

ing it has its principal office.(w) Ferry-boats owned in another state are not taxable.(x) A vessel registered in New York and plying between Panama and San Francisco is not taxable in California.(y)

TRUST PROPERTY. Property held in trust should be assessed to the trustee where he resides.(z) If there are two trustees, one-half may be assessed to each,(a) without regard to the *cestui que trusts*.(b) Where one executor resides within the state and transacts business pertaining to the estate, and the other resides abroad, the residence of the former determines the *situs* of the choses in action belonging to the estate.(c) Trust property under direction of the court is taxable in the jurisdiction having control of it.(d) An assessment against the personalty of an estate may be made a personal charge against the executor or guardian.(e) As to personalty of distributees of an estate in the hands of a trustee.(f) Money due on a land contract in the hands of an agent is taxable.(g)

INTANGIBLE PROPERTY. Intangible property, not growing out of real estate, follows the person of the owner.(h) Where the domicile of the owner of choses in action upon which taxes were paid (under protest) was in another state, they do not constitute property within this state, and are not subject to taxation here.(i) Although the *situs* of real estate, by which debts are secured, is within the state, the trust deeds are mere incidents—choses in actions attached to the owner.(j) The *situs* of a bond is the residence of the owner, wherever the obligor may reside.(k) Its locality does not depend upon the place of the written evidence of the ownership.(l) So of a promissory note secured by a bond deed.(m)

PROPERTY IN TRANSIT. A state cannot levy a tax upon property in transit to other states.(n) Such property has no *situs* in the state, in the proper legal sense of that word.(o) The personal property of one who had been a resident of the state, but who was *in itinere*, on the day for the levy of taxes, for the purpose of removing to another state, is subject to taxation.(p) One who has left the town of his residence without the intention of returning, is, nevertheless, taxable there, while he remains in the commonwealth, until he has

(w) Transp. Co. v. Wheting, 99 U. S. 273.

(x) St. Louis v. Ferry Co. 11 Wall. 423; Morgan v. Parham, 16 Wall. 471.

(y) Hays v. Pacific M. S. Co. 17 How. 596; State v. Haight, 30 N. J. 423; People v. Com'rs, 11 Alb. Law J. 401.

(z) Hardy v. Yarmouth, 6 Allen, 277; Baltimore v. Sterling, 29 Md. 48; People v. Assessors, 40 N. Y. 154; State v. Matthews, 10 Ohio St. 437; Carlisle v. Marshall, 36 Pa. St. 397.

(a) State v. Matthews, 10 Ohio St. 437; Baltimore v. Sterling, 29 Md. 48.

(b) People v. Assessors, 40 N. Y. 154.

(c) Johnson v. Oregon City, 3 Or. 13.

(d) Lewis v. Chester Co. 60 Pa. St. 325.

(e) Williams v. Holden, 4 Wend. 223; Payson v. Tufts, 13 Mass. 493.

(f) See U. S. v. Hunnewell, 13 Fed. Rep. 617, 618, note.

(g) People v. Ogdensburg, 48 N. Y. 300; Sup'rs v. Davenport, 40 Ill. 197.

(h) Johnson v. Oregon City, 3 Or. 13.

(i) Railroad Co. v. Pennsylvania, 15 Wall. 300; Davenport City v. Mississippi & M. R. R. Co. 12 Iowa, 539; Augusta City v. Dunbar, 50 Ga. 393; People v. Eastman, 25 Cal. 601; Hayne v. Dellesseline, 3 McCord, 373; Johnson v. Lexington City, 14 B. Mon. 521; Arapahoe Co. v. Cutter, 3 Colo. 349.

(j) Arapahoe Co. v. Cutter, 3 Colo. 350.

(k) Hayne v. Dellesseline, 3 McCord, 374; Augusta v. Dunbar, 50 Ga. 357. See Harper v. Com'rs, 23 Ga. 566; Bridges v. Griffin, 33 Ga. 113.

(l) Johnson v. Oregon City, 3 Or. 13.

(m) Arapahoe Co. v. Cutter, 3 Colo. 349.

(n) McCutcheon v. Rice Co. 2 McCrary, 337.

(o) McCutcheon v. Rice Co. 2 McCrary, 337.

