

that he devised some new and useful variety of electric motor. The entire invention claimed for Shaw is thus stated:

"Shaw's invention consists essentially, not only in the utilization of independent electric motors, as the moving power for the several traveling parts of his crane, but also in the adaptation of the motors and the crane each to the other by the location of one motor for moving the bridge directly upon the bridge itself, and the location of another motor for moving the trolley directly upon the trolley itself."

The prior art shows traveling cranes operated by steam power, in which the three motions are imparted by three independent engines,—one for each motion,—so arranged that each engine can act as its own brake, and all can be worked at once if desirable. The prior art shows cranes in which these three independent motors were located upon the trolley, and other cranes in which they were located upon the bridge; and, of course, when so placed, a more or less complicated arrangement of clutches, pinions, and gearings was required to transmit the power of the independent motor to the place where it was to act. This was a drawback, but was apparently deemed by the inventors of those earlier cranes less of a drawback than it would have been to furnish each independent motor with its independent boiler, or to supply steam from the single boiler through flexible pipes to motors whose position relative to that boiler was constantly changing. With electric motors, however, it is not essential to locate the motor so near to the source of power, and at a fixed distance from it. On the contrary, the motor may be placed in any position, and the power sent to it over a wire. It was the teaching of the electric art to attach the motor to the driven mechanism much more directly than other kinds of motor, and that, by reason of such direct application, much intermediate shafting and gearing could be dispensed with. It would seem that, given the three independent steam motors, and given the suggestion that electric motors be used to do the work, the locating of each directly on the part it was to move would suggest itself to those familiar with the art. We concur, therefore, with the conclusion expressed in *Crane Co. v. Worthington*, supra, that:

"The differences between the cranes of Force and Newton and the crane of the patent in suit are simply such as would naturally be made in changing the motive power, and whatever of superiority over previously used traveling cranes is to be found in the crane of the patent is due altogether to the recognized advantages inherent in the electric motor."

The decree of the circuit court is affirmed, with costs.

AMERICAN GRAPHOPHONE CO. v. WALCUTT et al.

(Circuit Court, S. D. New York. March 28, 1898.)

INJUNCTION—CONTEMPT—INFRINGEMENT OF PATENT.

Where the officers of a corporation, adjudged guilty of contempt for the violation of an injunction against the infringement of a patent, claim that they were misled by the wording of the decree, they are entitled to the benefit of any fair doubt in that respect, and are not punished beyond making good the injury by paying over the profits and damages of the violation, with costs.

This was a suit in equity by the American Graphophone Company against Cleveland Walcutt and Edward F. Leeds, for infringement of a patent.

Philip Mauro, for plaintiff.

Albertus H. West, for defendants.

WHEELER, District Judge. The claims of this patent that have been sustained cover sound records, as manufactures. The defendants have phonographs acquired from the American Phonograph Company, which that company had a right, acquired from owners of this patent, to use for making such sound records, and this right came with the phonographs to the defendants. When the decree for an injunction was settled, in order that the defendants might not be restrained from doing anything that they had a lawful right to do, the decree for the injunction was not left to be for an injunction against making, using, and selling such sound records absolutely, but only against such as were not, or should not be, "made on machines not procured from the plaintiff, or under this patent." All such sound records so made by the use of the phonographs so procured in subordination to the patent, and to the rights of those owning it, were left free to the defendants. All other such sound records were prohibited to them. They appear to have continued making original and duplicate sound records since the injunction as they did before. There does not appear to be any difference between the originals and duplicates when made. The former are understood to be made by the operation of sound waves of speech, or music, in the air, upon the phonographs, which are made thereby to record them. The latter are understood to be copied by machines from the former, and not to be made by sound waves in the air. The latter cannot be made by using the phonographs which the defendants have the right to use alone. Other means are, and necessarily must be, employed in making them. The defendants are strictly limited to what their phonographs so procured are actually made to do; the use of those existing things only being what is free from the monopoly of the patent to the defendants. The right to make sound records by the use of certain phonographs does not include a right to make like sound records by other means, or by the use of the phonographs and other means necessary to accomplish the making of them. This latter the defendants appear to have done; and, by doing it, they have gone outside of the license implied from the ownership of, and right to use, the specific phonographs procured from the American Graphophone Company, and have thereby violated the injunction. They have done this as officers of a corporation organized while the case was under advisement, but that does not make their own acts any less a violation of the injunction. They must therefore be adjudged guilty of contempt.

They claim to have been misled by the wording of this part of the decree; and as this proceeding is in its nature criminal, although for the protection of a civil right, they are entitled to the benefit of any fair doubt in that respect. The words do not seem to be ambiguous in this direction, but may have appeared so to others; and, to give the

defendants the full benefit of all possible doubt of intent arising from ambiguity, they will not be punished beyond making good the injury to the party, by paying over, upon ascertainment, the profits and damages of the violation, with costs of this proceeding, and, in default thereof, to stand committed. The respondents are adjudged guilty of contempt, and let an account be taken by the master of the profits and damages of the violation of the injunction order, to be paid in some short time after the coming in of the report, with costs; and, in default thereof, defendants to stand committed till the same are paid.

THE WASP.

DONOGHUE-KELLOGG MILL CO. v. THE WASP.

(District Court, D. Washington, N. D. April 4, 1898.)

1. TOWING RAFT—GUARANTY OF SAFE DELIVERY—BREACH.

Where the lessees of a steam tug entered into a contract to tow a raft of cedar logs, and guaranteed their safe delivery, they are liable under the guaranty for logs lost by them, and, under the statute of the state of Washington (2 Ballinger's Codes & St. Wash. § 5953), the libelants have a lien on the tug for the amount of damages.

2. SAME—NEGLIGENCE.

Where the master and lessees of a tug, towing a raft, finding that they cannot enter a bay until the next flood tide, leave the raft unsecured except by a single line tied to an insecure stake in the beach, and remain absent until the next flood tide, they are guilty of gross negligence and liable for the value of the logs lost.

T. B. Hardin, for libelants.
Allen & Powell, for claimant.

HANFORD, District Judge. The lessees of the steam tug Wasp entered into a contract with the libelants to tow a raft of cedar logs from Utsalady to the libelants' shingle mill at Ballard, and, in consideration of the price for towing, agreed to be paid, guaranteed the safe delivery of the logs. At the entrance to Salmon Bay, the tug, with her tow, encountered difficulties, and was delayed, and, when the raft was delivered at the mill a large number of the logs had been lost, for which loss the libelants have sued to recover damages. The contract by which the lessees guaranteed the safe delivery of the logs has been broken, and, without proof of additional facts, the libelants are entitled to recover damages, and, by force of a statute of this state, the libelants have a lien upon the steam tug for the amount of damages. 2 Ballinger's Codes & St. Wash. § 5953. Without the guaranty, the tug would not be liable, unless there was negligence in handling the raft, amounting to a failure to exercise ordinary care and skill, and the libelants would have the burden of proof to show a breach of the contract by failure on the part of the tug's captain to exercise ordinary care and skill. The A. R. Robinson, 57 Fed. 667. But, even under this rule, the libelants have made a good case. It is clearly established by the evidence that there was gross negligence on the part of the master and the lessees of the tug in handling this raft. I