

ical skill was involved and exercised. I am further of the opinion that said Rodebaugh patent was anticipated by the patent of Ely,—No. 163,309,—dated May 18, 1875.

2. If the Rodebaugh patent could be held valid, it would, in view of the action of the department, as shown by the file-wrapper and contents, have to be limited to the precise mechanism and construction therein described, and, as thus limited, it is not infringed by the machine used by the defendants. Rodebaugh's original claim was broad enough to have covered the machine as used by defendants. It was "(1) the eccentric lever, E, E¹, and connecting strap, F, combined with the vertical shaft or bar, D, carrying the dog-head, substantially as described, and for the purpose specified." This claim was rejected by the patent-office on reference to said Ely patent, No. 163,309, in which is found an eccentric lever operating on the vertically reciprocating bar, which carries the dog, and capable of locking the bar in any position it may be set. Upon the rejection of this broad claim Rodebaugh was compelled to present the new claim now shown in claim 1 of the letters patent issued to him, which cannot by any construction, or under any rule of doctrine of equivalents, be enlarged so as to cover or embrace what was previously rejected. It must manifestly be limited to the specific device therein described, in which the dog-head is locked when the eccentric lever has been moved through the half circle, or 180 degrees of the circle, of its action, and brought into a perpendicular position with the standard or shaft. The defendant's lever is differently constructed, having its greatest locking capacity when in a horizontal position, and losing this locking capacity entirely when carried to the position of the perpendicular at which the Rodebaugh lever makes its most effective lock. I am clearly of the opinion that the application for rehearing should be denied, and that complainants' bill should be dismissed, with costs.

BOYD v. JANESVILLE HAY TOOL Co.¹

(Circuit Court, W. D. Wisconsin. November 9, 1888.)

1. PATENTS FOR INVENTIONS—ANTICIPATION—HAY ELEVATOR.

Letters patent to John M. Boyd, No. 300,687, dated June 17, 1884, are void for want of novelty, being anticipated by prior patents.

2. SAME—PATENTABILITY.

Mere differences of form and mechanics, which do not involve invention, are not patentable.

(Syllabus by the Court.)

In Equity.

This was a bill for infringement of letters patent of the United States No. 300,687, to John M. Boyd, for hay elevators. The defendant man-

¹ Publication delayed by failure to obtain copy of opinion at time of delivery.

ufactured hay carriers under letters patent of the United States No. 279-869, to Frank B. Strickler. The defenses were want of novelty and non-infringement.

Erwin & Benedict, for complainant.

Offield & Towle, for defendant.

BUNN, J. The best judgment I have been able to form in this case from the evidence and from an inspection of the various patents and machines introduced on the hearing is this That the complainant's device is anticipated by the various patents introduced by the defendant; especially by the Walters patent, the Brower patent, the Church patent, the Jordon patent, the Kirch patent, the Hennyton patent, the Hustis patent, the Drake patent, and the Van Sickle patent. That in view of the several patents and machines, all prior to that of complainant, and apparently accomplishing substantially the same results by substantially the same means, there was very little left upon that line for inventors to work upon, and that the difference between the complainant's device and those preceding it is a difference of form and mechanics, and not one of art and invention. Complainant's bill dismissed, with costs.

RALLI *et al.* v. TROOP *et al.*

(District Court, S. D. New York. March 4, 1889.)

1. SHIPPING—AVERAGE—FIRE—WATER DAMAGE.

By our law, as well as by the York-Antwerp rules, the ship-owner is entitled to general average contribution from the cargo for water damage done to the vessel in extinguishing fire.

2. SAME—NEGLIGENCE—WHAT CONSTITUTES—EVIDENCE.

No general average contribution is due from the cargo to the ship-owners if the sacrifice is caused by such negligence of the vessel as the ship-owners are responsible for. *Held*, on the facts, that no negligence of the vessel was shown. The omission to comply with a port by-law requiring a locked lantern, is not, of itself, negligence, when such a regulation is not enforced by the local authorities, and is not shown to have been known to the master, and where the usual ship's lantern was actually used. The proceedings before a foreign board of inquiry are not legal evidence here.

3. SAME—SACRIFICE ORDERED BY PORT AUTHORITIES.

To entitle to general average contribution, the act of sacrifice need only be ordered by those who for the time being are in lawful control of ship and cargo, and, although this fire was finally extinguished under the direction of the port authorities, *held* that, as this was done by them while in control, under the *lex loci*, and as the act was a maritime act for the common benefit of vessel and cargo alone, and not for the supposed interests of other property in the port, the ship-owners were equitably entitled to contribution, under the maritime law, as if the master had retained sole control, and ordered the sacrifice.

4. SAME—ADJUSTMENT.

A British ship was chartered to load saltpeter and jute at Calcutta for a voyage to New York. The charter-party provided that all questions of general average should be settled in accordance with the York-Antwerp rules and the customs of the port of destination. After the vessel had loaded at her moorings, and was getting under way, fire broke out in the fore hold,