

controversy, and renders it liable to the same duty which is imposed upon the article that it resembles, thus constituting a provision in law for its taxation. The act of congress, therefore, applies in this case, and makes bichromate of soda subject to the same rate of duty as bichromate of potash. That was the duty exacted in this case, and the court must therefore direct judgment to be entered in favor of the defendant.

BUTLER, J. When the case was called for trial I was very much impressed with the reference made by the counsel for the plaintiffs to the provision of the act of congress upon which he based his argument, viz., a provision subjecting all salts to a specific duty. When, however, that provision is clearly examined, it will be observed that it refers only to articles enumerated not before provided for. What was before provided for? First, bichromate of potash is provided for at three cents per pound. Therefore it appears that bichromate of soda, although not enumerated, is specifically provided for when provision is made in the act of congress for bichromate of potash, and when it is ascertained that bichromate of soda is in the similitude of bichromate of potash.

The sections of the act relied upon by the counsel for the plaintiffs, although argued with ability, are inapplicable to this case, because they are applicable only to such articles as are not before provided for in the act of congress.

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ESTES and others v. LESLIE and others.<sup>1</sup>

(Circuit Court, S. D. New York. November 20, 1886.)

**TRADE-MARKS—INFRINGEMENT—"CHATTER-BOOK"—"CHATTER-BOX."**

The name "Chatter-book," printed upon the cover of the defendants' books of the juvenile character of the general appearance of the complainants' books, being in the opinion of the court an imitation of the name "Chatter-box," which, by association, when used upon books of a juvenile character, points "distinctly to the origin or ownership" of the books to which it is applied, an injunction *pendente lite* is granted against its use.

Motion for Preliminary Injunction.

G. G. Frelinghuysen, for complainants.

Fullerton & Rushmore, for defendants.

SHIPMAN, J. The name "Chatter-book," as printed upon the cover of the defendants' books, is, in my opinion, an imitation of the name "Chatter-box," which, by association, when used upon books of a juvenile character, points "distinctively to the origin or ownership" of

<sup>1</sup> See *Estes v. Leslie*, 27 Fed. Rep. 22.

the books to which it is applied; and the use by the defendants of the name "Chatter-book" upon the books which are represented by the exhibits in the case, the same being books of a juvenile character, of the general appearance, style, and manner of cover of complainants' books, should be enjoined *pendente lite*.

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HERMAN v. HERMAN.

(Circuit Court, S. D. New York. November 15, 1886.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—ASSIGNMENT AND LICENSE—INJUNCTION AND DAMAGES—PARTY ENTITLED.

Where a patentee has transferred "the exclusive right to the use of the improvements and rights secured to her by the letters patent," for the whole term of the patent, "by way of license, and not as transfer of a title to the letters patent," and stipulates to "defend the validity of the patent against all infringements," and, on due notice of infringements, "to proceed to seek to enjoin" such infringement, and to secure such damages as may be reasonable and commensurate with the injury done by such infringement to the rights secured" by the transfer, an action for damages for infringement and injunction should be brought in the transferee's name, as the patentee would not suffer damages by the infringement, and has not made herself liable for the payment of damages, and they would not belong to her if recovered.

2. SAME—PRELIMINARY INJUNCTION—FORMER EMPLOYEE—IMPLIED LICENSE—"DAISY HOOD."

Where the affidavits show that inventor, while employed by a manufacturer as superintendent, had been accustomed to prepare new designs for the use of defendant's business, for some of which he had obtained patents, and that this was part of his employment and duty, and that in the course of such employment he designed the Daisy Hood and applied for a patent therefor, the solicitor's charge for which was paid by defendant, and defendant, for several months, manufactured the design under the inventor's superintendence and by his permission, and without further compensation to him than his salary, and the inventor, having quit defendant's employ, assigned the patent-right in the design to his wife, and organized a new firm for the manufacture of the design, to which his wife assigned the exclusive right to use the patent-right, *held*, that a grant, license, or privilege to use the design was implied from the contract and relation of the parties, and that a preliminary injunction should not be granted.

In Equity. Bill for injunction and damages.

Walter R. Leggat, for complainant.

Wm. B. Ellison and Chas. C. Gill, for defendant.

BROWN, J. The complainant seeks to enjoin the defendant against the manufacture and sale of a certain form of "hood" known as the "Daisy Hood," the design for which was invented by her husband, Isidor Herman, and for which a patent was taken out, in the complainant's name, October 12, 1886. The defendant does not assail the validity of the patent, but denies the right of the plaintiff to bring suit in her own name; and also sets up a license in effect for the manufacture of the hood in question.