

of heated air and aqueous vapor. But the same result could take place with chimneys in the roof by the use of dampers. From this point of view there is no novelty in this patent. The complainant relies largely upon the function performed by these ducts, P, P, and their outlet, Q, Q; and it charges that the defendant has infringed his patent, because he has, under his patent of 1896, taken out as an improvement of his patent of 1894, No. 554,134, and has made openings in his structure, which it is charged perform the same function as P, P, with the outlets, Q, Q. But the preponderance of the evidence shows that while in the Emerson structure the air passes out of these openings, and none or scarcely any comes in, in the defendant's structure the outer atmosphere continuously comes into the kiln through his opening. Thus, it is demonstrated that P, P, with its outlet, performs the part of chimneys, while the opening of the defendant admit the outer air, instead of discharging air from the kiln. The length of this opinion forbids any further extended discussion of the case. The specifications accompanying the patent are confused, abound in the use of terms and in theories which evidently were not clearly understood by the draftsman. And in this they are calculated to mislead the public, both as to the character and the extent of the claim. *Merrill v. Yeomans*, 94 U. S. 568. There is no evidence of a convincing character of the utility of the invention; and, examining the exhibits in the case offered by complainant, it does not appear that any kilns have been manufactured in accordance with the patent. One exhibit offered by defendant (defendant's Exhibit No. 1), and shown to be an exact representation of the patent of complainant, is dissimilar in important details from the exhibits of complainant itself. The bill is dismissed.

WILSON et al. v. CONSOLIDATED STORE-SERVICE CO.

(Circuit Court of Appeals, First Circuit. June 14, 1898.)

No. 237.

1. PATENTS—PRELIMINARY INJUNCTIONS.

Sometimes a preliminary injunction may issue in a suit on a patent when the validity of the patent is clear, though it has not been sustained by a prior adjudication or public acquiescence.

2. SAME—PRIOR ADJUDICATIONS—INTERFERENCE PROCEEDINGS.

A decision in interference proceedings cannot be invoked, as against strangers to it, as a ground for the issuance of a preliminary injunction.

3. SAME—PRIOR JUDGMENTS AND ACQUIESCENCE.

With reference to a prior judgment or general acquiescence, there must be the same freedom from doubt, in behalf of a party applying for a temporary injunction, as if the question were one of validity alone. And a judgment rendered in a cause which, by reason of an adjustment among the parties, became practically a mere case before it was judicially passed upon, is not sufficient ground for granting such an injunction.

4. SAME—CASH CARRIERS.

An order granting a preliminary injunction against infringement of the Osgood patents, Nos. 357,851 and 293,192, for a cash carrier, or store-service apparatus, reversed on appeal because the validity of the patent is doubtful, and because there was no clear adjudication sustaining the patent after bona fide contest, and no sufficient proof of public acquiescence.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by the Consolidated Store-Service Company against John W. Wilson and others for alleged infringement of letters patent No. 357,851, issued February 15, 1887, to Edwin P. Osgood, and No. 293,192, issued February 5, 1884, to Byron A. Osgood and Edwin P. Osgood, which patents are for cash carriers, or store-service apparatus. In the circuit court a preliminary injunction was granted (83 Fed. 201), and the defendants have appealed.

Charles E. Mitchell and Elihu G. Loomis, for appellants.
Frederick P. Fish and Guy Cunningham, for appellee.

Before PUTNAM, Circuit Judge, and BROWN and LOWELL, District Judges.

PUTNAM, Circuit Judge. This is an appeal from an order granting an ad interim injunction in a patent suit. Apparently, the hearing on the application for the injunction occurred only a short time before the complainant below might have brought the case to an issue on bill, answer, and proofs. Meanwhile a voluminous record was made up on the application, which apparently had in view a determination as on the full merits of the cause. These matters were not brought to the attention of the court below, and we would not be justified in commenting on this particular record in these respects. We refer to them only because we do not wish to leave any presumption that we impliedly approve that parties should proceed with a voluminous hearing on a mere motion for an ad interim injunction at a time when a final hearing may be accomplished almost as speedily. Under the circumstances, there are some grounds for presuming that both parties intended to waive all objections as to the issues to be determined on the motion. At the hearing before us, however, the appellants took the usual special objections against the issue of temporary injunctions. Consequently we are not justified in assuming that the parties intended any waiver.

