

MEMORANDUM DECISIONS.**THE ANDREW J. WHITE.**

(District Court, S. D. New York. June 29, 1890.)

COLLISION—EVIDENCE CONSIDERED.

In Admiralty. Collision.

Carpenter & Park, for libelant.
James J. Macklin, for respondent.

BROWN, District Judge. The libel charges that the libelant's canal boat, Michael E. Kiley, while lying inside the slip at the foot of Sixty-Second street, North river, was run into by a car float, which was in charge of the steam tug Andrew J. White and which had broken loose and been allowed to run into the slip and damage the libelant's boat. The damage occurred early in the morning of February 16, 1898, probably about 5 o'clock, during a storm of wind and rain.

Notwithstanding the very diligent effort of libelant's counsel to make out a case against the White and her float, I am satisfied from a careful consideration of all the circumstances and testimony that there is not satisfactory evidence that the damage was done by the White, so as to warrant a decree in the libelant's favor. All the witnesses from the tug and float testify that the float did not break loose after getting out in midriver opposite about Seventieth street, but came down in midriver or a little to the westward, nearer to the Jersey shore, and so on around the Battery, and that at no time were they anywhere near the slip at the foot of Sixty-Second street, where the libelant's boat lay. The libelant seeks to meet this testimony in part by the direct evidence of two or three persons in the slip who claimed to recognize the float and the tug White, and in part by hearsay evidence or impeaching testimony. The argument is mainly upon hypothesis; and I think imagination plays too large a part in the case. The first witness called was a woman of 70, who swore to the identity of the float by seeing distinctly names which were never upon it. The libelant claims that because the float was let loose from the tug at one time while backing from the center of the float bridge at Sixty-Eighth street, and in shifting before going down river, that the float broke loose and drifted down river in the ebb tide and was carried by the wind into the slip. This is theory only. It is contradicted by the evidence that it was not high water at Governor's Island until 3:30; and as the current runs flood in the North river at least two hours after high water or about two and one-half hours at Seventieth street, the tug could not have drifted down at that time as supposed, but on the contrary she would drift up somewhat while she was shifting, as the witnesses for the float testify. The injury to the rull of the float it seems to me is clearly shown not to have arisen from the supposed collision.

Without going further into the numerous particulars which have been most industriously argued, I am satisfied that the evidence is insufficient to warrant a decree, and the libel should, therefore, be dismissed, without costs.

ASCHE et al. v. UNITED STATES. (Circuit Court, S. D. New York. May 27, 1899.) No. 2,762. Edward Hartley, for importers. H. P. Disbecker, Asst. U. S. Atty.

TOWNSEND, District Judge. The contention herein arises over certain "feathers and down" for beds, classified for duty, under paragraph 425 of the act of 1897, as "dressed or otherwise advanced or manufactured in any manner," at 50 per cent. ad valorem, and protested as "crude or not dressed," at

15 per cent. ad valorem, under said paragraph. Upon the hearing I reached the conclusion that the merchandise was crude feathers and downs, and made an oral statement to that effect. I have since thoroughly examined all the conflicting testimony and the opinion of the board of appraisers thereon, and am of the opinion that the evidence justified the finding of the board "that the goods are feathers and downs, advanced in value and condition above the condition of crude feathers and downs." The decision of the board of general appraisers therefore should not be disturbed. *White v. U. S.*, 18 C. C. A. 541, 72 Fed. 251.

BADISCHE ANILIN & SODA FABRIK v. MATHESON et al. (Circuit Court, S. D. New York. June 8, 1899.) Motion for Preliminary Injunction. Livingston Gifford, for the motion. Henry P. Wells, opposed.

LACOMBE, Circuit Judge. Judge Coxe has held this patent valid, having before him the very evidence as to the Casella German patent and as to the publications in this country on which defendant seems to rely. 94 Fed. 163. This court therefore starts with the proposition that the patent is valid, and, since it is not disputed that defendant's product responds to all the tests of the patent, it must be held to be an infringement.

BRADDOCK v. LOUCHHEIM et al. (Circuit Court of Appeals, Third Circuit. May 5, 1899.) No. 35. Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania. Dismissed pursuant to the sixteenth rule. See 87 Fed. 287.

FAYERWEATHER et al. v. RITCH et al. (Circuit Court, S. D. New York. June 26, 1899.) Motion to Amend Bill of Complaint. Roger M. Sherman, for the motion. James L. Bishop and C. N. Bovie, opposed.

LACOMBE, Circuit Judge. The motion to amend is granted as prayed. This practically reopens the whole case, and all parties defendant will have 20 days' time after service of the amended bill to plead, answer, or demur thereto. The case being thus reopened, a plea or a demurrer, if interposed, will be considered as a first dilatory pleading, and, in the event of its being overruled, the party interposing it will be allowed to answer. The defendants trustees of Hamilton College may have 20 days to elect whether it will plead, answer, or demur to the amended bill, or whether it will stand on the evidence already taken on the issues raised by its present plea and replication thereto, and the submission thereof heretofore made to this court.

HUI GNOW DOY v. UNITED STATES. (Circuit Court of Appeals, Ninth Circuit. May 17, 1899.) No. 542. Appeal from the District Court of the United States for the Northern District of California. Dismissed pursuant to the sixteenth rule. See 91 Fed. 1006.

KNIGHTS TEMPLARS' & MASONS' LIFE INDEMNITY CO. v. CONVERSE. (Circuit Court of Appeals, Seventh Circuit. June 30, 1899.) No. 572. In Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division. Charles C. Aldrich, for plaintiff in error. Clark Yarnum, for defendant in error. Before WOODS and JENKINS, Circuit Judges, and BAKER, District Judge.