

prior devices, the broad construction asked for would invalidate it. *Mathews v. Machine Co.*, 105 U. S. 58, 59; *Jeffrey Mfg. Co. v. Independent Electric Co.*, 27 C. C. A. 512, 83 Fed. 192-201.

If there could be implied into this claim the parts necessary to organize it into a perfecting press, complainant has not met the burden of showing a combination infringing the completed machine. In view of the success of defendant's press, the utter failure of that of Stonemetz, and the differences in parts and construction between the two, the language of the court in *U. S. v. Berdan Fire-Arms Mfg. Co.*, 156 U. S. 565, 15 Sup. Ct. 420, is not inapt:

"For where several elements, no one of which is novel, are united in a combination which is the subject of a patent, and these several elements are thereafter united with another element into a new combination, and this new combination performs work which the patented combination could not, there is no infringement."

The language of the court in *Consolidated Safety-Valve Co. v. Crosby Steam Gauge & Valve Co.*, 113 U. S. 157, 179, 5 Sup. Ct. 513, in speaking of the Richardson valve, is equally applicable to Cox's machine:

"Richardson's invention brought to success what prior inventors had essayed and partly accomplished. He used some things which had been used before, but he added just what was necessary to make the whole a practical, valuable, and economical apparatus. The fact that the known valves were not used, and the speedy and extensive adoption of Richardson's valves, are facts in harmony with the evidence that his valve contains just what the prior valves lack, and go far to sustain the conclusion at which we have arrived on the question of novelty."

There are several patents to which no reference has been made. To discuss these and the many other questions presented by the record would extend this opinion to a still more unreasonable length, although it would, in my judgment, confirm the conclusions here reached. For the reasons stated, the defendant has not infringed either the Kidder or Stonemetz patent, and complainant's bill should be dismissed, with costs.

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OVERWEIGHT COUNTERBALANCE ELEVATOR CO. v. CAHILL &  
HALL ELEVATOR CO. et al.

(Circuit Court, N. D. California. April 4, 1898.

No. 12,521.

PATENTS—PRELIMINARY INJUNCTION.

Where complainant was not manufacturing the patented machine, but had established a regular license fee, and defendants were solvent, and able to respond in damages to the amount of such fee for each machine made by them, *held*, that a preliminary injunction would be denied.

This was a suit in equity by the Overweight Counterbalance Elevator Company against the Cahill & Hall Elevator Company and others for alleged infringement of a patent for an improvement in elevators. The cause was heard on a motion for a preliminary injunction.

S. C. Denson and W. H. H. Hart, for complainant.

John H. Miller, for defendants.

DE HAVEN, District Judge. The complainant seeks by the bill filed in this case to obtain a decree enjoining the defendants from making, using, or vending elevators embodying the invention described in letters patent for an improvement in elevators granted to Philip Hinkle on May 16, 1882, and numbered 257,943. The question now before the court arises on the application of the complainant for an injunction pendente lite. The complainant is not engaged in manufacturing elevators, and it further appears that, prior to the commencement of this action, by resolution of its board of directors it established a royalty or license fee of \$250 for each elevator in which is used the invention covered by the patent in suit. Upon these facts it is clear that damages in an amount equal to the license fee thus established, multiplied by the number of infringing elevators which the defendant corporation may manufacture during the pendency of this action if not restrained, would fully compensate the complainant for any injury which it would suffer by reason of the threatened action of said defendant. It also appears that the defendant corporation is solvent, and able to satisfy any judgment for damages which may be awarded in favor of the complainant, if it shall finally succeed in this action. When it appears that damages will adequately compensate a complainant, and that the defendant is solvent and able to respond in damages, a motion for a preliminary injunction will be denied. *Pullman v. Railroad Co.*, 5 Fed. 72; *New York Grape-Sugar Co. v. American Grape-Sugar Co.*, 10 Fed. 837; *Kane v. Candy Co.*, 44 Fed. 287. It is always a material circumstance, in passing upon an application like this, that the defendant is responsible for any damages which may be decreed against him upon the final hearing. *Morris v. Manufacturing Co.*, 3 Fish. Pat. Cas. 67, Fed. Cas. No. 9,833. The foregoing cases are sound in principle. The office of a preliminary injunction is to preserve the rights of a complainant during the pendency of the litigation, and unless it appears that the alleged wrong threatened by the defendant might work an injury to the complainant, which in the view of a court of equity would be irreparable, such an injunction will not be granted. "The damage threatened to be done, and which it is legitimate to prevent, during the pendency of the suit, must be, in an equitable point of view, of an irreparable character. Such is the clear language and mandate of the cases, from the earliest to the latest." *Citizens' Coach Co. v. Camden Horse R. Co.*, 29 N. J. Eq. 303. To justify the issuance of an injunction pendente lite, the complainant must show a probable right, and also "a probable danger that the right would be defeated without this special interposition of the court." *Georgia v. Brailsford*, 2 Dall. 402; *Railroad Co. v. Earl*, 27 C. C. A. 185, 82 Fed. 690. Inasmuch as damages will compensate the complainant, and the defendant corporation is able to respond in damages, it is clear that the complainant is in no danger of being defeated in its rights, and thereby suffering irreparable injury, if the present application should be denied. I have not overlooked the fact that the solvency of the defendant corporation is attacked in one of the affidavits filed in behalf of complainant, but in my judgment the opposing affidavits of the president and secretary of that corporation are entitled to greater

