made, it might come to be described as an "improved New Peerless," the entity would remain the same,—it would still be a "New Peerless Machine," and by that name it would still be designated. I am fully persuaded that this interpretation of the phrase, "all inventions and improvements in said machinery," correctly exhibits the meaning which the parties intended it to have, and that their understanding was that nothing could be a new design which that phrase, as thus interpreted, comprehended. Improvements pertain to old designs. But to constitute a new one the divergence from the old must be thoroughly typical, and the difference in plan and structure be radically distinctive; and it is only by thus restricting the scope of the term "new design" that "all improvements" can be excluded from its embrace, and the grant be given harmonious construction and consistent effect.

The views which have been expressed are decisive. The inventions in question are plainly included in the grant of "improvements in New Peerless Threshing Machines," as that phrase has now been defined. As both parties claim to own the patents, neither, of course, questions their validity, and the novelty and utility of the inventions which they cover are therefore necessarily conceded. It is true that their application to a New Peerless Threshing Machine would involve the making of very considerable and important changes in it, but they would not transform it. It would not become a new, or even a different, design. Each of them separately, or all of them at once, might be incorporated in it without destroying its identity. It may be admitted that it would be much improved, but it would, nevertheless, be an improved Peerless Machine, and nothing else.

The defense of laches or estoppel is wholly without merit. There was no unreasonable or injurious delay in filing the bill. The contract between Landis and the Geiser Company was made upon April 5, 1893. The contract between Landis and the Frick Company, the defendant, is dated March 19, 1895. That company, claiming under its later contract, but with full knowledge of the earlier one, proceeded to manufacture and sell. The complainant, neither actually nor apparently, acquiesced in this, nor did the respondent suppose that it did, but, on the contrary, relied upon the validity of its own license, and was "willing to take chances." It denied the complainant's right, and challenged an assertion of it. The bringing of this suit was a timely response to that challenge, and the defendant must abide the result of the contest it provoked. Decree for complainant.

THE J. W. TAYLOR.

(District Court, E. D. New York. February 15, 1899.)

1. SHIPPING—INJURY TO STEVEDORE—NEGLIGENCE OF VESSEL.
   It is the custom to leave between-deck hatches open when a vessel is in port, of which custom a stevedore working on the ship is presumed to have knowledge.
2. SAME—DUTY TO LIGHT HATCHWAYS.
   Where the charterers are charged by the charter party with the duty of discharging, reloading, and coaling a vessel while in a port, and have

contracted with a firm of stevedores to do the work, and the vessel is in their charge for that purpose, the vessel owes no duty to keep the between-deck hatches closed, or, if open, lighted, to protect a stevedore from injury in going after dark to deposit or recover his coat in a part of the vessel not connected with his work; nor is she liable for an injury received by him under such circumstances by falling through an unlighted hatchway, which had been prepared to receive coal, because of a custom of the vessel to furnish lights for the use of the contractors, which were distributed by the stevedores as required by their work, it not appearing that the hatch was opened by the vessel.

This was a libel by Cornelius Callahan against the steamship J. W. Taylor to recover damages for personal injuries.

Elliott, Jones, Breckenridge & Dater, for libelant.
Convers & Kirlin, for claimant.

THOMAS, District Judge. On the 14th day of December, 1893, the steamship J. W. Taylor was lying at the dock in the city of Brooklyn, chartered by Lamport & Holt, who had employed T. Hogan & Sons, stevedores, to unload and load her. Before this date her cargo had been discharged, and she had been sent to dry dock, from which on the day in question she was again at the dock for the purpose of loading. She had four hatches, and about 2 feet aft of hatch No. 2 was what was known as the "bunker hatch," which was 14 feet in length athwartships, and 3½ feet in width. During the afternoon work was in progress in other parts of the ship, but the accident involves events in the neighborhood of hatch No. 2. Men were taking in cargo in the hold, to reach which a ladder was placed from hatch No. 2 on the main deck to the corresponding hatch between-decks, the coaming of which was about 20 inches wide, and from the inferior side of this coaming another ladder led into the hold. By this way the men went into the hold, and spent the afternoon, up to 6 o'clock in the evening, receiving cargo. The libelant was in the employ of the stevedores, and was called from some other part of the ship, and sent, about 5 p. m., down the ladder at hatch No. 2, to join his companions in the work there under way. On his way down, he testifies, he stopped at the bottom of the ladder, ending at hatch No. 2, between-decks, and made his way to the wing, where he left his coat, and that it was then so dark at that point that he could not see. After depositing his coat, he went down the ladder to the hold, and worked until 6 o'clock, whereupon he came up the ladder to the between-decks, and started to go to the wing for his coat, but immediately fell over, into, and through the bunker hatch, and received the injuries which are the subject of the action; the locus in quo at that time being entirely dark. During the afternoon, and probably previous to 5 o'clock, a large piece of tarpaulin had been stretched athwartships between hatch No. 2 and the bunker hatch, so as to entirely partition off the space, the purpose of which was to save the cargo forward of the tarpaulin from injury from the dust which would result from coaling the vessel through the bunker hatch, which was to commence at 7 o'clock. The tarpaulin was tied to beams beneath the floor of the upper deck, and fell to the floor of the between-