(p) McCutcheon v. Rice Co. 2 McCrary, 337.

acquired another residence.(*q*) Residence is presumed to continue until a change is affirmatively shown.(*r*) Where a town taxes a party as a resident, the burden of proof of residence is on the town if questioned.(*s*)—[ED.

(*q*) *Bulkley v. Williamstown*, 3 Gray, 493.
(*r*) *In re Nichols*, 64 N. Y. 62.

(*s*) *Hurlburt v. Green*, 41 Vt. 490; S. C. 42 Vt. 316.

SINGER ROCKING-CHAIR CO. *v.* TOBEY FURNITURE CO.

(*Circuit Court, N. D. Illinois. August 4, 1882.*)

PATENTS FOR INVENTIONS—ROCKING-CHAIRS—MERE MECHANICAL CHANGE.

A rocking-chair constructed to move upon a stationary platform, having a base or rails upon which the rockers move, the base being tongued and the rockers grooved so that one fits into the other, the ends of the base being elevated, to prevent the rockers from working off, with flexible rubber bands connecting the rockers to the rails of the stand to prevent the seat from moving back and forth on the rails, or rocking too far either way, is a mere mechanical change from chairs in previous use, and in such a device there is nothing that can be the subject of a patent.

Banning & Banning and C. K. Offield, for plaintiff.

Coburn & Thatcher, for defendant.

DRUMMOND, C. J. There are nine suits by the same plaintiff against different defendants, two of which have been brought in the circuit court of the United States for the eastern district of Wisconsin, and the remaining suits in this court. They are all founded on alleged infringements of a patent to Charles Singer, July 6, 1869, for an improvement in the construction of rocking-chairs. The patent contains two claims. The second relates to a device by which a current of air is produced, which, by the act of rocking, is impelled through a flexible tube so as to be carried to any part of the person seated in the chair. That claim is not in controversy here and need not be further considered. The rocking-chair is one constructed to move upon a stationary platform, and not upon the floor. The platform has a base or rail upon which the rockers move, the latter being curved in the usual form. The base or rail is tongued, and the bottom of the rockers grooved so that the one fits into the other, and the ends of the base (or rails, as the patent calls them) are elevated so as to prevent the rockers from working off. The base or rails are A shaped, or of other form, upon which the rockers are fitted; the latter being provided with V grooves, or otherwise adapted to the rail, and

projecting but a short distance below the seat. If it be intended that the rails are grooved and the rockers tongued, there would be no difference in the principle. The specification alleges: "The rockers may be connected to the rails of the stand by flexible bands, in passing over studs projecting from the sides of each, to prevent the seat from moving back and forth on the rails, or rocking too far either way. These bands may be slipped off the studs when the chair is to be taken apart for packing." The first claim, which is the only one said to be infringed, is as follows: "The stand, A, having rails, B, the seat, c', and rockers, C, fitted to the said rails, and the elastic bands, M, combined and arranged substantially as specified."

Having thus stated in what that part of the Singer machine consists which is the subject of controversy here, the question naturally presents itself, in what respect it was new and the subject of a patent.

The movement of a rocking-chair on a stationary platform, instead of rockers moving on the floor, was not the invention of Singer. That device had been used before. In a general sense it was contained in the patent of Samuel Simmons, of December 21, 1819, and particularly in the patent of Samuel H. Bean, of March 31, 1840. Bean states that the principal feature of his invention consisted in making the seat (and stool, as he calls it) of the chair in two parts, so that while the stool remains stationary the seat was made to rock on rockers. The base or rail on which the rockers moved in *his* chair were smooth, but there was a flange on the *outside* of each rocker similar to that on the inside of a railroad car-wheel, and which he calls guards, which prevented the seat from having any lateral movement. There were certain hanging metallic plates whose upper ends were suspended from the inside of the seat frame by pins, the object of which was to prevent the seat from being thrown off the stool. Without referring now to some of the other patented improved rocking-chairs which have been set up by the defense, it is clear that Singer found a platform or stool, with a chair on rockers moving on the rails or base of the stool, with flanges on one side of the rockers to prevent lateral displacement, and also with a device to prevent the seat and the rockers from being thrown off the stool. Now, what did he add to or change as to this part of his patent? He tongued the rails or base, and elevated them at the ends, and grooved the rockers, instead of making flanges on the outside of each, thus fitting the rockers to the rails or base, and he attached an elastic band to the platform on each side of the stand. With a rocker attached to an ordinary chair, moving on