

opinion upon that subject is, I think, conclusive even now. Therefore, the only question which I regard as being still, even partially, an open one, is that which arises under the allegation of unfair competition in trade; but it is proper to mention that the learned counsel of the plaintiffs, upon the oral argument, expressly reserved their right to hereafter insist upon every ground for relief which they had set up, and in their brief they say "that complainant cannot rest this case until it has been passed upon by the court of ultimate jurisdiction. The questions of copyright are of such controlling importance, and are so bound up with other questions involved, that such a course is absolutely imposed upon us." Upon the hearing of the motion for a preliminary injunction, I reached the conclusion that a case of unfair competition had been established, but, I am now authoritatively instructed that that conclusion was erroneous. The proofs as now presented have, I think, somewhat strengthened the plaintiff's position, but, after careful consideration of them, I am unable to find that the defendants' competition was unfair, without giving to some of the facts which were considered by the court of appeals a significance which that tribunal has said should not be ascribed to them. Consequently I am constrained to hold that the bill has not been sustained. The primary facts are, in general, plain and uncontroverted. The only substantial question is as to the inference which should be deduced from them, and as that question, together with those relating to copyright, is to be again submitted to the court of last resort, I do not believe that any useful end would be attained by any further discussion of it by me. Bill dismissed, with costs.

In re MARTIN.

(Circuit Court, S. D. New York. May 11, 1899.)

BANKRUPTCY—SOLVENCY.

BROWN, District Judge. A debtor having permitted all his stock in trade to be sold under a judgment and execution, and the residue of his property being insufficient to pay his debts, held, upon the issue of "solvency," that the "fair valuation" of the goods levied on (Bankruptcy Law, § 1, subd. 15) must be taken with reference to the actual situation and the liability of the goods to sale under execution; and, if the sale under execution thereafter had was in all respects a fair and reasonable one, that the debtor was bound by the result as to the valuation of the goods, and could not prove his solvency by higher estimates of their value if they had been free from levy, and sold at retail, or in the ordinary course of business.

REYNOLDS v. RITCH et al. (Circuit Court, S. D. New York. April 3, 1899.) William Blaikie and Roger M. Sherman, for the motion. William B. Putney, for Amherst College. Bronson Winthrop, for Hamilton College. C. N. Bovee, for Thomas G. Ritch. John E. Parsons, for Bulkley & Vaughan. Noah H. Swayne, for Lafayette College.

LACOMBE, Circuit Judge. (1) The motion to require defendants to appear, demur, plead, or answer to the cross bill is denied. (2) The motion that this cause be heard with the principal cause instituted in the original bill by Emma S. Fayerweather and others is denied, with leave to renew when this cause is actually ready for hearing. (3) The motion that the testimony taken by the complainant under the replication to the plea and answer of trustees of Hamilton College to said original bill stand and be read and received with the same force and effect as if the same had been taken in support of the cross bill is granted. (4) The motion to stay proceedings is denied.

SOUTHERN PAC. R. CO. v. GROECK et al. (Circuit Court, S. D. California. January 6, 1897.) J. D. Redding, for complainant. W. B. Wallace, for defendants.

ROSS, Circuit Judge. To the second amended bill of complaint, filed herein July 6, 1896, the defendants interposed a plea, which the complainant caused to be set down for argument, and which was, by the respective parties, submitted upon the same briefs theretofore filed upon the hearing of the plea to the first amended bill. For the purpose of disposing of the plea so submitted, the court must assume, without proof on either side, the facts to be as set out in the amended bill where not controverted by the plea, and, where so controverted or inconsistent, to accept as true the contradictory and inconsistent allegations of the plea, together with such additional facts as are therein set out. Railroad Co. v. Groeck, 74 Fed. 585, and cases there cited. The case, as now presented, is substantially the same as when last under consideration. For the reasons given in the opinion then filed, and which is reported in 74 Fed. 585, an order will be entered sustaining the plea, with leave to the complainant, if it be so advised, to reply to the plea, and take issue in respect to the matters of fact therein alleged, within 20 days from this date.

THOMSON-HOUSTON ELECTRIC CO. v. BULLOCK ELECTRIC CO. (Circuit Court, S. D. New York. March 6, 1899.) Motion for Preliminary Injunction. Frederick H. Betts, for the motion. Arthur Stem, George J. Harding, and Clifton V. Edwards, opposed.

LACOMBE, Circuit Judge. In view of the conflict of testimony, both expert and other, it would seem an unwise exercise of judicial discretion to grant restraining order before the hearing upon pleadings and proofs.

END OF CASES IN VOL. 93.