PARKER, Trustee, *v.* MCKEE and another.

(*Circuit Court, S. D. New York.* June 17, 1885.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.
   Parker v. *Stow*, 23 Fed. Rep. followed, and preliminary injunction granted.
2. SAME—INFRINGEMENT BY PARTNER.
   Where a member of a firm alleged to be infringing a patent was formerly a part owner of the patent, he will be estopped from denying its validity, unless it is shown that the conveyance of his title to the plaintiff was wholly without consideration.

In Equity.

W. C. Strawbridge, for plaintiff.

Walter D. Edmonds, for defendants.

WHEELER, J. This motion for a preliminary injunction cannot be denied without overruling, in effect, *Parker* v. *Stow*, 23 Fed. Rep. 252, and *Parker* v. *Montpelier Carriage Co.* Id. 886, which followed that decision. There are alleged anticipating devices put into this case which were not in either of those cases, but none of them is any nearer like the patented invention than some that were in those cases and considered, nor any nearer like it than long and well known chaise and carriage tops are. A point is made that the first reissue narrowed the patent by making the locking device a necessary part of it, and that the second reissue, although it only restored the original, broadened the second reissue to cover this infringement, and that what was surrendered of the original to obtain the first reissue could not lawfully be so reclaimed in the second. A comparison of the claims of the original with those of the first reissue shows that there was nothing covered by the former which was not included in the latter. Therefore nothing appears to have been abandoned by surrendering the original and taking that reissue, and it is not necessary to consider in this view what the effect would have been if there had been such an abandonment.

There is a strong reason for maintaining the validity of the patent in this case that did not exist in either of those cases, and that is that one of the defendants, who are a firm doing the business that infringes, was once an owner in the patent, and his title has passed to the plaintiff as a title to a valid patent. It is admitted that such a conveyance upon a valuable consideration would estop him from denying the validity of the patent, but it is urged that this conveyance was without consideration, and that therefore it does not work any estoppel. It does not appear, however, so far as has been noticed, that the conveyance of his interest was entirely without consideration, and the presumption would seem to be that it was upon consideration, and that the estoppel should follow. But the plaintiff appears to be entitled to an injunction independently of this ground. Motion granted.

THE ADELE THACKERA, Etc.

(*District Court, S. D. New York.* August 6, 1885.)

1. JETTISON—GOODS VALUELESS IN THEIR SITUATION.
   To recover contribution for jettison the sacrifice must be voluntary; if the goods have, through a sea peril, become practically irrecoverable and valueless, subsequently cutting them loose will not sustain a claim for contribution.
2. SAME—LUMBER WASHED OVERBOARD—LASHINGS CUT.
   Where lumber on deck was partly washed overboard in a gale, but more or less of it remained attached to the vessel by its lashings, which were afterwards cut loose, *held*, upon the evidence, that before the lashings were cut the lumber was practically lost by a sea peril; that it was of no pecuniary value in its then condition, and afforded no just claim for contribution as for jettison.
3. CHARTER-PARTY—SUBSEQUENT CHANGE OF MASTER, WHEN VALID.
   Under a charter-party executed by the master, who is described therein as "party of the first part," which contains no *express* statement or covenant that he shall sail as master for the contemplated voyage, there is no *implied* warranty to that effect, when the evidence does not show that the master's personal services were one of the inducements to the contract. *Held*, therefore, that in such a case the subsequent appointment of a new and competent master for the voyage, without notice to the charterer, did not affect the obligations of the contract.

In Admiralty.

E. D. McCarthy, for libelants.

Jas. K. Hill, Wing & Shoudy, for claimants.

BROWN, J. This libel was filed to recover some $1,800, the share of the schooner and freight towards contribution for an alleged jettison of lumber during a voyage of the Adele Thackera, in November, 1883, from Brunswick, Georgia, to New York. Upon the trial an amendment of the libel was allowed so as to include an independent claim for the loss of the lumber, on the ground that the master named in the charter had put the vessel on this voyage in charge of the mate. The schooner took a part of the lumber on deck, as customary, and sailed from Brunswick on November 9th. On the 13th the entry in her log shows that she encountered heavy weather. The entry reads as follows: "At 4 A. M. tremendous high cross-sea; vessel shipped much water. At 5 A. M. deck-load started, and went off down to the rail; got fouled up in running gear; had to cut gear and deck-load lashings to let it get clear. * * * The wind afterwards moderated, but again became a gale on the 14th." The log of that date contains the following: "At 5 A. M. blowing a gale from W. S. W. What lumber was left on deck got adrift, and with hard work kept it from breaking our pumps, while sea after sea washed it overboard. Some we had to cut to get clear of rigging. * * * 15th. At 6 P. M. everything movable gone from deck." The vessel arrived at New York on the 23d. The protest sworn to the same day runs in nearly the same words: "November 13th, 4 A. M. Tremendous high cross-sea running; vessel laboring hard and straining badly. 5 A. M. shipped an immense sea, which started the deck-load adrift; got fouled up in