It may have improvements upon the patented machine. If so, it has also the theory and parts of it improved upon, and still appears to be substantially the same. Therefore, it appears to infringe.

Let a decree be entered for the plaintiff.

HOLLIDAY & SONS, Limited, v. SCHULTZEBERGE et al.

(Circuit Court, S. D. New York. September 29, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—COMMISSION TO EXAMINE EXPERTS.

In a suit for infringing a patent, a commission to examine witnesses abroad will, in a proper case, be granted for the purpose of obtaining expert testimony; and such commission should be granted in the case of a patent involving the chemistry of coloring compounds, when it is asserted by the moving party, and denied by the opposing party, that the art is so little practiced here that the best expert testimony can only be obtained by a commission.

In Equity. Bill by Paul Holliday & Sons, Limited, against Paul Schultzeberge and others to enjoin the infringement of letters patent. Motion for a commission to examine witnesses. Granted.

Cowen, Dickerson, Nicoll & Brown, for complainant.
Goepel & Raegener, for defendant.

LACOMBE, Circuit Judge. This court is practically asked in this case to prescribe a new rule of procedure, to the effect that in patent cases commissions to examine witnesses abroad should not be granted for the purpose of eliciting merely expert testimony. It is urged that such an examination can rarely, if at all, be conducted upon written interrogatories, and that the issuing of open commissions for such purpose entails a very heavy expense upon litigants. There is much force in the argument. The cost of such litigation is already great, and, where equally competent experts can be found in this country, it would be desirable, in most cases, to confine the expert testimony to such as might be elicited from them; but it is hard to see how the court can make any general regulation upon the subject. It would seem unwise for it to undertake to decide in advance whether the experts who can best inform it as to the prior state of the art are to be found here or abroad. Upon the argument of this motion it was asserted, and the assertion disputed, that within the field of the patent, viz. the chemistry of coloring compounds, the art was so little practiced here that the best expert testimony could only be secured by a commission. The interrogatories are therefore allowed, under the arrangement as to method of taking proof before the commissioner, which was suggested by the court, and apparently assented to by counsel.

AMERICAN BELL TEL. CO. et al. v. McKEESPORT TEL. CO. et al.

(Circuit Court, W. D. Pennsylvania. August 21, 1893.)

No. 20.

PATENTS FOR INVENTIONS—PRELIMINARY INJUNCTION—EFFECT OF DECISION OF SUPREME COURT OF UNITED STATES.

A decision of the supreme court of the United States, sustaining a patent, must be regarded as conclusive, upon a motion for preliminary injunction.

In Equity. Suit for infringement of letters patent. On motion for preliminary injunction. Granted.

J. J. Storrow and J. I. Kay, for complainants.
W. Bakewell and John McDonald, for defendants.

ACHESON, Circuit Judge. Alexander Graham Bell's second patent, No. 186,787, dated January 30, 1877, here sued on, was sustained by the supreme court of the United States in The Telephone Cases, 126 U. S. 1, 8 Sup. Ct. Rep. 778, as to the 3d, 5th, 6th, 7th, and 8th claims. Now that decision must be regarded as conclusive, upon the present motion for a preliminary injunction. Purifier Co. v. Christian, 3 Ban. & A. 42, 51; American Bell Tel. Co. v. Southern Tel. Co., 34 Fed. Rep. 795. Infringement by the defendants of said claims is, I think, clearly shown. Indeed, in the affidavits submitted on the part of the defendants, it is not alleged that the telephones used by them differ materially, as respects the features here complained of, from the telephones which were adjudged by the supreme court to infringe the patent. A preliminary injunction, therefore, must be granted against the McKeesport Telephone Company and the other defendants who are citizens of Pennsylvania.

THE GOLDEN GATE.

ATLANTIC COAST STEAMBOAT CO. v. THE GOLDEN GATE.

(District Court, D. New Jersey. July 13, 1893.)

1. SALVAGE—WHAT AMOUNTS TO SALVAGE SERVICE.

The steamer Golden Gate, while proceeding to her wharf at Atlantic City, having become disabled by the breaking of her rudderhead, at about 2 o'clock P. M., cast anchor, and signaled for help. The sea at the time was rough, and the wind blowing from the northeast at the rate of 20 or 25 miles an hour. The steamer Atlantic City, then lying at her wharf, about a mile distant, in response to the signals, proceeded to the assistance of the disabled vessel, and, after several attempts to tow her, cast loose, and left her in her original position. *Held*, that the assisting vessel, having failed to render any successful service, was not entitled to salvage.

2. SAME—TOWAGE SERVICE—STALE CLAIM.

Subsequently, at the request of the owner of the disabled vessel, the Atlantic City again proceeded to the assistance of the Golden Gate, which