

Case No. 355. ANDERSON V. BROWN ET AL.
[N. Y. Daily T. Oct. 25, 1851.]

District Court, S. D. New York.

1851.

COMPROMISE—PAYMENT—NEGOTIABLE PAPER.

[A draft given in compromise of a suit, and thereafter protested for nonpayment, is not a payment of the claim, and the original suit may proceed as if no settlement had taken place.]

[In admiralty. Libel for a marine tort by Moses Anderson against William H. Brown and Nathaniel Jarvis, owners of the steam-ship Pacific. A settlement was heretofore had. Heard on motion by libelant to proceed with the suit, and to add one Lowry as a party respondent. Granted.]

Before JUDSON, District Judge.

This action was commenced by the libelants for \$5,000 damages for a marine tort against the defendants, as owners of the steamship Pacific. Process of citation was issued, and both defendants were served. After service a settlement of the suit was made by paying the libelants a draft for \$750. After the draft became due, it was protested for nonpayment. A motion was now made by the libelant to proceed with the suit, and add another party, a Mr. Lowry, as defendant, and for an order to hold all the defendants to bail. Mr. D. W. Mahon, Jr., was heard for the libelant in support of the motion, and Mr. T. J. Brady, for the defendants, in opposition, who relied on rule 25 of the supreme court of United States. After considerable discussion, the judge decided in favor of the libelant, granting the amendment prayed for, and allowing the suit to proceed as if no settlement had taken place, and ordering the defendants to be held to bail on \$1,200; thus deciding that a draft is no payment unless paid.