

are for combinations into which the plaintiff's bale-chamber enters as an element, the defendant answers that he does not use such a bale-chamber, and consequently does not infringe. What we have already said in comparing the two presses, generally, disposes of this answer, so far as we are concerned. We are unable to discover any material difference in the two bale-chambers; and finding the several combinations and matters involved in these claims, embraced in the defendants' machine, we must, and do, find them to be infringed. This leaves for consideration the seventh and eighth of 8,130, the third and eleventh of 7,983, the sixth of 8,292, and the first of 8,296. As, however, the seventh of 8,130 embraces the entire press, the question of infringement, respecting it, is already disposed of.—The eighth is very clearly infringed. The defendants' traverser is so like the plaintiff's that they can hardly be distinguished; in character and effect, they cannot be. The formal difference resorted to by the defendants is immaterial. The third and eleventh claims of 7,983, the sixth of 8,292, and first of 8,296, are also infringed. The matters claimed distinctly appear in the defendants' press.

This disposes of a case (so far as we are concerned) that has involved an unusual expenditure of time and labor, and in which the interests of both parties have been presented with unusual ability.

ATLANTIC GIANT POWDER Co. v. DITTMAR POWDER MANUF'G Co. and others.

(Circuit Court, S. D. New York. September 27, 1881.)

1. INJUNCTION—CONTEMPT OF COURT.

Disobedience to an injunction is none the less a contempt of court because the act is done in good faith, as not prohibited by the order, or under advice to that effect.

2. GLUKODINE.

Glukodine is a mechanical mixture, not a new chemical compound

Gifford & Gifford, for plaintiff.

Laxon & Huldane, for defendants.

BLATCHFORD, C. J. This is a motion for an attachment against the defendants, the Dittmar Powder Manufacturing Company and Carl Dittmar, for violating the preliminary injunction issued and served herein, by making and selling a blasting powder called "glukodine powder." I am of the opinion, from the testimony, that what the defendants call glukodine is a compound made by a mechanical

mixture of nitro-glycerine with nitro-saccharose, (or nitrated sugar,) and is not a new chemical compound; that the constituent nitro-glycerine is shown to be separable, as such, from the constituent nitro-saccharose; and that the nitro-glycerine used is so combined with absorbents of it as to make a dry powder, safe to handle, transport, and use. The nitro-glycerine is so availed of as to produce practically the same effect as if it were not mixed with any nitro-saccharose. It is the explosive element in the powder. It is combined with a solid absorbent substance, "whereby," in the language of the specification of No. 5,799, "the condition of the nitro-glycerine is so modified as to render the resulting explosive compound more practically useful and effective as an explosive, and far more safe and convenient for handling, storage, and transportation, than nitro-glycerine in its ordinary condition as a liquid." The absorbent substance is, in the language of said specification, "free from any quality which will cause it to decompose, destroy, or injure the nitro-glycerine," and the absorbent absorbs and retains "a sufficient amount of nitro-glycerine to form an efficient explosive." The matter seems to be so free from doubt as not to fall within the cases where a new suit has been required to reach the article complained of. The absorbent is, in its use, an equivalent of the absorbent of the patent, and I see no doubt on the question of infringement. Disobedience to an injunction is a contempt of court. Rev. St. § 725. The injunction in this case forbade the making, using, or selling certain powders described in it, and any powder substantially like any of said designated powders, and any infringement of said patent. What the defendants did they did not do accidentally or unintentionally, but knowing fully what they did. They were, therefore, guilty of contempt. What they did is not the less legally a contempt because they did not think they were infringing, or were advised that they were not. Any question of *animus* can bear only on the extent of punishment. The patent is still in life. *De Florez v. Reynolds*, 17 Blatchf. 436.

The powders now passed upon are those known as No. 2, No. 3, No. 4, and No. 5. As to them an attachment must be issued.

ARBO v. BROWN and others.*

(Circuit Court, E. D. Louisiana. 1881.)

1. INEVITABLE ACCIDENT—DAMAGES.

Damages resulting from an inevitable accident must be borne by the party on whom they fall. Hence, where a steamer that was safely moored for all ordinary emergencies broke loose in a storm and inflicted damage on other shipping, her owners cannot be compelled to make good the loss.

In Admiralty.

R. K. Cutler, for libellant.

E. H. Farrar, for defendants.

PARDEE, C. J. The evidence shows that September 1, 1879, libellant was the owner of a barge loaded with wood, moored in the harbor of New Orleans, at the foot of Delachaise street, near the Louisiana ice works.

On the same day the Governor Allen, a dismantled steam-boat, being without engines, chimneys, etc., but with her boilers taken down and piled amidship, was, and had been for some time, moored on the opposite side of the river, and nearly abreast the wood-boat of libellant. The Allen was lying head up stream, and she had out some eight lines, fastened to check-posts and dead-men. Some of these lines had been in use some time and some of them were doubled, but the bow or head-line was new, and the stern-line nearly new. According to the weight of evidence, (and upon this there is only one objecting witness,) the Allen was, apparently, securely and safely moored, with a watchman aboard. On this first day of September a storm, prevailing from the day before, rose into a hurricane about 11 o'clock in the morning, blowing at the rate of 40 miles an hour, and continuing until about 11 o'clock at night. About 2 o'clock of the afternoon, and during this storm, the Allen broke away from her moorings, the stern and breast-lines giving way first, some parting and others pulling up dead-men, and pulling up and breaking off check-posts, letting the stern of the Allen blow out stream, when the check-post to which the head-line was tied also pulled up, and the storm carried the Allen directly over the river to the libellant's wood-boat. The Allen went over the river sideways and struck the wood-boat sideways, or broadside, driving her guard up and over the wood-boat. She struck the wood-boat with great force, and, it is probable, broke in and injured her side towards the stern. As the Allen's guard was forced over and on top of the wood-boat, the Allen was listed or careened to the other side. Lines were at once got out, and the Allen was tied, with head, stern, and breast-lines, in a place where a tug-boat could not have pulled her out while the storm prevailed. The listing of the Allen to windward exposed her seams above the water-line, which were open from long exposure to the force of the waves and water, and the Allen began to fill. As she filled she listed more, and then the boilers, piled on deck, rolled down to the guard, and it is probable it was then too late to right the boat, even if she could have been got off. Soon after the

*Reported by Joseph P. Horner, Esq., of the New Orleans bar.