

UNITED STATES ex rel. SMITH v. WILLIAMS, Judge pro tem. (Circuit Court of Appeals, Eighth Circuit, May 23, 1898.) No. 8, Original. Thomas G. Frost, for relator. Dismissed, with costs, on motion of relator.

VERITY v. R. W. BELL MFG. CO. (Circuit Court of Appeals, Second Circuit, February 23, 1897.) No. 26. In Error to the Circuit Court of the United States for the Southern District of New York. Martin J. Keogh, for plaintiff in error. Page & Taft, for defendant in error. No opinion. Affirmed.

THE WADENA. (Circuit Court of Appeals, Second Circuit, March 18, 1897.) No. 111. Appeal from the District Court of the United States for the Southern District of New York. Goodrich, Deady & Goodrich, for appellant. Alexander Tison, for appellee Barney McCann. No opinion. Affirmed.

WALSH v. 382,000 FEET OF YELLOW PINE SAWN LUMBER. (Circuit Court of Appeals, Second Circuit, November 5, 1896.) No. 1. Appeal from the District Court of the United States for the Eastern District of New York. Goodrich, Deady & Goodrich, for appellant. Parsons, Shepard & Ogden, for appellees. Dismissed.

WALWORTH MFG. CO. v. LYONS. (Circuit Court of Appeals, Second Circuit, May 27, 1897.) In Error to the Circuit Court of the United States for the Southern District of New York. Eugene L. Richards, Jr., for plaintiff in error. Hutchinson & Newhouse, for defendant in error. Dismissed on consent.

WHEELING BRIDGE & TERMINAL RY. CO. v. FRANZHEIM. (Circuit Court of Appeals, Fourth Circuit, June 28, 1898.) No. 277. In Error to the Circuit Court of the United States for the District of West Virginia. Henry M. Russell, for defendant in error. Dismissed, pursuant to the sixteenth rule, on motion of defendant in error.

WINTER v. KNOTT. (Circuit Court of Appeals, Second Circuit, May 27, 1897.) No. 129. Appeal from the District Court of the United States for the Southern District of New York. Convers & Kirlin, for appellant. Butler, Notman, Joline & Mynderse, for appellee. No opinion. Affirmed.

WOODRUFF et al. v. UNITED STATES. (Circuit Court of Appeals, Second Circuit, April 1, 1897.) Appeal from the Circuit Court of the United States for the Southern District of New York. Stephen G. Clarke, for appellants. Wallace Macfarlane, U. S. Atty. Dismissed, pursuant to the sixteenth rule, for failure to docket.

ALDER et al. v. GUGGENHEIM et al. (Circuit Court, S. D. New York, October 11, 1898.) George C. Lay and Thomas P. Wickes, for complainants. John P. Bennett and Joseph H. Choate, for defendants.

LACOMBE, Circuit Judge. This is a suit closely similar to Huber v. Guggenheim, in which an opinion was filed yesterday. 89 Fed. 598. The con-

tract, which is substantially the same as in the Huber Case, calling for 100,000 stamps during the life of the patent, was signed by Engler, one of the firm of Alder, Rappolt & Co., on May 20, 1889, at St. Gall. Reference to the opinion filed in the Huber Case will sufficiently indicate the reasons for the disposition of this suit, the evidence in the two suits being in most particulars the same. It appears that negotiations between the parties began on May 17th, and that at the first interview, as two of the complainants testify, Solomon Guggenheim told them, among other things, that the Union was licensed for the term of the patent. Thereafter, and before concluding the negotiations, one of them called on Mr. Hoffman, one of the partners in the Union, and was informed by him that this could not be, since Kilngler, the person who acted for the Union in America (the Union contract was signed in New York, May 11th), was not empowered to make a contract for more than three years. In their succeeding interview with Solomon they told him of this statement of Hoffman, and he "assured [them] again that under no circumstances would he make a contract for less than the whole life of the patent," and they thereupon signed their contract. In December, 1889, they were informed by their agent here that the Union people in the United States asserted that "the Union only guaranteed for three years," but they seem not to have made this the subject of any protest to defendants, nor to have taken any action in repudiation of their contract, until two years later. These circumstances indicate pretty clearly how insignificant was the consideration given to the term for which the Union had bound itself. Indeed, the proofs in this case, more strongly, even, than in the Huber Case, show that the inducement to the making of these contracts was found in the belief in the validity and scope of the patent, and in the situation created by the announcement of defendants' intention to sell no more stamps except under their new contracts of license. The bill is dismissed, with costs.

GOLDY et al. v. GUGGENHEIM et al. (Circuit Court, S. D. New York, October 11, 1898.) George C. Lay and Thomas P. Wickes, for complainants. John P. Bennett and Joseph H. Choate, for defendants.

LACOMBE, Circuit Judge. This suit is similar to the others brought against the same defendants. *Huber v. Guggenheim*, 89 Fed. 598; *Reichenbach v. Same*, Id. 1023; *Hummel v. Same*, Id. 1023; *Nordlinger v. Same*, Id. 1023; *Alder v. Same*, Id. 1021. The contract was signed in March, 1890, subsequent to the granting of unlimited licenses for nominal considerations to the four American houses, and, if the court were satisfied that a statement was made by defendants, or on their behalf, that no better terms had been given to other licensees, the prayer of the bill would be granted. No sane man would have entered into this contract if he knew of the existence of the American contracts. Misrepresentation as to them would be clearly material. But the difficulty in this case is with the proof that any such representation was made. The negotiations leading up to the contract were had, not with Solomon Guggenheim, nor with any of the defendants, but with Adolph Brunner, their clerk. The testimony of the member of complainants' firm who carried on the negotiations is not especially persuasive. Upon direct examination he says that Brunner told him his contract "was on more advantageous terms than any of [his] competitors had." But, when pressed, on cross-examination, as to whether he was prepared to testify that Brunner told him that, he replied: "I cannot say exactly, but he gave me to understand that. Q. You inferred that? A. Yes." Brunner explicitly denies that he made any such statement. Upon this contradictory testimony,—complainants having the burden of proof,—the court is not satisfied that the false representation was made. The other points in the case are covered by opinion in *Huber v. Guggenheim* (filed yesterday) 89 Fed. 598.