Special reference is made in the opinion of the district judge to the means employed by the respondents in supporting the reel, as showing that the machines which they have made and sold do not infringe the second claim of the original patent. His view is that their machines do not infringe that claim because they do not employ but one reel-post instead of two, as shown in the complainants' patent, but it is so obvious that the one post with the frame attached to the upper end is substantially the same thing that it is not deemed necessary to pursue the argument.

For these reasons we are all of the opinion that the complainants are entitled to a decree that their several patents are valid, and for an account and for a perpetual injunction, except as to such, if any, as have expired.

DECREE REVERSED with costs, and the cause remanded for further proceedings

IN CONFORMITY TO THE OPINION OF THE COURT.

HALLIDAY v. HAMILTON.

A. in St. Louis having a standing agreement with B. & Co., in New Orleans, to ship produce to them, drawing against the shipments—the balance of any draft on one shipment not discharged by its proceeds, to be paid from the proceeds of any other shipment—bought of C., residing at Cairo, on the Mississippi, a hundred miles and more below St. Louis, a specific number of sacks of corn, then lying at a landing on the river somewhat above Cairo, though much below St. Louis, and received an order for its delivery. He did not pay for it, though the transaction was impliedly one for cash. A. delivered his order to the agents of a steamer at St. Louis, then about to go down the river to New Orleans. These gave to him a regular bill of lading, agreeing to deliver the specified number of sacks of corn to B. & Co., in New Orleans. On the same day A. drew his bill of exchange on B. & Co., in New Orleans, telling them to charge the draft to the account of this specific shipment; and attaching to his bill of exchange, the bill of lading thus received, sold the draft in the market. Being forwarded, it was paid at maturity by B. & Co., in New Orleans; they having had no notice of any difficulty. They were at the time in advance to A. on account of other shipments. The steamer set off on her voyage, and stopping at

Statement of the case.

the place where the sacks of corn were, took them on board. Proceeding further on her voyage she came to Cairo, C.'s residence. C. having learned that A. had failed, had not paid for the corn and was insolvent, issued an attachment, and on the arrival of the steamer seized the corn and took it off the boat. On suit brought by B. & Co., for damages, *held* that after the boat took the corn on board a transfer of the property to B. & Co. was effected, and that C. had made himself liable for his act of seizure and asportation.

ERROR to the Circuit Court for the Southern District of Illinois; the case being thus:

In 1867 Sherwood, Karns & Co., commission merchants of St. Louis, had a standing agreement with Hamilton & Dunnica, of New Orleans, to ship produce to them, and to draw drafts on the shipments, which they were to accept and pay. In case the proceeds of any shipment left a balance due to Hamilton & Dunnica, they were to apply the surplus of any other shipment in payment of it. At this time Cole Brothers were the correspondents in St. Louis of Hamilton & Dunnica, and were advertised to make advances on shipments made to them, and often during the season of 1867 made advances upon shipments to this house by Sherwood, Karns & Co. In this condition of things the transaction occurred which was the subject of this controversy.

On the 31st of August, 1867, Sherwood, Karns & Co. purchased of Halliday Brothers, of Cairo, Illinois, through their agent (one Booth) in St. Louis, 1250 sacks of corn, lying at Price's Landing on the Mississippi River, a hundred and fifty miles, more or less, below St. Louis, and a short distance above Cairo, and obtained an order for the delivery of the corn. This order they handed over to the agent of the steamboat Bee, then at her wharf in St. Louis, who issued a regular bill of lading to deliver the corn to Hamilton & Dunnica at New Orleans. On the same day Sherwood, Karns & Co. drew their bill of exchange for $2500 on Hamilton & Dunnica, and in it told them to charge the same to account of this specific shipment. At this time there was a large balance due Hamilton & Dunnica on account of previous shipments of produce. This bill of exchange was

