

DAY V. SCHWAB AND ANOTHER.

Circuit Court, S. D. New York.

May 8, 1880.

PATENT—IMPROVEMENT IN SKIRT
 PROTECTORS—MOTION TO OPEN CASE TO
 ADMIT OTHER DEFENCES—INSUFFICIENT
 AFFIDAVIT.

In Equity.

Miles B. Andrus and Edward N. Dickerson, for complainant.

M. P. Stafford, for defendant.

WHEELER, D. J. This cause is substantially like that of *Day v. Combination Rubber Co.*, heard at the same term, except that it is founded upon letters patent No. 161,012, dated March 23, 1875, and issued to the plaintiff, assignee of Theodore D. Day, for an improvement in skirt protectors by placing a moulding of India rubber, having two ribs, upon the lower edge of skirt protectors, made of plain material, and stitching it there through the web between the ribs, in addition to the De Forest patent, and the defendants have moved to have the case opened to admit other defences.

The affidavit in support of the motion sets forth no particular facts constituting defences desired to be brought forward, and no reason why they have not been brought forward in the usual manner, if they exist, except that the case was not attended to either by the defendants or their solicitor. Such an affidavit is wholly insufficient for the purpose. There is nothing in the case to show that the patent is not valid for that addition to skirt protectors. The evidence shows that the defendants have sold, for use, skirt protectors of that particular form, as well as those having the band of the De Forest patent. Therefore, upon the case as made up and presented, there must be a decree

that both patents are valid, that the defendants have infringed them, and for an injunction and an account accordingly.

Let a decree be entered for the plaintiff accordingly, with costs.

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