

gathering the beans and holding them in an upright position as they pass back."

The eighth claim covers the outwardly curved standard for the share and has been sufficiently discussed in considering the combination of the first claim.

The ninth claim is intended to cover the mechanism when used to cut a single row of beans and has been sufficiently considered. Considerable testimony was adduced to prove that the patented harvester was an improvement on the machine which preceded it. A number of intelligent farmers preferred it to the Bradford machine discarding the latter when they became convinced that the former was more successful in operation. The difficulty with this testimony is that it fails to show to what this success was attributable. There is certainly nothing to warrant a finding that it was due to the combinations of the claims in controversy. It may have been due to greater ease of adjustment, to improved construction, to reduced weight, to better materials or to more mature judgment in the relative location of parts. None of these features are covered by the claims and most of them are not patentable subject-matter. The impression produced by the entire record is that the Rulifson machine is the natural evolution of the art. The improvements are such as would suggest themselves to an intelligent farmer after seeing the older machines in operation. It cannot be said that there is a single new feature in the machine unless the mechanism for raising and lowering the frame can be thus considered. The main combinations are all found in the prior art. Some slight changes have been introduced and some unimportant elements added, but they are all within the province of the skilled mechanic and not of the inventor. The situation seems similar to the one considered by this court in *Fuller & Johnson Mfg. Co. v. Bender*, 69 Fed. 999. If the patentees have contributed anything to the art which produces a new result or a patentable change in the old result the court has been unable to find it in the record. The machine of the patent is the machine of the prior art operating in the old way and producing the old result. The machine is evidently an efficient one and the court approached the consideration of the evidence with the expectation that some of the principal features might be attributed to the inventive skill of the complainants, but, with every inclination to find otherwise, the court is compelled to the conclusion that the evidence will not warrant a decree in favor of the complainants. The bill is dismissed.

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THE FRED E. SANDER.

(District Court, D. Washington, N. D. June 27, 1899.)

1. SEAMEN—RELEASE OF WAGES—EXECUTION UNDER CONSTRAINT.

A release of wages earned by a seaman, executed while on board the vessel on a voyage, and imprisoned in irons, on his being released from imprisonment and discharged will be presumed by a court of admiralty to have been given under constraint, and will not be given effect.

**2. SAME—DAMAGES FOR ABUSIVE TREATMENT.**

Libelant, while cook on a schooner, during an altercation was assaulted by the captain, and, on freeing himself, seized an ax, with which he inflicted a wound on the captain's hand. He was seized and placed in irons by the captain's order, and thrown down a hatch, where he was chained and kept a prisoner for about 10 days, and then released and discharged. He was handled with unnecessary roughness, by which one of his ribs was broken, and he received other injuries, none of which were given any attention or care during his imprisonment, and from which he was disabled and suffered for some time thereafter. Held, in a suit in rem to recover wages and damages, that while, under admiralty rule 16, he could not recover for the assault and battery, he was entitled to his wages, and damages for the failure to give him proper care after injury, but, in view of his being also in fault, such damages would be limited to \$200.

Suit in rem against the schooner Fred E. Sander to recover wages earned as cook on a voyage from Seattle to St. Michael, and for damages for abusive treatment and neglect while the libelant was in a disabled and suffering condition at St. Michael. On final hearing.

Metcalf & Jurey, for claimant.

Pratt & Riddle and James Kiefer, for libelant.

HANFORD, District Judge. The story of this case, as I have gathered it from the testimony, is as follows: The libelant signed shipping articles at the port of Seattle on the 3d day of June, 1897, to serve as cook on board the Fred E. Sander on a voyage to St. Michael and return to Puget Sound, at the agreed rate of wages of \$45 per month. The libelant is quite an old man, and past the age for doing the ordinary work of an able seaman; but he is a competent cook, and performed his duties in a satisfactory manner on the passage from Seattle to St. Michael. Besides the complement of officers and men, there was on board the vessel on said voyage the captain's wife and an infant child and a nursemaid. It was the custom on the vessel to serve two breakfasts in the cabin,—the first for the mates and the nursemaid, and the second for the captain and his wife. One morning, while the vessel was at St. Michael, the nursemaid was late in coming to breakfast, and the mates took advantage of her tardiness by eating all of the breakfast served for the three persons. The cabin boy informed the libelant of this, and that the maid wished to have a second breakfast prepared for her, to which the libelant replied that a breakfast especially for her could not be served, and that she would have to take her breakfast with the captain and his wife; and her breakfast was served in the manner he proposed, but the maid informed the captain that the libelant had refused to cook meals for her in the ship. Acting upon this information, the captain went forward, and spoke to the libelant in an irritable manner, and the libelant answered him insolently; no doubt feeling exasperated by the captain's manner towards him after he had actually prepared two breakfasts for the maid. The captain attempted to punish his insolence by assaulting him, and a scuffle ensued in the galley. The libelant, as soon as he could get free from the captain's grasp, sprang out of the galley and picked up an ax, with which he aimed a blow at the captain, viciously inflicting a severe wound upon the captain's hand, and then attempted to escape from the consequences by going

