to cancel the patent, when it is apparent that the name of the government is only colorably used, and that the suit is really prosecuted by private persons. Would it not be better to leave the attack upon such patents as have been obtained by false suggestions where they have heretofore been left, as defenses to the validity of the patents? My attention was called upon the argument to *Mowry* v. *Whitney*, 14 Wall. 434, but I do not find in that case any authority for sustaining this bill.

I do not intend to be understood as holding that a bill in chancery will not lie in any case to annul a patent obtained by fraud, but only that this bill does not, in my opinion, make such a case as requires or authorizes the United States to allow the use of its name to fight out a contest between these individuals.

The demurrer to the bill is sustained, and the bill dismissed for want of equity.

See *U. S.* v. *Gunning*, 18 FED. REP. 511.

In re Petition of INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA for the Proceeds of the Barge Waubaushene.

(*District Court, N. D. New York.* 1884.)

1. MARINE INSURANCE — PAYMENT OF PREMIUMS — DELIVERY OF POLICY CONTAINING RECEIPT.
   The delivery of the policy of insurance to the assured, containing a receipt for the premium, estops the company, for the reason that the receipt is conclusive evidence of payment; to the extent, at least, that such payment is necessary to give validity to the contract. The company will not be permitted to say that no contract was made.
2. SAME—UNAUTHORIZED ACT OF AGENT—RATIFICATION.
   When the unauthorized act of an agent is ratified by the principal, the ratification relates back to the time of the inception of the transaction, and the act is treated throughout as if it were originally authorized.
3. SAME—CONTRACT—WHERE MADE.
   The agents of an insurance company in Buffalo, New York, at the request of an agent in Canada, insured a Canadian vessel. The note given for the premium was dated and signed in Canada, and made payable at a Canadian bank, and the policy, containing the receipt for the premium note, was delivered to the assured in Canada. *Held*, that the contract was made in Canada, and that the case was governed by the Canadian law.
4. SAME—LIEN FOR UNPAID PREMIUMS—NEW YORK STATUTE—FOREIGN VESSEL.
   The law of New York creating a lien in favor of underwriters for unpaid premiums of insurance, has no relation to insurance on a foreign vessel, the contract for which is made in a foreign country.
5. SAME—MARITIME LIEN.
   No general lien is created by the maritime law, in favor of the insurer, for unpaid premiums.

Motion to Confirm Report in Favor of Petitioner.

Benjamin H. Williams, for petitioner.
Willis O. Chapin, for respondent.

COXE, J. The petitioner is a marine insurance company of the state of Pennsylvania, doing business at Buffalo, in this state, where Crosby and Dimick are its general agents. They are also agents, either individually or as a firm, of three other marine insurance companies. The companies represented by them are known as the "Big Four." The barge Waubaushene is a Canadian vessel, registered at Toronto, Ontario. Her owner, Milton S. May, of London, Canada, applied in March, 1883, to A. H. Dalziel, an insurance agent and broker at Sarnia, Canada, for insurance upon her and other barges owned by him. The barge having been inspected at Buffalo, it was concluded to apply to Crosby and Dimick for insurance, it being understood that no one of their companies would write all the policies, that an application made to one would answer as well for each of the other three, and that the agents reserved the privilege to divide the risk according to the amount which each company would consent to assume. The application for the Waubaushene was made to the Thames & Mersey Marine Insurance Company, (one of the "Big Four,") and was dated March 30, 1883. The insurance asked for was $5,700, the applicant agreeing to give a note for the premium ($384.75) at six months, indorsed by J. C. Miller and Robert Moat, payable at the Bank of Montreal. The application, made on one of the company's printed blanks, contained the following:

"This application to be considered binding until rejected and due notice given the applicant; or approved, and the contract of insurance perfected by the issue of the company's policy."

The application was filled up by Dalziel, and sent by him to Crosby and Dimick. In all this he acted for May. Crosby and Dimick received the application, and in response issued two policies,—one in the Pennsylvania Company, (this petitioner,) for $1,700, the other in the Thames & Mersey Company, for $4,000. The policies, together with the premium notes, ready for signature, were sent to Dalziel by mail. The policies were delivered to May, and the notes, signed by him, but not indorsed, were returned to Dalziel, who mailed them to Crosby and Dimick. The notes so signed were accepted and retained. The policy in question contains a provision that it shall not be binding until countersigned by the general agents at Buffalo. It was so countersigned at the time of delivery. It also provides, in substance, that in case of loss or misfortune, if the insurer is required to pay for repairs, etc., more than its just proportion, the surplus (with the premium note, if unpaid) shall be a lien upon, and shall be recoverable against, the vessel, or against the insured at the option of the insurer. The policy also contains the following receipt:

"The assured hereby acknowleges the receipt of a note, at 6 months from May 1, '83, for the amount of the consideration of this insurance, which, at the rate of $6\frac{3}{4}$ per cent. on $1,700, is $114.75 "

The words "A. H. Dalziel, Agent at Sarnia, Ont.," are indorsed on the policy in the same handwriting, apparently, which appears on its face. The premium note is dated at Sarnia, Ontario, May 1, 1883; is made payable, not to the order of either of the persons proposed in the original application as indorsers, but to the order of the insurance company itself. The note recites that it is given for "premium of insurance on schooner barge Waubaushene, policy No. 611, of Sarnia, Ontario, A. H. D. (A. H. Dalziel) Agency, Insurance Co. of the state of Pennsylvania," and that if it is "not paid at maturity the full amount of premium shall be considered as earned, and the said policy becomes void, while the amount remains overdue and unpaid." The note was indorsed by the company, Crosby and Dimick general agents. The policy extended from May 1 to November 30, 1883, and was by special clause confined to "total loss and general average only."

Upon the hearing before the commissioner the note was surrendered. It has never been paid. The barge having been sold by order of the court in another proceeding, the petitioner now seeks to have the amount of the premium paid from the surplus in the registry of the court. The respondent, as mortgagee, resists this attempt, insisting that the debt is a mere personal contract of the owner, carrying with it no privilege against the ship.

The questions which the court must examine are these: *First*, was the contract made in the state of New York or in Canada? In other words, is the controversy to be determined by the law of this country or Canada? *Second*, has the law of New York, creating a lien in favor of underwriters for unpaid premiums, any application to this case? *Third*, is a general lien created by the maritime law of this country? The commissioner to whom the cause was referred decided—*First*, that the contract of insurance was made in New York; *second*, that the New York law has no application to a Canadian vessel; *third*, that a maritime lien for unpaid premiums does exist in favor of the insurer. That the commissioner was correct as to the second proposition I have little doubt, but am constrained to disagree with him as to the other two.

Where was the contract made? It cannot be said that any binding contract was entered into when the policy was made out and mailed at Buffalo, for the reason that it differs wholly from the application. *Eliason* v. *Henshaw*, 4 Wheat. 225. The minds of the parties did not meet. They did meet, however, when, at Sarnia, Ontario, May accepted the contract and signed the note in the precise form adopted by the company. It is argued for the petitioner that as May agreed to give an indorsed note and did not do so, the minds of the parties did not come together until the unindorsed note was accepted by the agents at Buffalo. Hence the contract was made there. The provision for an indorsed note was for the benefit of the insurers. Unquestionably, they could waive it. That they did waive it there is little doubt. They sent to Dalziel, who for this purpose