

doubtless be avoided were it practicable. The respondent does not claim it as a merit in his patent, nor allude to it in his specifications. We must, therefore, hold that the first claim is infringed.

Is the second infringed also? Its only distinguishing feature is the forcing screw. This we do not find in the respondent's machine. To hold that the fingers and cylinder constitute the complainant's screw is not justifiable; nor is it justifiable to say they are its equivalent because they do its work. To say that they are, would obliterate the distinction between the first and second claims; for if any forcing device that may be adopted—capable of performing the office of the screw—is its equivalent, it follows that the two claims are for the same thing. A decree may be entered in the usual form, for infringement of the first claim.

ACHESON, J., concurs.

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POPE *et al.* v. SECKWORTH *et al.*

(District Court, W. D. Pennsylvania. July 2, 1891.)

**ADMIRALTY PRACTICE—RELEASE OF ATTACHED PROPERTY.**

Under the fourth admiralty rule, which provides that an attachment may be dissolved upon defendant giving bond to abide by all orders of the court, and pay the amount awarded by final decree, attached property cannot be released on bond conditioned for payment of the value of the property released, where the value of such property is less than the debt sued for.

**In Admiralty.**

*Noah W. Shafer and Stephen C. McCandless*, for libelants.

*John Scott Ferguson and E. G. Ferguson*, for respondents.

REED, J. The respondent Seckworth, whose goods have been attached upon mesne process issued upon a libel *in personam* under the second admiralty rule, has applied for an order to direct the marshal to deliver to him two flat-boats so attached, upon his giving security that, in the event of a decree against him, he will pay the libelants on account of said decree the value of the said boats; and the respondents J. B. Hahn and Martin Hahn apply for a similar order as to the cargo of said flats, likewise attached as their property. The value of the flats and cargo is conceded to be much less than the claim of libelants. Proctors for libelants object to the application, and insist that the stipulation or bond must be to pay the amount awarded by final decree. I am not able to find any authority upon the subject, but an examination of the fourth admiralty rule satisfies me that the stipulation or bond must be as contended by libelants' proctors. That rule provides that the attachment may be dissolved by order of the court, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders of the court, and pay the amount awarded by

the final decree; and upon such bond summary process may be issued against the principal and sureties to enforce the final decree. The same language is used in the third admiralty rule relative to warrants of arrest in suits *in personam*, which has been held to require a stipulation or bond, not for the appearance of the defendants alone, but also for the payment of the decree. 2 Conk. Adm. p. 88 *et seq.*; *Gardner v. Isaacson*, 1 Abb. Adm. 141; *Gaines v. Travis*, Id. 297; Ben. Adm. § 496. The language of the fourth rule is plain, and leaves no room for the construction claimed by defendants' proctor. Provision is made by the tenth admiralty rule for relief in cases where the property attached is of less value than the claim of libelants, which is an additional reason, in my judgment, for the construction I have put upon the fourth rule.

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THE TIMOR.

NORDLINGER *et al.* v. NELSON *et al.*

(District Court, S. D. New York. June 25, 1891.)

CARRIERS BY SEA—DAMAGE BY RATS—BURDEN OF PROOF—BILL OF LADING—EXCEPTING VERMIN—NEGLIGENCE.

On discharge at New York of a cargo of beans from Fiume, Austria, after a voyage of 34 days, an extraordinary and almost unheard of amount of damage from rats appearing, *held*, (1) that the negligence of the ship to take reasonable and ordinary precautions against such a familiar cause of damage was to be presumed; (2) that, though an exception of liability by reason of "vermin" in the bill of lading included rats, neither that exception nor the exception of damage from negligence, even if valid, excuses the lack of preliminary precautions against rats through a proper previous examination of the ship, thorough washing out or fumigating, or a sufficient supply of cats; (3) that, the ship not having satisfactorily overcome the presumption against her, the libelants were entitled to recover their damages.

In Admiralty. Damage to cargo by rats.

*Wing, Shoudy & Putnam*, for libelants.

*Convers & Kirlin*, for respondents.

BROWN, J. On the voyage of the British ship Timor from Fiume, Austria, to New York, some 3,700 sacks of beans when discharged were found greatly damaged by rats. Upon the testimony I cannot doubt that this damage happened during the voyage. The voyage was a common one, between well-known ports. The cargo was not unusual. The special liability to damage by rats was well known, both as respects the cargo and the place of loading; yet the amount of damage was extraordinary, and almost unheard of. The inference seems to me irresistible and overwhelming, in the absence of any sufficient explanation why this extraordinary damage occurred, that it could only have arisen from some failure of the ship to take the usual precautions against rats, either in the examination and preparation of the ship beforehand, or in the number of cats taken on board, or the facilities afforded them