

As before stated, a patent for a combination is not invalid because all the parts are old. But merely assembling them together, or placing them in juxtaposition, does not indicate invention. Some new or peculiar function, produced by such a combination, must be developed. Unless this follows, the new arrangement is the mere exhibition of mechanical skill.

It appears to me that the difficulty about the complainant's patent as a combination is that none of the parts shown in the construction perform any different function than they had performed in other patents or combinations.

For this reason, I am constrained to hold that upon the evidence and the law the case is with the defendants.

The bill must be dismissed.

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WILSON *v.* CUBLEY and others.<sup>1</sup>

(Circuit Court, N. D. Illinois. January 4, 1886.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT.

The first claim of letters patent No. 255,229, of March 21, 1882, to Charles C. Wilson, for improvement in hand-stamps, held valid and infringed.

2. SAME—FEATURE SHOWN BUT NOT CLAIMED IN PATENTEE'S EARLIER PATENT.

The fact that the complainant showed a feature in an earlier patent did not of itself preclude him from claiming it in a subsequent patent, under the rule in *Graham v. McCormick*, 11 Fed. Rep. 859, and cases there cited.

3. SAME—ADDITIONAL FUNCTION PERFORMED BY INFRINGING DEVICE.

The fact that defendants' device is an improvement, and, as such, patentable, does not entitle him to use the patented device without license

In Equity.

*Peirce & Fisher*, for complainant.

*H. Henderson*, for defendants.

BLODGETT, J. This is a bill for an injunction and accounting, by reason of an alleged infringement of letters patent No. 255,229, issued to complainant, March 21, 1882, for "an improvement in hand-stamps." The first claim of the patent only is claimed to be infringed.

The elements of this claim are shown in Figs. 6 and 7 of the drawings of the patent, and are one modification of the invention covered by the patent. The claim reads as follows: "In a hand-stamp, the plate, F, having a receiving slot and catch-lug in combination with the type, and detachable spring-catches for engaging said lug, substantially as shown and described."

The defendants make and sell a hand-stamp in which they use a plate like complainant's plate, F, with a receiving slot for the type and lugs, with detachable springs for holding the type in place by

<sup>1</sup>Reported by Charles C. Linthicum, Esq., of the Chicago bar.

engaging the spring with the lugs. Complainant's patent shows the type arranged upon a band around a shell or cylinder, and by moving this band the desired type are brought to the lower part of the shell, where they are passed into the slot in the plate, F, and kept there by means of the catch-spring and lugs. Defendants set their type into a metal box or frame, and insert the box in the slot, and retain it in place by means of a catch-spring and lugs. It is true, as contended by defendants, that their screw-lugs may have an additional function not shown in the complainant's patent; that is, the element of adjustability, by which the lugs can be shortened or screwed down, as the face of the type wears away, so as to keep the type in the slot even with the rest of the type in the stamp; but there can be, I think, no doubt that the defendants' lugs and spring perform the same function in the defendants' stamp that is performed by the lugs and springs in complainant's patent, and the fact that they put their type into a metal box or frame, and set this box or frame into the slot, in no way changes the operation of their machine from that of the complainant.

The evidence of prior use, and as to the prior state of the art, does not, it seems to me, defeat the complainant's patent, for want of novelty, or so limit it as to allow the defendants to use these parts in their combination. The fact that the complainant showed a feature analogous to the function and operation of this feature in one of his earlier patents did not, I think, preclude him from taking this patent, under the rule laid down in *Graham v. McCormick*, 11 Fed. Rep. 859, and the cases there referred to.

The adjustable screw-lugs used by the defendants may be an improvement on the fixed and rigid lugs shown by the patent, and for that reason might form the subject of a further patent; but that is no reason why the defendant should use them without license from the plaintiff.

The finding, therefore, is that the defendants infringe the first claim of the complainant's patent, and there should be a reference for the purpose of taking an account.

THE CITY OF SPRINGFIELD.<sup>1</sup>

THE EDNA B. KING.

STUDWELL v. THE CITY OF SPRINGFIELD and another.

(District Court, S. D. New York. January 21, 1886.)

## 1. COLLISION—VESSELS MEETING IN NARROW CHANNEL—RIGHT OF WAY.

The rule that a vessel going with the tide through a narrow, dangerous channel has the right of way, and that a boat going in the opposite direction is bound to wait until the descending vessel has come through, cannot be justly applied when the descending boat has other channels available on the right hand side.

## 2. SAME—HELL GATE—SEVERAL CHANNELS—KEEPING TO THE RIGHT.

Vessels on the ebb-tide, bound down through Hell Gate, where three channels are available, should not take the east channel, if they have notice that a boat is coming up; and vessels going up on the right, through the east channel, have the right to assume that descending steamers, in the absence of any contrary indication, will keep to their own right, and pass through one of the other two channels, and not attempt the east channel to the left.

## 3. SAME—BEND IN RIVER—SEVERAL CHANNELS—LONG WHISTLE—INSPECTORS' RULE 5.

A long whistle, given in accordance with the inspectors' rule 5, "on approaching a bend in the river," is no intimation, where there are three equally available channels around the bend, that the vessel giving it intends to take the channel to her own left, and such a whistle from a vessel, after passing Negro point with the ebb-tide, is not in practice so understood.

## 4. SAME—CASE STATED—ASCENDING BOAT NOT BOUND TO WAIT.

The tug K., with a heavy tow, came down the East river with the ebb-tide. Soon after rounding Negro point, and before reaching Hallett's point, she gave one long blast of her whistle, to which the steamer City of S., being then a few hundred yards below Hallett's point, and bound up through the east channel of Hell Gate, replied with one. The tug rounded the point, and took the east channel, and the steamer being then in the same channel, and abreast of Flood rock, a collision followed between the latter and one of the boats in tow of the tug, for which both the steamer and tug were libeled, caused, as the court found, by the swing of the tide, which sets across the channel at the rate of six miles per hour. *Held*, that the tug was in fault for taking the east channel, knowing that a steamer, having the right of way, was coming up through it; and especially so, as she was incumbered with a heavy tow; that the City of S. had a right to assume that the tug would take one of the other channels; that she was not bound to wait below Flood rock to see which channel the tug would take, and that the enforcement of such a rule of navigation in that region would tend to multiply collisions rather than to avert them; that the steamer did all she safely could to avoid the collision, after the intention of the tug became known; and that the libel should therefore be sustained as to the tug, and dismissed as to the steamer.

## In Admiralty.

*Carpenter & Mosher*, for libellant.

*Wilcox, Adams & Macklin*, for the Springfield.

*Frank E. Blackwell*, for the King.

BROWN, J. This libel was filed by the owner of the canal-boats T. M. Slight and W. R. Wheeler to recover for the damages sustained by his boats through a collision with the steamer City of Springfield,

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.