Coming to the rules applicable under these circumstances, it cannot be denied that a preliminary injunction may properly issue in a patent suit, where the validity of the patent is clear, although it has not been sustained by a prior adjudication or public acquiescence. Of course, there must in every instance be an equitable necessity for relief by injunction; but we are not required to consider this necessity, because the case at bar clearly falls within the rule stated by this court in *Davis Electric Works v. Edison Electric Light Co.*, 8 C. C. A. 615, 621, 60 Fed. 276, 282, that:

"The fundamental basis of jurisdiction in equity in relation to patent rights and trade-marks is the necessity of protecting established enterprises from the great uncertainty caused by infringements, and by the difficulty of measuring the direct and indirect losses if infringements continue."

When the effect of a temporary injunction is merely to maintain matters statu quo until a final hearing, one may well be granted, notwithstanding the rights of the complainant are doubtful, and sometimes even when very doubtful. But in patent suits such an

injunction does not ordinarily have that effect. On the other hand, the respondent, while under the injunction, is ordinarily a constant loser, and never regains his losses unless the complainant has given a bond. Therefore in this class of cases the courts usually hold that unless the patent is supported by public acquiescence or prior adjudication, or some other peculiar condition, the complainant's rights must be free from doubt, to entitle him to a preliminary injunction. It is sufficient for this to refer to Rob. Pat. § 1173 et seq., and *North v. Kershaw* (1857) 4 Blatchf. 70, Fed. Cas. No. 10,311, and to the expressions of the circuit court of appeals for the Seventh circuit, in *Standard Elevator Co. v. Crane Elevator Co.*, 6 C. C. A. 100, 56 Fed. 718, 719, reaffirmed by the same court in *Williams v. Manufacturing Co.*, 23 C. C. A. 171, 77 Fed. 285, 286.

The case at bar is not an exceptional one in other particulars, so that the questions are as follows: Is the validity of the patent clear? or has there been a prior adjudication? or has there been sufficient acquiescence?

The validity of the claim in issue in each of the two patents in suit is far from clear. It is sufficient to say that we are all of the opinion that the validity of each claim is very doubtful, although we do not deem it necessary at this stage of the proceedings to elaborate the matter. Indeed, we regard it prudent not to do so, in view of the fact that the case may again come before us on final hearing.

The complainant below relies on the result of certain interference proceedings in the patent office as constituting a prior adjudication; but the defendants below were not parties to that proceeding, and the authorities cited by the complainant are limited to privies. The issues on an interference proceeding are narrow, when compared with the broad question of the validity of a patent, and the method of procedure in the patent office is so unlike that of judicial tribunals that a use made of the latter furnishes no precedent for a use to be made of the former. Walk. Pat. (3d Ed.) § 674, states that an interference proceeding cannot be invoked against strangers on the question of a preliminary injunction; and Judge Lacombe, who carefully reviewed the decisions in regard to this matter, in *Dickerson v. Machine Co.*, 35 Fed. 143, 147, came to the just conclusion that the only adjudication which can support such an injunction, is a judicial one. This leaves to be considered, on this point, the prior suit of *Store-Service Co. v. Whipple*, 75 Fed. 27, in which an interlocutory decree was rendered sustaining the claims now in suit. The rule as to prior litigation was stated by the circuit court of appeals, in the Seventh circuit, in *Electric Mfg. Co. v. Edison Electric Light Co.*, 10 C. C. A. 106, 61 Fed. 834, 836, and, as there stated, was approved by this court in *Bresnahan v. Leveler Co.*, 19 C. C. A. 237, 72 Fed. 920, 921. It requires "a bona fide and strenuous contest," resulting in favor of the validity of the patent. With reference to a prior judgment or general acquiescence, it is clear, on principle, that there must be the same freedom from doubt, in behalf of a party applying for a temporary injunction, as if the question was one of validity alone. A court would be no more jus-

