

On the question of infringement, the case seems so clearly favorable to the complainant, so far as claim 2 is concerned, that we do not deem it necessary to enlarge upon it. The only pretense of variance lies in the proposition of the respondents that in the complainant's patent the nonconducting material placed between the adjacent layers of the coil is no part of the insulating substance,—that is, no part of the cylindrical core; while in the respondents' construction the core and the nonconducting material between the adjacent layers of the coil are built solidly as one piece. Nothing either in the letter or the substance of the complainant's claim sustains this proposition.

The case was originally brought against two corporations and several individuals, alleged to be officers of one or more of the corporations. Discontinuance has been entered as against the individuals concerned, and no respondent now remains except the two corporations. In order to maintain the bill, it must be alleged and proven that the two corporations are guilty of joint infringement. It may be that both are guilty severally, one for manufacturing and selling, and the other for using. But the only proof in the record is that one manufactured and sold, and the other used, without showing any co-operation between them. This, of course, does not prove joint infringement. Therefore, as the case now stands, the bill must be dismissed. If, however, the complainant desires to dismiss the bill against one of the remaining respondents, it may do so on payment of costs. As a matter of course, the question of costs arising out of our finding that the first claim is invalid must abide the final decree. Ordered, the complainant has leave to dismiss without prejudice as against one of the respondent corporations, with costs, on or before the 4th day of September next; and, unless it so dismisses, the bill will be dismissed, with costs; if it so dismisses, there will be a decree as provided in rule 21, adjudging claim 1 void, and for an accounting and injunction as to claim 2.

MEMORANDUM DECISIONS.

ANDERSON et al. v. UNITED STATES. (Circuit Court of Appeals, Eighth Circuit.) No. 989. Certified to supreme court for instructions upon certain questions, under the provisions of section 6 of the act of March 3, 1891.

BARBER et al. v. DAYTON et al. (Circuit Court of Appeals, Eighth Circuit. September 6, 1897.) No. 795. In Error to the Circuit Court of the United States for the District of Kansas. Dismissed, without costs to either party, on motion of plaintiffs in error; attorney's fee being waived.

BOARD OF COM'RS OF PRATT COUNTY, KAN., v. BOSTON SAFE-DEPOSIT & TRUST CO. et al. (Circuit Court of Appeals, Eighth Circuit.) No. 904. Appeal from the Circuit Court of the United States for the District

of Kansas. Edwin A. Austin and J. C. Ellis, for appellant. Fred W. Bentley, John S. Miller, Merritt Starr, A. A. Hurd, and Robert Dunlap, for appellees. No opinion. Affirmed, per stipulation of parties, with costs against the receiver, McEntire.

BOYLE v. CLARE. (Circuit Court of Appeals, Sixth Circuit. February 2, 1897.) No. 491. In Error to the Circuit Court of the United States for the Western District of Tennessee. Dismissed, with costs, on motion of Percy & Watkins, counsel for plaintiff in error.

BURT v. McGRATH. (Circuit Court of Appeals, Sixth Circuit. October 25, 1897.) No. 530. In Error to the Circuit Court of the United States for the Northern District of Ohio. Alexander L. Smith, for plaintiff in error. Scribner Waite, for defendant in error. No opinion. Judgment affirmed.

BUTLER v. ASHLAND COAL & IRON CO. (Circuit Court of Appeals, Sixth Circuit. February 24, 1897.) No. 465. Appeal from the Circuit Court of the United States for the District of Kentucky. W. A. Byrne, for appellant. John Hager, for appellee. No opinion. Affirmed.

CAMPBELL v. ROWLAND et al. (Circuit Court of Appeals, Fifth Circuit. June 7, 1897.) No. 569. Appeal from the Circuit Court of the United States for the Eastern District of Texas. Before PARDEE and McCORMICK, Circuit Judges, and NEWMAN, District Judge.

PER CURIAM. In the decree of the circuit court we find no reversible error prejudicial to the appellant. The same is therefore affirmed.

CHAPIN v. UNION CONSOL. RY. CO. et al. (Circuit Court of Appeals, Seventh Circuit. October 4, 1897.) No. 339. Appeal from the Circuit Court of the United States for the Northern District of Illinois. Levy Mayer, for Charles A. Chapin. Clarence A. Knight and John P. Wilson, for Union Consol. Ry. Co. and others. Dismissed, on motion of appellant.

CHICAGO & N. W. RY. CO. v. ANDREWS. (Circuit Court of Appeals, Eighth Circuit. September 15, 1897.) No. 885. In Error to the Circuit Court of the United States for the District of Minnesota. L. L. Brown and W. D. Abbott, for plaintiff in error. William N. Plymat and W. E. Young, for defendant in error. Dismissed, without costs to either party, pursuant to stipulation of parties.

THE CITY OF MACKINAC. (Circuit Court of Appeals, Sixth Circuit. November 10, 1896.) No. 315. Appeal from the District Court of the United States for the Eastern District of Michigan. John C. Shaw, for appellants Timothy Hurley and another. Wells, Angell, Boynton & McMillan, for appellee claimant of the City of Mackinac. Discontinued, by consent, after the reversal of the decree dismissing the libel, and before any rehearing was had under the order of October 5, 1896, granting a rehearing. See 73 Fed. 883.