COTE and others *v.* MOFFITT.

PATENTS FOR INVENTIONS—VALIDITY OF REISSUA

A reissue may be good as to some of its claims and bad as to others. A patentee may rely on the infringement of the valid claim.

In Equity.

W. A. Macleod, for defendant.

T. L. Wakefield, for complainants.

LOWELL, J. A rehearing is asked for by the defendant, for the reason that since the interlocutory decree was entered, (*Cote* v. *Moffitt,* 8 FED. REP. 152,) and since the accounting was begun before the master, the decisions of the supreme court (*Miller* v. *Brass Co.* 104 U. S. 350; *James* v. *Campbell,* Id. 356) have laid down a rule for ascertaining the validity of reissues which was not understood before, and one which would render the reissue in this case void. The plaintiffs deny that the reissue is void, and object that this petition should have been filed before they had incurred so much expense before the master. If I have a discretion in the matter, arising out of the delay, I do not exercise it, because I think the case of *Gould* v. *Spicer* [reported *ante*] decides the point. It was there held that a reissue might be good as to some of its claims, and bad as to others; and that if a valid claim in the original patent reappeared in the reissue and was infringed, the patentee might rely upon that infringement and prevail, though some other claims were too broad. The single claim of Cote's original patent is repeated, in substance, in the reissue, and will support the plaintiff's decree. Petition denied.

THE BADGER STATE.

(Circuit Court, N. D. Illinois. January 6, 1883.)

1. COLLISION—PROPELLER ENTERING HARBOR.
   Where a propeller was entering a harbor on a dark night at a high rate of speed, she was held liable for a collision with a schooner leaving such harbor, notwithstanding the evidence was conflicting as to the position of the lights of the schooner, or the period at which a torch-light had been flashed on the schooner, and although the propeller may have had a proper lookout.

2. SAME—FAULT—HIGH RATE OF SPEED—WANT OF VIGILANCE.
   In such a case it is fault in a propeller, when entering a harbor on a dark night, not to slacken her speed and take the necessary precautions to avoid a collision.

Admiralty Appeal.

C. E. Kremer, for libelant.

H. W. Miller, for respondent.

DRUMMOND, J. This is a libel filed by the owner of the schooner Helen Blood to recover damages caused by a collision of the propeller Badger State with the schooner on the evening of October 9, 1877. A tug took the schooner in tow on that evening to start out on her voyage from Chicago to Muskegon, Michigan, which, after towing her out a short distance from the harbor, let her go, and the schooner was then proceeding to make sail, and while doing so, the hour being about 9 o'clock, the propeller was observed some distance off, making for the harbor of Chicago. There is some difference of opinion among the witnesses as to the precise course of the two vessels, but it seems sufficient to say that the course of the schooner was about N. by W., and that of the propeller about S. ¼ E. The wind was not far from S. W. The collision took place only a short distance from the harbor, probably less than a mile from the pier. The propeller struck the schooner a glancing blow on the starboard side. The night was not very dark, and a light properly displayed on a vessel could be seen at a distance of several miles.

The rule of law in a case like this is well settled. It was the duty of the propeller to avoid the schooner, and not having done so, and the collision having taken place, it is incumbent on the propeller to establish by competent evidence that the collision was caused, in whole or in part, by some fault on the part of the schooner.

It is claimed by the defendant that the schooner was in fault in three particulars: that the schooner did not, just before the time of the collision, show a starboard or green light, as the law requires; that she had no sufficient lookout; and that she was not properly