

BARNEY V. PECK AND ANOTHER. (TWO CASES.)

Circuit Court, S. D. New York. April 1, 1883.

PATENTS FOR INVENTIONS—INFRINGEMENT OF
SEVERAL PATENTS—BILL
MULTIFARIOUS—DEMURRER.

When a bill alleges infringement of several patents for different inventions, to escape the objection of multifariousness it must aver that the inventions are capable of conjoint use and are in fact so used by defendant.

Demurrer to Bill.

A. J. Todd, for complainant.

Briesen & Steele, for defendant.

WALLACE, J. When the bill alleges infringement of several patents for different inventions, to escape the objection of multifariousness it must aver that the inventions are capable of conjoint use, and are in fact so used by the defendant. *Nellis v. McLanahan*, 6 Fisher, Pat. Cas. 286; *Gamewell Fire Alarm Tel. Co. v. Chillicothe*, 7 FED. REP. 351; *Hayes v. Dayton*, 8 FED. REP. 702. The bill here is founded on distinct patents, and alleges that “the defendants have unlawfully used the said patented inventions, and have made and sold skates containing and embodying in their construction said inventions or substantial parts of the same, and still continue so to do.” It does not appear that the several inventions can be embodied in one skate. The averment of the bill would be satisfied by proof that some of the skates made by the defendants infringe one of the patents, and others infringe another patent. It may be that some or all of

the skates are infringements of all the patents, but the defendants are not required to take the chances of being compelled to litigate several distinct and unconnected controversies in one suit.

The demurrer is sustained.

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