tified in granting such an injunction on a doubtful case of a prior judgment than it would on a doubtful case of validity. Neither can a doubtful case of a prior judgment be assisted by a doubtful case of acquiescence, and vice versa. It is plain, on principle, that the complainant's right must be clear, either as to the validity of the patent, or on the question of a prior judgment, or on the question of acquiescence, although, of course, judgments rendered by consent may be admissible on the proposition of acquiescence, even when not so on that which we are now considering. The position with reference to the decree against Whipple is as follows: Whipple was the agent of a corporation known as the Fuller Company, and was sued by the complainant below because, as agent of the Fuller Company, he had leased or constructed cash-carrier systems, to or for various users, alleged to infringe the patents in suit. The suit against him was begun on June 20, 1894, and the defense was assumed by the Fuller Company. At that time the complainant below had made an adjustment with a corporation, known as the Lamson Company, of certain controversies in regard to the patents in issue here. This adjustment was of such a character that, although its terms are somewhat confusing, yet its effect gave that corporation all the same practical advantages with reference to all parties with whom it had dealt, or might afterwards deal, as though it had become a co-owner of the patents. Afterwards, on August 15, 1895, the Lamson Company, having then this broad contract with the complainant below, purchased from the Fuller Company its business, and stipulated with it that the Lamson Company would obtain from the complainant below licenses under the patents in suit, and waivers of all claims for damages, covering all the customers of the Fuller Company, not exceeding 2,000 stations, and that, so far as it did not accomplish this, it would assume the defense of the suits of the complainant below against the Fuller Company, its agents and customers. Thereupon the counsel who had been employed by the Fuller Company in the Whipple suit was superseded in that suit by the counsel of the Lamson Company. Whipple was not a customer, but an agent; and it is possible that a full investigation of all the facts, and a careful construction of the two contracts referred to (that is, the contract between the complainant below and the Lamson Company and that between the Lamson Company and the Fuller Company), might leave some remnant for a proceeding against him by the injunction which the interlocutory decree directed to issue against him. But the Lamson Company had no interest in preventing the issue of an injunction against Whipple, as, under its contract with the complainant below, it could at once license Whipple as its own customer, and thus practically annul the injunction. It is true, the interlocutory decree which was entered in the suit against Whipple may be assumed to have provided for an assessment of damages and profits; but there is no evidence that this was ever done, or that, under the contracts between the parties which we have referred to, it could have resulted in anything substantial. On the other hand, as, under its adjustment with the complainant below, the Lamson Company was practically enjoying the advan-

tages of a co-ownership of the patents in suit, it was apparently for its interest to have the patents sustained, even if, as a consequence thereof, it might be compelled to pay some damages pursuant to its contract with the Fuller Company. On the whole, the best conclusion which can be formed, on the record as presented to us, is that the suit against Whipple, before it was finally passed on judicially, became a moot case. Apparently, the question of patentability, which, rather than that of mere anticipation, is the important one, was not presented in that suit; and it is plain that under the rule which we have cited, as to the requisites of a prior adjudication as the basis of a temporary injunction, the decree therein is not sufficient on the questions now on appeal. The complainant maintains that it prosecuted the case against Whipple vigorously, and that it ought not to be made to suffer for any matter which was omitted by the Lamson Company in defending it. This is not at all relevant, because the question is not whether it can be made to suffer in consequence of that suit, but what it shall gain by virtue of it.

General acquiescence in the patents in suit is set up in the bill, but it has not been pressed on us. The law as to this is succinctly stated in *Sargent v. Seagrave*, 2 Curt. 553, 558, Fed. Cas. No. 12,365. While acquiescence, even of a qualified or doubtful nature, may give aid to a patent on a final hearing, yet, as already said, when relied on to support a temporary injunction it must be clear in its character and extent. There is nothing in this record answering this requirement. The bill gives the result of the litigation with the Lamson Company, as shown by the adjustment to which we have already referred; and, if that corporation had been the only infringer, the claim of acquiescence would be established. But the bill states that there were many other infringers, against some of whom suits are still pending. Also, the record leads to the inference that the patents have been in constant litigation, although it is alleged that, so far as the litigation has been determined, it has resulted in favor of the patents. This undoubtedly refers to various adjustments of suits, because no decision of any court is produced, except that in the Whipple Case.

