COVERT v. CURTIS.

(*Circuit Court, N. D. New York.* October 3, 1885.)

PATENTS FOR INVENTIONS—INFRINGEMENT—ROPE-CLAMPS.

Patent No. 208,157, granted September 17, 1878, to James C. Covert for an improvement in rope-clamps, *held* infringed by the sale by defendant of similar clamps, and a preliminary injunction granted.

Motion for Preliminary Injunction.

William H. King, for complainant.

Coburn & Thacher, for defendant.

COXE, J. The complainant is the inventor of an improvement in rope-clamps, for which a patent, No. 208,157, was granted September 17, 1878. The specification contains two claims. The first is for the method of connecting one part of a rope adjacent to another part, or the ends of two ropes, by clamping with one or more open metallic rings, under extreme pressure. The second is for one or more open rings clamped around a braided or twisted rope, under pressure, to prevent unbraiding or untwisting. Since the date of the patent the complainant has, in the business of his firm, manufactured and sold large numbers of the patented clamps. Capital has been invested, expensive machinery purchased, skilled labor employed, and a high degree of proficiency attained in the character of the goods manufactured. The result is that a large and flourishing business has been established, which will be greatly injured by competition, and especially so if inferior and unworkmanlike goods are permitted in the market. Though the patented device is largely used, the complainant is in a situation to supply all demands; his exclusive right to do so having been generally acquiesced in by the public.

It is suggested in one of the affidavits read by the defendant that there is no infringement, because the ends of the rings sold by him are not beveled and do not overlap. This contention is clearly untenable. An examination of the claims discloses the fact that the beveled ends are no part of the invention. They are, in the description, recommended as being preferable to square ends, but are not claimed.

The prior patents, drawings, and exhibits referred to by the defendant have been examined, and it is thought that none of them anticipates the complainant's invention, so far, at least, as the first claim is concerned. Neither can it be maintained upon this proof that the patent is invalid for lack of invention.

It is manifest that a refusal of the relief asked for will work great, and perhaps irreparable, injury to the complainant's business. On the other hand, it is not easy to perceive how the defendant, who is a merchant and not a manufacturer, can be materially injured by being required to discontinue his sales until the questions at issue can be finally determined. The motion is granted.

THE SPARTAN.[1]

CROSSLEY *v.* FABBRI and another.[1]

(*District Court, S. D. New York.* July 24, 1885.)

1. DEMURRAGE—BLOCKADE OF PORT OF DESTINATION—CONSTRUCTION OF CHARTER-PARTY—CUSTOMARY DISPATCH—CASE STATED.

The charter-party of the ship S. provided for a voyage "from New York to Arica, Peru, with the privilege of a second port in Peru not north of Callao; charterers to be allowed 'customary dispatch' for discharging the cargo after the captain reports the vessel in the berth ready to * * * discharge the cargo. * * * Should the port of Arica be blockaded, and the vessel not be able to get into that port, the vessel is to proceed to the next nearest open port to discharge her cargo." On arrival at Arica on the fifth of April, that port was found to be blockaded, and the vessel was ordered by the agents of the charterer to Callao, which was then open, but was blockaded the day before the vessel arrived there. The agents thereupon directed the vessel to go to Ancon, 10 miles north of Callao, a place which had never before been made a port of entry, and which had no facilities for discharging cargo, in consequence of which great delays were occasioned. When about half the cargo had been discharged, Ancon was blockaded, and the vessel went to Chancay, where there was further delay, and a little more discharge of cargo before that port also was closed. After further hindrances, the discharge was finally completed on the twenty-fifth of August at Arica, where the blockade had been raised. Libelants claimed that "customary dispatch," in general, on the coast of Peru was such that the S. should have been discharged at Ancon by May 12th, whereas her discharge was not completed at Arica until nearly 125 days later, for which demurrage at the rate of £15 per day was demanded. *Held*, that the expression "customary dispatch," in unloading, is the dispatch customary at the place of discharge. At the extemporized ports of Ancon and Chancay there was no custom. As, in using the phrase "at the next nearest open port," the parties could not reasonably have had in view any such places as Ancon or Chancay, the "customary dispatch" of large ports, such as Arica or Callao, could not be exacted in this case at new and extemporized ports, which were substituted by necessity, and not from choice, as places of delivery, to prevent the defeat of the voyage, and that the obligation of the consignees, as respects discharge in those places, would be that of reasonable diligence only.

2. SAME—WAIVER OF PROVISION IN CHARTER—RESULT IN THIS CASE.

As the consignees designated Callao, 600 miles north, for the place of discharge after Arica, and the captain of the S. acquiesced, *held*, that the provisions of the charter as to the "next *nearest* port" had been waived. There was no provision in the charter for a substituted port in case the "second port" should also be blockaded. *Held*, therefore, that upon the blockade of Callao the situation became the same as if Callao had been the only port of discharge named in the charter, with no reference to the contingency of blockade.

3. SAME—BLOCKADE OF PORT OF DESTINATION—EFFECT ON CHARTER—ENGLISH AND AMERICAN AUTHORITIES.

English and American decisions reviewed as to the effect of the blockade of the port of destination of a vessel on the obligations of her charter-party.

4. SAME—UNDER FOREIGN LAW.

The obligations of the ship in such circumstances considered under the codes of various foreign nations.

5. SAME—EFFECT ON CHARTER—DUTY OF MASTER—FREIGHT—DELAY OR DAMAGE—CONTRACT TO RUN BLOCKADE.

Under our law, a blockade that prevents both parties from performing their concurrent obligations as to receipt and delivery of cargo dissolves the specific contract. If the master cannot then obtain the instructions of the ship-

[1] Reported by Edward G. Benedict, Esq., of the New York bar.