

nal specifications and drawings. The reissue was applied for and obtained in less than two years after the issue of the original patent, and hence comes within the rule of *Miller v. Brass Co.*, 104 U. S. 350, and *James v. Campbell*, Id. 356.

As to the question of infringement, an inspection of the refrigerator of the defendants in evidence in this case shows, without doubt, that the defendants have brought into their refrigerator all the elements which are peculiar to the complainant's patent. None of the defenses, therefore, being established, a decree will be entered finding that the complainant's patent is valid, and that defendants infringe the third claim thereof.

THE NEW CITY.

HOEH *et al.* v. THE NEW CITY.

(District Court, D. Washington, N. D. August 24, 1891.)

1. SEAMEN'S WAGES—FAILURE TO COMPLETE VOYAGE.

In a suit against a British vessel by members of her crew to recover wages for a certain voyage, which the shipping articles showed was not completed, it appeared that libelants had endured the usual hardships of a sailor life; that some offenses had been committed against them by the officers; that on arrival at a certain port their demand to receive their wages was refused by the master, whereupon they refused to work; and the evidence was conflicting as to whether the captain then ordered them to leave the ship, or to go to work. *Heid*, that where the British vice-consul, on the facts shown by the shipping articles and the *ex parte* statements of libelants, had refused to order payment to them of their wages, the district court of the United States will dismiss the libel.

2. SAME—DISCHARGE FOR ILL HEALTH.

The claim of an intervening libelant that he is entitled to be discharged on account of ill health will be dismissed, when it was previously denied by the vice-consul on the ground that the libelant had failed to apply for such relief as he could lawfully demand under his contract.

Wattshoair v. The Cratgend, 42 Fed. Rep. 175, distinguished.

In Admiralty. Libel by Bernard Hoeh and others against the sailing vessel *New City*, of St. John, N. B. Dismissed.

J. C. Haines, for claimant.

Lewis & Humphries, for libelants.

HANFORD, J. This is a suit against a British vessel by members of her crew to recover wages claimed for services on a voyage from Philadelphia to Japan, thence to Whatcom via Port Townsend, in this state. The term of service for which the libelants contracted, as appears by the shipping articles, has not expired, and the vessel has not reached a port at which the libelants can, by the terms of said articles, claim their discharge. From the evidence taken, I infer that during their service in this vessel the libelants have endured the usual hardships of a sailor life, and there is evidence of offenses against some of them having been

committed by officers of the vessel, meriting the punishment prescribed therefor by British law. But if I were called upon to decide whether these men should be allowed to cancel their contract, and claim their wages, on account of abusive treatment, I am bound to say that the case as made by all the evidence is not a strong one. On arrival at Whatcom the libelants claimed that they were entitled to be discharged, and demanded their wages, which demand the master in unequivocal terms refused. Thereupon they refused to work until they could have a decision from the British consul of the question as to their right to be discharged. The fact is clearly established and admitted that these men disobeyed a command from the mate to turn to; but as to what occurred immediately afterwards there is a conflict in the evidence. They were in the fore-castle, and the evidence on their side is to the effect that the captain ordered them to leave the ship, and that they did so after a short interval, and afterwards returned, during the absence of the captain from the vessel, and took away their belongings. The evidence in behalf of the claimant is to the effect that the captain did not order the men to go ashore, or consent to their going, but, on the contrary, that his command was to get out of the fore-castle and go to work.

The evidence does not make out a strong or clear case in favor of the libelants as to any claim possible for them to assert; and I should find difficulty in awarding a decree in their favor, even if the case were free from complications created by efforts to have the differences between the parties adjusted by other competent authority before bringing the matter into this court. But, after leaving the vessel, the libelants, with the assistance of attorneys, appealed to the British vice-consul residing at Port Townsend,—an officer whose right to adjudicate the questions at issue is at least equal to the right of this court to do so; and, after making as full an investigation as he deemed to be necessary, the consul refused to order payment to the libelants of their wages, basing his decision upon the facts shown by the shipping articles and the *ex parte* statements of the parties complaining. This court has the power to issue process and grant a hearing upon complaints against foreign vessels found within this state, but in exercising its jurisdiction it proceeds upon the idea that comity towards the nation to which the vessel belongs requires it. The object in each case is to prevent a failure of justice, and it will not officiously interfere in any case after a fair hearing and decision of the matter in controversy has been given by an authorized agency of the government of the country to which the vessel belongs, as in this case. On this ground a decree will be entered dismissing the libel, and also the intervening libel of George McGee.

The intervening libelant claims that he is entitled to be discharged on account of ill health, by which he is disabled; but the vice-consul refused to pronounce in his favor, for the reason that he had failed to apply for such relief as he could lawfully demand under his contract, if in fact he were so disabled. In the case of *The Craigend*, 42 Fed. Rep. 175, cited by the proctor for the libelant, there had been no investigation or decision by the vice-consul, and the jurisdiction of the court, or

propriety of exercising it in that instance, was not challenged; therefore I cannot regard my decision in that case as a precedent to affect the decision in this.

THE DASORI.¹

THE STERLING.

DURYEA *et al.* v. MAYOR, ETC., OF THE CITY OF NEW YORK.

(District Court, S. D. New York. June 15, 1891.)

1. COLLISION—HELL GATE—MIDDLE PASSAGE—RIGHT OF WAY—DUTY OF ASCENDING BOAT.

A tug, with a tow on a hawser, coming towards New York through the middle passage of Hell Gate on the ebb-tide, has the right of way over a tug with a light tow along-side, bound through Hell Gate into the Harlem river, and it is the duty of the latter tug, on an interchange of one whistle between the vessels, to take the eastern channel, or at least to wait below, in a place that is well out of the way of the descending tow.

2. SAME—TOWING ON HAWSER—TOWING ALONG-SIDE.

The comparative safety of towing through Hell Gate on a hawser and along-side considered.

In Admiralty. Suit for damage by collision.

Carpenter & Mosher, for libelants.

James M. Ward, Asst. Corp. Counsel, for respondents.

BROWN, J. At about half past 2 o'clock in the afternoon of December 23, 1889, as the libelants' two-masted schooner *Highland*, in tow of the tug *Sterling*, on a hawser of from 30 to 35 fathoms, was coming westward on the ebb tide through Hell Gate by way of the middle passage between Flood rock and Mill rock, she came in collision with the respondents' steam-tug *Dasori*, which had a light scow in tow along-side, and was bound up the Harlem river. The schooner was struck on the port side, near her main chains, and sustained damages for which the above libel was filed. As the tug in tow passed Hallett's point, there was another tug, the *Temple*, with a three-masted schooner in tow on a hawser ahead of them, which went around the north side of Mill rock by way of the main ship channel; and the *Sterling*, instead of going behind the *Temple*, preferred to take the middle passage, which, since it was blasted out about two years ago, has become the easiest, the most direct, and the safest course for such vessels coming westward on the ebb-tide. The *Dasori* at that time was in the vicinity of Horn's hook, some little distance out in the river, having come past Blackwell's island by the northerly channel. When the *Sterling* was about to enter the middle passage, which the *Dasori* perceived, a signal of one whistle was exchanged be-

¹Reported by Edward G. Benedict, Esq., of the New York bar.