The party defendant did not choose, under the

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.

requirements of the statute, to assail the validity of the complainant's patents. Therefore the case stands solely on the question of infringement. Both patents are infringed, and there will be a decree accordingly, and perpetual injunction. It may or may not be that defendant's patent is an improvement; but whether that be so or not, he cannot infringe the plaintiff's patents, the validity of which is undisputed. As to the damages, B. Gratz Brown will be appointed special master *pro hac vice*.

THE WISCONSIN.¹

(*Circuit Court, E. D. New York. July 14, 1885.*)

COLLISION—STEAMER AND BARK—MISTAKE AS TO LIGHTS—FLARE-UP—BLUE LIGHT—PILOT SIGNAL.

The decision of the district court in the same case (23 Fed. Rep. 831) affirmed.

In Admiralty.

In these two actions against the steam-ship Wisconsin, which were argued together, the court (BLATCHFORD, Justice) made and filed the following findings of fact:

(1) A little after 1 o'clock on the morning of December 14, 1882, a collision took place between the bark Ella, belonging to the mercantile marine of the United States, and the British steam-ship Wisconsin, in latitude 40 deg. 40 min. N., and longitude 68 deg. 40 min. W., the steam-ship being bound from Liverpool to New York and the bark from Buenos Ayres to Boston, with cargo, in consequence of which the bark was injured on her starboard bow, and her cargo was damaged. The bark was close-hauled on her port tack, on a course N. N. W., the wind being W. or W. by N., and had set reefed foresail, foretop-mast-stay sail, maintop-mast-stay sail, and reefed spanker. The wind was blowing strong, and the night, though dark, was clear, and a good night for seeing lights at a distance. The bark was making between two and one-half and three knots an hour. She was of 654 tons burden, and was owned by the libelants in the first suit. She was about 145 feet long.

(2) The steam-ship was of 2,386 register tons burden, 400 feet long, was loaded by the stern, had about 15 feet free-board amid-ships, and was about 18 feet out of water at her stem. Her bridge was located about 130 feet aft of her extreme bow. She had two lookouts on the bridge, who were competent and experienced seamen, and each of them was carefully attending to such duty, and had no other duty to attend to. The second and fourth officers were also on the bridge. It was the second officer's watch, and he was in charge of the navigation of the steam-ship. Both of those officers were keeping a careful watch and lookout. There was no lookout on the bow. Only one of the lookouts has been called as a witness or accounted for. The steam-ship, before sighting any light on the bark, was moving at the rate of 11 knots an hour, and was on a compass course of W. by N. $\frac{1}{2}$ N., which was

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.