SMITH *v.* HALKYARD and others.

(*Circuit Court, D. Rhode Island.* February 9, 1884.)

MOTION FOR CONTEMPT—PLAIN EVIDENCE REQUIRED.

To sustain a motion for contempt on account of the violation of an injunction issued to restrain the infringement of a patent, it must appear clearly and indisputably that the infringement continues.

In Equity. Motion for contempt.

John L. S. Roberts and *George L. Roberts*, for complainant.

Wilmarth H. Thurston and *Benj. F. Thurston*, for defendants.

Before LOWELL and COLT, JJ.

COLT, J. The defendants contend that they are not violating the injunction recently granted by this court by reason of certain changes made in their machine. The plaintiff claims that the defendants still infringe the first and seventh claims of the lacing-hook patent, as well as the patent for lacing-hook stock. The lacing-hook patent is for a combination. One of the elements of the feeding device mentioned in the first and seventh claims is a spring inserted in the groove along which the stock is fed, which operates to raise the stock and clear it from the dies. In their present machine the defendants use no spring. The inclines in the groove of the feeding mechanism are not, in our opinion, the equivalents of the spring, and do not perform the same function, and, as shown in the affidavit of Mr. Renwick, may be dispensed with altogether. By leaving out one element of the combination a serious doubt is raised as to the defendants' infringement.

As to the lacing-hook stock patent the position is strongly urged by the defendants that the patent is for stock with a series of alternate necks and indentations, and that in their present machine they only use a single neck and indentation at the end of the stock strip, and not a series. The plaintiff contends that, while at no moment of time a series exists, this is due to the fact that each neck and indentation is cut out as soon as formed, and that a series does exist in order of time or successively, as is shown by the successive holes in the waste strip. It is clear, from the specification and drawing, that the patentee contemplated the co-existence of a series of alternate necks and indentations. It is from stock so specially prepared in a series from which the blanks for the formation of lacing-hooks were to be cut. It may well be doubted whether, in view of the terms of the patent and the prior state of the art, the patent can be held to extend to a single neck and indentation.

Motions of this character are not granted unless the violation of the injunction is plain and free from doubt. Walk. Pat. 481; *Birdsall* v. *Hagerstown Manuf'g Co.* 2 Ban. & A. 519; *Liddle* v. *Cory*, 7 Blatchf. 1; *Welling* v. *Trimming Co.* 2 Ban. & A. 1; *Bate Refrig. Co.* v. *Eastman*, 11 FED. REP. 902.

Motion denied

THE C. D. BRYANT.

(District Court, D. Oregon. March 18, 1884.)

1. SALVAGE BY PILOT.
   Under the Oregon pilot act of 1882, (Sess. Laws, 15,) a pilot is bound to render aid to a vessel "in stress of weather or in case of disaster," and he is not entitled to salvage for such service unless he is thereby involved in "extraordinary danger and risk."
2. CASE IN JUDGMENT.
   The libelant in a smooth sea and calm weather boarded the Bryant in a thick fog, while she lay aground at low tide on the outer edge of the middle sand of the Columbia river, and at the next flood sailed her over into deep water in the south channel, and, after drifting out to sea in the night, brought her into port the next morning. *Held*, that the service of the libelant did not involve any "extraordinary danger or risk," and that he was only entitled to a pilot's compensation therefor.

In Admiralty.

Frederick R. Strong, for libelant.

M. W. Fechheimer, for claimant.

DEADY, J. The libelant, Henry Olsen, brings this suit to obtain a decree for salvage against the American bark C. D. Bryant and her cargo, for services rendered her at the mouth of the Columbia river on September 4 and 5, 1883. The master of the Bryant, James P. Butman, intervening for his interest and that of his co-owners in the vessel, as well as the owners and consignees of the cargo, answers the libel, denying that the libelant performed any salvage service on the occasion in question, and alleging that he acted as bar pilot merely, for which service he was duly paid. The evidence is very voluminous, and, as usual in such cases, is largely irrelevant, immaterial, and repetitious. The material facts appear to be that on September 4, 1883, the Bryant being bound on a voyage from Hong Kong to Portland, drawing about 19 feet of water, was off the mouth of the Columbia river, when, about 2:30 P. M., and near high water, she grounded on the outer edge of the middle sand in 12 to 15 feet of water at low tide, and about three miles south-west of Cape Disappointment light—the sea being smooth, the weather calm, and a thick fog or smoke on the bar; that about 5 o'clock she was boarded by the libelant, a bar pilot from the pilot-schooner Cousins, who thereupon took charge of her; that the vessel lay quietly in her bed in the sand after the libelant took charge, until the flood tide began to make, and the wind freshened from the north-west, when with the aid of her sails and the swell of the sea she rubbed across the sand some time before 3 o'clock on the morning of the 5th, in a south-easterly direction, into deep water, and was afterwards carried by the ebb tide and an easterly wind in a south-westerly direction to sea, where she laid off until daylight, and then came in over the bar with a light breeze and the flood tide, and was taken in tow by a tug, and brought to Astoria and beached with three or four feet of water in her