The result is that whether we look at the question of validity, or at that of a prior adjudication, or at that of alleged public acquiescence, the position is too doubtful to justify a temporary injunction in a patent suit. The order appealed from is reversed, and the costs of appeal are awarded to the appellants.

THE L. B. X.

(District Court, W. D. Missouri. March 1, 1898.)

1. FEDERAL COURTS—TERRITORIAL JURISDICTION—ADMIRALTY SUITS.

An admiralty suit in personam is a "suit," in the meaning of the act of February 28, 1887, § 4, providing that "all suits" to be brought in the federal courts in Missouri, not of a local nature, shall be brought in the division having jurisdiction over the county where the defendants reside.

2. ADMIRALTY PROCEEDINGS—SUITS IN PERSONAM AND IN REM.

When the cause as instituted is one in rem, and the process issued directs the seizure of the res only, the fact that the marshal treats the cause as a personal action, and serves the owner with process in the usual form, does not make the suit one in personam.

3. SAME.

The act of February 28, 1887, dividing the Western district of Missouri into four divisions, and establishing district and circuit courts in each division, creates a distinct district, and distinct courts, having all the essential features of a district and a district court as originally created; and such courts are limited in their jurisdiction over proceedings in rem in admiralty to cases in which the res is situated within their territorial limits.

This was a libel in admiralty by the Weber Gas & Gasoline Engine Company against the steamboat L. B. X. The cause was heard on motion by the claimant to dismiss the libel for want of jurisdiction.

Wash. Adams and Chas. B. Adams, for libelant.

S. D. Chamberlin, for claimant.

ADAMS, District Judge. This is a proceeding in admiralty instituted in this court by libelant against the steamboat L. B. X. The prayer of the libel is for the arrest of the vessel, and a monition to any and all persons claiming any interest in her, to the end that libelant may be awarded the amount alleged to be due it for work done and material furnished in her repair. Upon filing of the libel a warrant of arrest was duly issued, commanding the marshal of this district to arrest the vessel, and cause public notice of such arrest to be given by publication in the Kansas City Mail, admonishing and summoning all claimants to the vessel to appear in this court on the 4th Monday (the 25th day) of April, and interpose their claims, if any they had. The marshal, acting under this warrant, made a seizure of the vessel at her home port, at Jefferson City, Mo.; the same being in the Central division of this district. It appears from the return of the marshal that he also delivered a copy of the warrant of arrest and of the libel to Henry Strutman, who is alleged in the libel and in the warrant to be the owner and master of the vessel. Strutman, as such owner, now comes and files a motion in this court to dismiss the libel for the following alleged reasons: (1) Because at the time of its filing and service upon him he resided at Jefferson City, in the county of Cole, in the Central division of this district; and (2) because the vessel at the time of its arrest was at its home port, Jefferson City, and not in any county over which this court, in the Western division of the district, has jurisdiction. Counsel have argued this motion as if the suit were a proceeding in personam. While I do not think they are correct, yet, with a view of answering their argument, and at the same time disclosing historically the legislation which bears on the subject for its appropriate use in disposing of the motion, I have concluded to first treat this suit as a proceeding in personam.

The question raised by the present motion is whether the division of the Western district of Missouri into four subdivisions by the act of congress approved February 28, 1887 (24 Stat. 424), has any effect

