a member of the corporation, who has complied with its lawful requirements, a sum not exceeding five thousand dollars," "to his family, or as he may direct."

Colyar, Marks & Childress, for plaintiff.

James O. Pierce, for defendant.

BAXTER, J. 1. The rights of the plaintiff are to be determined in accordance with the rules established by the constitution and laws of the order.

2. Decision No. 20, made by the supreme dictator in 1879, that a member must be suspended in order to forfeit his death benefit, applied to a case where a member died after the expiration of 30 days from the call of the assessment, and before the next meeting of his lodge, and does not apply to the present case.

3. The laws and rules of the order, in force in 1881, did not declare that a member was always in good standing until he had been legally suspended by a valid act of his lodge; and the failure of Guthrie Lodge No. 1,054 to legally suspend McMurry is not conclusive of this case.

4. McMurry having been at the time of his death in arrears for nine months dues to his lodge, and in arrears for eight assessments to the widows' and orphans' benefit fund, the time for the collection of which had fully expired, was by reason of these facts not in good standing, within the meaning of the benefit certificate sued on, and the plaintiff, therefore, cannot recover.

5. Payment of the assessment by the members is essential to the successful operation of the widows' and orphans' benefit fund of the order, as the plan of the same is exhibited in the constitution and laws of the order.

In re VETTERLEIN & Co., Bankrupts.

(*District Court, S. D. New York.* April 19, 1884.)

BANKRUPTCY—PREFERENCE—UNITED STATES.

Where a bankrupt firm, through fraudulent undervaluations of goods entered at the custom-house, has incurred a forfeiture of their value to the United States, the claim of the latter against the firm for the tort is joint and several; and upon proof of the debt, containing a statement of the facts, the United States is entitled, under sections 5501 and 3466 of the Revised Statutes, to priority of payment out of any of the proceeds of either the joint or several estates, without reference to what may be the particular claim of priority in its proof of debt.

In Bankruptcy.

Samuel B. Clark, Asst. Dist. Atty., for the United States.

Jas. K. Hill, for assignee.

BROWN, J. The proof of the debt made by the United States in this case, sworn to on April 1, 1878, declares that Theodore H. Vet-

terlein and Bernard T. Vetterlein, the bankrupts, were, and still are, justly indebted to the United States in the sum of $99,951.25 for the value of goods imported in violation of the act of March 3, 1863, "to prevent and punish frauds upon the revenue," and which became forfeited to the United States thereby. The proof subsequently states that a claim is made for priority of payment out of the joint estate of said bankrupts as prescribed by law.

The above proof does not in terms claim priority of payment out of the individual estate of either of the bankrupts. The account of the assignee shows a joint estate and joint creditors, and a small separate estate of Theodore H. Vetterlein, one of the bankrupts, and private debts of the latter in excess of his estate. The assignee claims that the debt of the United States is not entitled to priority out of the separate estate, both because it has elected to prove the debt against the joint estate, and because it has not made an express claim of priority against the separate estate. Claims of the kind here referred to are both joint and several. It is unnecessary to determine whether a private creditor would, upon such debts and under the law of this country, be put to his election between the joint and several estates. *Mead* v. *Bank of Fayetteville*, 6 Blatchf. 180, and cases cited; *In re Bigelow*, 3 Ben. 146.

The decision of the supreme court in the case of *Lewis* v. *U. S.* 92 U. S. 618, holds that, under the fifth section of the act of March 3, 1797, (Rev. St. § 3466,) as well as under the bankruptcy act, § 5101, the priority of the United States is absolute against both the joint and separate estates, and that those provisions of law supersede the marshaling of assets, as recognized in equity, and by the bankrupt law, as between other creditors of the bankrupts. Under this decision, to which this court is bound to conform, no distinction of joint and separate estates can prevail as against the United States. The proof of debt above referred to states the facts upon which, according to the decision of the supreme court, the right of the United States must prevail against other creditors, for both the joint and separate property. It was unnecessary in the proof of debt to assert that the claim was made against the joint estate. It was immaterial whether this claim were made or were not made; and the assertion of a joint claim cannot debar the legal effect of the proof which, under the law as above stated, entitled the United States to priority out of the separate estate also.

The prior claim of the United States must therefore be allowed against both the joint and several estates.

HICKS *v.* FERDINAND and others.

(*Circuit Court, S. D. New York.* April 9, 1884.)

PATENT LAW—REHEARINGS OF CASES TO BE DISCOURAGED WHEN PRIOR USE IS THE DEFENSE.

Rehearings in equity cases should be generally denied, when the grounds offered therefor pertain to matters of evidence that could just as well have been procured before the trial already had. This should be especially the rule in patent cases when the defense is *prior use*, since it is seldom that the defendant cannot make it appear that he has discovered new evidence in support of such a defense.

In Equity.

Frost & Coe, for complainant.

Briesen & Steele and *Roscoe Conkling*, for defendants.

WALLACE, J. The application to amend the answer, and for a rehearing, should be denied, because it does not satisfactorily appear that the facts constituting the new defense could not have been discovered by the exercise of reasonable diligence before the cause went to a hearing. The complainant has conducted a difficult, protracted, and expensive litigation to a successful issue, and it would subject him to great hardship to compel him now to abandon the fruits and meet a new defense. It was his right to be apprised by the answer of the defenses which he would have to meet and overthrow, so that he could elect whether to proceed with his suit or abandon it. Amendments of pleadings which introduce a new defense are permitted with great reluctance in equity after a cause has been set for hearing, and after a hearing are rarely allowed. *Walden* v. *Bodley*, 14 Pet. 156, 160; *Smith* v. *Babcock*, 3 Sumn. 583. When the application is based upon the ground of newly-discovered evidence, a more liberal rule obtains; but courts of equity, as well as courts of law, in such cases proceed with great caution, and extend no indulgence to the negligent. Unless it appears affirmatively that the evidence could not have been obtained in due season if the party applying had used all reasonable efforts in that behalf, the application will be denied. It is due to the public interests, as well as to the immediate litigants, that rehearings for the purpose of letting in evidence which might and ought to have been introduced before the hearing should not be tolerated. In no class of cases should the practice of allowing rehearings be more strictly guarded than in cases like the present, where the defense of prior use is relied on to defeat the novelty of a patented invention, because it is seldom that a defendant cannot make it appear that he has discovered additional evidence in support of such a defense. The defendant states in his affidavit, in general terms, that he "has been eager to collect all material evidence," and "has made great exertion and every reasonable effort to defend the suit." These are his conclusions, but if the facts were specified they might not be the conclu-