

1891, the said Fourth Street National Bank advanced twenty-five thousand dollars (\$25,000) in clearing-house gold certificates to the said Keystone National Bank to enable it to meet its debtor balance in the Philadelphia clearing house under these circumstances: On said date Gideon W. Marsh, the president of the Keystone National Bank, acting on its behalf and by its authority, came to the banking room of the said Fourth Street National Bank, in the city of Philadelphia, and there represented to the officials of that bank that the Keystone National Bank owed a balance at the clearing house which it could not meet, because its funds were in the city of New York, and exhibited to them a memorandum showing a balance to the credit of the Keystone National Bank in the Tradesmen's National Bank of the city of New York of about twenty-seven thousand dollars (\$27,000), stating that his bank wished to draw against it and get clearing-house certificates; and he asked the Fourth Street National Bank to accept the draft of the Keystone National Bank for twenty-five thousand dollars (\$25,000) against this 'reserve account in the New York bank,'—that is to say, against the said fund in the Tradesmen's National Bank,—and give his bank clearing-house gold certificates therefor. Relying upon these representations of Marsh, and on the faith of his statement, supported by the said memorandum, that the Keystone National Bank had in the Tradesmen's National Bank the specified fund against which it proposed to draw, the Fourth Street National Bank gave Marsh, for the use of the Keystone National Bank, clearing-house gold certificates to the amount of twenty-five thousand dollars (\$25,000), and took its draft, of which the following is a copy: 'Keystone National Bank, No. 5086. Philadelphia, March 19, 1891. Pay to the order of R. H. Rushton, cashier, (\$25,000.) twenty-five thousand dollars. John Hayes, Cashier. To the Tradesmen's National Bank, New York.' R. H. Rushton was the cashier of the Fourth Street National Bank. The books of the Keystone National Bank show that on the 19th day of March, 1891, it had to its credit in the Tradesmen's National Bank of the city of New York the sum of twenty-six thousand nine hundred and seven and $\frac{2}{100}$ dollars (\$26,907.32), and on the same day an entry was made therein charging against that credit the said draft for twenty-five thousand dollars (\$25,000) it had given to the Fourth Street National Bank. The draft for twenty-five thousand dollars (\$25,000) was duly forwarded to New York for collection, and was presented for payment to the Tradesmen's National Bank on the morning of March 20, 1891. Payment thereof was refused upon the ground that the drawee had not in hand funds of the drawer sufficient to pay the same. In fact, the Tradesmen's National Bank had in cash and in collection items (drafts) for the Keystone National Bank the sum of twenty-six thousand nine hundred and seven and $\frac{2}{100}$ dollars (\$26,907.32), of which eighteen thousand and fifty-six and $\frac{21}{100}$ dollars (\$18,056.21) were remitted by the latter-named bank to the former on March 19, 1891, and the rest previously. The Tradesmen's National Bank then had in hand in cash, to the credit of the Keystone National Bank, the sum of nineteen thousand seven hundred and twenty-five and $\frac{2}{100}$ dollars (\$19,725.62), and had in addition the said collection items to make up the full sum of twenty-six thousand nine hundred and seven and $\frac{2}{100}$ dollars (\$26,907.32). Afterwards this money was paid, and the said collection items or drafts were turned over to Robert M. Yardley, the receiver of the Keystone National Bank, and out of the collection items he realized sixty-one hundred dollars (\$6,100), and he thus had in his hands from this source, when the bill in this case was filed, the sum of twenty-five thousand eight hundred and twenty-five and $\frac{2}{100}$ dollars (\$25,825.62) in cash. On the 20th day of March, 1891 (some time during the morning), by the order of the comptroller of the currency of the United States, the Keystone National Bank was closed, and thereafter Robert M. Yardley was appointed receiver thereof." The two questions propounded to the supreme court were these: "First. Do the above facts show an equitable assignment by the Keystone National Bank to the Fourth Street National Bank of twenty-five thousand dollars of the fund, consisting of cash and collection items or drafts, as aforesaid, belonging to the Keystone National Bank, in the hands of the Tradesmen's National Bank? Second. If the stated facts do not show such equitable assignment of the whole twenty-five thousand dollars, do they show such equitable assignment of the cash so in the hands of the Tradesmen's National Bank, namely, the sum of nineteen thousand seven hundred and twenty-five and $\frac{2}{100}$ dollars?" We have received from the supreme court of the

United States its mandate directed to this court, and certifying that it is the opinion of the supreme court that the first question certified to that court must be answered in the affirmative. This affirmative answer to that question is decisive of the controversy between the parties to this appeal, and requires a reversal of the decree of the court below dismissing the bill, and the entry of a decree in favor of the complainant in the bill. Accordingly, the decree of the circuit court is reversed, and the cause is remanded to that court, with directions to enter a decree in favor of the complainant in the bill in conformity with the decision of the supreme court of the United States, as signified by its affirmative answer to the first certified question above set forth.

