

upon final hearing. Preliminary relief will not be granted when, upon the same proofs and allegations, final relief would not be granted.

There is nothing in the affidavits on the part of the complainant in regard to the licenses. Copies of licenses are annexed, which purport to be signed by persons bearing the same name as the defendants, but there is nothing to show that licenses were ever delivered to or accepted by the defendants, or that there has been any breach, or that the licenses are not now in force. Enough may be spelt out from the affidavits of the defendants, and from the answer to the bill, to supply these omissions, though not without difficulty; but the court should not be asked to spend much time to find out whether the vital facts upon which the moving party relies, but which he has not taken the trouble to assert, can be exhumed from some other source. Ordered accordingly.

TATE and others v. THOMAS.

(Circuit Court, S. D. New York. January 10, 1885.)

PATENTS FOR INVENTIONS—TATE QUILTING-MACHINES—THOMAS MACHINE—INFRINGEMENT.

The eighth claim of the patent granted August 22, 1871, to William John Tate, for an improvement in quilting-machines, is infringed by the Thomas machine.

In Equity.

Edwin H. Brown, for complainants.

S. J. Gordon, for defendant.

WALLACE, J. Infringement is alleged of the patent granted August 22, 1871, to William John Tate, for an improvement in quilting-machines. The court has been relieved by the concessions of counsel made at the hearing from the consideration of any question except whether the defendant's machine, known as the "Thomas machine," and made under a license from the owner of the patent granted June 9, 1874, to M. A. King; is an infringement of the eighth claim of the complainants' patent. It has been conceded that the other machines made by the defendant are infringements of one or more of the claims of that patent. The object of the invention is to effect the quilting by machinery of complex patterns over the surface of materials used for bed-coverings, the lining of garments, etc. One feature of the invention relates to the production of diamond patterns or figures in the material quilted, and as the infringing machine is adapted to produce such patterns only, it will not be necessary to consider the other features of the invention.

It is obvious that Tate was the first to invent a quilting-machine which would produce the various complex and elaborate patterns which before his invention were produced by hand-work. The near

est advance in the art, before his invention, had been made by William Muir, whose quilting-machine is described in his patent of April 20, 1869. This machine could quilt in straight parallel lines, like the stitching of the sewing-machine, and it could also quilt in coincident zigzag lines, and thus form patterns defined by such lines. This latter result was effected by a single row of needles combined, with devices for feeding the fabric to the needles, which would impart both a forward or longitudinal and a laterally vibrating movement to the fabric, thus causing the stitching to be done in waved or zigzag lines. Tate conceived that by employing two rows of needles and so organizing the feeding devices that those for each row would operate successively and not simultaneously the zigzag lines of stitching of one row of needles could be made to meet those of the other row at the angle of the zigzag, and thus produce the desired diamond-shaped pattern. The invention described in his patent, so far as it relates to the production of the diamond-shaped patterns, is a combination of the two rows of needles with the requisite feeding devices.

The specification and drawings describe the needles as arranged in two parallel rows, and those of one row so located as to be opposite the spaces between the needles of the other row. Thus the series in one row alternate with those in the other row. When thus located and the described forward and lateral feed movement is applied, the relative disposition of the zigzag lines made by each row of needles is such that the angles of the lines meet at their apexes, thus producing the diamond figures or patterns in the place of the figures or patterns resulting from coinciding zigzag lines. The eighth claim of the patent is as follows:

"The combination of a series of needles, arranged in two rows, one behind and alternating with the other, and devices for feeding the work beneath the needles, substantially as described."

Whether the alternating arrangement of the needles is essential to the combination for the purpose of producing the diamond pattern it is not necessary to consider, because the language of the claim in question explicitly imports that arrangement into the claim. A machine which does not have the series of needles arranged in two rows, one behind and alternating with the other, is not an infringement of the claim. The defendant's machine employs the feeding devices which are one of the elements of the claim, and also the series of needles arranged in two rows, one behind the other. But in this machine the needles of each row are located opposite those of the other row. It does not follow, however, that this machine does not have the alternating needles of the claim; and upon an analysis it appears that it has two sets of needles, and each set consists of a series in two rows, alternating each with the other. Each set of needles operates on the principal of Tate's invention, and does the work of his machine in the same way. In other words, the defendant has incorporated Tate's alternating needles into the machine and then duplicated

Tate's arrangement, and when this has been done each needle in one row is opposite a needle in the other row. No new result is obtained by the change, although an aggregation of results is accomplished. If the additional needles had not been inserted the defendant's machine would quilt diamond patterns just as it does now. The machine is held to be an infringement. A decree is ordered for the complainants.

THE BOSKENNA BAY, etc.

(District Court, S. D. New York. December 12, 1884.)