weight in considering the question of its financial ability. The views here expressed render it unnecessary to consider at this time the other questions presented by the affidavits, and discussed by counsel. The application for a preliminary injunction will be denied upon the ground that complainant has not shown that it will sustain irreparable injury unless such injunction be granted.

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THE ST. PAUL.

INTERNATIONAL NAV. CO. v. THE ST. PAUL (CROSSMAN et al.,  
Intervenors).

(Circuit Court of Appeals, Second Circuit. April 7, 1898.)

Nos. 91 and 92.

**1. SALVAGE—VESSEL AND CARGO—SEPARATE CLAIMS.**

Where by one series of operations the cargo is salvaged, and by another the ship, it is proper for the salvors to bring separate proceedings against ship and cargo, and for the court to award separate sums, each bearing a different ratio to the amount salvaged.

**2. SAME—ERROR IN VALUATION OF VESSEL.**

Where the court valued the vessel salvaged at \$2,000,000, while its actual value was \$1,888,500, the error is not material, as, where the total amount salvaged is so large, the difference between the two sums is too small to affect the amount of award.

**3. SAME—COMPENSATION.**

An award of \$131,012.48 as salvage against the liner St. Paul, valued at \$2,000,000, will not be disturbed as excessive, where she was stranded, and called into service the resources of two wrecking companies with equipment, valued at \$400,000. The salvors responded promptly, enabling them to take advantage of the favorable condition of the water on the day she grounded; and the services were rendered by a large force, and occupied 11 days, during which time the liner was exposed to risk of loss.

**4. SAME—UNLOADING AND DELIVERY OF CARGO—LIGHTERAGE OR SALVAGE.**

Where the operations of the salvors in righting and securing a stranded vessel save the cargo, valued at \$2,000,000, from a risk to which it was fairly exposed, and the cargo is then removed by them, the award should be for salvage, and not merely the cost of lighterage, and one of \$28,987.52, though most liberal, will not be disturbed on appeal.

**5. SAME—CHARGE AGAINST SPECIE CARGO.**

No distinction can be made between the proportions of salvage charged against the different kinds of cargo, and specie must bear its share of the common burden.

Appeal from the District Court of the United States for the Southern District of New York.

These are two salvage suits growing out of the stranding of the American Line Steamship St. Paul in January and February, 1897. The first action is in rem against the steamer and her freight moneys, and the second is in personam to recover salvage in respect to her cargo. The two actions were tried together in the district court, Southern district of New York, the testimony being given in open court, resulting in salvage awards of \$131,012.48 against the vessel and of \$28,987.52 against the cargo. The St. Paul, 82 Fed. 104. Appeals have been taken by respondents in both causes, and by libelants in the second one.

Samuel Park and Harrington Putnam, for libelants.

H. Galbraith Ward, for International Nav. Co.

E. L. Baylies, for intervener Van Bergen.

Wilhelmus Mynderse, for intervener Crossman.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.