on the jurisdiction in admiralty and maritime causes as it existed before such subdivision was made. Section 9 of the judiciary act of September 24, 1789 (1 Stat. 73), provides "that the district courts shall have original cognizance of all civil causes of admiralty and maritime jurisdiction, including seizures," etc., within their respective districts, as well as upon the high seas. By the act of March 16, 1822 (3 Stat. 653), the state of Missouri was made a judicial district, to be known as the "Missouri District," and a district court was established therein. By the act of March 3, 1857 (11 Stat. 197), the Missouri district was divided into two judicial districts, to be known respectively as the "Eastern and Western Districts"; an additional court was created, and the jurisdiction over the state divided between the two courts. By the act of January 21, 1879 (20 Stat. 263), the Western district was divided into two divisions, to be known as the "Eastern and Western Divisions of the Western District of Missouri," and jurisdiction over the former Western district was divided between two courts,—one for each division, as specified by the act. Section 3 of the act provides, in substance, that all civil suits thereafter to be brought in either of said courts shall be brought in the court having jurisdiction over the division in which the defendant resides. By the act of February 28, 1887, *supra*, the Western district of Missouri is divided into four divisions, to be known respectively as the "St. Joseph, the Western, the Central, and the Southern Divisions." Section 2 specifies the different counties which shall constitute these several divisions. Section 3 in direct terms establishes a district and circuit court in each of the several divisions (except the Southern division, in which the district was by that act alone created), and provides for the holding of two separate terms of the district court in each and every year in each of said divisions, and requires the judge of the Western district of Missouri to hold these several courts. Section 4 provides as follows:

"That hereafter all suits to be brought in the courts of the United States in Missouri, not of a local nature, shall be brought in the division having jurisdiction over the county where the defendants, or either of them, reside, but if there be more than one defendant, and a part of them reside in different divisions or districts of said state, the plaintiff may sue in either division, or either district where one of such defendants resides, and send duplicate writs to the other division or district directed to the marshal of said district."

Section 5, among other things, provides:

"That process issuing out of the courts of either division of said district shall be directed to the marshal of the district in which the division is located, and may be executed by him or his deputies upon the party or parties against whom issued wherever found within his district."

Comparing the language of the act of March 16, 1822, *supra*, creating the Missouri district, and the court therefor, with the act of February 28, 1887, *supra*, dividing the Western district into four divisions, and establishing district courts for each division, and defining their respective territorial jurisdictions, it appears that greater particularity is employed in the latter act than in the former. Language is there employed clearly creating separate jurisdictions, and a court for each such jurisdiction, and in terms confining the jurisdiction of each court, so far as personal actions are concerned, to causes

in which the defendant resides within the division where the action is brought. In other words, each of these divisions, and the courts created therein, have all the essential features of a district and a district court as originally created. Taking counsel at their word, and treating this suit as a proceeding in personam against the master or owner of the vessel, as if libellant were proceeding by simple monition, under rule 2 of the admiralty rules, there would, in my opinion, be no jurisdiction over such owner or master. He did not reside within the Western division of the Western district of Missouri, over which this court has jurisdiction. This cause certainly comes within the comprehensive and general term "suit," and according to the requirement of section 4 of the act of February 28, 1887, "all suits" must be brought in the division having jurisdiction over the county where the defendants, or either of them, reside. Different provisions, however, are made in the event the owner may have property or credits within a given district, and resides elsewhere. In such case the libellant, under rule 2 of the admiralty rules, might have secured an order for the attachment of the property, or for the garnishment of debtors to the owner. In *re Louisville Underwriters*, 134 U. S. 488, 10 Sup. Ct. 587; *Cushing v. Laird*, 107 U. S. 69, 2 Sup. Ct. 196; *Ex parte Devoe Mfg. Co.*, 108 U. S. 401, 2 Sup. Ct. 894. This process for the attachment of property and garnishment of credits seems to be treated by the authorities as in lieu of personal service in cases where the owner or master cannot be served with process, but may have property or credits within the jurisdiction of the court. *Manro v. Almeida*, 10 Wheat. 474. The remedies above referred to are applicable to cases in personam only. Whatever may have been the distinction drawn in some of the cases referred to by proctors of libellant, founded upon the rule that a proceeding in admiralty is not a "civil cause," within the meaning of section 9 of the judiciary act of 1789, it is believed that such distinction cannot now be made in a proceeding brought since the passage of the act of February 28, 1887, *supra*, which provides, as already seen, in terms, that "all suits" (not civil causes only, but all causes of action whatsoever) which parties may desire to institute in any of the courts of the United States (including, of course, the district court in any branches of its jurisdiction) shall be brought in the division having jurisdiction over the county where the defendants, or one of them, reside. If, therefore, this were a proceeding in personam, as argued by counsel, against the owner or master of the vessel, it could not have properly been instituted in this court, but should have been instituted in the district court for the Central division of this district, which has sole jurisdiction over Cole county, in which the owner and master resides.