aloft in the rigging. The captain ordered the mates to put him in irons, and then went into the cabin. The mates brought the libelant to the deck, put handcuffs on him, and, handling him very roughly, conducted him to the afterpart of the vessel, where they threw him down the lazarette hatch; and by the captain's orders he was chained to a stanchion, and imprisoned in the lazarette for about 10 days. He was, however, allowed certain liberty for exercise and necessary purposes. He was thrown into the lazarette with unnecessary force, and probably received several kicks or blows, whereby one of his ribs was broken, and he sustained other injuries more or less severe. While in the lazarette he was cramped for want of sufficient room, and suffered great discomfort, and no attention whatever was paid to the treatment of his wounds. On the 20th day of July, 1897, with his own consent, he was released from imprisonment, and discharged from the service of the ship, and engaged as a mariner on board of another American vessel then at St. Michael; but being weak and sore, and too old to perform the duties of a seaman with safety to himself, he did not go to sea, but secured a position as cook on board a river steamer running on the Yukon river. He was then able to superintend the cooking department in said steamboat, but was unable to do hard work for several weeks. On the steamboat he was for the first time put in bandages, and received proper treatment for his broken rib. No wages were paid to him for his services on board the Fred E. Sander, and at the time of his release from imprisonment he signed a paper relinquishing his claim for wages.

I hold that the libelant's written agreement to forfeit his wages is not binding upon him, for the reason that, considering his situation at the time, a presumption arises that he was constrained to sign the agreement, or suffer further imprisonment, which he had every reason to believe would continue until the return of the vessel to Puget Sound. Courts of admiralty pay no respect to agreements of seamen to forfeit their wages, extorted from them at sea, or in places where the power of the ship's master is supreme.

The libelant cannot recover in this suit any damages for assault made upon him and injuries inflicted by the violence of the captain and his subordinate officers, because admiralty rule 16 does not permit a suit in rem to recover damages for such injuries; but, after the injuries had been inflicted, he was entitled to humane treatment, and to be cured at the expense of the ship. For his additional unnecessary suffering, and the neglect of the captain to see that he had such proper treatment for the cure of his injuries as, under the circumstances, might have been afforded, he is entitled to some compensation. If he were without fault in the matter, his claim for substantial damages would be entirely just, and I would unhesitatingly award to him more liberal recompense than the amount which I have fixed as proper under all the circumstances which I have detailed. The libelant is himself blameworthy, and to a very considerable extent responsible for his own injuries, by reason of his unjustifiable conduct—First, in offering insolence to the captain when he was spoken to concerning his duties; and, second, in retaliating for an assault which had been made upon him by making a murderous as-

sault upon the captain with a deadly weapon. The captain's ill usage was sufficient to provoke him to anger, but the circumstances were not such as to justify him in resorting to the use of a dangerous weapon in self-defense, because he had no reason to believe that he was in imminent danger of suffering great bodily harm, and he had not retreated to the wall. Considering all the circumstances shown by the evidence, it is my opinion that justice will be done by awarding to the libellant wages at the rate of \$45 per month for a period of three months, and damages for neglect to treat him properly after his injuries, in the sum of \$200 and costs. A decree will be entered in accordance with this opinion.

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McMASTER et al. v. ONE DREDGE.

(District Court, D. Oregon. July 8, 1899.)

1. MARITIME LIENS—VESSELS SUBJECT TO—DREDGE.

A dredge capable of being moved from place to place on navigable waters, and of the transportation of machinery and sand and gravel taken from the bottom of rivers, is a vessel, and subject to maritime liens.

2. ADMIRALTY—JURISDICTION TO ENFORCE STATUTORY LIENS—CONTRACTS NOT MARITIME.

A court of admiralty is without jurisdiction of a suit to enforce a lien unless it arises from a maritime contract, and a contract to build a vessel is not maritime, nor is it made so by a state statute giving a lien on the vessel for the labor done and materials furnished in its construction.<sup>1</sup>

3. SAME—CONTRACT FOR CONVERSION OF A SCOW INTO A DREDGE.

A contract for converting a scow into a dredge is one for the building of the dredge, and is not maritime; hence a court of admiralty is without jurisdiction of a suit to enforce a lien on the vessel given the builder by statute.

This is a suit in rem in admiralty to enforce a lien upon a dredge.

A. King Wilson, for libelants.

A. C. Emmons and Williams, Wood & Linthicum, for defendant.

BELLINGER, District Judge. This is a libel in rem against a dredge owned by the Portland Sand & Contract Company, and grows out of a contract entered into, in July last, between that company and the libelants, which contract, omitting the formal parts, is as follows:

"This agreement, made and entered into by and between Christenson-McMaster Machinery Company, of Portland, Oregon, as party of the first part, and the Portland Sand Company, of the same place, as party of the second part, witnesseth, that the party of the first part, for and in consideration of the sum of six hundred forty and no/100 dollars, U. S. gold coin, to be paid as hereinafter specified, agrees to fit up the old dredging machinery belonging to the party of the second part, and put in working order, as follows: We to furnish all necessary woodwork; furnish one 60-ft. ladder, with carrying wheels, and new foot sheave, with large flanges; repair all old links for chain; put in two spuds 10"x10"x36 ft. long, using old points on same; fit up old hand derrick, and furnish woodwork for same; do all piping; install all machinery, except such as may be furnished by other parties; party of the second part to

<sup>1</sup> For jurisdiction of admiralty to enforce maritime liens created by state laws, see note to The Election, 21 C. C. A. 21.