tenced in accordance with the law upon the verdict against him. That question was before the supreme court of the United States in the case of In re Bonner, 151 U. S. 243, 14 Sup. Ct. 323. In that case Bonner had been convicted under a statute the penalty for which was a fine of not more than $1,000, or by imprisonment not more than one year, or by both such fine and imprisonment. The court sentenced him to imprisonment in the penitentiary at Anamosa, in the state of Iowa, for the term of one year, and to the payment of a fine of $1,000. In that case Bonner was delivered to the keeper of the state penitentiary and had served a large portion of the sentence of imprisonment. The sentence in that case was directly in violation of section 5541 of the Revised Statutes, which by implication prohibits the imprisonment in a penitentiary of any person who is not sentenced to imprisonment for a longer period than one year. That case, therefore, is a much stronger case than the one at bar, because in the case at bar the court had the power to sentence Christian to the penitentiary, and also to sentence him to hard labor. In the Bonner Case the court had no power to sentence Bonner to the penitentiary at all. But the court, in discharging Bonner from the custody of the keeper of the penitentiary, did so without prejudice to the right of the United States to take any lawful measures to have him resentenced on the verdict against him, and, I think, thereby established a sound and salutary practice, which should be followed, to the end that justice may not be thwarted by mere inadvertent errors of the court or clerical misprisions of the clerks, which do not prejudice the substantial rights of the defendant. Moreover, there is ground for belief that the court, in sentencing Christian, sentenced him to imprisonment at hard labor, and that it was an inadvertence or misprision of the clerk that the judgment did not contain the sentence of hard labor.

Without reference, however, to this feature of the case, which is not raised by the answer, but was briefly referred to in argument on the trial, on the authority of In re Bonner, supra, the order will be that the petitioner be discharged from the custody of J. P. Grady, marshal of the Central district of the Indian Territory, but without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law upon the verdict of guilty against him, or to correct the judgment if the same was by misprision of the clerk erroneously entered.

See, also, Medley, Petitioner, 134 U. S. 175, 10 Sup. Ct. 384; Savage, Petitioner, 134 U. S. 176, 10 Sup. Ct. 389. An interesting case is that of Ex parte Friday, 43 Fed. 916.

UNITED STATES v. $164^{8}/_{100}$ PROOF GALLONS DISTILLED SPIRITS.

(District Court, S. D. Ohio, W. D. June 30, 1897.)

No. 1,762.

INTERNAL REVENUE — PROCEEDING FOR FORFEITURE OF SPIRITS—MOTION TO PRODUCE EVIDENCE.

In a proceeding for the forfeiture of distilled spirits on the ground of a fraudulent violation of the internal revenue laws, the government will not be required, on motion of an intervening claimant, to furnish such claimant

before trial with the report of the gauger showing the measurements of the packages containing such spirits, such report being on file in the proper district, and the claimant being entitled, on application there, to an inspection or a certified copy of the same.

Proceeding by the United States for the forfeiture of distilled spirits. Heard on motion to require the government to produce evidence before trial.

Sidney G. Stricker, for claimant.
Horlan Cleveland, for the United States.

SAGE, District Judge. This case is before the court on motion to require the government, before trial, to produce to the attorney for the intervening petitioner any and all books or writings in its possession or power which contain—First, evidence pertinent to the issues; that is to say, any and all reports or returns of the gaugers who gauged and inspected the brandy in question; second, any and all reports or returns made by the distillers or wholesale liquor dealers in whose possession or control said brandy has ever been; third, any and all writings or correspondence or copies thereof between any of the parties who may have had any connection with the removal or shipment of said brandy The demand is as sweeping and comprehensive as it could be made, and, if sanctioned by the order of the court, would compel the government to submit its entire evidence to the inspection and examination of counsel for the defendant in advance of the trial, which, in a proceeding for forfeiture based upon a charge of fraud in violation of the internal revenue laws of the United States, ought not to be allowed. But in the brief of counsel for the intervener the demand is modified to "seeking a discovery of the original measurements of the packages, the only existing evidence of which is the return of the gauger under form 59½ as made to the revenue department, which is in its exclusive possession and control, and which can be reached by no other process than this motion." The intervener is a wholesale liquor dealer, who claims to have purchased the packages from the distillers. But the United States attorney has not in his possession these original measurements. They are technically, it is true, in the possession of the government, —that is to say, of the internal revenue department,—but they are on file in the state and district where the brandy was distilled, and the intervener is entitled, upon application, to an inspection or to a certified copy of them. It is not the duty or province of the government to transport the originals here for the convenience of the intervener and his counsel, or to procure certified copies for that purpose. The originals are in the proper custody directed by the law, but not within this jurisdiction. If the intervener wishes to inspect them, he will have to make his application there, or procure from the collector of the proper district certified copies. The motion will be overruled.

LOVELL v. JOHNSON.

(Circuit Court, D. Massachusetts. August 18, 1897.)

1. EQUITY—PLEADING—BILL AND ANSWER.
   It is a settled rule that under equity rule 61, as interpreted by the supreme court, an allegation in the bill not noticed in the answer is to be proven by the complainant, in the absence of exceptions.
2. PATENTS—INVENTION—FORMATION OF COURTS.
   The creation of a slot or other cavity of a particular form or size, or the change of form or proportions of an existing slot or cavity, merely to provide accommodation for the device which is the real conception, or for the really useful thing, does not involve patentable invention, unless under very extraordinary circumstances.
3. SAME—BREECH PIECES FOR GUNS.
   The Entebrouk patent, No. 230,409, for an improvement in breech-loading firearms, consisting of a breech piece for a single-barreled gun, covers nothing but the construction of a cavity suitable to accommodate the working parts of a central hammer and a top snap in line, and is void for want of invention.

This was a suit in equity by Benjamin S. Lovell against Mary Elizabeth Johnson for alleged infringement of letters patent No. 230,409, granted to Charles H. Entebrouk, July 27, 1880, for an improvement in breech-loading firearms.

Maynadier & Mitchell, for complainant.
Causten Browne, for defendant.

PUTNAM, Circuit Judge. This is a bill in equity charging infringement of a patent issued for an alleged invention. The answer does not deny invention; but it is well settled under equity rule 61, as interpreted by the supreme court, that an allegation in the bill not noticed in the answer stands to be proven by the complainant in the absence of exceptions. The question of invention was not specifically opened by the briefs, but at the hearing it was raised incidentally by the respondent. In addition, it seemed to us that this question obtruded itself in such special manner that the court could not entirely overlook it, even though not urged by the parties. Accordingly, we requested additional briefs with reference thereto, and we are indebted to the counsel on either side for promptly complying with our request. The court believes it now has before it all that can in any way aid it with reference to this branch of the case. There is only one claim in the patent, which is as follows:

"The breech piece, A, of a single-barreled gun, slotted in two directions, as described,—that is to say, horizontally and vertically,—the vertical slot being in the center, whereby the hammer and top snap may be placed in line, and still the operating parts accommodated; all as set forth."

The complainant insists that the patent is for a new breech piece,—in other words, for a new manufacture; but in determining questions of this character it is necessary to avoid the danger of being misled by terms, and to ascertain exactly what was accomplished by the patentee. The case, in this particular, leaves no doubt in the mind of the court. The specification says as follows:

"A breech piece for a single-barreled gun has never heretofore been so contrived as to accommodate a central hammer and top snap, the difficulty being to get the hammer and top snap in line, as they are not in double-barreled guns,