I do not understand that the foregoing conclusion is at variance with the doctrine of the case *In re Louisville Underwriters*, *supra*, relied upon by proctors of libellant. That case simply decides that when a foreign insurance company has, in compliance with the law of Louisiana, appointed an agent at New Orleans, on whom legal process might be served, and when a monition issuing out of the district court for the Eastern district of Louisiana in a suit in personam, in admiralty, was there served upon such agent, it was effective to bring

into that jurisdiction, in a personal action, the insurance company, incorporated in Kentucky. It is also authority for the proposition that a suitor in admiralty is not compelled to resort to the home of the defendant when its goods or credits can be attached in other jurisdictions. The case of *The Willamette*, 18 C. C. A. 366, 70 Fed. 874, is authority only for the proposition that when a suit in admiralty was commenced in the Western division of the state of Washington, and the owner of the ship lived in the Northern division, and the ship was seized in the Northern division, the owner, as claimant, may waive the objection to the jurisdiction, if any there was. In considering the applicability of that case, it should be observed that the act of congress creating the judicial district of Washington divides it into four divisions, "for the purpose of holding terms of the district court." 26 Stat. 45. If, therefore, the case was otherwise applicable to the question now under consideration its facts might distinguish it from this case.

So it appears that the cases relied upon by the proctors for libelant do not affect the conclusion already reached in this case. If, therefore, this suit could be construed as a suit in personam, inasmuch as the jurisdiction of this court is assailed at the outset, and no waiver thereof made, the motion to dismiss for want of jurisdiction would necessarily be sustained. But in my opinion this is not a suit in personam. It is true, the marshal makes return on the warrant of arrest that he executed it by delivering a copy of the writ and the libel to Henry Strutman, the owner and master of the vessel. This action of the marshal in treating Strutman as a defendant personally interested in the case cannot change the character of the suit itself. The duty of the marshal, under rule 2 of the admiralty rules, was to arrest the vessel, her engines, machinery, etc., and take the same into his custody for safe-keeping, and to cause public notice thereof, and of the time assigned for the return of process and the hearing of the suit, to be given by publication in a newspaper as required by the warrant of arrest. The fact, therefore, that the marshal treated this as a personal action, and served the owner with process in the usual form of such actions, is insignificant. The cause, as instituted, was *in rem*. The process issued pursuant to the prayer of the libel was to seize the *res* only. It already appears that the home port of the vessel was at Jefferson City, within the territorial jurisdiction of the district court for the Central division of the Western district, and that the vessel was not at the time of the institution of the suit, or at the time of the issuance of the process, within the territorial jurisdiction of this court. The marshal, it appears, seized the boat at Jefferson City, and now has her in his custody at that place. The question now remaining for solution is whether, under the facts so disclosed, this court has jurisdiction of this cause, as a suit in *rem*, and may proceed therewith to a final determination. On this question, also, there is no waiver of the jurisdiction by any persons, claimants to the vessel, or otherwise. On the contrary, the owner of the vessel now appears, under this view of the case, as a claimant challenging the jurisdiction of the court over this vessel. The chronological consideration already had of the legislation creating the courts

