

Case No. 5,568.

GOODYEAR v. DAY.

[1 Blatchf. 565;<sup>1</sup> Fish. Pat. Rep. 385.]

Circuit Court, S. D. New York.

Oct. Term, 1850.

COURTS—JURISDICTION—CITIZENSHIP.

A citizen of Connecticut brought a suit in equity in this court against a citizen of New Jersey, for a breach of contract, and prayed an account: *Held*, that this court had no jurisdiction of the case, neither party being a citizen of New-York, although the subject matter of the contract was a patent.

[Cited in *Goodyear v. Union India Rubber Co.*, Case No. 5,586; *Blanchard v. Sprague*, Id. 1,516; *Randolph v. Robinson*, Id. 11,561; *Consolidated Fruit Jar Co. v. Whitney*, Id. 3,133; *Teas v. Albright*, 13 Fed. 412.]

[Cited in *Slemmer's Appeal*, 58 Pa. St. 164; *Middlebrook v. Broadbent*, 47 N. Y. 448.]

In equity. The bill in this case was founded upon a special agreement entered into between the plaintiff [Charles Goodyear] and the defendant [Horace H. Day] on the 29th of October, 1846, adjusting several suits pending between them concerning patent-rights claimed by the plaintiff relative to the manufacture of India-rubber. It charged a breach of the agreement, and prayed an account, &c. The plaintiff now moved for an injunction. The facts appear by the opinion of the court

F. B. Staples, for complainant.

George Sullivan, for defendant

NELSON, Circuit Justice. The plaintiff is a citizen of Connecticut and the defendant a citizen of New-Jersey, as appears upon the face of the bill; and an objection has been taken to the jurisdiction of the court for the want of proper parties. The objection is undoubtedly fatal, as, in order to give jurisdiction, the suit must be between a citizen of the state in which it is brought, and a citizen of another state. Judiciary act of 1789, § 11 (1 Stat 78). Here neither party is a citizen of New-York, where the suit is brought

It was attempted to sustain the jurisdiction on the ground that the suit was brought under the patent act [of 1836(5 Stat. 117)], where jurisdiction depends on the subject matter, without reference to citizenship or residence; and that the gravamen laid was the infringement of patent-rights. But there is no foundation for this position. The bill is not constructed for the purpose of presenting a question of the infringement of a patent; but is brought for the violation of a contract. We can regard it in no other light Motion denied.

<sup>1</sup> [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]