taken to Cole Brothers for discount, and sold, indorsed, and delivered to them with the bill of lading attached, by Sherwood, Karns & Co., to whom they paid the proceeds. Shortly after this Cole Brothers deposited the bill of exchange thus accompanied by the bill of lading with a banking house in St. Louis, who sent them forward, and Hamilton & Dunnica accepted the bill of exchange, without notice of any difficulty in the matter, and paid it at maturity. In a day or two after the bill of lading was issued and transferred to Cole Brothers, the steamboat Bee proceeded on her voyage to New Orleans as far as Price's Landing, and, *having obtained the corn*, stopped at Cairo, arriving there September 5th. On the day, however, before she got there, Booth, the agent at St. Louis of Halliday Brothers, telegraphing to them that Sherwood, Karns & Co. had failed, had not paid for the corn, and had no effects in St. Louis, directed them "to stop the delivery of the corn." Thereupon Halliday Brothers got an attachment, and upon the arrival of the steamer at Cairo, the corn was levied on and taken from the possession of the boat by virtue of the same. Halliday Brothers stated to their agent, Booth, his impression was, that "they attached the corn." These attachment proceedings resulted in the sale of the corn, and the payment of the net proceeds by the marshal to Halliday Brothers. Hamilton & Dunnica hereupon brought trespass against Halliday Brothers. The court below charged generally in favor of the plaintiffs; and refusing to charge as the defendant asked it to do, that the defendants were not liable in this action unless they directed the officer to seize the corn, or personally interfered with or took control of it. The jury found for the plaintiff $3436. Judgment accordingly.

Messrs. Albert Pike and R. W. Johnson, for the plaintiffs in error, contended that:

1. That the case was wanting in the essential characteristics of the factors' lien without possession; that there was no previous express agreement to ship the identical cargo in

question; no distinct pledge of the proceeds of *that* cargo to the payment of actual advances; no actual advances made in pursuance of such agreement by actual payment or acceptance of draft before the rights of third parties attached. That the case did not show that Hamilton & Dunnica knew of the existence of this corn, or bill of lading, or draft, but only that one party had been in the habit of shipping, and the other in the habit of paying on consignment.

2. That at all events, Hamilton & Dunnica as against the attaching creditors could have no lien beyond their actual advances on the particular consignment; and that the equitable interest of Sherwood, Karns & Co., in the surplus, was open to attachment.

3. That a bill of lading for corn as shipped at St. Louis on one day, could not give the right of property in corn shipped at a place one hundred and fifty miles distant, on another day. The corn had not been received by the transportation company at all, when the bill was given.

4. That the court had erred in refusing the instruction above mentioned as asked for, viz.: that what the attachment called upon the marshal to seize was, of course, the corn of Sherwood, Karns & Co., and not any property of Hamilton & Dunnica; and as for any notification of the marshal's trespass, if a trespass had been made, the case showed no ratification with a knowledge that any had been committed.

Mr. G. P. Strong, contra.

Mr. Justice DAVIS delivered the opinion of the court.

There is no difficulty, on principle and authority, in determining the rights of the parties to this controversy. On the conceded facts of this case there can be no question that the legal title to the 1250 sacks of corn passed to Hamilton & Dunnica before the levy of the attachment by Halliday Brothers, and if so, the judgment of the Circuit Court must be affirmed.

It is not necessary to discuss the general doctrine relat-

ing to the lien of a factor, because it has no application here. If this were the case of a mere agreement to ship produce in satisfaction of antecedent advances, which will not in general give the factor or consignee a lien upon it for his general balance until he obtains actual possession of it, the attachment would hold the property. But the agreement in question is of a different character, and rests on a different legal principle. It appropriates specifically 1250 bags of corn to Hamilton & Dunnica, with an intention that they shall sell it to pay the draft drawn against it, and, if there is any surplus remaining after this is done, to apply it in liquidation of the advances previously made for Sherwood, Karns & Co. And this appropriation did not rest in intention merely, for it was executed, so far as the parties in St. Louis could execute it, by the transmission of the bill of lading to Hamilton & Dunnica. As soon as the corn was deposited with the common carrier, who was the bailee for the purpose, the title to it and right of property in it was changed and vested in Hamilton & Dunnica, to whom it was to be delivered. This is the effect of all the cases on the subject.* A contrary rule would defeat the object which the parties to the agreement intended to accomplish by it, and would seriously embarrass commercial men in their dealings with each other, for it can be readily seen that the mode of transfer adopted in this case is necessary for the purposes of commerce. If Hamilton & Dunnica had purchased the corn outright, they could not have got a better legal title to it than they acquired under the admitted facts of this suit. The legal title to the property passed to them to carry out certain designated purposes, and they had the right to the undisturbed possession of it until those purposes were effected.

