

YALE LOCK MANUF'G Co. v. BERKSHIRE NAT. BANK and others.¹

(Circuit Court, D. Massachusetts. December 9, 1885.)

1. PATENTS FOR INVENTIONS—ANTICIPATION.

Defendant offered two witnesses, a rejected application, and models said to be constructed in accordance with the rejected application, to prove an anticipation; but the witnesses could not swear positively the alleged prior device embodied the patented features, nor that the rejected application described such device. The court found that the models offered did not correspond with the description in the rejected application, and it was not evident that the models introduced nor the alleged prior device were operative. *Held*, that an anticipation was not made out with the necessary clearness and certainty.

2. SAME—LAPSE OF TIME—ABANDONED EXPERIMENT.

In considering an alleged anticipation, the lapse of time, (17 years in this case,) and the fact that during that time nothing has been done by the alleged prior inventor, must be considered.

3. SAME—LITTLE TIME—LOCK PATENT.

The alleged prior device of Robert S. Harris, Dubuque, Iowa, *held*, to have been an abandoned experiment.

In Equity.

Causten Browne and Edmund Wetmore, for complainant.

E. N. Dickerson and W. C. Cochran, for defendants.

COLT, J. In this case Judge LOWELL, following the opinion of Judge SHIPMAN, held the first and seventh claims of the Little reissue patent, for improvements in locks for safes and vaults, to be valid. *Yale Lock Manuf'g Co. v. Berkshire Nat. Bank*, 17 Fed. Rep. 531; *Yale Lock Manuf'g Co. v. Norwich Nat. Bank*, 6 Fed. Rep. 377; S. C. 19 Blatchf. 123. The case is now before the court upon a rehearing on the ground of newly-discovered evidence relating to an alleged prior invention by Robert S. Harris, of Dubuque, Iowa, which it is claimed anticipates the Little device. The Little invention was for a time-lock, which would both lock and unlock at predetermined times. The defendants contend that in the year 1867, and prior to the invention of Little, Harris constructed a lock which would both lock and unlock at predetermined hours; that the first model he built was put upon a small wooden box in his house, and worked practically; that this model was soon after broken up, and a second model made, which remained for a short time in the First National Bank, in Dubuque, and was then sent to the patent-office with the application for a patent, which was made through Munn & Co.; that the application was rejected, and thereupon Harris, becoming discouraged, dropped the matter. To prove this, the defendants introduce two witnesses, J. K. Graves, a friend of Mr. Harris, and associated with him in the management of the bank, and also interested with him in the procurement of the patent, and Mrs. Harris, the wife of the inventor. It appears that Mr. Harris was too ill to give his testimony. The re-

¹ Reported by Charles C. Linthicum, Esq., of the Chicago bar.

jected application is also put in evidence by the defendants, and two models, constructed by them, which it is claimed are made substantially after the description and drawings of the application, and which are said to be operative machines.

While both Mr. Graves and Mrs. Harris say generally, in one part of their testimony, that the Harris lock would both lock and unlock at predetermined hours, when closely pressed neither is able to swear positively that such was the fact. Further, neither witness can testify with certainty that the lock described in the rejected Harris application is like the models they saw, though they believe them to be. Again, in our opinion, the two models, introduced by the defendants as made according to the description and drawings contained in the Harris rejected application, do not correspond in important particulars with such description and drawings. As, for instance, there is no provision for attaching the rear spring to the pin in the bolt, but the specification describes another and different mode of attachment. We are in doubt, upon the evidence, whether the original models made by Harris would both lock and unlock a door at predetermined times. We have not been shown that a lock constructed after the rejected application of Harris would operate, nor are we entirely satisfied that the modified models of the Harris device, introduced by defendants, would practically accomplish the result attained by Little. In the discussion of this alleged anticipation we should not lose sight of the fact that 17 years have elapsed since Harris made his two models, and his application for a patent was rejected, and that since then neither he nor Graves have ever moved in the matter.

For these reasons, we think the defendants have failed to establish an anticipation of the Little patent with that clearness and certainty which are necessary; and that, upon the proof before us, we must view the Harris lock as an abandoned experiment, and, consequently, as in no way affecting the validity of the first and seventh claims of the Little reissue. The former decree is affirmed.

THE PAVONIA.¹

HOBOKEN LAND & IMP. CO. v. THE PAVONIA.

*(Circuit Court, S. D. New York. December 5, 1885.)***1. COLLISION—OBLIGATIONS OF FERRY-BOATS WHEN APPROACHING SLIPS.**

The ferry-boats Pavonia and Weehawken had slips on the New York side about 750 feet apart, that of the Weehawken being the lower. The location of the slips on the other side of the river was such that the courses of the two boats crossed. In consequence it was customary for the Weehawken to give the Pavonia, on the New York side, the right of way from the time she commenced to swing for her slip. When the tide was flood, the Pavonia usually commenced to swing for her slip when below it and to drift up with the tide. This sometimes made it more convenient for the Weehawken to go inside of the Pavonia and to keep up the river between the Pavonia and her slip. The collision occurred on the New York side, and about 200 feet from the entrance to the Pavonia's slip. The Pavonia had begun to swing for her slip before the collision occurred. The tide was flood, but the direction and force of the wind were such that it was not necessary for the Pavonia to go as far below her slip as was usual with the flood-tide. The Weehawken had been coming up the river at a distance of between 100 and 200 feet out in the channel, and was inside of and between the Pavonia and the line of slips at the time of collision. *Held*, that the Weehawken was not justified in departing from the established practice of the boats by which the Pavonia was entitled to the right of way to her slip, and was in fault in attempting to cross the bows of the latter vessel when swinging to her slip.

2. RULE, IRRESPECTIVE OF USAGE.

The case falls under the operation of the twenty-fourth rule of navigation, and the regulations of supervising inspectors do not apply. Irrespective of usage, general considerations of convenience and prudence demand that a ferry-boat having ample room to do so should keep out of the way of another about entering her slip, or in such close proximity to it that she has made her final preparatory movements to enter. If the circumstances require her to make a circuitous swing to conform to the varying condition of wind and tide, she should not be embarrassed by the presence of another boat in such close proximity to her as to involve risk of collision if any miscalculation or unforeseen emergency should occur.

3. RULE AS TO SIGNALS.

When the boat having the right of way fails to respond to the signal of the boat whose duty it is to keep out of the way, the latter has no right to assume, because of such silence, that the former abandons her right of way.

4. DEFECTIVE LOOKOUT.

When there are no obstacles in the way, the fact that the approaching vessel is not seen is all that is necessary to impute negligence on the part of the lookout. Both vessels having been negligent, and the collision having been caused thereby, the damages will be divided.

In Admiralty.

Abbett & Fuller, for libellant and appellant.

The Weehawken violated no rule or regulation in taking a course parallel to the line of slips and between the Pavonia and her slip before there was any danger of collision. The Weehawken, having seen the Pavonia's red light on her port bow before the latter had swung any considerable distance, had a right to assume that the Weehawken was at the same time seen by the Pavonia. The lights then being red to red it was the Weehawken's duty to go ahead. The collision was

¹ Reported by Theodore M. Etting, Esq., of the Philadelphia bar.