one related to religious, moral, or ethical tenets. A scheme to defraud, planting itself upon, and seeking to take advantage of, such tenets, entertained as they are by large numbers of people, has been held to be within the contemplation of the federal statutes, and with this class of cases I have no fault to find. But they afford no authority for indictment in this case. Because there is no scheme set out in the indictment reasonably adapted to deceive persons of ordinary prudence, I am of the opinion there is no scheme to defraud, within the meaning of the statute in question, and the motion to quash is sustained.

THE INTERNATIONAL et al.

CONNELLY v. THE INTERNATIONAL et al.

(District Court, E. D. Pennsylvania. November 30, 1897.)

CUSTOMS DUTIES—CLASSIFICATION—DREDGES AND SCOWS.

Dredges and scows are vessels, and are not dutiable as "goods, wares, and merchandise," under the tariff laws. U. S. v. Dunbar, 14 C. C. A. 639, 67 Fed. 783, distinguished.

This was a libel in admiralty by N. K. & M. Connelly against the dredge International and scows No. 1 and No. 2.

Frank P. Prichard, for libelant.

Francis F. Kane and James M. Beck, for respondent.

BUTLER, District Judge. Are dredges and scows vessels, or goods, wares and merchandise, and subject to the duty imposed by congress on the latter description of property? This is the only question presented. While it has not been directly passed upon by the courts, it has, I think, been indirectly decided. Dredges and scows are held to be water craft; they are intended for, and subject to, use only upon the water, and are consequently so shaped and constructed as to be navigated. That they are without independent means of propulsion is immaterial. In this respect they resemble barges and similar vessels. They are held to be within the jurisdiction of admiralty, subject to the laws of navigation generally, and to the provisions of our statutes relating to the subject. As authority for this statement it is sufficient to refer to the following cases: The Mac, 7 Prob. Div. 126; The Hezekiah Baldwin, 8 Ben. 506 [Fed. Cas. No. 6,449]; Endner v. Greco, 3 Fed. 411; The Alabama, 22 Fed. 449; The Pioneer, 30 Fed. 206; The Walsh Brothers, 36 Fed. 607; Aitcheson v. Endless Chain Dredge, 40 Fed. 253; The Atlantic, 53 Fed. 607; The Starbuck, 61 Fed. 502; Saylor v. Taylor [23 C. C. A. 343] 77 Fed. 476.

It is urged, however, by the respondent that this view is inconsistent with section 3 of the Revised Statutes. I do not so regard it. The section reads as follows:

"The word 'vessel' includes every description of water craft or artificial contrivance used, or capable of being used, as a means of transportation on water."

Dredges and scows are "water craft" and valueless except as such; and are "used or capable of being used as means of transportation." It is for these reasons the courts have held them to be subject to admiralty jurisdiction and to the laws of navigation. It is earnestly contended that they are not used, and cannot be used, as "means of transportation." Scows, however, carry cargoes. It is immaterial that the cargoes are generally mud. They are also "capable" of carrying coal, iron and other merchandise. Dredges transport their crews, coal and other supplies, and are "capable" of being used to transport other things. The section applies to whatever falls naturally within the scope of its terms; and scows and dredges do. We cannot limit the scope by speculating about the intent of congress for the purpose of subjecting such water craft to taxation under the provision of tariff laws, which impose a tax on foreign "goods, wares and merchandise." The ordinary sense of the latter terms (and they are used in this sense) does not embrace water craft of any description whatever. The language of the supreme court in the recent case of The Conqueror, 166 U. S. 110 [17 Sup. Ct. 510], on this subject is as applicable here as it was there. The question was not involved in U. S. v. Dunbar [14 C. C. A. 639] 67 Fed. 783, on which the respondent relies. There the dredge was *entered by its owner as an imported article* and claimed to be exempt from duty by the "free list." The collector decided otherwise, and the owner appealed. The only question, therefore, was whether the decision was right; no other could possibly be raised. The property must necessarily be treated as entered. The immaterial statement in the opinion that it was properly entered as an article of foreign manufacture, that it was not a vessel, is entitled to no weight; and the fact that the statement is predicated on the circumstance that the dredge was without independent "means of propulsion" demonstrates its fallacy.

WESTERN ELECTRIC CO. v. WILLIAMS-ABBOTT ELECTRIC CO. et al.

(Circuit Court, N. D. Ohio, E. D. December 2, 1897.)

No. 5,678.

1. PATENTS—CONSENT DECREE—PLEADING.
In a suit to enjoin an infringement of letters patent, the fact that a consent decree has previously been procured against a third person, who is neither defendant nor privy, is not material, and, if averred in the bill, will be struck out on motion.

2. SAME—INTERFERENCE PROCEEDINGS.
The same rule applies to averments of interference proceedings, for they raise a presumption of the validity of the patent only as against the parties thereto and their privies.

This was a suit in equity by the Western Electric Company against the Williams-Abbott Electric Company and others for alleged infringement of a patent. The cause was heard upon exceptions to the bill, accompanied by a motion to strike out certain allegations.

Barton & Brown, for complainant.
E. A. Angell, for respondents.

RICKS, District Judge. Exceptions are filed to the bill in this case, accompanied by a motion to strike from the bill the averments setting forth the facts connected with four consent decrees entered in United States circuit courts in the several districts described. It is averred that this recital of the proceedings wherein consent decrees were entered can have no place in this proceeding, except to influence the court upon an application for a preliminary injunction, and on such hearing they would have little weight, because decrees entered by consent are subject to suspicion, and are often recorded by collusion and unfair negotiations between the parties. I do not see that these averments are material to the issues in this case. The facts stated are, of course, within the knowledge of the complainant, and can easily be averred and supported by affidavit; but the respondents know nothing about such decrees, and would either be compelled to aver that they knew nothing concerning the facts, and therefore could not deny, or go to the expense of ascertaining the facts, and pleading the results of such an investigation. It is bad pleading to make an issue of facts which are not material to such issue. It is not contended that the defendants in any of those suits where consent decrees were entered are in any way connected with the defendants or their privies, and they are not, therefore, bound by any such proceedings. I think the motion to strike out those averments ought, therefore, to be sustained.

The next question for consideration arises upon the motion of the respondents to strike out from the bill paragraph 5, which sets forth certain interference proceedings in the patent office. The purpose of expunging impertinent matter from the bill is to keep all irrelevant and redundant matter from the pleadings. In this case the paragraph is not one of great length, and, so far as the same is ob-