The plaintiff contends that the part which the defendant calls a fork is really a portion of the nailways; and that it reciprocates for the same purpose, and with the same effect as the whole track or way reciprocates in the patent; and that, in truth, the mode of operation of the two machines is substantially similar.

The defendant insists upon the differences between the two organizations, which all depend upon the fact that the defendant's machine has no spring to stop or protect the end of his nailway. In all other respects the machines are alike. The piece called a fork is one with the nailway, and a part of it when the nail is delivered into the throat of the nail tube; the separator acts in the same way to divide the lowest nail from the others; the fork, which, when at rest, was a part of the nailway, recedes, and the nail is driven in the same way as in the plaintiff's machine. The difference is that the nailway is cut in two and the lower end moves in the opposite direction from that in which the plaintiff's nailway moves. The part of the cover which acts as a stop is not needed, and is not present in the defendant's machine. We doubt its being an essential part of the plaintiff's machine. At any rate it is distinctly and separately described and claimed. We agree with the plaintiff that the fair construction of his patent will cover the defendant's machine.

The fourth claim, which contains, as an element, the stop, or springing end of the cover, is not infringed. Claims 1, 2, and 3—which are for combinations, (1) of the nailway and nail tube, (2) of the nail tube with an opening in its side, and the picker (or separator) and nailways, and (3) the ways and the adjustable cover—are infringed.

Decree for the complainant.

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## NAT. PUMP CYLINDER CO. *v.* GUNNISON.

(*Circuit Court, W. D. Pennsylvania.* September 4, 1883.)

PATENTS FOR INVENTIONS—CLAIM IN REISSUE REPEATING CLAIM IN ORIGINAL PATENT.

Where the claim in a reissue, while differing verbally from the claim in the original patent, is substantially and in legal effect a mere repetition of that claim, the claim in the reissue may be sustained.

*Gage* v. *Herring* 2 Sup. Ct. Rep. 819; *Schillinger* v. *Greenway Brewing Co.* 17 FED. REP. 244, followed.

In Equity. *Sur* demurrer to bill.

*John K. Hallock*, for demurrer.

*Mr. Taylor, contra.*

ACHESON, J. The *first*, *second*, and *third* grounds of demurrer go to the entire bill of complaint, and, if sustained, would require the court to hold that the reissued letters patent are void *in toto* by reason

of the alleged unwarrantable expansion of the claim. But it has been authoritatively decided that the invalidity of a claim in a reissue does not impair the validity of a claim in the original patent which is repeated and separately stated in the reissued patent. *Gage* v. *Herring*, 23 O. G. 2119; [S. C. 2 Sup. Ct. Rep. 819;] *Schillinger* v. *Greenway Brewing Co.* 24 O. G. 495; [S. C. 17 FED. REP. 244.] Now, in the present case, the second claim of the reissue, while differing verbally from the first claim of the original patent, is, it seems to me, substantially, and in legal effect, a mere repetition of that claim; and therefore, under the authorities cited, such second claim may be sustained. The *fourth* ground of demurrer is conceded.

And now, September 3, 1883, the fourth ground of demurrer is sustained, but the first, second, and third grounds of demurrer are overruled, and leave is granted the defendant to answer within 30 days.

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## THE MARY N. HOGAN, etc.

(*District Court, S. D. New York.* August 10, 1883.)

1. NEUTRALITY LAWS—FORFEITURE OF VESSEL—ADMIRALTY RULE 11.
   The eleventh rule in admiralty, authorizing the bonding of vessels arrested, is not imperative in all cases; it is designed to apply in suits to recover pecuniary demands, and should not be applied where it would defeat the object of the suit.
2. SAME—REV. ST. §§ 5283, 4189—BONDING VESSEL.
   Section 5283 of the Revised Statutes is designed to prevent hostile expeditions altogether by the seizure and forfeiture of the vessel engaged in them; not to set a price, by releasing the vessel on bond, upon the violation of international obligations; and no interpretation of the admiralty rules should be permitted which would admit of that result.
3. SAME—CASE STATED.
   Where the steam-tug M. N. H. was seized for forfeiture under sections 5283 and 4189, on a libel charging, upon responsible authority, that she had been fitted out for, and was about to depart upon, a hostile expedition against Hayti, and was registered under a false certificate of ownership, and application was made by the alleged owner, under rule 11, for appointment of appraisers for the purpose of bonding the vessel, *held*, that rule 11 was not designed for such a case, and that the vessel should not be released on bond, and the application for appraisers was denied.

