amend the claim by adding before the word "jointer" the words "double moldboard." Accordingly they amended the claim so as to read as it now stands. Referring to the specification, the only description of the moldboard jointer is as follows:

"This moldboard is so shaped as to present a land side in proper line on the one side, and a moldboard on the other, when turned in one direction, and the reverse when turned the other way."

Unless the double moldboard is composed of two parts, of which one forms a land side and the other a furrow side, it is not the jointer of the patent. In none of the alleged infringing plows is there such a moldboard.

It may be true, and probably is, that a land side does not perform any important function in the moldboard of a jointer. The land side in the main moldboard of the plow bears against the land side of the furrow, and thus resists the lateral strain caused by the pressure of the earth on the furrow side; but the lateral pressure exerted on the moldboard of the jointer is insignificant, because the resistance of the land side of the main moldboard prevents lateral displacement, and holds the beam in place. Nevertheless, the patentees have seen fit, by their description of the jointer moldboard as so shaped as to present a land side in proper line on one side and a moldboard on the other, to specify it as one capable of performing the functions incident to that form of moldboard. Having made this feature essential by their specification, it cannot be eliminated. The double moldboard jointer of the claim must be regarded as a moldboard having this feature.

The bill must be dismissed.

HOHNER v. GRATZ.

(Circuit Court, S. D. New York. November 29, 1892.)

TRADE NAME—INFRINGEMENT.

Mathias Hohner is a well-known maker of harmonicas in Wurtemberg, most of which are sold under his name in this country. He makes no particular style, but his workmanship is good. Ernest Leiterd made harmonicas in Saxony, and put upon them his own name, partly in monogram, with the word "*nach*" and the words "Improved Hohner" in larger and plainer letters, and sold them in this country through an agent. *Held*, that Hohner's right to the use of his own name was infringed, and he was entitled to an injunction and accounting.

In Equity. Bill by Mathias Hohner against William R. Gratz for infringement of a trade name. On final hearing. A motion for leave to file a supplemental answer setting up a foreign judgment was heretofore denied. See 50 Fed. Rep. 369. Decree for complainant.

Louis C. Raegener, for orator.

Benno Loewy, for defendant.

WHEELER, District Judge. The orator is a well-known maker of harmonicas in Wurtemberg, most of which are sold under his name in this country. Ernest Leiterd is a maker of harmonicas in Saxony, for whom, in the sale of which, the defendant is agent in this country. Leiterd has made harmonicas, and put upon them the word "*nach*" with the words "Improved Hohner" in larger letters, prominently, besides his own name, partly in monogram, and less plain, which have been and are being sold through the defendant in this country. This bill is brought to restrain such use of the orator's name, and for other relief. The orator does not appear to have made or sold any particular style of these instruments to which his name has been applied, but his workmanship appears to have been good, and his name has generally been used upon those of his own manufacture. He has made no improvements but in quality, and the words "Improved Hohner" would signify his make of better quality.

The defendant Leiterd has no occasion to use the orator's name to distinguish any form of instrument, or for any purpose but to express his workmanship. The use of the word "*nach*" would not show that the instruments were not his make; neither would the name of Leiterd show that they were of his make. This use of the orator's name tends directly to show that Leiterd's instruments are of the orator's make. Many cases justify the use of others' names to show kinds and styles, but none of them go so far as this. *Fairbanks* v. *Jacobus*, 14 Blatchf. 337; *Wilcox Machine Co.* v. *Frame*, 17 Fed. Rep. 623; *Leclanche Battery Co.* v. *Western Electric Co.*, 23 Fed. Rep. 276; *Goodyear's India Rubber Glove Manuf'g Co.* v. *Goodyear Rubber Co.*, 128 U. S. 598, 9 Sup. Ct. Rep. 166. The orator has the right to use his own name on his own wares. The defendant has shown no right to use the orator's name on Leiterd's wares. Let there be a decree for an injunction against this use of the orator's name, and for an account, with costs.

THE VENEZUELA.

INSURANCE CO. OF NORTH AMERICA *v.* THE VENEZUELA *et al.*

MERRITT *et al. v.* THE VENEZUELA *et al.*

(*Circuit Court of Appeals, Second Circuit.* October 4, 1892.)

Nos. 64, 68.

ADMIRALTY APPEALS—NEW EVIDENCE—RULES OF COURT.

Rule 7 of the admiralty rules promulgated by the circuit court of appeals for the second circuit, to take effect July 2, 1892, authorizes the taking of new proofs only on sufficient cause shown to the court or a judge thereof pursuant to an application made within 15 days after the filing of the apostles, and upon 4 days' notice to the adverse party. *Held*, that this rule will not be enforced as against a party whose case was tried in the district court prior thereto, in reliance upon the right to introduce such new testimony on an appeal as was permissible under the then existing rules and practice of the circuit; and in such a case the court will, as under the old practice, receive new material evidence which was not intentionally withheld in the district court. The new rule is not an innovation in admiralty practice.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Admiralty. Separate libels filed by the Insurance Company of North America and the Atlantic & Gulf Wrecking Company, on the one hand, and by Israel J. Merritt and Israel J. Merritt, Jr., on the other, against the steamship Venezuela, her tackle, etc., and her cargo, (John Dallett and others, constituting the firm of Bailton, Bliss & Dallett, being claimants,) to recover for salvage services. The cases were heard together in the district court, which awarded $6,500 to the first-named libelants and $33,500 to the Merritt Wrecking Company. See 50 Fed. Rep. 607. An appeal was taken by the first-named libelants in the one case and by the claimants in the other, the appeals being numbered 64 and 68, respectively, on the docket of this court. The case is now heard on the motion of the appellees to suppress certain depositions filed in this court by the appellants, and containing new evidence not offered below.

Robert D. Benedict, for the motion.

George A. Black, opposed.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. We think the facts stated in the opposing affidavits should excuse the appellant for not making the application for leave to take new proofs required by rule 7, Appeal Rules in Admiralty, promulgated by this court May 20, 1892, to take effect July 1, 1892. It would be unjust to a party whose case has been tried in the district court in reliance upon the right to introduce such new testimony upon an appeal as was permissible under existing rules to preclude him