decks, and lay in a fold upon the floor, and was sufficient to prevent the dust from getting around or under it, but was not sufficient to protect a person from falling into the hatch, if he pressed against it. The tarpaulin had been furnished by the ship, and had been placed in position by the carpenter of the ship, assisted by one Fitzsimmons, who was usually employed by Hogan by the day as a stevedore, but on this occasion had been furnished to the ship, and was to be paid at its expense, and was under the direction of the ship's carpenter. It seems that T. Hogan & Sons do all the stevedore work for this line of vessels, and that, whether the vessel be under charter or otherwise, such stevedores insist that the ship shall see to it that, while the stevedores are coaling, suitable arrangements be provided to prevent the dust from injuring the cargo, and that the stevedores disclaim responsibility for damage therefrom. The practice as to lighting was as follows: The stevedores, through their foreman, made application to the ship's lamp trimmer for lights; the lamp trimmer placed the lights on the deck; and the stevedores took and placed them wherever their convenience or work required.

It is claimed that the ship is liable for some omission of duty owing by it to the stevedores. What is that duty? The ship was under charter. The charterers employed the stevedores' master, T. Hogan & Sons, to unload and load. For all such purposes the ship was in the possession and under the control of the charterers, save as they surrendered such possession and control to the stevedores for discharging and receiving cargo. The charter party imposes no obligation upon the ship to furnish lights, or to take other means for protecting the stevedores, who were removed from the ship by the intervention of the two contracts named. Reasoning from generally applicable principles and the terms of the charter party, it may be concluded readily that the ship was guilty of no fault of omission. But did the ship do any act that was a breach of a duty owing by it to the stevedores? Did it leave the hatch open? The stevedores had been in the possession of the ship to unload it. Cargo had been discharged from the bunker hatch. There is no evidence that the hatch was covered while it was upon the dry dock, or that the ship thereafter disturbed the hatch. Why should the ship disturb the hatch? She had no interest in the unloading. That matter alone concerned the charterers and their stevedores. If the hatch was left uncovered after discharging, the stevedores suffered it. If it was uncovered afterwards, and in contemplation of the coaling that was imminent, the presumption would be that the persons interested in the cargo did it. For what possible purpose should the ship open the hatch? By the terms of the charter party, it was not the duty of the ship to do the coaling. Nor did the ship do it, but T. Hogan & Sons did do it, under contract with the charterers, upon whom the contractual duty rested. But the argument of the learned advocate for the libelant is that it was the duty of the ship to place a light at the hatch. For what purpose? For taking in the cargo for which it was obviously made ready? From what did the obligation arise? Certainly not from the terms of the charter party. From her relation to the cargo? The ship had no interest in the reception of the cargo. From custom?