In Admiralty.

*Elihu Root*, U. S. Atty., for libelant.

*Weekes & Forster*, for claimant.

BROWN, J. The steam-tug Mary N. Hogan being in the custody of the marshal, under arrest upon process issued for her forfeiture to the United States, application is made in behalf of John H. McCarthy, her alleged owner, for the appointment of appraisers to determine her value, preliminary to giving bond for her release from custody. The application is opposed by the district attorney on the ground that the

claimant is not, in this case, entitled to bond the vessel. The proceedings for the forfeiture of the vessel are instituted under sections 5283 and 4189 of the Revised Statutes. The former section subjects to forfeiture any vessel "furnished, fitted out, or armed within the limits of the United States with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace." The libel charges that the Mary N. Hogan, on or about the fifteenth of July, 1883, was furnished, fitted out, or armed within this district, with the intent that she should be employed in the service of certain rebels in the island of Hayti, to cruise or commit hostilities against the subjects, citizens, or property of the island of Hayti, with which the United States are at peace.

By section 4189, also, every vessel is made liable to forfeiture whose certificate of registry "is knowingly and fraudulently obtained;" and the libel charges that John H. McCarthy, on or about the fifteenth day of July, 1883, knowingly and fraudulently procured the registry of said vessel in his name as sole owner, upon oath that there was no subject or citizen of any foreign prince or state directly or indirectly interested in her, whereas, in fact, a foreign citizen was part owner.

The proceedings for the forfeiture of the vessel are proceedings in admiralty, and governed by the admiralty rules. The appointment of appraisers and the bonding of the vessel are claimed under rule 11 of the supreme court rules in admiralty, which provides that "where any ship shall be arrested, the same *may*, upon the application of the claimant, be delivered to him upon due appraisement to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving stipulation with sureties," etc.

In the great majority of cases suits are brought, and the arrest of the vessel is made, for the purpose only of securing payment of some pecuniary demand. In such cases the object of the suit will be fully secured by permitting a good bond, with sureties, to be substituted as security in place of the vessel during the pendency of the litigation; and thereby not only is the great expense of keeping the vessel in custody for a considerable period avoided, but the vessel is also allowed in the mean time to be engaged in the pursuits of commerce. Rule 11 is clearly designed for this purpose. It is not in form imperative in all cases of the arrest of vessels, but provides only that the vessel "*may*" be delivered, etc.; thus leaving to the court a discretion which may be rightly exercised under peculiar circumstances; and, as it seems to me, the rule clearly should not be applied in those cases where the object of the suit is not the enforcement of any money demand, nor to secure any payment of damages, but to take posses-

sion of and forfeit the vessel herself, in order to prevent her departure upon an unlawful expedition, in violation of the neutrality laws of the United States. Such, by the statements of the libel, appears to be the sole object of this suit; and to permit the vessel, as soon as arrested, to be bonded by the very persons alleged to be engaged in this unlawful expedition, and bonded presumably for the purpose of immediately prosecuting it, would be to facilitate in the most direct manner the unlawful expedition, and would practically defeat the whole object of the suit, and render the government powerless by legal proceedings to prevent the violation of its international obligations.

No section of the statutes other than section 5283 fully meets the circumstances of this case. That section is rightly invoked to enable the government to preserve itself from large possible liabilities through a violation of its treaty obligations to Hayti. It is clearly not the intention of section 5283, in imposing a forfeiture, to accept the value of the vessel as the price of a hostile expedition against a friendly power, which might entail a hundred-fold greater liabilities on the part of the government. No unnecessary interpretation of the rules should be adopted which would permit that result; and yet such might be the result, and even the expected result, of a release of the vessel on bond. The plain intent of section 5283 is effectually to prevent any such expedition altogether, through the seizure and forfeiture of the vessel herself. The government is, therefore, entitled to retain her in custody, and rule 11 cannot be properly applied to such a case.

Upon the papers submitted it appears that the proceedings are promoted at the instance of responsible officers of the Haytian government; and there is no evidence before me tending to show that the proceedings are in bad faith, or malicious, or on insufficient *prima facie* grounds; and the application for appraisers for the purpose of bonding should, therefore, be denied.

As the vessel is in custody, either party, under the rules of the court, is entitled to an immediate trial. No term for the trial of calendar causes being in session at this time, upon the consent of the United States attorney, already given in open court, the claimant, upon filing his answer to the libel, may have an immediate order of reference to the clerk to take the testimony in the cause; and when completed the case may be submitted, and will be at once disposed of.

