

man's device. We are therefore of opinion that structure No. 1 is an infringement on both claims.

Structure No. 2 presents a different state of facts. It appears a bustle pipe can be twisted or sprung from its normal position under certain conditions, and, when thus twisted, it acts as a torsional spring. In structure No. 2 this is done by means of a rod (adjustable by a screw to regulate the extent of the spring) connecting lugs placed on the upper sides of the bustle and the belly pipes. By this means the lower end of the belly pipe is supported, and the tuyere pipe is held in contact with the butt end of the tuyere by a pressure which adapts itself to the contraction and expansion of the parts. It is alleged by complainant that the rod between the bustle and belly pipes is a link which applies a yielding tension, and this brings it within the scope of Hartman's claim. We cannot so regard the claims of the two structures. To our mind, so far as the claims are concerned, they represent two distinct types of construction. The underlying thought, the "motif," so to speak, of Hartman's device, was a link or tie between the tuyere pipe and tuyere. Indeed, a study of the successive steps of his invention—first rigid clamps at the joint, then the extension of those clamps to a rod or link reaching to the end of the tuyere pipe, and then finally giving to the link the added capacity of exerting a yielding pressure—shows this. Through it all runs the idea of a link as something connecting or joining the two parts and drawing them together by pressure, the stack in which the tuyere was seated being stationary, the tuyere pipe movable. It is obvious that in his conception the stability of the stack was his starting point or base, by means of which his device was possible. This idea was embodied in the eighth claim (and we take it as being the broadest) in language that to our mind is capable of but one reasonable interpretation: "The combination of an oscillating joint upon a water-cooled tuyere, an oscillating tuyere pipe, and a link connecting the same by a yielding pressure, substantially as specified." "A link connecting the same." Connecting what? Obviously the tuyere and tuyere pipe. How? By pressure. What can this mean but the pressure operated through the rod itself? But this pressure of the rod, which would otherwise be fixed, is made yielding by the mechanism employed. The very word "link" means coupling or joining together, and "connecting" intensifies it, for the word from which it is derived means to bind. The language of the claim is not "means to exert a yielding pressure upon the same," but is restricted and limited to a link connecting the same by a yielding pressure. It is to be remembered that while the combination was new, and as such, and in the use of its equivalents, would be protected, yet separate and in themselves the elements of it were not. While Hartman was entitled to credit and protection as far as he invented and claimed, yet he did not block all paths of invention leading to the same result. The second structure reaches the same end, but by another path. In it a connecting link is wholly dispensed with. The stability of the stack as a base is not an element, and, instead of a pressure exerted from the stack

towards itself, we have a wholly independent force exerted propulsively from a separate structure towards the stack. In it there is no such connecting link between the tuyere and tuyere pipe as is found in Hartman's claims, nor has the link or tie of structure No. 2 a yielding pressure at all. It is a fixed link. The yielding pressure, after the link is fixed, comes from the bustle pipe alone. As we view the claims of Hartman's patent, there is no infringement in structure No. 2.

Let a decree be prepared in accordance with this opinion.

THE OSCODA.

(District Court, N. D. New York. September 30, 1895.)

1. TOWAGE CONTRACTS—INDEFINITENESS.

It is doubtful whether an alleged oral agreement by the master of a steamer to tow a barge on the Great Lakes during an entire season, the master to pay commissions, and the barge owner to give him one-third of the gross earnings, is sufficiently explicit to be enforced.

2. SAME—DAMAGES FOR BREACH.

Where a steamer which had been towing a barge on the Great Lakes abandoned her at Buffalo, in violation of an alleged contract to tow her during the entire season, held, that no damages were recoverable, in the absence of any evidence that if she had been taken along with the steamer and her other barges to Cleveland, she would there have been able to obtain a cargo, or that she would in any event have earned more freight during the remainder of the season than she in fact did earn by employing another steamer to tow her.

Libel in rem by owner of barge Harvey Bissell to recover damages for breach of contract of towage against propeller Oscoda. Exceptions to the libel disputing the jurisdiction of the court were overruled and an exception as to the items of damage was sustained, the libelant being required to make the libel more definite and certain in this respect. The Oscoda, 66 Fed. 347. An amended libel was thereafter filed, and the cause now comes on to be heard on pleadings and proofs.

Thomas Cary Welch, for libelant.

Harvey L. Brown, for claimants.

COXE, District Judge. The cause of action stated in the amended libel is that on the 1st day of April, 1894, at Buffalo, N. Y., the libelant made a contract with the master of the Oscoda by the terms of which the latter agreed for a valuable consideration to tow the libelant's barge, the Harvey Bissell, for the entire season of 1894, to furnish the barge with cargoes and to pay all commissions and towage. The libel alleges further that on the 1st day of September, 1894, contrary to the terms of said agreement, the Oscoda abandoned the barge at Buffalo. The items of damages are stated to be, first \$150 for five days' detention at Buffalo before the barge could obtain another tow boat and, second, \$850 because the steamer Toledo, which libelant was compelled to employ for the remainder of the sea-