1. SHIPPING—DELIVERY OF PERISHABLE CARGO—NOTICE—USAGE.

A vessel is bound to give reasonable notice to the consignee of readiness to discharge perishable cargo, and sufficient opportunity to receive and remove the same without injury from the weather; and she is bound by all reasonable customs of the port designed to secure that end.

2. SAME—READINESS TO DISCHARGE.

A vessel is not "ready to discharge" perishable cargo, within the meaning of that phrase in the bill of lading and under the usages of the port, when the weather is so cold that fruit cannot be discharged without injury.

3. SAME—CUSTOM—FRUIT—FROST.

Where a custom was proved to discharge fruit cargo in the forenoon of the day of sale previously advertised, and for the vessel to wait until the weather was mild enough to admit a discharge without injury from frost during the day, the sale being postponed accordingly, and the vessel having a large cargo which could not all be removed in one forenoon, commenced discharging about noon the day before the sale, and continued discharging till night, without notice to the consignee of intended discharge, and the fruit was injured by frost during the night, *held*, that the vessel was liable for the injury, because the discharge was not warranted at the time by any certainty as to the weather, and because it was without notice to the consignee, and a departure from the usual custom. Advertisement alone is not legal notice.

4. SAME—STEVEDORES—SERVANTS OF SHIP—NEGLIGENCE.

A charter of affreightment provided that the "stevedore was to be named by the charterer and consignees, and to be employed under the captain's supervision." *Held*, that the stevedore who discharged the ship upon appointment of the charterer's agents was the servant of the ship, and that the ship was liable for his negligence in discharging the goods at an improper time.

5. SAME—EVIDENCE—COMMERCIAL DOCUMENTS.

Courts of admiralty, where justice requires it, may take notice of matters not strictly proved according to the rule of the common-law courts, and where points arise incidentally and unexpectedly upon the trial, the evidence of which is found in commercial documents executed abroad, such documents may be considered without strict proof when the *res gesta* afford the highest practical guaranties for their authenticity and correctness. But this practice should not be extended so as to justify any laches in obtaining full proof, the necessity of which could have been reasonably foreseen.

In Admiralty.

F. Bartlett, for libellant.

Wheeler & Souther, for claimant.

Brown, J. The libel in this case was filed to recover \$1,688 damages to 2,288 boxes of oranges and lemons, through their alleged improper discharge from the steam-ship Boskenna Bay, on the twenty-first of March, 1883, in frosty weather.

1. The fruit in question was part of a cargo of about 22,000 boxes of oranges, lemons, etc., brought by the Boskenna Bay to New York from the Mediterranean. She arrived in this city about the eighteenth of March, 1883. On Monday, the 19th, she obtained a berth at pier 44, North river. Oranges and lemons are perishable cargo. Lemons will not bear, without injury, exposure to a temperature below freezing; oranges, not more than two or three degrees below that. The established usage requires a vessel arriving in cold weather to wait for weather mild enough to admit of a discharge and removal of the fruit from the wharf without injury from frost. The usual practice is to leave this matter largely to the head stevedore, who has the care of discharging the cargo. He usually obtains information from the weather bureau as to the probabilities of the weather for the next 24 hours, and acts partly upon the information thus obtained. The great bulk of oranges and lemons imported here is sold to jobbers at public auction. The business is managed by a single firm of auctioneers, whose sales are at their down-town office at 12 o'clock noon. The practice is for the fruit, or so much of it as will be sufficient samples, to be put upon the wharf in the forenoon. Buyers examine it there during the forenoon preceding the sale at auction, and buy at their own risk. Each purchaser thereafter removes what he has purchased from the wharf on the same day. By this means the discharge and removal of such fruit are ordinarily accomplished without injury in weather that is mild enough in the day-time, but which would be destructive to the fruit if it were allowed to remain upon the wharf over night. On Monday and Tuesday, the nineteenth and twentieth of March, the weather was too cold to admit of discharging; and, though the vessel was otherwise ready, the unloading was accordingly deferred. The stevedore in charge testified that on Tuesday afternoon the information received by messenger from the weather bureau at the Equitable building was favorable, and he accordingly directed the discharge to commence the next morning. On Wednesday, the 21st, the discharge was begun some time before 11 o'clock, and continued until 5. Pier 44 was covered by a shed closed upon the southern side, but with doors upon the northern side, through which the fruit was put upon the pier beneath the shed. The sale of the cargo at auction was publicly advertised for the 22d, at 12 o'clock. On the morning and during the forenoon of that day the libellant and other persons went to the pier to examine the fruit discharged, when the boxes in question were found injured by frost. One of the reasons assigned for unloading the fruit the day before the sale, was that the cargo was so large that it could not possibly be all discharged during the forenoon of the day of the sale. The evidence is conflict-