

Root v. Railway, I do not think sufficient to take the case out from the principle there established. Nor in the other reasons urged by the plaintiff do I find any good ground for invoking equitable jurisdiction of the court.

The plea should be sustained and the bill dismissed; and it is so ordered.

GLAENZER *et al.* v. WIEDERER *et al.*

(*Circuit Court, S. D. New York. November 1, 1887.*)

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Where on a bill to restrain infringement of a patent, it appears from the defense made that complainant's patent will be very narrowly sustained, if at all, a preliminary injunction will be denied.

In Equity. On bill for injunction.

Plaintiffs, Jules Glaezer and another, filed their bill against Peter Wiederer and another, to enjoin defendants from infringing letters patent No. 182,633, dated September 26, 1876, issued to P. L. Brot, assignee of L. T. Berton, for a compound folding mirror, which plaintiffs now claim to own. The hearing is on a motion for a preliminary injunction.

Eaton & Lewis, for plaintiffs.

Goepel & Raegerer, for defendants.

LACOMBE, J. Complainant, on his application for preliminary injunction, refers to the decision of Judge WHEELER in *Hall v. Stern*, 15 Fed. Rep. 463, sustaining this patent. Additional evidence, however, which was not before the court in that case, is here presented. If, in view of that new proof, complainant's patent is to be sustained at all, it must be sustained by so narrow a margin as hardly to warrant a decision in his favor in advance of the trial. In view of this condition of affairs, and of the other questions raised on the motion, the application for injunction is denied.

KENNEDY *et al.* v. McTAMMANY.

(Circuit Court, D. Massachusetts. January 27, 1888.

COPYRIGHT—SHEET MUSIC—PERFORATED STRIPS FOR ORGANETTES.

The manufacture and sale of perforated strips of paper to be used in organettes, and by which a certain tune is produced, is not a violation of the copyrighted sheet music of the same tune.

In Equity. Bill for injunction.

William H. Kennedy and others, filed their bill to restrain John McTammany, Jr., from violating a copyright.

James E. Maynardier, for complainants.

C. T. & T. H. Russell, for defendant.

COLT, J. This case has been thoroughly presented to the court. It is admitted that the plaintiffs are the owners of a valid copyright in a certain song and musical composition entitled "Cradle's Empty, Baby's Gone," and that the defendant makes perforated papers which, when used in organettes, produce the same music. The sole question in issue is whether these perforated sheets of paper are an infringement of copyrighted sheet music. To the ordinary mind it is certainly a difficult thing to consider these strips of paper as sheet music. There is no clef, or bars, or lines, or spaces, or other marks which are found in common printed music, but only plain strips of paper with rows of holes or perforations.

Copyright is the exclusive right of the owner to multiply and to dispose of copies of an intellectual production. Drone, Copyr. 100. I cannot convince myself that these perforated strips of paper are copies of sheet music, within the meaning of the copyright law. They are not made to be addressed to the eye as sheet music, but they form part of a machine. They are not designed to be used for such purposes as sheet music, nor do they in any sense occupy the same field as sheet music. They are a mechanical invention made for the sole purpose of performing tunes mechanically upon a musical instrument. The bill itself states that they are adapted and intended for a use wholly different from any use possible to be made of the ordinary sheet music. Their use resembles more nearly the barrel of a hand organ or music box.

The arguments urged by the complainants, while forcibly put, do not seem to me to be wholly sound, or entirely applicable to this case. It is said that sheet music may consist of different characters or methods, as, for example, the Sol Fa method, and that the perforated strips of the defendant are simply another form of musical notation; but the reply to this is that they are not designed or used as a new form of musical notation. If they were, the case would be different. Again, it is said, that they can be used as sheet music the same as the Sol Fa method; but the answer to this is that they are not so used. While it may not be denied that some persons, by study and practice, may read music from these