ants, yet their purpose is accomplished by simply increasing the diameter of the foot rest. The end is the same, and the difference in means is not substantial; and, therefore, if there was infringement in the case decided by Judge Coxe, there is also infringement in this one.

I should not be understood as intimating any independent opinion upon either of the two questions which were determined by the supreme court of the District of Columbia, but only as holding that, because they have been determined by that court, and upon substantially the same evidence as has been now adduced, they are not open for present consideration.

The motion for a preliminary injunction is granted, and the writ may issue accordingly.

NEW YORK BELTING & PACKING CO. v. GUTTA PERCHA & RUBBER MANUF'G CO.

(Circuit Court, S. D. New York. February 24, 1892.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.
When it appears that defendants have kept and offered for sale an infringing article, it is not unfair to issue a preliminary injunction, though they profess to have no present intention of continuing such sales.

2. SAME.
Such injunction will not be refused on a suggestion that an improper use may be made thereof by advertising to embarrass defendants in the sale of noninfringing articles, since it must be presumed that the injunction was sought in good faith, and, should the contrary appear, the court could reconsider its action.

In Equity. Suit by the New York Belting & Packing Company against the Gutta Percha & Rubber Manufacturing Company for infringement of design patent No. 11,208, issued May 27, 1879, to George Woffenden. The patent was sustained by Judge Coxe in New York Belting & Packing Co. v. New Jersey Car Spring & Rubber Co., 48 Fed. Rep. 556. Preliminary injunction granted.

B. F. Lee and Wm. H. L. Lee, for complainant.
Livingston Gifford, for defendant.

LACOMBE, Circuit Judge. While I do not think the complainant has shown the manufacture by the defendants of infringing mats of the kind described in the decision of Judge Coxe, it is impossible not to escape the conviction that they have kept such mats in stock, and offered them for sale. The catalogue which they circulated down to some time subsequent to June 1, 1891, offering mats of sizes not made by the complainant, seems conclusive on this point. It may be that the defendant has no present intention of continuing such sales, but, in view of the fact that there is a final decision sustaining the patent, it does not seem an unfair exercise of the court's discretion to secure the continuance of that intention by the granting of a preliminary injunction, at least until further order. The defendant cannot com-

competence of the master, and negligence in not having a helper, and in turning back. No other faults are alleged.

The proofs do not sustain any of the charges of negligence. The Burnett drew somewhat less water than the tugs customarily employed in taking barges into the Missiquog river. The uncertainties of entrance there must have been well known to all concerned. The practice was to go to the bar and cross it at high tide if there was sufficient water; if not, to return to Huntington. The Burnett pursued this practice, and cannot be charged with fault if she was navigated with all reasonable caution and skill in accordance with this general practice, unless there were special conditions of wind or weather which made a departure from the usual course reasonably necessary. At the close of the case it was contended, that at about 12 o'clock noon, when the tug and tow passed Huntington, there was so fresh a wind from the northwest that it must have been reasonably apparent to the pilot of the tug that such a tow of chunkers could not safely be brought back to Huntington in case no entrance could be effected on arrival at the Missiquog river; and that he was therefore bound to put in at Huntington, instead of pursuing the usual practice of going on to try the water at St. Johnland. The northwest wind itself would be no obstacle to entrance as usual.

The chunkers have a freeboard of only about 20 inches. They were plainly unfit to head much sea in the Sound; and if the faults stated had been charged in the libel, and I was satisfied upon the evidence that there was such unpromising weather at the time of passing Huntington that the entire safety of the fleet would depend upon the chance of crossing the bar and getting into the river, I should hold the tug blamable. Bouker v. Smith, 40 Fed. Rep. 839. Knowing the uncertainties that attended the entrance to that bar, the pilot of the tug would have no right to risk the entire safety of the chunkers on the single chance of entrance on arrival, when it was apparent that if he could not cross the bar, he could not expect to get back. It was not an uncommon thing for such tows to find the water too low, and be obliged to return to Huntington in consequence.

The evidence on the part of the tug, however, is that there were no such indications in the condition of the wind and weather at the time of passing Huntington. Some of the libelant's witnesses confirm the testimony for the tug in that respect, and such I am satisfied was the fact. No such charge is contained in the libel, and this contention appears for the first time at the close of the case. All the faults alleged in the libel being disproved, the libel must be dismissed, with costs.

THE MONDEGO.

MONTGOMERY v. FURNESS.

(District Court, D. Maryland. May 6, 1893.)

SHIPPING—DAMAGE TO CARGO—CATTLE SHIP — DEFECTIVE VENTILATION—EVIDENCE.

The mere fact that a very unusual number of cattle died while in transit to Europe, from no apparent cause, is not of itself sufficient proof of defective ventilation, as against the fact that the ship was provided with so many air spaces as to lead all the inspectors and experts to pronounce the ventilation sufficient, and the further fact that both before and after the voyage she had carried a greater number of cattle with scarcely any mortality.

In Admiralty. Libel in personam by Lewis E. Montgomery against Christopher Furness to recover damages for loss of cattle while in transit to Europe. Libel dismissed.

Sebastian Brown, for libelant.
John H. Thomas, for respondent.

MORRIS, District Judge. This is a libel in personam to recover the value of 118 head of cattle which died on the voyage while being transported from Baltimore to London on the British steamer Mondego. The steamer was put on as one of the Furness Line, and under the usual special live-stock contract took on board for the libelant 495 head of cattle, 184 of which were on the upper deck, and 311 were in the between decks. The steamship sailed from Baltimore on November 22, 1889, and arrived at London on December 9th. The passage was smooth, with light warm winds from abaft the ship. There was very unusual mortality among the cattle, 114 dying in the between decks and 4 on the upper deck. Those which were landed were in fair condition, except, perhaps, a little shrinkage in weight.

The question of fact in issue is as to the ventilation of the between decks. The libel charges that the cattle died from want of sufficient ventilation for so large a number as 311 head of cattle in the between decks. The defense on behalf of the ship is that the ventilation was sufficient, and had been proved ample by the vessel carrying a larger number of cattle on a previous voyage at a warmer season of the year, and that these cattle died either from inherent disease, or from being overheated and wet when put aboard, or from neglect of the cattle men in not attending to them on the voyage, or because they were very fat and swill fed, which rendered them risky to carry.

The Mondego was not specially constructed with reference to the cattle-carrying trade. She had been a passenger steamer, and was altered into a freighter, but she had, when her hatches were not closed, an unusual amount of open hatch space; and the ventilation of her between decks was such as to induce all the regular underwriters' inspectors, and the official inspector of the board of agriculture of England, who inspected her after this voyage,