

## LEAHY v. SPAULDING, Collector.

(Circuit Court, N. D. Illinois. January 22, 1884.)

## CUSTOMS DUTIES—SILK AND COTTON SHAWLS.

Certain shawls worth 15 shillings and 6 pence, containing one shilling and six pence worth of silk, and the rest cotton, *held*, subject to a duty of 35 per cent. only, as "shawls, cotton chief value," instead of 60 per cent., as "wearing apparel, silk chief value."

At Law.

*Storck & Schumann*, for plaintiff.

*Gen. Joseph B. Leake*, Dist. Atty., for defendant.

BLODGETT, J. The only question in this case is whether certain shawls imported by the plaintiff and which were classed as "wearing apparel, silk chief value," and charged with duty at the rate of 60 per cent. *ad valorem*, were improperly so classed and should have been classed as "shawls, cotton chief value," and charged with duty at 35 per cent. *ad valorem*. The proof shows, without dispute, that much the larger component in value of these shawls is cotton. According to the proof the value of these shawls was 15 shillings and 6 pence each, while, if all cotton, they would have only cost 14 shillings each, thus showing that they contained only a very small proportion of silk, and that their value was not increased over 1 shilling and 6 pence by the silk they contain.

The issues will be found for the plaintiff.

KIRK and another v. ELKINS MANUF'G & GAS Co.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania. February 13, 1884.)

## PATENT FOR INVENTION—INFRINGEMENT.

Patent No. 201,536, for improvement in bronze alloys, not infringed by defendant's metal or alloy, known as "Ajax Metal," in which copper, tin, and arsenic occur in proportions different from the proportions specified in complainant's patent.

Hearing on Bill, Answer, and Proofs.

This was a bill to restrain an infringement of patent No. 201,536, dated March 19, 1878, for improvement in bronze alloys, issued to Edward C. Kirk.

*H. T. Fenton*, for complainants.

*John G. Johnson*, for respondents.

<sup>1</sup>Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

MCKENNAN, J. The compound described and claimed in the patent consists of copper, tin, and arsenic, in the proportion of 75 to 90 parts of copper, 10 to 25 parts of tin, and one-fifth of 1 per cent. to 10 per cent. of arsenic to be added to the copper and tin when the latter are at the melting point in the crucible. The patentee was not the first to produce an alloy of copper and tin. The specification shows that castings of these metallic constituents were made before the date of the patent; and, indeed, the patent of Randall, for a metal alloy of copper, tin, and arsenic, is expressly referred to. The patentable novelty of the described alloy consists, then, in the proportions in which the copper and tin are compounded and in the addition thereto, in the process of melting, of the prescribed quantity of arsenic, for the purpose of deoxidizing the metallic oxides always found in ordinary alloys of copper and tin. The only evidence of infringement is furnished by analyses of borings from several samples of Ajax metal manufactured by the respondents. These show it to be composed of copper, tin, zinc, lead, and arsenic; copper within the range of proportion stated in the patent, tin and arsenic generally below the minimum proportion stated in the patent, and lead and zinc in varying proportions, as high as 8 per cent. What differential effect upon the character and properties of the compound results from the reduced proportions of tin and arsenic and the addition of lead and zinc we are uninformed by the evidence; but it is clear that so far as the constituents of the two compounds are concerned they are not the same. But the respondents deny that they have added arsenic to the other metallic components of their alloy, and allege that whatever portion of arsenic it may be found to contain was only in combination with the copper, which they used in its natural state. This is fully sustained by the testimony of their superintendent, who was alone cognizant of the ingredients of their compound. He says he desired to get rid of all the arsenic he possibly could, and hence that no arsenic was artificially introduced; that he used only the copper of commerce, which always contains more or less arsenic; and that he began the use of this in the manufacture of Ajax metal in 1874, and has continued to use it since without material change in proportions. Considering, therefore, that the alloys manufactured by the complainants and the respondents, respectively, are not constitutively the same, and that the respondents have not used arsenic except as it may have been found in combination with commercial copper, and that their use of this began in 1874, we cannot adjudge them to be infringers, and the bill must therefore be dismissed, with costs.

## GOLD &amp; STOCK TEL. Co. v. PEARCE and others.

(Circuit Court, S. D. New York. February 20, 1884.)

## PRELIMINARY INJUNCTION—WHEN TO BE GRANTED.

A preliminary injunction will not be granted while another to the same effect is in force in a different suit.

In Equity.

*Edward N. Dickerson, Jr.*, for orator.

*Roscoe Conkling and Samuel A. Duncan*, for defendants.

WHEELER, J. This cause has been heard on the motion of the orator for a preliminary injunction to restrain infringement of the second claim of the orator's patent. In a prior suit in this court, so lately brought by the orator against these same defendants that the time for an answer and taking of testimony has not yet expired, a preliminary injunction restraining the defendants from infringing this second and the third claims of the patent has, on motion of the orator, been granted, and is still in force. The time for pleading in bar the pendency of the first suit has not arrived. In an affidavit by an expert, filed by the orator on this motion, it is stated that he is familiar with the patent, and made an affidavit on the former motion, and that the apparatus claimed to be an infringement on this motion "is in all material respects, so far as the second claim is concerned, the same apparatus as that enjoined in the previous motion." The defendants object to this mode of procedure by a new bill, and cite *Wheeler v. McCormick*, 8 Blatchf. 267. The orator insists that it is proper to file successive bills for successive infringements, and cited *Higby v. Columbia Rubber Co.* 18 FED. REP. 601. It is also urged in support of the orator's position that the prior suit could not be maintained on an infringement subsequent to the filing of that bill only; while this may be, and that that may fail and this succeed. That is one ground stated by WOODRUFF, C. J., for maintaining the second suit in *Wheeler v. McCormick*, although the principal ground was that the prior suit was in another district and circuit. That reason does not obtain here, however, as this case now stands, for it is adjudged in the prior suit, and that adjudication still stands insisted upon by the orator, that there was an infringement prior to the filing of the former bill sufficient to uphold it to an accounting and final decree. That the accounting in that case would extend to the time of taking, and cover the infringement now aimed at, is not at all questioned. That distinguishes this case from what was said by LOWELL, J., in *Higby v. Columbia Rubber Co.* There the account had been closed, and although the former injunction was in force a new bill would be necessary to full relief for the new infringement. It is also urged that as a proceeding for contempt would be a harsher remedy than a motion for a new injunction, the injunction might be granted on a case on which the