claims reversing the decision of the examiner. Upon the whole, therefore, I think the patents sued on are valid.

This brings us to the grounds relied on by plaintiff for the preliminary injunction. There are, as I have already said, the judgment in Bowers v. Von Schmidt, and certain testimony given in that case, explaining the claims and the affidavit of plaintiff. In reply, defendant relies on the affidavit of its president, contradicting that of Bowers; opposes to the testimony offered by plaintiff other testimony; and urges that the judgment in Bowers v. Von Schmidt is not determinative of anything, as it has been appealed from; and, besides, defendant introduces patents which it is claimed anticipate plaintiff's, and which were not introduced in that case. It is not necessary to consider at length the contention of the parties on the propositions. With the conclusions in the case of Bowers v. Von Schmidt, on the evidence which was then before me, I am entirely satisfied; but other evidence and other patents have been introduced in the case at bar. The effect of these was submitted to a jury in an action at law between the parties, and the jury failed to agree. The consequences of this, whether it makes the case for plaintiff doubtful or otherwise, it is not necessary to determine, under the circumstances of this case. I do not care to pass on the matter (which is to pass on the patents) on a motion for a preliminary injunction, in view of the affidavit of the president of the defendant company and its pecuniary condition, it appearing to be solvent. There is no reason why the hearing of the case should not be pushed, and the rights of parties speedily determined. Motion for an injunction is therefore denied.

WARING ELECTRIC CO. et al. v. EDISON ELECTRIC LIGHT CO. et al.

(Circuit Court of Appeals, Second Circuit. February 9, 1894.)

PATENTS—INFRINGEMENT—ELECTRIC LAMPS.

Appeal from the Circuit Court of the United States for the District of Connecticut.

This was a suit in equity by the Edison Electric Light Company and Edison General Electric Company against the Waring Electric Company and others for infringement of the so-called "incandescent lamp" or "filament" patent, No. 223,898, issued January 27, 1880, to Thomas A. Edison. The circuit court granted a motion for a preliminary injunction. See 59 Fed. 358, where the opinion by SHIPMAN, Circuit Judge, is reported in full. From this interlocutory decree, defendants appeal.

Wm. E. Simonds and Chas. E. Perkins, for appellants.

R. H. Dyer and Frederick P. Fish, for appellees.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. Decree affirmed, with interest and costs, on opinion of circuit judge.

HERMANN v. PORT BLAKELY MILL CO.

(District Court, N. D. California. September 13, 1895.)

No. 11,176.

1. ADMIRALTY JURISDICTION—TORTS COMMITTED PARTLY ON LAND AND PARTLY ON WATER.

   Where a tort is committed partly on land and partly on water, the question whether admiralty has jurisdiction over it is determined by the locus of the damage, and not the locus of the origin of the tort. *Held*, therefore, that where the tort complained of was that a laborer working in the hold of a vessel was struck and injured by a piece of lumber, sent, without warning, down through a chute, by a person working on the pier, the case was one of admiralty jurisdiction.

2. MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANT—PLEADING.

   A libel in personam to recover damages for personal injuries, after describing defendant as a corporation, alleged that libelant was working in the hold of the vessel, and that "defendant" carelessly and negligently sent down upon him, through a chute, a piece of lumber, without giving notice of its coming, and that "defendant" was required to give notice, etc. *Held* that, although the acts of negligence ascribed to defendant must necessarily have been performed by some agent or employé, yet the court could not hold, on a demurrer to the libel, that such agent or employé was a fellow servant of libelant.

This was a libel in personam by Charles Hermann against the Port Blakely Mill Company, a corporation, to recover damages for personal injuries alleged to have been sustained while employed by defendant on the American vessel Kate Davenport. Defendant excepts to the libel.

H. W. Hutton, for libelant.

Van Ness & Redman, for defendant.

MORROW, District Judge. This is a libel in personam to recover damages for injuries alleged to have been sustained on board of the American ship Kate Davenport, while said vessel was being loaded with lumber at a wharf in Port Blakely, state of Washington. It appears from the allegations of the libel that the libelant was employed, in the month of January, 1895, in the capacity of mate on the Kate Davenport; that the vessel proceeded, with the libelant on board, to Port Blakely, there to load lumber; that on the 20th of January, 1895, while the vessel was lying at a wharf in said port, owned by the defendant, and was being loaded with lumber, the libelant was in the hold of the vessel, with several of the crew, engaged in receiving the lumber which was being loaded; that the manner of loading was to slide the lumber down a chute into the hold, and, as each piece was slid down, warning was given, to notify those in the hold, to enable them to escape from the descending lumber; that this warning was relied upon by the libelant in order to get out of the way of the lumber coming into the hold as aforesaid; that the defendant so carelessly, negligently, and improperly slid down a piece of lumber, without giving any warning or notification, to those in the hold, that the same was coming down the chute, that said piece of lumber struck the libelant, breaking his right leg, thereby seriously injuring him, to his damage in the sum of $10,000. Exceptions are filed to the libel