

BALTIMORE CAR-WHEEL Co. and others v. BEMIS and others.

(Circuit Court, D. Massachusetts. November 24, 1886.)

PATENTS FOR INVENTIONS—LIBEL—INJUNCTION.

There is no jurisdiction in the United States courts of equity to enjoin a libel on the rights or title of an owner of letters patent.

Benjamin Price and William C. Williamson, for complainants.

Benjamin F. Thurston and Wilmarth H. Thurston, for respondents.

Heard by COLT and CARPENTER, JJ.

CARPENTER, J. This bill alleges that the complainants are the owners of and licensees under certain letters patent for cars and car axle boxes, and that the respondents have falsely and maliciously published statements and written letters to the effect that the complainants have failed in a suit for infringement of said letters patent brought against the respondents; that the axle boxes and gear manufactured by the complainants are infringements of certain other letters patents owned by the respondents; and that suits are about to be brought by the respondents, on account of such infringement, against the complainants, and those who shall purchase and use their axle boxes and gears. The bill further alleges that, by reason of the said false statements, those who desire to purchase and use the apparatus made and sold by the complainants are deterred from so doing through fear of litigation, and the business of the complainants is thereby injured; and prays for an injunction. To this bill respondents demur.

We think the demurrer is well founded. There is no jurisdiction in a court of equity to enjoin libel on the rights or title of the complainant. We understand this to be the settled law both in England and in this country, in the absence of statutory provisions conferring such jurisdiction. The question is so fully and clearly discussed in the leading decisions that we do no more than cite them. *Prudential Assur. Co. v. Knott*, L. R. 10 Ch. 142; *Boston Diatite Co. v. Florence Manuf'g Co.*, 114 Mass. 69; *Kidd v. Horry*, 28 Fed. Rep. 773.

OSBORN *v.* JUDD and others.

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

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTIONS—BANNER ROD.

A preliminary injunction will not be granted to restrain the infringement of a "design for a banner rod, consisting of a conventional imitation of a straight twig with the bark, and slantingly cut ends;" the section which relates to design patents demanding, it may be supposed, the exercise of more genius than is exhibited by it.

Motion for a Preliminary Injunction against the infringement of a design patent. Denied.

Joshua Pusey, for complainant.

Briesen & Steele, for defendants.

SHIPMAN, J. This is a motion for a preliminary injunction against the infringement of a design patent. The design is sufficiently stated in the claim, which is as follows: "The design for a banner rod, herein shown and described, the same consisting of a conventional imitation of a straight twig with the bark on, and slantingly cut ends."

I have great doubt whether there is anything which shows genius, or which indicates the work of an inventive mind, and therefore whether there is anything patentable in merely making a banner rod to imitate measurably a straight twig with the bark on. This natural and simple design for a banner rod would, I think, readily suggest itself to the upholsterer. There is so much reason to suppose that the section which relates to design patents demands the exercise of more genius than is exhibited in the patented design that the motion should be denied.

UNION PAPER-BAG MACHINE Co. and others *v.* STANDARD PAPER-BAG Co. and others.

(Circuit Court, D. Massachusetts. November 26, 1886.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PAPER-BAG MACHINES.

Claims 8, 10, and 13 of reissued letters patent No. 8,357, July 30, 1878, for improvements in paper-bag machines, by opening the end of a tubular blank, and forming the first or diamond fold thereof by means of the conjoint action of two adjacent moving surfaces, these surfaces consisting of two revolving rollers into which the blank is fed, the lower roller drawing the free or lipped end of the blank in one direction, while the other roller, moving in another direction, pulls the other side of the blank by the seam connecting it with the preceding blank, this operation extending the mouth of the bag into a diamond fold shape, held not to be infringed by defendant's machine, which has only one roller, and no second divergent moving roller; the fold not being formed by the conjoint action of two diverging moving surfaces.