

the Clark patent, having bought it from King, the unsuccessful defendant in the previous suit of *Pennington v. King* upon the Pennington patent, in which case King's defense was that the Pennington invention had been previously patented to Clark. The court sustained the validity of the Pennington patent as against the Clark patent, and thus the validity or the scope of the latter patent was directly in issue. Hunt having bought the Clark patent from King after the adjudication, with knowledge of the controversy, was held to be privy in estate with his assignor, and to be bound by the judgment. The difference between these two cases and the one at bar is that in each of the cited cases the validity or the scope of the patent which belonged to the defendant in the original suit was directly in issue, and was adjudicated upon.

The plea of William D. Bishop, which sets up non-infringement, is within the adverse criticism of the court upon a similar plea in *Sharp v. Reissner*, 9 FED. REP. 445.

Both pleas are overruled.

AMERICAN DIAMOND ROCK BORING Co. v. SHELDONS and another.

SAME v. SUTHERLAND FALLS MARBLE Co. and others.

SAME v. GILSON and others.

(Circuit Court, D. Vermont. July 13, 1885.)

PATENTS FOR INVENTIONS—REHEARING ON CONDITION TESTIMONY TAKEN BE USED.

Motion for rehearing granted, on condition that in case there should be a decree in the cause for an accounting, the testimony already taken before the master shall stand for use in the case as if taken by the parties respectively upon such new accounting.

In Equity. S. C. 2 FED REP. 353.

E. G. Thompson, for plaintiff.

E. T. Rice and *Aldace F. Walker*, for defendants.

WHEELER, J. These causes are pending for the purposes of an accounting before a master, pursuant to an interlocutory decree made upon hearing in chief. 17 Blatchf. 208, 303. They have now been heard upon motion for a rehearing on the merits. The decision was made largely upon the authority of, and following, *American Diamond Rock Bor. Co. v. Sullivan Machine Co.* 14 Blatchf. 119, upon the same patent. The change in what were understood to be the principles of law governing reissuing patents since these decisions has been found to be sufficient to change that made in the former case. *American Diamond Drill Co. v. Sullivan Machine Co.* 21 FED. REP. 74. That affords sufficient ground for granting a rehearing to

review the decision made in this case, upon which the decree for an accounting rests. *Coon v. Wilson*, 113 U. S. 268; S. C. 5 Sup. Ct. Rep. 537. Still, the expenses of taking testimony before the master should not be lost, in case it can, in any event, be of use in the case. The same decree may be made again upon rehearing or an appeal. What the result may be cannot be foretold with certainty; therefore it seems proper that the rehearing should be granted without prejudice, so far as may be, to the proceedings before the master. Therefore the motion is to be granted, upon the express condition and order that in case there shall be a decree in the cause for an accounting, the testimony already taken before the master shall stand for use before the same or any other master in the cause, as if taken by the parties, respectively, upon such new accounting.

Motion granted, but without prejudice to the right to use the testimony already taken before the master on any accounting in the cause.

THE THOMAS FLETCHER, (on the Appeal of James Gibb Ross.)¹

(Circuit Court, S. D. Georgia. November, 1884.)

1. MARITIME LIENS—BOTTOMRY BONDS.

A bottomry bond should have a preference to be paid out of the proceeds of a vessel, superior to those holding maritime liens for supplies and repairs, if the evidence shows that prior to its execution the owner of the vessel was notified to consent to the bond, or to raise the necessary funds by other means. *The Julia Blake*, 16 Blatchf. 472, followed.

2. SAME—SUPPLIES.

To constitute maritime liens for supplies, they must have been furnished on the credit of the vessel, and in some other than her home port.

3. SAME—HOME PORT.

The enrollment of a vessel makes only a *prima facie* case as to the port of her enrollment being her home port, which may be overcome by evidence as to the residence of her owner. The statute (Rev. St. § 4141) provides that the home port of a vessel "shall be deemed to be that at or nearest to which the owner usually resides," and that seems to contemplate that a ship-owner may reside in different places; but the residence to determine the place of enrollment (or home port) is to be the usual residence, and no person can have more than one such residence. Business men in this country may have residences and business places scattered over the whole of our great territory, but, as a matter of fact, they cannot have more than one usual residence.

Admiralty Appeal.

Richards & Heyward, for appellant.

Garrard & Meldrim, for appellees.

PARDEE, J. The bark *Thomas Fletcher* having been sold by decree of the district court, and the proceeds of sale partitioned among the various libelants and intervenors, James Gibb Ross, a mortgage

¹ Reported by Joseph P. Horner, Esq., of the New Orleans bar.