* Haille *v.* Smith, 1 Bosanquet & Puller, 563; Desha et al. *v.* Pope, 6 Alabama, 690; Gibson *v.* Stevens, 8 Howard, 384; Grove *v.* Gilmor, Ib. 429; Bryans *v.* Nix, 4 Meeson & Welsby, 775; Anderson *v.* Clark, 2 Bingham, 20; Holbrook *v.* Wight, 24 Wendell, 169; Grosvenor *v.* Phillips, 2 Hill, 147; Sumner *v.* Hamlet, 12 Pickering, 76; Nesmith et al. *v.* The Dyeing and Bleaching Company, 1 Curtis, 130; Valle *v.* Cerre, 36 Missouri, 575.

It may be said that Sherwood, Karns & Co. had an equitable interest in any surplus that might remain of the proceeds of the corn after the claims of Hamilton & Dunnica were satisfied, and that this equitable interest was liable to attachment by the laws of Illinois. "But that liability," says Chief Justice Taney, in *Gibson* v. *Stevens*,* "will not authorize the attaching creditor to take the property out of the hands of the legal owner before his claims upon it are discharged." Besides, it is clear from the evidence that the proceeds from the corn fell far short of liquidating the indebtedness due Hamilton & Dunnica from Sherwood, Karns & Co.

It is argued that the bill of lading did not effect the transfer of the property, because when it was executed the corn had not been received by the transportation company. But it became operative as soon as the corn was in the custody of the boat, and the legal relations of Hamilton & Dunnica to the property were fixed from that time, and it is unnecessary to consider what would have been the rights of third persons if the attachment proceedings had preceded, instead of being subsequent to, the delivery of the corn.

It is urged that the Circuit Court should have instructed the jury, as it was asked to do, that Halliday Brothers were not liable in this action, unless they directed the officer to seize the corn, or personally interfered with or took control of it. But the refusal to give this instruction worked no harm to the plaintiffs in error, for the court could have well told the jury that the evidence was conclusive on these points against them. Indeed, so conclusive is it that there is no room to doubt that they took out the attachment to seize this very corn, and directed the officer to delay the boat for that purpose. On the 4th of September, Booth, their agent in St. Louis, having ascertained that Sherwood, Karns & Co. had failed, and did not own any property there to attach, and being unable to get the money for the corn, sent a telegram to the Hallidays to stop its delivery. This they doubt-

* 8 Howard, 384.

less found they could not do; but on the same day they applied for the writ of attachment, which was issued and served on the following day. No other persons in Cairo could have known of the shipment of the corn, or Sherwood, Karns & Company's connection with it, and it is idle to suppose the marshal would have made the levy without the special instructions of the plaintiffs in the suit. Besides, it was their interest to keep their proceedings as secret as possible, for fear the officers of the boat might get knowledge of them and avoid landing at Cairo. But this is not all, for they told Booth that they attached the corn, and the marshal paid them the net proceeds of the sale of it. Surely nothing more is necessary to show that the levy and sale were at their instance, and there is no evidence at all to the contrary.

These views dispose of the case, and the judgment is accordingly

AFFIRMED.

STEINBACH *v.* STEWART ET AL.

1. A decree of the District Court of the United States confirming a claim to land under a Mexican grant in California contained a proviso that the confirmation to the claimant should be without prejudice to the rights of the legal representatives of the original grantee, or whoever might be entitled to the land under him, and should enure to the benefit of any person, or persons, who might own or be entitled to the land by any title, either at law or in equity, derived from the original grantee by deed, devise, descent, or otherwise. On appeal to the Supreme Court the decree, so far as it confirmed the original grant, was affirmed: *Held*, that this language of the Supreme Court did not annul the proviso to the decree, but left it in full force; and that the decree accordingly gave to parties holding under the original grantee or the confirmee the same benefits which it gave to them in the perfection of their title.
2. In August, 1846, the confirmee, V., executed an instrument, and delivered it to one H., wherein he uses these words, after certifying that he had purchased the tract of land designated of the original grantee:

   "I grant and transfer all the right which I have in the land mentioned to H., who shall make such use thereof as may be most convenient to him;"

   Held, that the instrument, construed by the Mexican law in force in Cali-