—First, of the Western district of Missouri; second, of the Eastern and Western divisions of the Western district of Missouri; and, third, of the St. Joseph, Western, Central, and Southern divisions of the Western district of Missouri, and defining their territorial jurisdictions—is convincing to my mind that the several divisions, and certainly those created by the act of February 28, 1887, *supra*, were intended by congress to be jurisdictional subdivisions, and that the courts established in them are limited in their jurisdiction over real actions and proceedings in rem to cases where the real estate or the res proceeded against is situated within its territorial limits. As already seen, the act of February 28, 1887, not only divides the Western district into four divisions, but establishes a district and circuit court in each of the several divisions, and particularly confers jurisdiction upon such courts, and limits the same to the counties composing the division. The language of the act of March 16, 1822, *supra*, creating a judicial district out of the state of Missouri, and establishing a district court therein, is not so clearly expressive of the legislative intent to confine its jurisdiction to the limits of the state as is the more specific language of the act of February 28, 1887, to confine the jurisdiction of the district court for the Western division of the Western district of Missouri to the confines of the several counties composing that division. It is manifest that congress never intended these subdivisions of a district as mere convenient arrangements for holding the courts of the district. This appears from the specific and accurate language employed, which is entirely inconsistent with such intent, and also from the language employed in other acts creating courts for mere convenience. See specially the act of February 24, 1879 (20 Stat. 418), as construed in *Logan v. U. S.*, 144 U. S. 263-297, 12 Sup. Ct. 617. It is true, the act of February 28, 1887, *supra*, makes no specific provision for jurisdiction over real actions, or proceedings strictly in rem; but considering the familiar satutory rule respecting real actions in state courts, requiring them to be brought in the court of the county where the land is situated; considering also the strict limitations imposed by the act in question, as already observed, with respect to personal actions, and considering especially the manifest purpose of congress to create separate territorial jurisdictions for each court in the several divisions of this district,—I cannot doubt that congress intended that all proceedings in rem, involving a seizure of the res, as well as all real actions of every kind, should be brought in the court of that division having jurisdiction over the territory where the real estate or res might be. Rule 23 of the admiralty rules requires that, if the libel be in rem, the libel shall state that the property or res is within the district. These rules were revised and corrected by the supreme court of the United States, under an act of congress conferring the power, at its December term, 1870. At that time divisions of districts, as they now exist in some of our states, were unknown; and in the light of legislation already referred to creating these divisions, with separate courts, and jurisdiction limited to certain prescribed territory, it is my opinion that the divisions thus made constitute districts, within the true meaning of this rule, and require all suits in admiralty,

in rem, to be brought in the division of the district in which the res is located. The procedure in admiralty has been, from very ancient times, determined by considerations of the demands of trade, and the necessities of those interested in promoting it; and courts have been vested with jurisdiction so as to promote safety and convenience of commerce, and a speedy decision of controversies when delay might often be ruin. Practice and procedure have been adopted in harmony with this general policy, and therefore the supreme court says, in *Re Louisville Underwriters*, supra:

"To compel suitors in admiralty, when the ship is abroad, and cannot be reached by a libel in rem, to resort to the home of the defendant, and to prevent them from suing him in any district in which he might be served with a summons, or his goods or credits attached, would not only often put them to great delay, inconvenience, and expense, but would in many cases amount to a denial of justice."

This general policy is not violated by the conclusion reached in this case. No practical difficulty can be experienced in cases like this, arising in a locality where courts are so numerous and accessible, in resorting to the court with jurisdiction over the territory of the home port of the vessel, or where she can be found. I am aware that section 5 of the act of February 28, 1887, supra, provides that process may be executed by the marshal upon the party or parties against whom issued, wherever found within the district itself. This, however, cannot be held to enlarge the jurisdiction of the court as specifically conferred. It means only that process, like writs of execution, contemplated by sections 985, 986, Rev. St., and writs of subpoena, as provided by section 876, which may lawfully reach beyond the territorial jurisdiction of the court issuing it, shall be executed by the marshal. Treating this suit, therefore, as a proceeding in rem, I am constrained to hold that this court has acquired no jurisdiction, and the motion to dismiss must be sustained.

THE HIGHLAND LIGHT.

THE OCCIDENTAL.

TOWNSLEY v. BARNESON et al.

(District Court, D. Washington, N. D. June 25, 1898.)

1. ADMIRALTY PLEADING—CROSS LIBELS.

Admiralty Rule 53 is to be given a construction sufficiently broad to allow all matters in dispute between the parties, which must necessarily be considered in the determination of the original case, to be fully considered for all purposes, so that the rights of both parties may be fully protected and finally adjudicated in one suit.

2. SAME.

To a libel in rem to recover money earned by libelants as stevedores in loading certain vessels, a cross libel may be filed, under Admiralty Rule 53, to recover damages for breach of a promise by plaintiffs to render certain towage services to the vessels in question, where the agreement for loading the vessels and for furnishing the towage were both embodied in the same instrument, and the mutual promises of the parties constituted the consideration of the contract.