

my position is not changed by service of the writ. I cannot, indeed, sue the officer, for he has taken nothing belonging to me; but neither can he prevent me from suing my debtor. It is the latter's lookout to see that he does not have to pay the debt twice.

And, as bearing on the second point, such a suit may be brought in a United States court as well as a state court, except when the suit is brought for goods in the hands of a state officer. In such a case, to prevent an unseemly conflict, the federal courts will not entertain jurisdiction; nor, for the same reason, will the state courts entertain jurisdiction of a suit for goods in the hands of a United States officer.

As to an attachment being a proceeding *in rem*, it is only such in a modified sense. A personal judgment cannot be obtained, but only a judgment that will affect the thing attached. Also, when goods are attached, they may be held by the officer to await the result of the litigation; and when debts and credits are attached, the debtor cannot pay them to the person who is defendant in attachment at the time the attachment is levied. In these respects, the proceeding is a proceeding *in rem*. But there is nothing in the nature of an attachment to prevent a man, who has nothing to with it, from recovering his goods or collecting his debts against any person who is liable to him for them.

Judgment will be entered for the plaintiffs.

HICKS v. BEARDSLEY and another.

(Circuit Court, S. D. New York. September 21, 1887.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

On motion for preliminary injunction to restrain the infringement of letters patent No. 126,347, granted to D. W. Thompson, in 1872, for fire-kindlers, *held*, that in view of the fact that in another action pending in another district of the same circuit, brought by complainant against the manufacturers from whom defendants obtain the article alleged to infringe, a similar motion had been made and denied, with leave to renew, and in view of the fact that defendants vigorously assail the validity of complainant's patent, the motion should be denied, with leave to renew when an injunction is obtained against the manufacturers.

Wm. H. King, for complainant.

M. B. Andrus and *James A. Whitney*, for defendants.

LACOMBE, J. The complainant moves for a preliminary injunction to restrain infringement of a certain patent (No. 126,347) for fire-kindlers. The patent was granted to D. W. Thompson, in 1872, and assigned to complainant in August last, a few days before the bringing of this suit. Defendants do not manufacture the articles which it is claimed infringe the Thompson patent; they obtain them from one George S. Geer, against whom complainant has a suit pending in the Northern district of this

state. No preliminary injunction has been granted in the Geer suit; complainant's motion for that relief having been denied, with leave to renew. The validity of the Thompson patent is vigorously assailed by the defendants, many prior patents for fire-kindlers being submitted with the opposing affidavits.

In view of all the facts, the manufacturer being a resident of the Northern district where he has been regularly served, and has appeared by counsel, the motion for a preliminary injunction is denied, with leave to renew when an injunction, preliminary or final, is obtained against the manufacturer.

MORSS *v.* MANCHESTER and others.

(*Circuit Court, E. D. New York. September 14, 1887.*)

1. PATENTS FOR INVENTIONS—DRESS-FORMS—INFRINGEMENT.

Letters patent No. 233,240, issued October 12, 1880, to John Hall, for a new and useful dress-form, to be employed to support and extend a lady's dress while in process of construction, the second claim of which is for a combination, one essential element of which is double braces extending in opposite directions, *held* not to be infringed by the dress-forms made by defendants, as the braces employed in making the latter dress-forms are not of the same length, and do not extend in opposite but in the same direction.

2. SAME—LACK OF INVENTION.

In letters patent No. 236,887, granted January 25, 1881, to John Hall, for a dress-form to be employed to support and extend a lady's dress while in process of construction, the second claim which is for the combination with the adjustable ribs of a dress-form of a non-elastic band or tape, which is provided with a scale and secured to the ribs, involves no invention, and the patent, so far as said claim is concerned, is void.

In Equity.

Peabody, Baker & Peabody, for plaintiff.

Gifford & Brown, for defendants.

BENEDICT, J. This action is founded on two United States patents: one, No. 233,240, granted October 12, 1880; the other, No. 236,887, granted January 25, 1881,—to John Hall. The plaintiff sues as the assignee of Hall. The charge is that the defendants have infringed the second claim of each of the above-mentioned patents by making a dress-form, the description of which is not in dispute. Patent No. 233,240 is for a new and useful dress-form, to be employed to support and extend a lady's dress while in process of construction. The second claim of the patent is as follows: "In combination with the standard, *a*, and ribs, *c*, the double braces, *e*, and sliding blocks, *f*¹ and *f*², and rests, *h*¹ and *h*², substantially as and for the purpose set forth." This claim is for a combination, one essential element of which is the double braces, which, as the specifications and drawings clearly show, are intended to extend in opposite directions. In the dress-forms complained of, this element