

visions of the act of 1872, in so far as they applied to vessels in the coast-wise trade, with the exceptions named in the repealing act. 23 Fed. Rep. 141. See, also, *Scott v. Rose*, 2 Low. Dec. 382.

2. The objection that the act of 1874 does not repeal the provisions of the Revised Statutes taken from the act of 1872 can be readily disposed of. That act of congress of June 22, 1874, provided that the Revised Statutes should take effect as of December 1, 1873; and by section 5601 it was declared that acts passed since that date should have full effect as if passed after the enactment of the Revised Statutes, and, "so far as such acts vary from or conflict with any provision contained in said Revision, they are to have effect as subsequent statutes, and as repealing any portion of the Revision inconsistent therewith." *U. S. v. Bain, ubi supra*. The act relied on by the defense in this case was passed June 9, 1874. It therefore operated to repeal the provisions of the Revised Statutes taken from the act of 1872. It necessarily described the act repealed by its title as it then stood in the statutes; for the Revised Statutes, which re-enacted its provisions, had not been passed. The demurrer is sustained.

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UNITED STATES v. BONHAM.

(District Court, D. South Carolina. August 1, 1887.)

1. INTOXICATING LIQUORS—BUSINESS OF RETAILING—ACTS CONSTITUTING OFFENSE.

To constitute the offense of carrying on the business of a retail liquor dealer without having paid the special tax, the accused must have procured the liquor sold with intent to retail it, or, having it on hand, formed the intent to retail it, and carried out that intent by one or more acts. It is not enough that, having the liquor on hand for his own use he let others have it as a matter of kindness or neighborly feeling, although he took money from them for the accommodation.

2. SAME—SALE BY AGENT—WIFE AND CONCUBINE.

The presumption that a wife who, on her husband's premises, and in his presence, and with his knowledge, makes illegal sales at retail of intoxicating liquors, does so as his agent, does not attach to such sales so made by a woman living with a man as his concubine; and, to authorize the conviction of the man for such sales by the concubine, the jury must be satisfied, from the evidence, that she was acting as the agent of the accused when she made the sales.

Indictment for Unlawful Retailing of Liquor.

*Mr. Youmans*, Dist. Atty., for the United States.

*M. L. Bonham, Jr.*, for defendant.

SIMONTON, J., (*charging the jury*.) The defendant is indicted for carrying on the business of a retail liquor dealer without having paid the special tax. The government have introduced three witnesses who swear to purchases of distilled spirits at the house of defendant on three dif-

ferent occasions. Two of them say that they purchased from Peggy Bonham; one of them, that he purchased from defendant. Peggy Bonham lives with the defendant. Some of the witnesses say that they think she was his wife; others swear that he never married her, and that she was his concubine. In order to convict the defendant, the jury must be satisfied, from the evidence—*First*, that he sold the liquor as charged. If sales were made by Peggy Bonham in his presence, and with his knowledge, and Peggy was his agent in doing so, the sales were his. If Peggy was his wife, the law will presume that she did this as his agent; if Peggy is not his wife, then the jury must be satisfied, from the evidence, that she was acting as his agent,—the same presumption does not arise as would arise were she his wife. *State v. Collins*, 1 McCord, 355; *City Council v. Van Roven*, 2 McCord, 466. *Second*, if the jury find that the sales were made by defendant himself, or by his agent, then they must further be satisfied from the evidence that the defendant had the liquor on hand for the purpose of selling it at retail. The facts proved must indicate that the defendant had procured the liquor with the intent to retail it, or, having it on hand, had formed the intent to retail it, and carried out the intent by one or more acts. If the defendant had the liquor on hand for his own use, and if he let the witnesses have it as a matter of kindness, or from neighborly feeling, he cannot be convicted, even if he took money, especially as no general practice has been proved.

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BATE REFRIGERATING CO. v. GILLETT and others.

(Circuit Court, D. New Jersey. August 9, 1887.)

1. PATENTS FOR INVENTIONS—VACATING AND REINSTATING INJUNCTION—EFFECT OF FOREIGN PATENT AND LITIGATION.

An injunction granted upon rendering an interlocutory decree for complainant, in a suit for infringement of a patent, was dissolved upon its being shown that there was a prior foreign patent for the same invention whose term had expired, and thereby terminated the life of the domestic patent, but such order of dissolution was afterwards vacated by the court by reason of the fact that a court of the foreign country had, since the making of such order, declared the foreign patent void *ab initio*. Such decree of the foreign court, declaring the foreign patent void, having afterwards been vacated by the same court on the ground that it was obtained by collusion, *held* that the order dissolving the injunction should now be reinstated.

2. SAME—FOLLOWING FORMER DECISION IN CASE.

Upon a hearing on petition for such reinstatement before a judge other than the one who originally ordered the dissolution of the injunction, *held*, that the decision of the former judge, holding that the provision of Rev. St. U. S. § 4887, that "every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent," includes foreign patents granted pending the application for the domestic patent, should be followed, without considering the question *de novo*; the question being at least a doubtful one, and the former decision having been followed in other circuits.

3. SAME—FOREIGN PATENT—TAKING EFFECT—TERM OF.

A Canadian patent takes effect from its date, although the delivery of it to the patentee is postponed on account of his neglect to file a model as re-