

the suit one against the association as a whole, the plaintiff cannot now be allowed to put this suit into that shape.

The usual decree for an injunction and an accounting against all the defendants but Kent, with costs, must be entered.

See S. C. 12 FED. REP. 567.

GOTTFRIED v. CRESCENT BREWING Co.

(Circuit Court, D. Indiana. September 21, 1882.)

PATENT FOR INVENTION—DEVICE.

A device consisting of old elements combined, and practically superseding all other known means of pitching kegs and other small receptacles, is not a mere mechanical equivalent of any other device.

Banning & Banning, for complainants.

Parkinson & Parkinson, for defendants.

GRESHAM, D. J. I have considered the proofs and arguments on the motion for a rehearing, and am convinced that in holding the complainants' patent invalid undue importance was attached to the German publications, the Cochrane and Slate patent, and the Siebel device as anticipating defenses. See 9 FED. REP. 762. The German publications are vague and uncertain, and describe no machine capable of practical and successful use by brewers for pitching casks and kegs.

It is sufficient to say of the Cochrane and Slate device, without again stopping to describe it, that, without material changes in its construction or arrangement, it cannot be made to produce the same useful results as are produced by the complainants' device.

I am still of opinion, however, that the complainants' patent cannot 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 an account of profits.

DEFORD, HINKLE & Co. v. MEHAFFY and others.

(Circuit Court, W. D. Tennessee. September 9, 1882.)

1. REMOVAL OF CAUSES—TIME FOR FILING PETITION—PRO CONFESSO.

According to the Tennessee chancery practice a cause is not for trial until a *pro confesso* has been taken against a party not appearing, and a petition for removal is in time if filed before this has been done.

2. SAME—SEVERAL DEFENDANTS—CAUSE, WHEN TRIABLE—REMOVAL, WHEN BARRED.

If there be several defendants, and as to one there is an issue by answer, but as to others no issue by answer or *pro confesso*, the cause is removable until and during the term at which the *pro confesso* is entered. It must be at issue and triable as to all the parties to bar the right of removal as to any of them by the lapse of a trial term; and this, whether the parties as to whom there is no issue be necessary or only proper parties.

3. SAME—PRO CONFESSO ON FINAL DECREE.

And the foregoing rule is not affected by the fact that the *pro confesso* may, under the practice, be entered in the final decree itself. Nothing but an actual trial commenced will bar the right of removal at the trial term when the case is in that condition.

4. SAME—DEFECTIVE BOND—AMENDMENT—JURISDICTION.

If the removal bond be defective, and omit the condition for the payment of costs required by the act of congress, the omission is not fatal to the jurisdiction of the federal court. The defect may be cured by amendment, either in the state or federal court, or by the substitution of a new bond, containing the proper conditions, filed *nunc pro tunc*.

b. SAME—ACT MARCH 3, 1875, CONSTRUED.

(1) The only essential *jurisdictional* facts are the existence of a controversy between citizens of different states, or arising under the constitution and laws of the United States, of the character and amount described in the statute. (2) The right of removal may be barred by the lapse of time, on failure to commence the proceeding within the time prescribed by the statute, as in other cases of limitation of that nature. (3) But a perfect petition and a perfect bond for removal, or a strict compliance with the practice regulations of the statute, are not absolutely essential as jurisdictional requirements, but only directory and not imperative methods of procedure; regulations that should be carefully followed and reasonably enforced by the courts; but, after all, regulations that are protected by the acts of congress authorizing amendments to cure defects and omissions in legal proceedings. (4) These amendments may be made in either the state or federal courts, according to their practice, respectively.

In Equity. Motion to remand.

This is an attachment and injunction bill filed in the chancery court of Hardin county by citizens of Tennessee against a citizen of Louisiana, and certain citizens of Tennessee. It seeks an account of transactions between the plaintiffs and the leading defendant of