There is no satisfactory evidence of that. The courts take judicial notice of the fact that between-deck hatches are left off in port, and the usual holding is that stevedores working on the ship assume the risk thereof. The evidence in this case shows that the libelant knew of the bunker hatch. He should have known that it was liable to be off, (1) because it is a custom in port to leave such hatches open; (2) because it had been open to discharge cargo, and he does not show that he had reason to suppose that it was closed; (3) because within about one hour the ship was to be coaled through the hatch. It is true that in Craig v. The Saratoga, 87 Fed. 349, this court held that, notwithstanding the established custom of leaving hatches open, yet, when the ship laid out a way over a hatch for its servants to pass, the court would not assume, under such circumstances, in the absence of evidence to that effect, that it was the custom to leave the open chasm unlighted, and gave judgment for the libelant for divided damages. But the bunker hatch was not appropriated as a portion of a pathway over which the ship asked its servants to travel in profound darkness. It was removed sufficiently to permit a person about his business to go down the main hatch, and was divided from that hatch by a heavy tarpaulin. Why did not the libelant go on his way down to the hold, and why did he step off, and attempt to walk in the between-decks? He states that on his way down he stopped at the between-decks, and in utter darkness walked to the wing and left his coat, and that he was on his way to recover it when the accident happened; and the argument is that the ship should have lighted the bunker hatch, so that the libelant could have gone safely to his coat, which he had laid away deliberately in the wing, making his way in the dark. It is considered that if the ship was under obligation to light the hatch for any purpose, which is not shown, she was not constrained to do so to the end that the libelant might hide away his coat in the wing of the ship, or recover the same. In Hefferin v. The Illinois, 63 Fed. 161, and The Protos, 48 Fed. 919, it is held that it is the custom of workmen to leave their clothes on the deck above which they work, and that it was the duty of the steamship to keep the deck in a safe condition for that purpose. This holding was not made with reference to hatches, but trimming holes, whose open condition the stevedore had no occasion to expect. The libelant asks that the doctrine be extended to hatches, probably opened by the stevedores to whom the ship was committed. The proposition that the ship must either keep the hatches closed, or, if open, lighted, when in port, to protect stevedores, who would otherwise be injured by wandering in the dark to store their coats in parts of the ship disconnected with their work, cannot be accepted. It is peculiarly obnoxious to judicial holdings, when sought to be applied to a case where the decks and hatches are under the control of charterers, and the charterers have delegated the whole matter to stevedores, one of whom falls through a hatch opened in the course of the general employment of stevedores. But it is urged that the bunker hatch is a blind hatch, and that the custom of leaving hatches so open in port does not apply to it. The bunker hatch corresponded in size and locality to one on the main deck, and was in no sense a blind

hatch, but was a large hatch, used for the purpose of loading a division of the hold, when occasion arose.

The foregoing views find precise expression in the following findings: (1) That it was not the duty of the ship to take off the hatch covers for the purpose of the loading; (2) nor to guard the hatches when uncovered for the purpose of loading; (3) that there is no evidence that the ship uncovered the hatches; (4) that hatches in the between-decks are customarily left off when the vessel is in port, when the spaces beneath are needed for loading or unloading cargo; (5) that the libelant, from his experience, must be presumed to have known of that fact; (6) that it is not customary to light hatches in the between-decks under such circumstances, unless work be in progress at the hatch; (7) that the hatch did not expose the libelant to any danger while he was engaged in his legitimate occupation; (8) that the libelant placed his coat in the wing in profound darkness, knowing of the proximity of the bunker hatch, and that it was, or might be, open, and that he assumed the risk of doing this in safety; (9) that the ship was not under any obligation to light the place, to aid the libelant in the storing or recovering his coat; (10) that it was no part of the ship's duty to light the between-deck hatches for any purpose; (11) that even if it be granted that it was the ship's duty to hand out such lanterns as the stevedores requested, which was certainly the practice, the distribution of the lights was a matter that concerned the stevedores alone. There is nothing in this case to commend the libelant to the consideration of the court, save his grievous injury, and the skillful effort of his counsel to avoid the difficulties that beset his case. But the magnitude of the injury does not tend to create liability, and the law and facts are too obstinately opposed to permit a decision favorable to him. Let there be a decree for the claimant, with costs.

THE CANADA.

(District Court, D. Alaska. January 28, 1899.)

1. DERELICT—WHAT IS.

A bark which has broken from her anchorage in an arm of the sea; drifted on a rocky beach in a heavy storm; been made fast to the trees by the captain and crew; fills with water during the night; is deserted the next day by all hands, they taking with them the ship's papers, compasses, side lights, and their personal effects; and the vessel, two days later, goes adrift again, and is found drifting before the storm, 14 miles from her anchorage, with no one on board,—*held* to be a derelict.

2. SALVAGE—AMOUNT AND APPORTIONMENT.

A vessel and cargo, of the estimated value of $60,000, brought only $2,000 at the marshal's sale, the great loss to vessel and cargo having been sustained prior to libelants finding her. *Held*, that a moiety of one-half of the net proceeds is a reasonable allowance as salvage money.[1]

(Syllabus by the Court.)

