

* * * The objects of my invention are as follows: First, to provide the disk-gangs with mechanism between their inner ends to receive their side thrusts without coupling their axles together; second, to provide means by which the end friction of the journals of the disk-gangs will be reduced; third, to provide in a disk-harrow, having two opposing disk-gangs, buffer-heads made with the inner ends of the gang-axles, whereby the inner disks of the opposing gangs will be held uniformly apart during all stages of adjustment or operation. * * * One of the advantages gained by the organization of parts described in these objects of invention is that by the use of buffer-heads between the gangs the front edges of the inner disks can (when set at an angle to each other) be brought sufficiently near together to cut all the earth between the gangs, and the side thrust of one gang is counteracted by the side thrust of the other acting against the buffers, which are not inclosed in boxing, and, when set at an angle, revolve with a planetary motion around their respective centers, thus avoiding any rubbing friction between the gangs when set at angles or when vibrating," etc.

The claim alleged to be infringed is:

"(1) In a disk-harrow, the combination of a pole, crossbar, disk-gangs capable of being set at an angle to the line of draft, and buffer-heads or equivalent mechanism between their inner ends for receiving their side thrust without coupling their axles together."

The use of two gangs of disks set at an angle to each other prevailed long before the complainant's patent. If set at one angle, the tendency of the gangs when driven through the soil was to run apart; if set at another, to come together. If allowed to come together, the inner disks would soon be destroyed. It would seem, as defendant suggests, that it should not have required inventive talent to devise buffer-heads to take the strain and relieve the inner disks; but in the face of the evidence that the trouble existed for years, and that the manufacturers who were continually appealed to for a remedy produced only such devices as rigid axles, separating yokes, and universal joints, whose action was far from satisfactory, it must be concluded that there was invention in La Dow's device, simple though it be, which at once commanded extensive sales. The nearest, and indeed the only, approach to it in the prior art, is La Dow's own (patent 187,392, of February 13, 1877), which shows two balls fixed on the inner ends of the gang-axles, and inclosed in a box, so that they would not ride over each other or jam. The defects of this device are made plain by the testimony and the exhibits, but it seems to have required more than the ordinary workman's skill to discard the box, and flatten down the balls into buffer-heads; otherwise, it would surely not have taken seven years to make the advance. Inspection of defendant's device demonstrates infringement. Complainant may take usual decree for injunction and accounting.

EWAN v. TREDEGAR CO.¹

(District Court, E. D. Virginia. April 20, 1882.)

DEMURRAGE—DELAY IN DISCHARGING.

If the ship is prevented, after getting into her dock, from securing a fit place for discharging by any cause over which she has no control, then

¹ This case has been heretofore reported in 5 Hughes, 401, and is now published in this series, so as to include therein all circuit and district court cases elsewhere reported which have been inadvertently omitted from the Federal Reporter or the Federal Cases.

any delay occasioned by the crowded condition of the dock is chargeable to the consignee. But, when a place for unloading is furnished by the consignee within the 24 hours allowed after receiving notice of arrival, delay occurring, not by any insufficiency of carts to receive the cargo, but by reason of the vessel delivering from but one hatch, when she might have used two, is chargeable to her, and she can recover no demurrage therefor.

This was a libel by J. B. Ewan, master of the schooner Sarah Schubert, against the Tredegar Company, to recover demurrage for delay in discharging a cargo of coal at Richmond, Va.

Wyndham R. Meredith, for libelant.

Charles S. Stringfellow, for respondent.

HUGHES, District Judge. It appears from the evidence in this case that the schooner arrived at Richmond on the night of the 15th of November, 1881, and went across to the Richmond & Danville Railroad wharves. Her engagement was to notify the consignee of her arrival, but there is no proof that the notice was received by the respondent until the forenoon of the 17th. The allegation in the libel that notice of arrival was given by telephone on the 16th is not proved. The schooner was bound by contract to be, not merely in the harbor of Richmond, but at the usual place of unloading there. In the present instance she was bound to be in the dock at Richmond; that being the usual place of unloading. 1 Pars. Shipp. & Adm. 313, note 1, and Abb. Shipp. Eng. (Ed. 1881) p. 243, note o, and page 244, notes a-c. If she was prevented, after getting into the dock, from securing a fit place for discharging her cargo, by any cause over which she had no control, then the lay days occasioned by the crowded condition of the dock would have been chargeable to the consignee. The consignee, not the ship, is answerable for delay from the crowded condition of the harbor. But there does not seem to have been any delay in this case from this cause. The schooner came into the dock about 3 p. m. on the 17th, and the unloading began the next morning at 8 a. m.—that is to say, within 24 hours after arrival and notice to consignee; for, supposing that notice was given on the morning of the 17th, the consignee was not bound to commence unloading within the 24 hours recognized by the contract. The unloading seems to have been delayed a day and a fraction of a day beyond the period provided for in the contract. The weight of evidence is mostly in favor of the proposition that this delay was not caused by an insufficiency of carts provided by the consignee to receive the coal, but was caused by the coal being delivered from one only of the two hatches of the schooner, and not from both hatches. This was the fault of the schooner, and not of the consignee. I do not think the schooner is entitled to recover demurrage in this case, and the libel must be dismissed, with costs.

DAVIS et al. v. COUNTY COURT OF RANDOLPH COUNTY et al.

(Circuit Court, D. West Virginia. August 4, 1898.)

1. REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.

A cause is not removable unless all the parties on one side are citizens of different states from those on the other side, or unless there is a separable controversy wholly between some of the parties who are citizens of different states, in which the question at issue can be fully determined between them.

2. SAME—SUIT FOR INJUNCTION.

A suit by taxpayers of a county against the county court and a citizen of another state, to restrain the court from erecting a new court house, and the other defendant from executing a contract to build it, entered into with the county court, is not removable by the nonresident defendant on the ground that there is a separable controversy, as an injunction against either defendant necessarily operates upon both.

C. W. Dailey, for plaintiffs.

J. L. Wamsley and E. D. Talbott, for defendants.

JACKSON, District Judge. This is a bill filed by James Henry, John P. Davis, and R. D. Darden, who are citizens, residents, voters, and taxpayers of the county of Randolph, in the state of West Virginia, who sue on behalf of themselves and all of the taxpayers of the said county, against the county court of Randolph county, Patrick Cricard, a commissioner and president of said court, J. W. Gooden and Omar Conrad, commissioners, who are all citizens and residents of Randolph county, W. Va., and John P. Conn, a citizen and resident of the state of Pennsylvania. The purpose and object of this bill is to restrain the county commissioners from the erection of a new court house at Beverly, in Randolph county, and to restrain the defendant Conn from executing a contract entered into with him by the county court on the 6th day of June, 1898, for the construction and erection of the court-house building, as provided for in the contract.

It is not necessary for the court at this time to consider the various questions involved and raised by the pleadings in this case. It appears from the bill that the plaintiffs and the defendants are all citizens of West Virginia, except the defendant Conn, who is a citizen and resident of Pennsylvania. The defendant Conn filed his petition in the circuit court of Randolph county for the removal of this cause to the United States circuit court for this district, claiming that he had a separable controversy between himself and the plaintiffs. It is now heard upon a motion to remand the cause upon the ground that it is not a cause that can be removed into the United States court, for the reason that there is no separable controversy between the plaintiffs and defendants in this case. I was inclined to think, when I first heard this motion, that the relief sought by the defendant Conn could be had independent of his co-defendant, the county court, but upon further reflection I have reached the conclusion that the defense of the defendants is one and inseparable, and that the case cannot proceed, as against one of the defendants, without the presence of the other.