

In a press of the type herein described, the side boards, D, for applying the final pressure to the bale, extended beyond their supports toward the receiving end of the press a greater distance than they are extended toward the delivery end."

And the Dederick claims are:

"(1) In a baling press, the combination with the bale chamber having openings, as at H, of the sides, each pivotally supported at a point between its extremities, whereby said sides are permitted to conform to, and bear with uniform friction upon, the column of pressed material, substantially as described. (2) In a baling press, the combination with the bale chamber having openings, as at H, of the sides provided with passages for the bands on the bales, and each pivotally supported at a point between its extremities, substantially as described, for the purpose specified. (3) The bale chamber having the openings, H, and guides, O, and provided with the closed sides at the discharge end, substantially as described. (4) The bale chamber having the openings, H, and guides, O, in combination with the adjustable closed sides at the discharge end, and means for adjusting said sides, substantially as described. (5) The bale chamber having the openings, H, the guides, O, and the slotted closed sides at its discharge end, substantially as described. (6) The bale chamber having the openings, H, the guides, O, and the adjustable slotted closed sides at its discharge end, substantially as described. * * *

The question of interference is determined by the claims, not by the general appearance and functions of the machine, shown but not claimed. The elements of Wickey's first claim are—First, an encircling hoop; and, secondly, devices for tightening the hoop,—neither of which appears in any of Dederick's claims. The second claim is still more limited, for it includes, besides the two named, a number of others, and what is said of the first applies the more to it. The fifth claim is for a specific form of construction. It is not for the same invention Dederick made, but is subordinate thereto. The patents, then, not being interfering ones, within the purview of Revised Statutes, § 4918, the case of Paper Co. v. Knopp, 54 O. G. 391, 44 Fed. Rep. 609, is not applicable. We therefore are not called upon to discuss it.

We are asked, however, to dismiss this bill because the plaintiff's remedy is at law. However potent this reason might have been if raised in limine, as was done in Smith v. Sands, 24 Fed. Rep. 470, yet, in view of the fact that it was not raised until final hearing, and the answer tendered a number of issues upon which much testimony has been taken, we do not think it should now prevail, and in support of that position we refer to Reynes v. Dumont and Tyler v. Savage, supra. Let a decree be drawn accordingly.

ACHESON, Circuit Judge, concurs.

STANDARD ELEVATOR CO. et al. v. CRANE ELEVATOR CO.,
(two cases.)

(Circuit Court of Appeals, Seventh Circuit. May 2, 1893.)

Nos. 48, 49.

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

A preliminary injunction to restrain the alleged infringement of a patent should not be granted, where the financial ability of the defendant to respond in damages is not successfully attacked, and the proof of complainant's rights and defendant's infringement is not free from doubt.

Appeal from the Circuit Court of the United States for the Northern District of Illinois. Reversed

Hall & Brown, for appellants.

Raymond & Veeder, for appellee.

Before GRESHAM and WOODS, Circuit Judges, and JENKINS, District Judge.

JENKINS, District Judge. The bills of complaint in these two cases were filed by the Crane Elevator Company to enjoin the alleged infringement of certain claims in several patents for improvements in hydraulic elevators, viz.: Claim 1, of patent No. 317,202, issued to George H. Reynolds May 5, 1885; claims 2, 4, and 6 of patent No. 328,614, issued to George H. Reynolds October 20, 1885; claim No. 3 of patent No. 248,908, issued to Cyrus W. Baldwin November 1, 1881; claims 1, 4, and 5 of patent No. 456,107, issued to Cyrus W. Baldwin July 14, 1891; claims in patent No. 456,122, issued to George H. Reynolds July 14, 1891; claims in patent No. 309,865, issued to Joseph Moore December 30, 1884; claims in patents No. 458,917, issued to George H. Reynolds September 1, 1891. Before answers to the bills, the complainants moved for injunctions pendente lite, which motions were heard upon bills and answers, and upon ex parte affidavits, and models constructed by the parties, respectively. The court below, at the hearing of the motions, granted preliminary injunctions on the first claim of patent No. 317,202, and on the second and fourth claims of patent No. 328,614, and on the first, second, and third claims of patent No. 458,917. The devices, the use of which was enjoined, are known as (1) the "Bottom Water Discharge;" (2) the "Air Escape;" (3) the "Lever Device;" (4) the "Compensatory Device." The appeal involves the propriety of these preliminary injunctions. The answers deny infringement; deny invention, novelty, and public acquiescence.

The principles upon which courts of equity grant the writ of injunction in advance of a decree upon the merits are elementary. The purpose of the interlocutory writ is not to conclude the question of right, but to protect against material injury pending the litigation. In patent cases, to warrant the writ, not only must the infringement be without reasonable doubt, but the rights of the patentee must be clear. Failing prior adjudication in favor of the validity of the patent, there must be shown such continued public acquiescence in the exclusive right asserted as raises a presumption of validity; a presumption not arising from the letters patent, unless accompanied by public acquiescence. The object of the provisional remedy is preventive, largely; and it will not be granted if it is more likely to produce, than to prevent, irreparable mischief. If the controversy between the parties be substantial, and not, as to the alleged infringer, colorable, merely, courts of equity are not disposed to adjudicate upon the rights of the parties otherwise than according to the approved usages of chancery, when the defendant's rights might, by the issuance of a writ of injunction,

be put in great jeopardy, and the complainant can be compensated in damages. Without passing any opinion upon the complainant's right, or the defendant's infringement, it suffices to say that upon the proofs in the record we cannot declare that the right or the infringement is so clear from doubt as to warrant the issuance of a preliminary injunction. The evidence as to construction of claims and infringement, upon which the court below was called to pass, was largely and necessarily *ex parte*. There was no opportunity of probing the witnesses. Scientific expert evidence is not wholly reliable when not subjected to the search light of intelligent cross-examination. It would, we think, be most unsafe to determine this controversy without full and orderly proof. It would be most unwise to imperil, and presumably wholly ruin, the large capital and interests involved in the business of the appellants, by arresting the enterprise in advance of a final decree, when the damages which the appellee may sustain can be compensated in money. The financial ability of the appellants to so respond has not, in our judgment, been successfully attacked.

The order appealed from will be reversed.

THE CITY OF ST. LOUIS.

DAVIDSON v. THE CITY OF ST. LOUIS.

(District Court, E. D. Louisiana. June 16, 1893.)

No. 12,967.

1. SHIPPING—SEAMEN—INJURIES—CONTRIBUTORY NEGLIGENCE.

A deck hand on a steamer, on the day after his employment as such began, was ordered to paint the smokestack, and, misunderstanding the directions given him, he placed a ladder weighing about 80 pounds against the smokestack. When he ascended it, the stack fell, and he received serious injuries. *Held*, that the accident was due to his own ignorance, and he can recover no damages.

2. SAME—EXPENSES—MEDICAL ATTENDANCE.

His fault was not, however, of such a character as to debar him from recovering his expenses while he was disabled, and a sum equal to his wages for a like period will be allowed as what the ship should contribute to the expenso of his cure.

3. SAME—COSTS—DIVISION.

But where the court is of opinion that he would have been conceded this much by the ship but for the demand for damages in addition thereto, and the expense of taking testimony, etc., would thus have been saved, the costs will be divided.

In Admiralty. Libel by John Davidson against the steamboat City of St. Louis for personal injuries received by libelant while in the steamboat's employ. Decree for libelant.

T. M. Gill, for libelant.

Brown & Choate, for claimant.

BILLINGS, District Judge. The libelant was employed as a deck hand. On the day after his employment he was directed to paint the smokestack. He misunderstood the directions that were