[1] See note to The Lamington, 30 C. C. A. 280, for "Salvage Awards in Federal Courts."

This was a libel by the Alaska Steam Navigation Company and others against the bark Canada and her cargo to recover compensation for salvage services.

John G. Heid, for libelants.
H. J. Miller, for claimant.

JOHNSON, District Judge. The bark Canada was a sailing vessel of about 1,000 tons burden, the property of the Alaska Steamship Company. She was valued at about $10,000, and her cargo, which consisted of general merchandise, lumber, and four head of horses, was of the estimated value of $50,000. On the 19th day of February, 1898, while lying at anchor in the harbor of Skaguay, Alaska, which harbor is an arm of the North Pacific Ocean, she parted her cables in a severe storm, lost both her anchors, and went adrift. A small steamer went to her, but, because of the severity of the storm, was unable to render her any assistance. There being no other steam vessel in the vicinity of sufficient size and power to save her, she drifted before the wind for about three miles, when she went ashore on a rocky beach, bow on. Her captain and crew went to her, and made her fast to a large tree on shore with several strong lines. In this condition she remained for two or three days. During all this time the weather was extremely cold and the wind terrific. On the 20th of February her captain gave orders to shoot the horses aboard, which was done, and directed the officers and crew to take with them such personal effects as they could carry. The captain took the ship's papers, compasses, side lights, stove, and other articles, and all hands left the ship, and went to Skaguay to live. In speaking of the condition of the Canada at this time, her captain says: "The bow was on the beach, and when the tide went out, or at low water, the ship lay in that position, at an angle of about 45 degrees from forward aft. When the tide flowed, the vessel's stern didn't rise as fast as the water did, and as a consequence the water flooded the ship to her cabins." On the night of February 23d the vessel parted all her fastenings, and again went adrift. On the morning of the 24th the steamer Colman found her, about 14 miles from Skaguay, and drifting on shore. Her hold was then filled with water, the seas were breaking over her, she was a mass of ice, a hole was found in her port bow, and her rigging was largely carried away. The weather was still very severe and the sea rough. The crew of the Colman boarded her, and made fast a line, but, because of the heavy weather, were unable to tow her to the best harbor in the vicinity. They then took her to a sand spit near Haine's Mission, where they beached her, she having no anchors with which she could be made fast in the harbor. There she remained till March 9th, when she was gotten off, and towed to Skaguay by the Colman. In the meantime many efforts had been made by the Colman, and one or more efforts were made by the claimant, to get the Canada off the beach. Such vessels as were available were used for that purpose, but, the tide not serving sufficiently high, all such efforts were unavailing. On March 7th the libelants

herein filed their libel, and, by agreement of parties, an order was made directing the marshal to sell the vessel and cargo. This he did on May 14th, and paid to the clerk of this court $1,874.37 as the net proceeds of said sale.

The claimant, defendant herein, denies that libelants are entitled to anything as salvors, but, on the contrary, says they did not salve the vessel; that she was not a derelict; and that because of libelants' inability to save the vessel, and their refusal to allow claimant to assist them, claimant has suffered almost the total loss of the vessel and cargo, and he asks judgment against the libelants for damages. We cannot concur in this contention. The evidence fully satisfies us that, at the time the Colman took the Canada in tow, the latter had been wholly abandoned by her officers and crew, that she was a derelict, and was in imminent danger of destruction and total loss. It also satisfactorily appears that the value of the vessel and cargo must have been practically destroyed while she lay on the rocky beach, from the 19th till the 23d day of February, and the depreciation in the value of the lumber aboard will account for the remainder of the loss.

While the conduct of the libelants, after the vessel was placed on the sand spit, cannot be commended for any great display of business sagacity, yet the owners could at any time have filed in this court their stipulation, conditioned for the payment to libelants of any salvage money which might be found due them, and thereby have obtained possession of the vessel and her cargo. This they did not do, though there is some claim that they offered to secure libelants if they would surrender possession of the vessel. Whatever loss may have been sustained to the vessel and cargo after being beached on the sand spit, it is clear from the evidence that both claimant and libelants are equally responsible. The libelants might, with perfect safety, have accepted the assistance of claimant, and the claimant could with equal safety have secured libelants against all loss, and thereby have compelled a surrender of the possession of the vessel.

