the broad interpretation which Judge BLATCHFORD appears to me to give it, it is done in a substantially similar way. I am informed that in the third circuit, on a motion to commit for contempt, the court was not willing to give so great a scope to this claim; but I am further informed that Judge BLATCHFORD has, on a similar motion, explained that he intended to give it this breadth. He is reported to have said that dipping the web itself into a bath of wax, instead of dipping a cylinder into the bath and carrying the web over the cylinder, did not escape this fifth claim. As the decision in the third circuit was founded upon that in the second, I should feel more safety, as matter of authority, in following the latter. I am myself of opinion that the claim may and should have this liberal construction.

A second patent to Hammerschlag, No. 209,393, dated October 29, 1878, is also relied on. This patent is taken out for improvements upon the invention described in the other. It describes, among other things, a fan for cooling the web of paper after it has been passed over the cylinders and before it is wound on the reel. Claim 3 is, "the method herein specified of preparing waxed paper, consisting in transferring the wax to the paper, heating the same to cause its incorporation with the paper, removing the surplus wax, and cooling the paper by a current of air before winding the same on a reel, substantially as described."

The defendants' argument insists that the claim incorporates the whole process of reissue 8,460; and, if that process is not infringed, a combination of that process with the use of a fan is not infringed. As I have decided that the premises are unsound, the conclusion drawn from them must fall.

Injunction ordered.

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## LILLIENDAHL and another *v.* DETWILLER and another.

(*Circuit Court, D. New Jersey.* October 17, 1883.)

PATENTS FOR INVENTIONS—DEMURRER—MULTIFARIOUS BILL.

Courts encourage single suits upon a number of patents to avoid multiplicity of actions; but in such cases the bill of complaint, in order to be maintained, must allege, and the proofs must show, that the inventions embraced in the several patents are capable of conjoint use, and are so used by the defendants.

On Bill, etc. Demurrer.

*F. C. Lowthorp, Jr.*, and *Edwin H. Brown*, for the demurrer.

*Robert H. Hudspeath, contra.*

NIXON, J. The bill of complaint charges the defendants with the infringement of two letters patent,—one, numbered 159,995, for "improvement in torpedo filling machines," and the other, numbered 167,814, for "improvement in torpedo envelope machines." The dedefendants have demurred, and for special ground of demurrer allege

that "the bill is multifarious, inasmuch as it sets forth separate and distinct letters patent, for infringement of which suit is brought, but shows no reason for uniting these separate and distinct causes of action in one suit against the defendants." The demurrer is well taken. A bill is not necessarily obnoxious to the charge of multifariousness because the suit is brought upon more than one patent. Courts encourage single suits upon a number of patents to avoid multiplicity of actions; but in such cases the bill of complaint, in order to be maintainable, must allege, and the proofs must show, that the inventions embraced in the several patents are capable of conjoint use, and are so used by the defendants.

The patents in this case relate to the same subject-matter, to-wit, the manufacture of torpedoes. The specifications of both state that the respective inventions appertain to the manufacture of percussion torpedoes, so popular with children as a means of amusement. It may well be that the defendants, in making torpedoes, used the devices of each patent, and, if so, and the bill properly charges the infringement by the conjoint use of both in such manufacture, it is as much for the interest of the defendants as of the complainants that the controversy should be determined in a single suit. But the bill in this case is faulty, inasmuch as the charge is that "the defendants use, employ, and operate the inventions of the complainant in combination or separately, or some material part or portion of the same, in and about the manufacturing and putting up percussion torpedoes, or for the purpose of facilitating such manufacturing or putting up said percussion torpedoes, or have vended and sold, or caused to be vended and sold, percussion torpedoes so manufactured and put up by the employment, operation, use, or aid of such inventions, in combination or separately, or some material part or portion of the same, or have made, sold, constructed, and put in operation, and used the said inventions, or some material part of both, or either of them, or both separately, or in combination, or some material part of the same separately or in combination, containing the said inventions, improvements, and combinations described and claimed in said letters patent." And the prayer is "that the defendants may be compelled to account for their gains and profits, and for the damages suffered by the complainants from the making, vending, and employing by the defendants the said invention described in said letters patent, or either of them, separately or in combination." Under such alternative and disjunctive allegations and prayer, the complainants could support their bill by proving the use of both the patents, or of either of them. But such proofs, I fear, would lead to difficulties, as well in the matter of defense as in the accounting, to which the defendants ought not to be subjected.

The objection is well taken to the bill in its present shape, and the demurrer is sustained.

## THE M. J. CUMMINGS.

(*District Court, N. D. New York.* 1883.)

1. ADMIRALTY LAW—TOWAGE—LIABILITY OF TUG.
   A tug-boat cannot be considered a common carrier, nor an insurer, and the highest possible degree of skill and care are not required of her; but reasonable skill and care she is bound to exercise, and the want of either is a fault, rendering the tug liable to the full measure of the damages so resulting.
2. SAME—NEGLIGENCE.
   It was *held* negligence on the part of the captain or pilot of a tug to start on a trip with a tow, knowing that the tow was in a measure unseaworthy, that it steered poorly, that the lake was rough, the wind strong, and that night was fast approaching.
3. SAME—CONTRIBUTORY NEGLIGENCE.
   Where the captain and owners of a canal-boat and cargo permitted her to be taken as a tow, without any light or other means of signaling the tug, they having knowledge of all the facts above stated, *held* contributory negligence, and the admiralty rule of dividing the loss, in cases of mutual fault, applied.
4. SAME—TOWAGE CONTRACTS—LIABILITY FOR DAMAGES UNDER.
   The duty of a tow-boat in respect to the vessel in tow, not to cause injury to the same, does not arise out of the towage contract, but is imposed by law; and an agreement that the boat shall be towed at her own risk will not exempt the tow-boat from liability for damages caused by her own negligence.

In Admiralty.

*John Stowell*, proctor, and *Francis Kernan*, advocate, for libelants.

*H. C. Benedict*, proctor, and *S. A. Webb*, advocate, for claimants.

COXE, J. On Saturday, November 4, 1882, the canal-boat Carrie and Cora was lying at Fair Haven, loaded with fruit and vegetables. The cargo was the property of the libelants, and was worth the sum of $5,889.50. Fair Haven is at the head of Little Sodus bay, about a mile and a half from Lake Ontario, and distant from Oswego between 14 and 15 miles. The canal-boat was built in 1871 or 1872, and belonged to the class known as "Oneida lake scows." Her dimensions were as follows: Length, 98 feet; beam, 16 feet 8 inches; height, from 7 to 9 feet; and her extreme draught, when loaded as she was on the day in question, was 5 feet 1 inch. She had been employed in the carrying trade, as similar boats usually are, but had, perhaps, received more than ordinary hard usage. On one occasion, in the summer of 1880, she struck on a sharp rock and sunk in the Oswego river. She had been repaired from time to time, and when the accident occurred was in a fair condition for the canal, but was unsuited, except in calm weather, for any extensive navigation upon the lakes. Pursuant to an agreement with the Oswego Tug Company, she had been towed, unloaded, from Oswego to Fair Haven by the steam-tug M. J. Cummings on the day previous,—Friday, November 3d. The contract for towing was made in the latter part of October, between Mr. Loomis, one of the libelants, and Mr. Crimmins and Mr. Post, the former being the collector and agent, and the latter the secretary and treasurer, of the tug association. It was agreed