

actual receipt,' is now too firmly settled to be treated as an open question, and this is plainly to be inferred from the opinions delivered in *Smith v. Hudson*." Section 156.

And in section 157:

"That acceptance may precede receipt." *Cusick v. Robinson*, 1 Best & S. 299.

Again, section 160:

"It is settled that the receipt of goods by a carrier or wharfinger appointed by the purchaser does not constitute acceptance, these agents having authority only to receive, not to accept, the goods for their employers. But it is held that if, after acceptance, the vendor delivers the goods to a carrier named by the purchaser, the receipt of them by the carrier is a receipt by the purchaser." Note *a* to same section.

NOTE. See *Burnside v. Rawson*, 37 Iowa, 639; Code, § 3636; 4 Greene, 410; *Partridge v. Wilsey*, 8 Iowa, 459; 47 N. Y. 452; 1 N. Y. 265, quoting statute, "The buyer should accept and receive some part of the goods," on page 265; 6 Wend. 400, (important; date of decision, 1831;) *Outwater v. Dodge*, 120 Mass. 315; *Noman v. Phillips*, 14 Mees. & W. 277; *Combs v. Ry. Co.* — Hurl. & N. 510; 9 Cush. 115.

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### SCHNEIDER v. GEO. F. BASSETT & Co.

(Circuit Court, D. New Jersey. July 25, 1882.)

#### PATENT FOR INVENTIONS—REISSUES—DEFECTS CURED.

Where, upon inspection and comparison, the lack of definite specifications, which rendered prior reissues inoperative, has been cured by the present reissue, the reissue *prima facie* is good.

In Equity.

*Gifford & Gifford*, for complainant.

NIXON, D. J. The bill of complaint was filed against the defendants for infringing reissued letters patent No. 10,087, dated April 11, 1882, for "shade-holders for lamps," and the case comes now before me on a motion for a preliminary injunction.

The application for the original patent was filed August 18, 1876, and letters patent No. 182,973 were granted October 6, 1876. These were surrendered January 27, 1877, and the first reissue, No. 7,511, dated July 13, 1877, was duly obtained.

A suit was brought against an alleged infringer of this first reissue, in the circuit court of the United States for the eastern district of New York, which resulted in a decree for the defendant; his honor,

not be sustained on the theory that they were the first to use a hot blast, from which the oxygen had been removed, in heating the interior of casks for the purpose of pitching them. Siebel, we have already seen, heated the cask with his machine for the same purpose by the application of a hot blast, which he deprived of its combustible properties by forcing it through and in actual contact with the fire in the furnace.

This furnace he inserted into the cask through the man-hole, and there operated it. Of course, this machine could not be used in pitching kegs or other small receptacles into which it could not be inserted. In this and other respects the Siebel device was crude and imperfect, compared with the complainants' machine, which was located and operated outside the receptacle to be heated and pitched, and which was adapted to pitching barrels and small kegs as well as casks.

The complainants' device was the first, and the proof shows that it is to-day the only, means by which brewers are enabled to pitch barrels and kegs without removing the heads. This device also forces into the receptacle to be heated a much hotter blast than Siebel can apply with his machine, and with it brewers are enabled to do their pitching more expeditiously and economically.

The method or means which the complainants employed in forcing into the cask a hot blast, consisting of the same elements as the Siebel blast, produced, if not a new result, certainly a much better one than could be produced by any other method or means then known to persons engaged in the business of brewing. Compared with other means for heating the interior of casks and receptacles, the complainants produced a new mechanism or thing which enabled them to pitch casks and kegs more rapidly and economically than they had ever been pitched before. I think the complainants were entitled to a patent, not for the improved or better result or effect, but for the mechanism or means by which the result was accomplished.

It is the policy of the law to encourage useful improvements, and I am unwilling to hold that the complainants' device, consisting of old elements, combined and operated as stated in the specification, practically superseding, as it does, all other known means of pitching kegs and other small receptacles, and greatly superior, as it confessedly is, to Siebel's machine for pitching large casks, is the mere mechanical equivalent of the latter, or of any other device.

These are briefly my reasons for withdrawing my former ruling, and for now entering a decree in favor of the complainants, with an order for a perpetual injunction and an account of profits.

## TUEDT and others v. CARSON and others.

*(Circuit Court, D. Minnesota. 1882.)***1. REMOVAL OF CAUSE.**

The act of 1866, providing for the removal of a part of a cause into the federal court, and thereby splitting the action, was repealed by section 2 of the act of March 3, 1875.

**2. SAME—UNDER ACT OF MARCH 3, 1875.**

An action brought by a citizen of the state in which it is brought against citizens of the same state and citizens of another state, cannot be removed from the state court to the federal court by the non-resident defendants, unless the whole suit is removed.

**3. SAME—SEVERABLE AND INSEVERABLE CONTROVERSY.**

Although an action brought by the plaintiff against several defendants is for a tort, in respect to which plaintiff could sue one or all of the tort-feasors, yet if he elects to sue all, it will be deemed so far an inseverable controversy that a part only of the defendants cannot remove the cause into the federal court.

TREAT, D. J. This case was instituted in the state court against several non-resident defendants; also Wood and Styles, residents. The action is for malicious prosecution. The cause was removed from the state court to this court at the instance of the non-resident defendants. Without suggestion to the court that this was a removed cause, it went to trial on its merits. It appeared that the non-residents, being merchants, had sold and delivered to the plaintiffs goods amounting to three or four hundred dollars. Having heard a rumor that the plaintiffs had failed, a telegram was sent by them to Wood, of the law firm of Wood & Styles, inquiring as to the truth of said rumor. Wood answered, substantially, that the plaintiffs had not yet failed, but were in a bad way, and requesting said non-resident defendants to send forward the amount of their demand and the individual names of the members of the firm. That was done, together with a direction to secure their demand at all hazards. After information secured by Wood & Styles as to the preparation of an attachment suit in the interest of others, Styles made the needed affidavit for an attachment, upon the strength of which a levy was made. It was contended that such action having been had without previous demand for the amount due, other attachment suits of like nature were induced, whereby the store of the plaintiffs, under the several attachment and other suits following, and executions issued, plaintiffs' property was sacrificed at said execution sales. Judgment was had in the state court, as by default, against the plaintiffs here