The Colman suffered some injury and loss of time while undergoing repairs for these injuries, which ordinarily, under the law, would be allowed to her in addition to any salvage money found to be due her; but, in view of all the facts surrounding this case, we are not disposed to make any special allowance for these damages or loss of time.

It is our judgment that a fair allowance for salvage would be, after deducting all costs, including the statutory fee of $20 for proctor for libelants, to divide what remains in the hands of the court from the sale of said vessel and cargo into equal parts, giving the libelants one half and the claimant the other half of said proceeds. Of the one half going to libelants, one half should be given to the steamer Colman, and the remaining half should be divided between the officers and crew of the Colman, in proportion to the wages being paid them at the time the Canada was salved, and a decree may be entered in conformity to this opinion and the findings herein contained.

SAMUELS v. REVIER et al.

(Circuit Court of Appeals, Fifth Circuit. February 7, 1899.)

No. 697.

1. ATTACHMENT—LEVY OF WRIT—TEXAS PROCEDURE.
   Under the procedure in Texas it is not necessary for the sheriff in attachment cases to require an agent of the attachment defendant, where the latter is a nonresident, to point out property to be levied on, nor to levy first on personal property.
2. EXECUTION SALE—GROUNDS FOR SETTING ASIDE IN EQUITY—INADEQUACY OF PRICE.
   Inadequacy of price alone will not authorize a court of equity to set aside a sale of land on execution, where such inadequacy was caused by the action of the execution defendant or his agent in deterring persons from bidding by making unwarranted statements at the sale as to the invalidity of the judgment.

Appeal from the Circuit Court of the United States for the Northern District of Texas.

This is an appeal by the defendant below from a decree rendered by the United States circuit court for the Northern district of Texas in an equity cause. The suit was brought on May 8, 1896, by W. J. Revier, Jr., and J. M. Revier against S. L. Samuels, to cancel a certain sheriff's deed which conveyed to Samuels 200 acres of land in Hill county, Tex.; and also to enjoin Samuels from the further prosecution of an action of trespass to try title,—which is a statutory action of ejectment in Texas,—which had been brought by Samuels against W. J. Revier, Jr., in the same court, for the recovery of the tract of land just mentioned. The bill of complaint avers that the action at law was commenced on December 6, 1893. The ground on which the complainants rely in their bill for the relief they seek is the inadequacy of the price paid for said land at a sheriff's sale of the same,—the land having been bought in by Samuels, who was the attaching creditor under whose attachment the same had been seized, and under whose execution it had been sold. The bill alleges that Samuels sued the complainant J. M. Revier to recover a debt of $70, which the bill substantially admits was due Samuels, in a justice of the peace court in McLennan county, Tex., on January 9, 1892, and that in that action Samuels caused a writ of attachment to be issued upon the ground that J. M. Revier was a nonresident of the state, and that the writ of attachment was levied upon the land above mentioned, which was subsequently sold under execution in the suit brought in the justice of the peace court on January 13, 1893; that the land was bid in by Samuels, the attaching creditor; and that after the levy of the attachment, but before the judgment and sale, J. M. Revier conveyed the land to W. J. Revier, Jr., his co-complainant. The complainants claim that there was an irregularity in the sheriff's sale, in this: that at the time the attachment issued J. M. Revier was the owner of sufficient personal property in Hill county to satisfy Samuels' debt, and that W. J. Revier, Jr., was the agent of J. M. Revier, and that the sheriff did not require this agent to point out property on which the attachment could be levied, nor did the sheriff levy first on personal property, as is required by the statutes of Texas with reference to execution; and that this irregularity, coupled with the inadequacy of the price bid at the judicial sale, to wit, $85, was sufficient cause to set aside the sheriff's deed. The complainants averred that at the time the land was sold and bought in by Samuels, it was, and still is, worth the sum of $5,000.

Samuels filed his answer, in which he alleged in defense, among other matters, that the inadequacy of the price was caused by the acts, conduct, and statements, at the execution sale, of the complainant W. J. Revier, Jr., the agent of J. M. Revier, in publicly stating, in the presence of the sheriff and bidders at the sale, that J. M. Revier was not indebted to Samuels, and that,