

of a storage house, as stated in the contract "adjoining their present elevator and connected thereto at Harlem."

In the specifications under "General Description" is the following:—

"The work shall consist of a tile storage house resting on a reinforced concrete foundation and connected to present working elevator with three concrete tunnels to basement and three enclosed steel bridges at cupola."

The final payment for the Harlem elevator was made on the 21st January, 1907. The application for the second patent was on the 6th April, 1908.

Certain correspondence was produced from which it was contended that there was no acceptance of the Harlem elevator until August, 1907. This correspondence relates to the storage elevator, the subject matter of the second contract of 26th November, 1906.

The Peavey plan for the elevator at Duluth is dated 6th March, 1906, and in the evidence quoted it is stated that this plan shewed the whole invention. I think the Harlem elevator was constructed and in use prior to the 26th November, 1906. It was paid for in full more than a year prior to the application for a patent in Canada for the main patent.

It is said guarantee bonds were executed. One such bond is attached to the contract. It is merely to guarantee the performance of the work. If a further bond was given it is not produced, and in my opinion does not affect the case.

I think it cannot be held that the inventor was experimenting with the view to perfecting his invention. The fact that he took a contract for the erection of the Peavey structure would demonstrate this. However, I think it was on sale within the meaning of the statute. If an inventor attended a fair and produced a model of his invention soliciting orders for its construction, would it not be on sale? In this case, in lieu of a model complete plans were exhibited and contracts entered into for its erection. He could not manufacture a grain storage elevator and have it on view.

See a very recent case, *Dittgen v. Racine Paper Goods Co.* (181 Fed. R. 394), where the Circuit Court of the Eastern