paper of the kind he wanted; that he was awaiting the outcome of his suit." This witness tells nothing of the later interview, nor does he say that defendant refused to sell the paper. Moreover, defendant himself, who has submitted a long affidavit, confines himself to asserting that he has "not made any waxed paper which infringes patent 377,706," and that he has "not made any waxed paper for typewriter stencil sheets for over a year." He nowhere disputes the statement of Canode that he (defendant) sold him the five quires of which sample is annexed to the moving papers, nor that such sample is as above described. It must therefore be taken as abundantly proved that such sale was made. The defendant seems to have an impression that, if he does not make the paper himself, he will escape the operation of the injunction. This is not so. The injunction is in the usual form against "making, using, or vending for use," and by the sale to Canode defendant has plainly violated it, and must be found guilty of the contempt charged.

Fine, $100, without costs, half to complainant, half to United States. Ten days allowed in which to pay, and, in default thereof, commitment as usual in such causes.

VERMILYA v. ERIE R. CO.

(Circuit Court, S. D. New York. August 30, 1898.)

PATENTS—SUIT FOR INFRINGEMENT—PRELIMINARY INJUNCTION.

In a suit against a railroad company for infringement of a patent for a combination in a railway switch, apparently of old parts, which patent expires within two months, where defendant has in use 1,100 of the alleged infringing devices, distributed over 2,000 miles of track, an injunction pendente lite will not be granted.

Motion for preliminary injunction.

A. G. N. Vermilya, in pro. per.
Joshua Pusey, opposed.

LACOMBE, Circuit Judge. The patent sued upon will expire November 1, 1898,—about two months after argument of this motion. The patented invention is a railway switch, and defendant now has in actual use 1,100 of the infringing devices, scattered over 2,000 miles of track. It is the practice in this circuit, when injunctions are granted in similar cases, to allow defendant a reasonable time to prepare for removal, and the necessary substitution of other switches, and to require removal only in installments,—so many each month,—in order that the running of the road be as little interfered with as possible. If injunction thus phrased be issued in this suit, very few of the infringing devices would be removed before expiration of the patent. The patent, as appears from the claim, is for a combination, apparently of old parts; and after expiration of the patent the same old parts might be used to restore the combination destroyed in obedience to the injunction. Johnson v. Railroad Co., 37 Fed. 147. Under these circumstances injunction pendente lite should not be granted. Motion denied.

THE SAVOY.

WHEELER et al. v. THE SAVOY.

(District Court, D. Connecticut. September 1, 1898.)

SEAMEN—LIBEL FOR WAGES—EVIDENCE.

Where the employment of libelants by the owner of a vessel, as testified to by them, is inherently improbable, and the appearance and demeanor of the libelants' witnesses prevent belief in their testimony, a libel for alleged wages will not be sustained.

This is a libel by a seaman for wages.

Stiles Judson, Jr., for claimant.
Howard H. Knapp, for libelant.

SHIPMAN, Circuit Judge, acting during disability of district judge. This libel in rem against the sloop Savoy, to enforce an alleged lien for seamen's wages, averred that the libelants, Charles E. Wheeler, Lewis Nordaby, and Charles Tobias, were seamen on board said sloop in and about Long Island Sound, of which vessel James E. Miller was the managing owner; that Wheeler was employed from April 13, 1897, to September 25, 1897, at $60 per month, and earned $304, of which he has received only $10; that Nordaby was employed from September 7, 1896, to May 24, 1897, at $12 per week; that there is still due to him $174, and that there is a balance of $55 due to Tobias. No testimony was offered in favor of the Tobias claim. The libel was filed June 15, 1898. Annie Golati, who alleges that she is the owner and holder of a mortgage upon said sloop to secure the sum of $500 given by James E. Miller on September 19, 1896, and upon which the sum of $400, with accrued interest, is still due, appeared as claimant, and denied the truth of the allegations of the libel. During all the time in which the services of the libelants were rendered, James E. Miller, a clerk in a grocery store in Bridgeport, Conn., and a man of very moderate means, owned the Savoy, a sloop of 11.60 tons, and which was built to be used for the dredging of oysters. Wheeler is a person who dredges for oysters during the oyster season, and during the rest of the time is employed in services of one kind and another in the vicinity of the wharves and waters of Bridgeport and Stratford. His story, in which he is supported by Miller, is that in the spring of 1897 he was employed, by verbal agreement with Miller, to take charge of the boat and manage it, as sailing master only, and not as captain or master, for $60 per month. Wheeler says that from April 23, 1897, he was occupied for one month in rigging up the sloop, putting on a false deck, and fitting her out to dredge for oysters; that he dredged during the next month, when she went upon the ways for about a month, where she was being fitted to take out sailing parties; that she began about July 23d to take out sailing parties, and took out a few to different points, until the first week in September; that afterwards she dredged for about 10 days, until she was capsized and sunk in the Housatonic river, on September 20th. It is true that the boat was being repaired at the ship yard of Berdell, in Stratford, for about three weeks from June 15 to July 5, 1897. Wheeler has no written