## The New Champion.

(*District Court, S. D. New York.* July 15, 1883)

1. Admiralty—Lien—Supplies—Presumption.
   Necessary supplies furnished to a vessel in a foreign port are presumptively furnished upon the credit of the vessel as well as of her owners, and a lien on the vessel therefor will be sustained, unless the evidence is sufficient to rebut this presumption.
2. Same—Owner's Agreement.
   The lien will not be affected by an agreement between the owners and the captain that the latter should find the crew and provisions, where the seller had no knowledge or notice of the agreement.

In Admiralty.

*Alexander & Ash*, for libelants.

*J. A. Hyland*, for claimant.

Brown, J. The supplies for which this action is brought were provisions furnished at Bergen Point, New Jersey, to the steward, in accordance with the master's orders; and all belong to the class of necessaries. The captain was running the barge on an agreement with the owners that he should have $60 per month and find the crew and provisions. The libelants, who kept a grocery store at Bergen Point, had no knowledge or notice of this arrangement, as in the case of *The Wm. Cook*, 12 Fed. Rep. 919, and hence were not bound by it. *The John Farron*, 14 Blatchf. 24, reversing 7 Ben. 53; *The S. M. Whipple*, 14 Fed. Rep. 355; *The India*, Id. 476.

The libelant testified that the supplies were furnished on the credit of the vessel; and upon all the circumstances I do not think there is sufficient evidence to rebut this testimony, or the legal presumption that the supplies, being furnished in a foreign port, were furnished upon the credit of the vessel, as well as of her owners. *The Secret*, 15 Fed. Rep. 480; *The Plymouth Rock*, 7 Ben. 448; *The E. A. Baisley*, 13 Fed. Rep. 703; *The E. A. Barnard*, 2 Fed. Rep. 712, 714; *The Grapeshot*, 9 Wall. 129, 136.

The libelants must, therefore, have judgment for the value of the goods furnished, amounting with interest to $33.45, with costs.

## VAN DOLSEN *v.* MAYOR, ETC., OF NEW YORK, and others.

(*Circuit Court, S. D. New York.* August 30, 1883.)

JURISDICTION—LEASE OF REAL ESTATE TO CONFER—TITLE TO WATER FRONT.

The owner of certain dock property, who derived his title from the British crown through a grant of land bounded by the "water side," in anticipation of the action of the defendants, leased the same to plaintiff, who was a citizen of another state. Defendants, who derived their title also from the crown, attempted, under authority of the laws of the state of New York, to fill into the water, and build a new water front before the landing place, and cut it off from the water. *Held* that, as defendants were grantees of the crown, they were limited as if they had made the grant the crown had made, and could not grant land bounded on a way, and afterwards remove the way without compensating the parties injured. *Held, further*, that, although the principal motive in making the lease was to enable the plaintiff to sue in the circuit court of the United States, as it did not appear that the lease was not real and effectual to pass the title of the term to plaintiff, the suit involved a controversy properly within the jurisdiction of the court.

In Equity.

*James W. Gerard*, for orator.

*James C. Carter*, for defendants.

WHEELER, J. This cause has been heard upon pleadings and proofs, from which it appears that while the whole proprietary interest in all the land and water now in question was vested in the British crown, Sir Edmund Andross, royal governor of the province of New York, granted, in 1676, to Gabriell Curtessee a tract of land on the east side of Manhattan island, bounded south-east by the river, and in 1677 to David Deffore another tract adjoining this, bounded "by ye water side." These lands, between now Forty-ninth and Fifty-first streets, on the water front of which there has been, and been used for many years, a landing place, are the property of Gerard and James W. Beekman, who leased the front to the orator for two years from November 11, 1880. The defendants are attempting, under authority of grants from, and laws of, the state of New York, to fill into the water and build a new water front before this landing place, and cut it off from the water. This bill is brought to restrain such action, and for an account of damages. The owners have been accustomed to lease these premises for dock purposes before. They apprehended such action as has been begun by the defendants, and a controlling reason for making this lease was the fact that the orator is a citizen of another state, and could, as was supposed, proceed against the defendants in this court for any inteference with his rights. It is objected that this controversy is really between the lessors and the defendants, who are citizens of the same state, and not between the orator and the defendants, and that, therefore, the suit does not really involve a controversy properly within the jurisdiction of this court, and should be proceeded with no further, but dismissed, under section 5, act of