

CELLULOID MANUF'G Co. and others v. NOYES and others.

SAME v. AMERICAN ZYLONITE Co. and others.

(Circuit Court, D. Massachusetts. October 31, 1885.)

PATENTS FOR INVENTIONS—CELLULOID COMBS—WANT OF INVENTION.

Patent No. 223,311, dated January 6, 1880, and granted to William Booth, for improvement in the manufacture of combs from celluloid and analogous material, *held void.*

In Equity.

Frederick H. Betts, for complainants.

E. B. Smith, for Noyes and others.

E. M. Fett, for American Zylonite Co.

COLT, J. The defendants are charged with infringement of letters patent No. 223,311, dated January 6, 1880, granted to William Booth for improvement in the manufacture of combs from celluloid and analogous material. The device consists in the application of a stream or jet of water to or near the saw while the teeth of the comb are being cut. The claims are as follows:

(1) The process of making combs of celluloid and analogous material herein set forth, consisting in the application of a stream or jet of water to or near the saw while the teeth of the comb are being cut, substantially as set forth.

(2) The process of making combs of celluloid or analogous material herein set forth, in which a jet or stream of water is applied to or near the saw while the teeth of the comb are being cut, substantially as set forth.

The use of water upon a saw or cutting tool, to lubricate it, diminish friction and consequent heat, is old. It has been used in making combs, rings, piano keys, and numerous other articles out of ivory, mother of pearl, rubber, and other materials; and it also appears that it has been previously applied to sawing knife-handles of celluloid.

In view of the well-known and common use of water upon a cutting tool, we must hold this patent void for want of invention. In dealing with a material of the character of celluloid, the use of water upon the saw would seem to suggest itself to the most ordinary mechanic.

The complainants seek to uphold the patent and escape the charge of double use, on the ground that new results are accomplished by the application of this process to the manufacture of combs from celluloid. Water in the Booth process performs its usual duty of lubrication, keeping the saw cool, and preventing it from buckling, and also keeping the material cool, and preventing it from softening, so as to bend, or from catching on fire.

Bearing in mind what has been accomplished by the use of a similar process, we are unable to discover, notwithstanding the skillful

and elaborate argument of complainants' counsel, any such new results in the use of the Booth process as would warrant the court in sustaining the patent on this ground. Bills dismissed.

THE EGYPT.¹

ACKER and others v. THE EGYPT.

HOUSTON v. SAME.

PERSON and others v. SAME.

(District Court, S. D. New York. October 6, 1885.

1. FIRE ON WHARF—BURNING OF CARGO LANDED, BUT NOT DELIVERED—STATEMENT.

The steamship E., of the National Line, arrived in the port of New York about 1 o'clock P. M. of January 31, 1883. She at once obtained from the collector of the port a general order for discharge on the dock, a further special permit for continuing the discharge after sunset, and a permit for goods not entered to remain on the dock 48 hours after discharge. These permits were obtained under section 2871, Rev. St., and regulations prescribed by the secretary of the treasury. This was the customary method pursued by the steamship company. The discharge of cargo was immediately commenced and continued until about 2 o'clock A. M. of the following night, when fire broke out on the wharf from some unknown cause, and, so far as appeared on the trial, without the fault or negligence of any one, and libelants' goods, which had been landed on the wharf, were consumed.

2. SAME—FIRE COMMUNICATING WITH STEAM-SHIP—SECTION 4282, REV. ST.

Where goods on a wharf are destroyed by a fire that originates on the wharf and is communicated to the vessel along-side, from which they were discharged, the ship will not be relieved from liability under section 4282, Rev. St., as for a "loss by reason of a fire happening to the ship," if it does not appear that the firing of the ship contributed to the burning of the goods on the wharf.

3. BILL OF LADING—"GENERAL ORDER" FOR DISCHARGE—NOTICE TO CONSIGNEE.

The bills of lading under which the goods burned were shipped, were partly of the National Line and partly of the Inman Line. Both bills of lading contained the stipulation that "the collector of the port is hereby authorized to grant a general order for discharge immediately after entry of the ship;" also that "the goods are to be taken from along-side immediately the vessel is ready to discharge, or otherwise they will be landed and deposited at the expense of consignee, and at his risk of fire," etc. Under the "general order" the cargo had been partly discharged when the fire occurred. Libelants urged that without notice of the discharge, or opportunity to remove their goods, the discharge was not a valid discharge, and that the stipulations of the bill of lading did not come into effect until after such notice. *Held*, that the meaning of the bill of lading was that the parties agree that the ship shall be authorized to procure permission from the collector to land the goods *instantly*, without notice to the consignees, and that if consignees are not there to receive them, the ship may nevertheless land the goods at once, and that they shall then be at consignee's risk.

¹Reported by R. D. and Edward G. Benedict, Esqs., of the New York bar.