

has been a contest, yet it is, plainly, an independent, original jurisdiction which is given to the courts. If it were not so, the mode of appeal, and the security to be given the adverse party, would undoubtedly be provided for, but especially the time within which the appeal should be taken, so that the commissioner might know whether he could issue the patent or not. Upon the theory of the bill it is left to the mere discretion of the defeated party when, and under what circumstances, the action of the office shall be suspended. This cannot be the law. Injunction refused.

MARGOT *v.* SCHNETZER and others.

(Circuit Court, D. Massachusetts. February 5, 1883.)

PATENTS FOR INVENTIONS—DOUBT AS TO NOVELTY—INJUNCTION *NISI*.

In Equity. On motion for preliminary injunction.

James E. Maynardier, for complainant.

Avery & Hobbs, for defendants.

LOWELL, J. This is a motion for a preliminary injunction. The suit is upon patent No. 12,775, dated February 21, 1882, for a design for watch-cases. The defendants copied the plaintiff's design before it was patented, and without knowing that a patent was to be applied for, and they are ready to stop infringing. The damages must be small, and I should wish to end the case here, if that were possible; but a serious doubt is raised as to the novelty of the design, by the affidavit of one Smith, and by the admissions of the plaintiff in his affidavit in reply to Smith, so that I think an injunction *nisi* is all that I ought to grant.

Injunction *nisi*.

THE CHEROKEE.*

(District Court, S. D. Ohio, W. D. January 30, 1883.)

1. COLLISION—ENTERING NARROW CHANNEL—PILOT RULE 3.

The question of negligence, where a vessel enters a narrow channel while another is aground on its banks, depends on the apparent situation and circumstances of the vessel aground, making proper allowances for a change in the relative situation of the vessel aground; but unexpected changes, not brought about by the vessel attempting to pass, should not be considered in determining whether there has been any blame. Where, therefore, pilot rule No. 3 requires an ascending vessel, about to enter a narrow channel at the same time with a descending vessel, to lie below the channel until the descending vessel has passed through, she may, without negligence, enter the channel, if the descending vessel, being a tow-boat with barges in tow, has grounded one of the barges, and is not coming on, and there be room to pass without collision; and the unexpected drifting of one of the barges, by which a collision occurs, is an inevitable accident, for which the ascending vessel is not liable.

2. SAME—TUG AND TOW.

A tow-boat working at one of its barges aground should, if possible, make way by temporarily suspending work to permit another vessel to pass, where that is necessary to prevent delay.

3. SAME—BARGE ADRIFT.

Where a barge, constituting part of a tow, is adrift in a narrow channel, a passing steam-boat owes the duty of doing all that is possible to prevent collision with it; but if she reverses her engines as speedily as possible, and otherwise does all she can, there can be no blame, because she is in a narrow channel, where the tug and tow would have had the right of way if it had not been partially aground.

In Admiralty.

Lincoln, Stevens & Slattery, for libelants.

Hoadly, Johnson & Colston, for claimants.

HAMMOND, J., (*sitting by designation.*) Notwithstanding the voluminous testimony in this case the essential facts lie within a small compass. There is opposite Rising Sun, on the Ohio river, a very narrow channel, caused by the encroachment of a bar, making out from the Kentucky shore, and at the stage of water existing at the time of the collision sued for, navigation at the place was difficult. It is conceded that this place comes within the application of the following rule, prescribed for the government of pilots:

“Rule 3. Where two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should two boats unavoidably meet in such channel, then it shall be the duty of the pilot of the descending boat to make the proper signals, and, when answered, the ascend-

*Reported by J. C. Harper, Esq., of the Cincinnati bar.