

affirmatively authorized by law, willfully, wantonly, carelessly, or voluntarily created in the navigable waters, over which the United States has jurisdiction, not covered by the specific provisions of the preceding sections in the same chapter; and it follows from this construction that hulls of vessels sunk in harbors not through perils of the sea, but by voluntary act of owners or their authorized agents, are obstructions, within the meaning of this section of the statute. It is not quite clear whether the court below, holding this view of the statute, determined the cause, and dismissed the bill upon findings of fact against the government, or whether the order of dismissal resulted from construing the statute as not covering obstructions of the character disclosed by the record; but this is perhaps immaterial, for in either view it results that the decree of the circuit court must be reversed.

The decree of the circuit court is reversed, and the case is remanded, with directions to enter a decree in accordance with the views herein expressed.

On Rehearing.

(June 14, 1894.)

PER CURIAM. The court has duly considered the petition for a rehearing filed in this cause by the appellees under rule 29, 47 Fed. xiii. The causes assigned in the petition, numbered 1 to 5, inclusive, were not brought to the attention of the court at the argument, or by appellees' brief. To permit them to be argued now would split up the case in a manner which the proper progress of suits does not ordinarily allow of. Extreme cases may arise where this may be done, but this is not one of them, though it might be if this procedure was under the criminal provisions of the statutes, or if the joinder of defendants involved, as a practical result, a gross injustice. The remaining causes were fully considered by the court before its conclusion was announced.

Ordered that, as none of the judges who concurred in the judgment in this case desire that the petition for a rehearing be granted or argued, the petition is denied, and the mandate may issue forthwith.

DOUGHERTY v. DOYLE et al.

(Circuit Court of Appeals, Second Circuit. September 12, 1894.)

No. 155.

PATENTS—INFRINGEMENT—MINCE-PIE COMPOUNDS.

The Allen patent, No. 268,972, for a dry mince-pie compound, in which dryness is made the essential characteristic, and the use of cider, except as contained in the desiccated apples forming one of the ingredients, expressly excluded, is not infringed by a compound to which there is added 150 pounds of boiled cider to every 1,200 pounds of other ingredients. 59 Fed. 470, affirmed.

Appeal from a decree of the circuit court, northern district of New York, dismissing a bill in equity for alleged infringement of

letters patent No. 268,972, dated December 12, 1882, to Henry Julian Allen, for "preserved compound for mince pies."

George W. Hey, for appellant.

Josiah Sullivan, for appellees.

Before LACOMBE and SHIPMAN, Circuit Judges.

PER CURIAM. In affirming the decree upon the ground that no infringement is shown, it seems unnecessary to add anything to what has been said by the circuit judge. The patentee obtained his letters patent only after much argument and many amendments, which, with increasing insistence, presented his invention as a practically dry compound of old ingredients, viz. beef, sugar, apples, spice, currants, raisins, and salt, with, if desired, a small quantity of starch, and also, if desired, "wine, brandy, or other liquor," in so small a proportion as to "create no sensible moisture in the composition." To secure the dryness which he pointed out as characteristic of his invention, he not only cooked the meat and desiccated the apples, but also avoided the use of ingredients containing a substantial quantity of free water. Cider was commonly used as an ingredient of earlier compounds. The patentee does not include it in his enumeration, and, when referred by the patent office to Atmore's compound, distinctly states that he uses none, except such as may be present in the desiccated apples, "the cider being dried, and the free waters removed, when the apples are dried or evaporated. So that I have the cider in my compound without useless water, which may be added when the consumer wishes to use it." And in his final amendment of the specification he seeks to differentiate his invention from "mince-pie compounds [which] have heretofore been prepared in the wet state with free water present in the shape of wine, cider, or other liquid." Within the lines with which the patentee has himself circumscribed his patent, it must be construed, and, as thus construed, there is no infringement in a compound where there is added 140 pounds of boiled cider to every 1,200 pounds of the other ingredients, with the result of creating a sensible moisture in the composition. The decree of the circuit court is affirmed, with costs.

THE EMPIRE.

THE TRANSFER NO. 3.

KENNEDY v. THE EMPIRE and THE TRANSFER NO. 3 et al.

(Circuit Court of Appeals, Second Circuit. September 12, 1894.)

No. 150.

1. COLLISION IN EAST RIVER—BREACH OF STATUTE AND INSPECTORS' RULES—Tows.

A steamer going east in the east channel of the East river is in fault for keeping in close to the Blackwell's Island shore, and attempting to pass a steamer going in the opposite direction starboard to starboard, instead of keeping in the middle of the river, and passing port to port, as required by the state statute, the rules of the supervising inspectors, and the cus-