Palm cannot be compelled to give evidence on behalf of complainant, because thereby he may subject himself to penalties and forfeitures hereafter in an accounting with the present complainant. In Roberts v. Walley, 14 Fed. 167, the right of the complainant to call a respondent seems to have been assumed, the contention being simply to restrict such examination within proper limits. Assuming, for present purposes, that infringement is not admitted by the answer, we see no reason why Palm was not competent to prove the purchase and use, by the respondents, of the infringing device. He is not a party to the present bill, and we do not regard Rev. St. §§ 4919, 4921, as subjecting him hereafter to penalties and forfeitures. They do not vest a right in a complainant to recover any penalty or forfeiture; they simply empower the court, in its discretion, and "according to the circumstances of the case," to impose additional damages against an infringer. See Untermeyer v. Freund, 58 Fed. 210. The calling of Palm to testify was a violation neither in letter nor spirit of the constitutional provision (see amendment 5) that "no person * * * shall be compelled in any criminal case to be a witness against himself."

We are of opinion the complainant is entitled to a decree.

MASSETH v. REIBER.

(Circuit Court, W. D. Pennsylvania. January 15, 1894.)

No. 16, Nov. Term, 1892.

PATENTS—INFRINGEMENT SUITS—DEFENSES.

The refusal of a patentee to furnish his device, when requested, does not justify the use of an infringing article.

In Equity. Suit by Benjamin Masseth against Ferd. Reiber for infringement of a patent. Decree for complainant.

W. Bakewell & Sons, for complainant.
T. C. Campbell, for defendant.

BUFFINGTON, District Judge. This case is governed by that of Masseth v. Johnston, (No. 8, Nov. Term, 1892,) 59 Fed. 613, to the opinion in which we refer. One additional matter is set up in defense. It is alleged that respondent requested complainant to put in one of his packers, and that he arbitrarily refused to do so until respondent would direct the payment of a contested bill by a company of which he was superintendent. These facts, however, would not justify the respondent in using an infringing device. "The exclusive right to his discovery" is what the law confers on a patentee. Whether he exercises that right or not, by manufacturing his device, cannot affect his exclusive right under the patent. Roller-Mill Co. v. Coombs, 39 Fed. 805: Campbell Printing-Press & Manuf'g Co. v. Manhattan Ry. Co., 49 Fed. 930. We are of opinion the complainant is entitled to a decree.

THE WILLIAM SMITH.[1]

CLYDE STEAMSHIP CO. v. THE WILLIAM SMITH.

(District Court, S. D. New York. December 8, 1893.)

SALVAGE—DERELICT— STRANDING DURING SALVAGE SERVICE ONE OF SALVOR'S RISKS.

The sum of $8,336.23 represented the entire net proceeds of a schooner found derelict at sea, and brought safely into Southport, N. C., by libelant's large and valuable passenger steamship, and afterwards towed, by agreement, to New York for sale. After deducting the necessary expenses of the last-named towage, there was left $5,450.77 of the proceeds of sale in New York as the true net proceeds. Of this, 70 per cent., or $3,815.54, was allowed as salvage. During the salvage, stranding of the schooner occurred, which cost the steamer $1,000. *Held*, that this item was not taxable as an expense, being a salvor's risk, and, as such, to be taken into account incidentally only.

In Admiralty. Libel for salvage. Decree for libelant.

Mr. Ward and Mr. Hough, for libelant.

Wing, Shoudy & Putnam and Mr. Burlingham, for respondents.

BROWN, District Judge. The whole net proceeds of vessel, cargo and freight amount to $8,336.23. From this should be deducted, first, the expenses of bringing the schooner to New York from Southport, N. C., where the salvage service proper was completed. From there she was brought by the libelant, at the request and for the benefit of all parties in interest, and the result has been, doubtless, advantageous to all. This expense amounts, as I find, to $2,885.46, after excluding therefrom certain charges incidental to the salvage proper, and also the sum of $1,000, paid to a tug at Southport for getting the schooner off the bar, where she had grounded in the course of the salvage enterprise. This was an expense incident to the risk of the salvage operation, and was, therefore, at the risk of the salvors. This risk, however, is an element which is considered and allowed for in the percentage hereafter given to the salvors, and is covered by that allowance. Deducting the $2,885.46 from $8,336.23, leaves $5,450.77, as the true net proceeds.

The schooner was a derelict; she had drifted in the ocean about 120 miles before she was picked up by the libelant's steamer Seminole. She is a large passenger steamer, worth about $225,000, and had on board a cargo worth about $370,000, as well as passengers impatient for the completion of the voyage. She was detained about 15 hours by the salvage service. The personal services of most of the ship's company in this case were comparatively small, and without danger; the expense and risk were chiefly on the part of the ship, and her owners. The salvage award, therefore, should go mainly to the latter. Seventy per cent. will, I think, be a proper allowance for the salvage service, which, computed upon $5,450.77, makes $3,815.54. Of this latter sum, $200 should be reserved for

[1] Reported by E. G. Benedict, Esq., of the New York bar.