

libelants if they had claims for damages yet unsettled arising under it. I am constrained to find that the settlement of October 1, 1890, was in full to that date, and is a bar to any claim which predates that time. I cannot find any proof that after that date any claim for damages or repairs accrued to the libelants. It is true that one of the libelants testifies that of the 43 days which it is claimed the tug was unusable because of its unseaworthy condition at least 23 were after the settlement, but no dates or causes of delay are given. If that statement is correct, it is evident that the tug must have been out of service nearly the whole of October. But the remaining testimony does not justify such inference. On this point of the case I shall refer it back to a commissioner, if libelants so desire, for more direct and positive testimony. The remaining claim is for loss of anticipated profits on what is called the "Wilmington" contract. It is extremely doubtful if the circumstances of this case warrant the finding of consequential damages. At any rate, the evidence now before the court does not justify any such award. It is extremely unsatisfying, vague, and indefinite, and does not, as it appears, support the contention of the libelants.

The respondent has filed a cross libel, claiming various items, amounting to \$1,368.17, as due from the firm of Devenny & Co. It is only necessary to refer to one of these,—a charge of \$25 per day for the tug from November 10th to December 17th, amounting to \$950. It appears that in accordance with the provisions of the amended contract of hiring, on the 9th day of November, Dr. L'Engle's agent served a notice upon the libelants, terminating the term for failure to comply with the conditions of the charter. That the libelants were in default in payment of hire of the Mascotte is not disputed. Such default gave the owner of the tug the right to cancel the contract of hiring. The due service of the notice is not disputed. In breach of their contract, Devenny & Co. by force kept possession of the tug until December 17th. But this they did under legal advice. This is no case for exemplary damages. I think that the claim of \$25 per day for the tug is not justified, but that the damages sustained by the owner through this illegal detention will be properly measured by the charter rate of \$10 per day, and for such sum it is allowed. The other items of the claim, I believe, are not disputed. Of course, the charge of \$67.62 for legal expenses is disallowed.

ABBOTT v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. February 3, 1896.)

No. 254.

Error to the Circuit Court of the United States for the Western District of Washington.

This was an action by Twyman O. Abbott against the United States to recover damages for breach of a contract to lease certain rooms for a post office. There was a judgment for plaintiff. 66 Fed. 447. Defendant brings error.

W. H. Brinker, U. S. Atty.

W. C. Sharpstein, for defendant in error.

Before McKENNA and ROSS, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge. The facts of this case and the principles of law applicable thereto were clearly and correctly stated by the circuit judge (see *Abbott v. U. S.*, 66 Fed. 447), and are not of such a character as to call for any further discussion. The judgment of the circuit court is affirmed.

BERGNER et al. v. HORN.

(Circuit Court of Appeals, Fourth Circuit. February 4, 1896.)

No. 141.

Appeal from the Circuit Court of the United States for the District of Maryland.

This was a bill by William C. Horn, president of Koch, Sons & Co., an unincorporated joint stock company, against Frederick Bergner and others, for infringement of a patent. There was a decree for an injunction and an accounting (68 Fed. 428), from which defendants appealed.

H. T. Fenton and Edgar H. Gans, for appellants.

Alan D. Kenyon and William Houston Kenyon, for appellee.

Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

PER CURIAM. We see no error in the conclusion reached by the circuit court. The decree of that court is affirmed, with costs.

EELLS v. COOK.

(Circuit Court of Appeals, Ninth Circuit. October 10, 1894.)

No. 142.

Appeal from the Circuit Court of the United States for the District of Washington.

William H. Brinker, U. S. Atty.

F. Campbell, for appellee.

Reversed, on authority of *Eells v. Ross*, 12 C. C. A. 205, 64 Fed. 417.

FOLSOM v. TOWNSHIP OF NINETY-SIX.

(Circuit Court of Appeals, Fourth Circuit. February 10, 1896.)

No. 69.

Error to the Circuit Court of the United States for the District of South Carolina.

Shields & Shields, H. J. Hansworth, and J. W. Parker, for plaintiff in error.

Chas. Inglesby, Eugene B. Gary, and W. C. Miller, for defendant in error.

No opinion. Reversed and remanded, pursuant to the mandate of the United States supreme court. See 16 Sup. Ct. 174.

HAMMOND v. STOCKTON COMBINED HARVESTER & AGRICULTURAL WORKS.

(Circuit Court of Appeals, Ninth Circuit. February 14, 1896.)

No. 231.

In Error to the Circuit Court of the United States for the Northern District of California.

This was a petition for a rehearing. See, for former opinion, 17 C. C. A. 356, 70 Fed. 716.