

THOMPSON v. HALL and others.<sup>1</sup>

(Circuit Court, E. D. New York. July 24, 1885.)

**PATENTS FOR INVENTIONS—PATENTEE AN EMPLOYEE—LETTERS PATENT No. 232,-975—IMPROVEMENT IN CUTTING-PLIERS.**

A patent was issued to plaintiff, Henry G. Thompson, as assignee of Moses C. Johnson, for an improvement in cutting-pliers, and he filed a bill for damages and an injunction against one Hall. It appeared that Hall was president of a company engaged in making cutting-pliers under a patent issued to Hall. The writ turned on the question whether a certain model was made by Johnson while he was in the employ of the company, or after he had been discharged by Hall. *Held* that, on the evidence, it was not made till after the discharge; that Johnson was not the first inventor; and that the bill must be dismissed.

**In Equity.***Horace Barnard*, for plaintiff.*Amos Broadnax*, for defendants.

**BENEDICT, J.** This action is founded upon letters patent No. 232,-975, dated October 5, 1880, issued to Henry G. Thompson, assignee of Moses C. Johnson, for an improvement in cutting-pliers. The bill charges infringement, and prays for damages and an injunction. The question at issue is whether the combination described in the plaintiff's patent was invented by Moses C. Johnson while an employe of a corporation styled the Interchangeable Tool Company, which corporation was engaged in the manufacture of cutting-pliers under a patent issued to the defendant Thos. G. Hall, then the president of the corporation. In support of the averment that Moses C. Johnson was the first inventor of the combination in question, the plaintiff produces a model known in the case as defendant's Exhibit C, which model embodies the invention in question, and was made, as the plaintiff has sought to prove, while Johnson was in the employ of the Interchangeable Tool Company. On the other hand, the defendants assert, and have sought to prove, that this model was not made by Johnson while employed by the Interchangeable Tool Company, but after Johnson had been discharged from that employment, and for the purpose of supporting a fraudulent claim to an invention really discovered by the defendant Hall, put forth for the first time by Johnson after he had been discharged from the service of the Interchangeable Tool Company.

In one aspect, the decision of the case depends upon a question of time; that is to say, whether this model, (Exhibit C,) composed of brass and iron, was made when Johnson says it was, while he was a workman for Hall's company, or at a date subsequent to Hall's discharge of Johnson. Upon this question much testimony has been taken on both sides. Upon a full consideration of all the evidence,

<sup>1</sup>Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

my conclusion is that Exhibit C was not made when Johnson says it was, but subsequent to Johnson's leaving the employment of the Interchangeable Tool Company, and that Moses C. Johnson was not the first inventor of the combination described in the patent issued to the plaintiff as assignee of Johnson. There must therefore be a decree dismissing the bill, with costs.

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THE MARGARETTA.<sup>1</sup>

GREGORY and others v. THE MARGARETTA and THOS. F. LUBY.

(District Court, E. D. New York. July 31, 1886.)

ADMIRALTY—WRECKS—FORCIBLE TAKING AND WRONGFUL SALE BY WRECK-MASTER—ACTION TO RECOVER—NECESSARY PARTIES.

On November 8, 1883, the bark *Margaretta* took fire, and was towed to the Kill von Kull, where she was scuttled and sunk. The place where she sank was within Richmond county, New York. Her owners sold her, as she lay, to G., the libelant, who began operations to raise her. On November 23 the person occupied in raising her received notice from Luby, the wreck-master of Richmond county, to desist from work on the vessel, and, this notice being disregarded, Luby took possession of the wreck by force. A statute of the state of New York authorizes wreck-masters to take possession of wrecked property within their counties, when no owners shall appear, and, if the property is perishable, to obtain an order from the county judge, and sell the wreck at auction. Luby, having taken forcible possession of the wreck, obtained an order of sale from the county judge, and sold her to the claimant, and this action was brought by G. to recover possession. *Held*, that it is only of property abandoned by the owner, and upon such abandonment, taken possession of by the wreck-master, that a county judge has the power to direct a sale. Here there had been no abandonment by the owners. *Held*, therefore, that Luby's possession was unlawful; that the order of sale was void, and the sale itself invalid; and that libelant was entitled to the possession of the bark. *Held, also*, that Luby was improperly made a party to this action.

In Admiralty.

T. C. Campbell, for libelants.

Edwin G. Davis, for claimants.

BENEDICT, J. This is an action for the possession of the bark *Margaretta*. That vessel, on the eighth day of November, 1883, while being loaded with petroleum oil at a wharf in New Jersey, took fire. While on fire she was towed to a point in the Kill von Kull, opposite Sailors' Snug Harbor, in the county of Richmond, New York, and there, in 35 feet of water, she was scuttled, and sunk some 800 feet from shore. She had on board cargo that was insured, and on November 14th the insurance company made a contract with one William E. Chapman to save the cargo on board. On November 15th Chapman

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