

few shoes from a straight rod upon the ribless die and die L, without the use of any other dies. Models of these dies are exhibits known as "Deeble dies Nos. 1 and 2."

As the die, B, of the second claim is old, and dies, B, D, and E, of the third claim are old, if die, A, is also old, or an immaterial modification of an old die, it is insisted that the two claims are within the principle of the decision in *Beecher Manuf'g Co. v. Atwater Manuf'g Co.*, 114 U. S. 523, S. C. 5 Sup. Ct. Rep. 1007, and are void.

The motion is denied.

DICK and another, Receiver, etc., v. STRUTHERS and others.

(Circuit Court, W. D. Pennsylvania. September 19, 1885.)

1. PATENTS FOR INVENTIONS—PATENT ABOUT TO EXPIRE—INJUNCTION.

A suit in equity was brought on May 5, 1885, on letters patent which expired on the sixteenth of June next succeeding. There was service on the defendant on May 7th, but no steps were taken to secure a preliminary injunction. The bill, however, on its face disclosing a case cognizable in equity, on demurrer, *held*, that the court would not dismiss the bill because of the expiration of the patent.

2. SAME—SUIT BY RECEIVER OF CORPORATION.

In Pennsylvania a receiver of a corporation is the mere custodian of its property; and, not being invested with the title of the corporation to letters patent, he cannot maintain suit thereon in his own name.

In Equity. *Sur* demurrer to the bill of complaint.

*Joshua Douglass*, for complainants.

*D. F. Patterson*, for defendants.

ACHESON, J. This suit was brought on May 5, 1885, upon letters patent which expired on the sixteenth day of June next succeeding. The bill charges the defendant with past, and then continuing and threatened, infringement, and prays for an injunction, "provisional as well as final," and that the infringing drilling jars in the possession of the defendants might be destroyed; also for a discovery, alleged to be "essential and material" to a just determination of the case, for an account, and decree for profits and for damages. Process was served on the defendants on May 7th, but no steps were taken to secure a preliminary injunction; and, the patent having now expired, it is insisted that for this reason the court should not further hold the bill. But if a case is cognizable in equity at the time the bill is filed, the mere fact that the patent has expired does not oust the jurisdiction of the court. *Gottfried v. Moerlein*, 14 Fed. Rep. 170. True, in *Betts v. Gallais*, L. R. 10 Eq. 392, (cited in *Root v. Railway Co.*, 105 U. S. 211,) it was held that the court would not entertain a bill for the mere purpose of giving relief in damages for the infringement of a patent, where suit was begun so immediately before the

expiration of the patent as to render it utterly impossible to have obtained equitable relief during the life of the patent, which had only four days to run after bill filed. And in *Burdell v. Comstock*, 15 Fed. Rep. 395, and in *Davis v. Smith*, 19 Fed. Rep. 823, where suits in equity were commenced in the former case only five days, and in the latter but one day, before the expiration of the patent, the bills were dismissed. But in each of those cases it was evident that the bill was a mere device to transfer a plain jurisdiction to award damages from the forum, to which it properly belonged, to a court of equity. Here, however, such is not the apparent purpose, and this ground of demurrer is not sustained.

But there is another real difficulty in the plaintiffs' way, in that they do not represent the entire right in the patent, which is necessary in order to sustain the suit. *Walk. Pat.* §§ 399, 400, 574; *Gayler v. Wilder*, 10 How. 494; *Blanchard v. Eldridge*, 1 Wall. Jr. 339; *Hewitt v. Pennsylvania Steel Co.*, 24 Fed. Rep. 367. The bill discloses that the Gibbs & Sterrett Manufacturing Company—a corporation which, as the case stands, is a stranger to the suit—is the owner of one-half the patent. F. W. Ames, the receiver of that company, is, indeed, the plaintiff; but, clearly, he has no title upon which to maintain an action in his own name. *Yeager v. Wallace*, 44 Pa. St. 294; *Kerr*, Rec. p. 192, note 1; *High*, Rec. § 209. By the law of Pennsylvania, Ames is the mere custodian of the property of the corporation. By virtue of his appointment as receiver no title to the patent passed from the corporation to him. Doubtless it was competent for the court appointing him to authorize him to bring suit on the patent; but then it should have been brought in the name of the corporation. The objection, therefore, that the plaintiff Ames has no title upon which to maintain this suit, the same being in a corporation which is not a party hereto, is well taken, and for this cause the demurrer is sustained.

## DICK and another, Receiver, etc., v. OIL WELL SUPPLY CO., Limited.

(Circuit Court, W. D. Pennsylvania. September 19, 1885.)

## PATENTS FOR INVENTIONS—WANT OF INVENTION.

In this case, *held*, that the alleged want of patentable invention was not so obvious that the question of patentability could be examined and safely decided on demurrer.

In Equity. *Sur* demurrer to the bill of complaint.

*Joshua Douglass*, for complainants.

*James C. Boyce*, for defendant.

ACHESON, J. The cause of demurrer assigned upon the record is that the letters patent sued on are not for any patentable invention; the described improvement in the construction of drilling jars for oil wells being the mere substitution of one material for another. Now it is indeed true that the specification discloses that drilling jars had been made substantially of the form and shape described in the patent, usually of wrought iron alone, or in rare instances entirely of steel; but such jars, the specification also reveals, were defective—liable to become locked together and inoperative while in the well, or to break—for reasons fully explained. These practical difficulties, it is claimed, are obviated by the invention here, which consists in so combining iron and steel in the manufacture of drilling jars as to secure the necessary tensile strength in the parts subjected to great longitudinal strain, and the hardness of steel in the parts which give and receive the blow, and which are subject to great frictional wear, such end being secured by welding into the wrought-iron jar a steel head-piece to receive the blow, and by making of steel the inner faces of the link-bars where the frictional wear is the greatest. In view of the service required, and the obstacles to be overcome, is there an obvious want of patentable invention in this device? Whether an improvement in machinery is the result of mere mechanical skill and good judgment, or involves the exercise of the inventive faculty, is often a nice question. That the improvement here belongs to the category of invention, it must be presumed, was shown to the satisfaction of the officials in the patent-office, and I am not prepared to say, upon a mere inspection of the patent without any proofs bearing upon the subject, that the decision of the office was erroneous. Moreover, the bill of complaint alleges that Guillod was the “true, original, and first inventor” of the improvement, and that it was “not known nor used before.” Still further, the bill sets forth that this court hitherto, in a contested case, particularly referred to, between other parties, made a decree, at final hearing upon the merits, sustaining the validity of the patent, and in another recited case granted a preliminary injunction to restrain infringement. The truth of all these allegations the demurrer admits. Perhaps cases may arise