KING v. McDONALD et al. (Circuit Court of Appeals, Fourth Circuit. May 4, 1897.) No. 190. Appeal from the Circuit Court of the United States for the District of West Virginia. Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

SIMONTON, Circuit Judge. This is an appeal from the circuit court of the United States for the district of West Virginia. The case depends upon the same facts, is governed by the same principles, and must take the same course, as the case of *King v. Williamson*, 80 Fed. 170, the result of which has just been announced. The decree of the circuit court is affirmed, with costs.

KING v. WHITE et al. (Circuit Court of Appeals, Fourth Circuit. May 4, 1897.) No. 191. Appeal from the Circuit Court of the United States for the District of West Virginia. Before GOFF and SIMONTON, Circuit Judges, and BRAWLEY, District Judge.

SIMONTON, Circuit Judge. This is an appeal from the circuit court of the United States for the district of West Virginia. The case depends upon the same facts, is governed by the same principles, and must take the same course, as the case of *King v. Williamson*, 80 Fed. 170, the result of which has just been announced. The decree of the circuit court is affirmed, with costs.

UNITED STATES v. UTZ. (Circuit Court of Appeals, Third Circuit. April 30, 1897.) In Error to the Circuit Court of the United States for the District of New Jersey. For opinion, see 75 Fed. 648. J. Kearney Rice, for plaintiff in error. Chas. A. Hess, for defendant in error. Before ACHESON and DALLAS, Circuit Judges, and BUFFINGTON, District Judge.

ACHESON, Circuit Judge. This suit was brought in the court below on the 23d day of February, 1895, under the act of congress of March 3, 1887 (24 Stat. 505). The petition sets out a contract in writing entered into on the 31st day of January, 1888, by and between William Utz (the petitioner), as party of the first part, and the United States (the defendant), as party of the second part, whereby the petitioner agreed to do the cartage of all merchandise in the custody of the government at the port of New York "from the first day of February, 1888, up to and including the first day of February, 1890, at the rate of fourteen and one-half cents per package for all packages from the importing vessel, and from general order store and warehouses to public store, with the exception of sample packages; and that said party of the first part will cart all sample packages from all points at the rate of one cent per package." The suit is for an alleged balance due the petitioner under this contract, he alleging that he had carted a large number of packages upon which he was entitled under the contract to compensation at the rate of 14½ cents per package, but upon which he had received payment at the rate of only 1 cent per package. The court below sustained the claim of the petitioner to the extent of \$4,536.56, and gave judgment in his favor against the United States for that sum. The record shows that as to a part of the peti-

tioner's allowed claim, namely, the sum of \$1,631.21, the right of action accrued more than six years before the suit was brought. In all other particulars than those above specified, the finding of fact by the court below, and its stated conclusions of law in this case, were the same as they were in the suit of William Utz, Thomas M. Garrett, and William H. Kirby against the United States. The questions for determination by this court are therefore the same in these two causes, and the decision which we have just made in the case of *U. S. v. Utz*, 80 Fed. 848, is decisive of the controversy here. For the reasons stated at length in our opinion in that case, the judgment of the court below in this case must be reversed. Accordingly, the judgment of the circuit court is reversed, and the cause is remanded to that court, with directions to dismiss the petition.

WALTER BAKER & CO., Limited, v. SANDERS et al.¹ (Circuit Court of Appeals, Second Circuit. May 26, 1897.) No. 126. Appeal by Complainant from a Decree of the Circuit Court of the United States for the Southern District of New York.

PER CURIAM. The facts in this case, which deals with unfair competition in the sale of cocoa, are so nearly identical with those in the chocolate case between the same parties (No. 125; 77 Fed. 181) that it is unnecessary to discuss them. A mandate will issue in this case similar to that in No. 125.

¹ For corrected report, see 82 Fed. 1006.