

DOBSON *ET AL.* V. CUBLEY.

*Circuit Court, S. D. New York.*

June 19, 1889.

PATENTS FOR INVENTIONS—INFRINGEMENT.

Banjos made under letters patent issued April 3, 1883, to E. J. Cubley for improvement in banjos, in which the parchment rests directly on a rim consisting of a metal shell, in form like the old wooden rim, but differing from any rim previously made, and producing by such rim distinctive musical properties, do not infringe letters patent issued May 17, 1873, to C. K. Dobson, for an improvement consisting of a ring, either of metal or wood, to ease the wear of the parchment against the rim, and improve the tone of the instrument; nor do they infringe letters patent issued November 18, 1881, to Henry C. Dobson, whose improvement consists of a metal ring between the parchment and a rim of wood and metal, and which eases the parchment, as does the ring in the first patent, and produces a metallic musical sound.

In Equity. Bill to restrain infringement of patent.

*Arthur S. Brown* and *Albert Comstock*, for complainants.

*Edward P. Wilder* and *Howard Henderson*, for defendant.

WALLACE, J. The question in this case is whether banjos made conformably to the patent to Edwin J. Cubley, dated April 3, 1883, are an infringement of the patents granted one to Charles E. Dobson, dated May 14, 1873, and one to Henry C. Dobson, granted November 18, 1881, for improvements in banjos. The banjo of the first Dobson patent contains a dome-shaped ring, interposed between the parchment and a wooden rim. The ring may be of metal or of wood, and serves to ease the wear which the parchment is subjected to when the rim has an angular edge, and to improve the tone or resonance of the instrument. When the ring is made of metal, it imparts a metallic tone to the instrument. If made of wood, as it may be by the patent, it is doubtful whether the musical properties of the instrument would be improved. Whether the ring is made of metal or wood, the amount of material used will affect these properties. In easing the wear upon the parchment what is done by the ring was as well accomplished practically by the wooden rims, which were previously used, having the edge rounded where it came in contact with the parchment. The banjo of the second Dobson patent has a metal ring formed with two downwardly projecting flanges, interposed between the parchment and a rim composed of wood and metal. The ring is curved at the part which comes in contact with the parchment, and therefore serves to ease the wear upon the parchment similarly with the ring of the first patent. So much of the ring is out of contact with the parchment that it has a vibratory movement, and the ring thereby imparts a bell-like tone to the instrument; and the further this free portion extends beyond the point of contact with the parchment the more emphatic will be the metallic ringing or bell-like quality of the sound. Not only is the ring an element of each of the claims in controversy in both of the Dobson patents,

but its peculiar form is essential in each invention in producing peculiar musical properties of the instrument.

These are varied in each by the dimensions and form of the ring, and in the banjo of the second patent the combination of wood and metal in the rim is a factor. The banjo of the defendant does not infringe either of these patents, because it has no ring. In this banjo the parchment rests directly on the rim. The rim consists of a metal shell, made by turning over the edges of a piece of sheet metal. If a piece of sheet metal were turned over the old round-edged wooden rim, so as to completely inclose it, the rim of the defendant's banjo would be produced. As respects form, it is the old round-edged wooden rim. As, however, it is made of metal, and is hollow, it differs from any rim which had been devised previously. It cannot be doubted that these differences impart distinctive musical properties to the instrument. Of necessity, such an instrument differs as essentially in the character and quality of its musical tones from either of the Dobson banjos as the Dobson banjos differ from one another. There is no identity of parts or of result in the several instruments. The invention of Cubley has as much originality as either one of Dobson. The hollow rim of his banjo is not an equivalent for the solid rim and the ring of Dobson, because it was not a known mechanical substitute for them, and does not effect the same result. The bill is dismissed, with costs.