

parallel to the can, and then had an offset, and then was formed parallel to the can, resulting in an annular U-shaped trough for the solder, and not a V shape. The V-shaped was expressly disclaimed. The contention now made in behalf of the complainants, that the real invention was an annular trough of any shape, cannot be entertained. The patentee, not having appealed from the rejection of his original claim, is now irrevocably restricted to the limitations put upon his invention by the disclaimer in his amended specifications, and the withdrawal of his broad claim, and his acceptance of the narrow claim, as granted to him. *Leggett v. Avery*, 101 U. S. 256; *Shepard v. Carrigan*, 116 U. S. 593, 6 Sup. Ct. Rep. 493; *Roemer v. Peddie*, 132 U. S. 313, 10 Sup. Ct. Rep. 98; *Caster Co. v. Spiegel*, 133 U. S. 360, 10 Sup. Ct. Rep. 409; *Dobson v. Lees*, 137 U. S. 258, 11 Sup. Ct. Rep. 71.

The proof shows that the can manufactured by the defendant has no such annular U-shaped trough as is described in the patent. The flanges of the tops and bottoms of defendant's cans are very nearly closely fitting, and parallel, without any offset at all, except that upon close examination, in some there is found, almost at the very edge of the flange, a slight flare away from the can. This almost imperceptible flare, the witnesses for the defendant testify, is not intentional, and is not desirable, and arises solely from the fact that in stamping out the circular ends, and turning up the flange by a drawing die, there results, in consequence of the crimping of the metal, this slight flare. This, if it is anything worth considering, forms a V-shaped annular trough, such as was disclaimed by the patentees. I think it is quite clear that there is no infringement.

The bill must be dismissed.

THE JOSEPH STICKNEY.

LOWELL et al. v. THE JOSEPH STICKNEY.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

COLLISION—EVIDENCE—APPEAL.

Where, in a collision case, the controversy turns wholly on questions of fact depending upon testimony which is so conflicting that no safe opinion can be formed of the merits, a decree dismissing the libel will be affirmed on the ground that libelants failed to establish their case by a preponderance of evidence.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by Lowell and others against the steam tug *Joseph Stickney* to recover for a collision resulting in damage to the schooner *Harry White*. The court below dismissed the libel. See 50 Fed. Rep. 624, where a full statement of the facts will be found in the opinion of Judge Brown. Libelants appeal. Affirmed.

Eugene P. Carver, for appellants Lowell.

Mr. Berrier, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. This controversy turns wholly upon controverted questions of fact, and such is the conflict of testimony that a safe opinion of the merits cannot be formed. The learned district judge, from whose decree the appeal is taken, rejected the theory of the collision of either party, and concluded that the libel ought to be dismissed upon considerations which appear to be reasonable. Without saying that we fully concur in his conclusions, we think the decree should be affirmed because the libelants did not establish their case by any preponderance of evidence.

The decree is affirmed, with costs of this court.

THE UNA.

ACKERMAN v. THE UNA et al.

(District Court, S. D. New York. May 11, 1893.)

BAILMENT—SHIPPING—VESSEL IN SHIPYARD—RIGHTS OF OWNER.

Libelant purchased at trustee's sale a damaged yacht, at that time lying in respondent's shipyard. It was agreed between libelant and respondent that the yacht should remain as she was, in storage, during the winter season, but that she would be launched when wanted at a certain time in the spring. On libel filed to recover possession of the yacht, the court found that, owing to disputes between the parties, respondent had intentionally obstructed libelant in his endeavors to obtain timely possession of his yacht, and held that the right of the owner to have his vessel launched at a proper time by respondent, the bailee, was a right incident to the ownership of the yacht, and a right which passed to her owner in payment of the price agreed on, or a reasonable compensation. *Held*, therefore, that libelant was entitled to the possession of his yacht, to be launched by respondent, and to reasonable damages till launched and delivered for her withholding.

In Admiralty. Libel by J. Fred Ackerman against the yacht Una and John P. Hawkins for possession, and for damages for unlawful detention.

Benedict & Benedict, for libelant.

George A. Black, for respondents.

BROWN, District Judge. The yacht Una, having been injured by collision, was placed in the shipyard of the respondent Hawkins at City Island. On the 21st of December, 1892, she was sold by a trustee appointed by this court in proceedings taken by the owner to limit his liability. Mr. Hawkins attended and was a bidder at the sale. She was purchased, however, by the libelant, who, within a few days afterwards, had certain negotiations with Mr. Hawkins in reference to completing her repair. They could not come to an agreement as to the terms; but it was agreed that Mr. Hawkins should charge \$10 per month for storage during the winter season, which was his usual price. He was told that the yacht would be wanted for use with the repairs completed by the beginning of the yachting season on the 1st of June following; and he was requested to state what would be the expense of putting her into the water, there being at that time one other yacht between