

to a successful issue, nor, when the charge is of a conspiracy to defraud the United States by aiding in obtaining payment of a false claim, is it necessary to prove that payment was in fact obtained, nor is it required that the indictment should aver what particular official might have been deceived if the conspiracy had been carried to a successful issue. If the indictment was intended to charge a conspiracy to defraud some particular person, by practicing a deceit upon him, then, as argued by counsel, it might be necessary to aver the particulars of the intended deceit, and that the same would operate to deceive the named person; but the indictment against the present defendants charges a conspiracy to defraud the United States, the means to be employed being the aid given the railway company in obtaining payment from the United States of a false claim for services in transporting the mails. The indictment avers the party intended to be defrauded, to-wit, the United States, and that is all that is required in this particular.

Without further extending this opinion, it is sufficient to say that we think the indictment charges an offense against the laws of the United States, and states the facts relied on with fullness of detail sufficient to advise the defendants of the accusation laid against them. This being so, the demurrer thereto must be overruled; and it is so ordered.

WOOLSON, J. I concur in the foregoing opinion.

FALK v. SCHUMACHER *et al.*

(Circuit Court, S. D. New York. November 12, 1891.)

1. COPYRIGHT OF PHOTOGRAPH—INFRINGEMENT—PLEADING.

In a bill for an injunction against infringing the copyright of a photograph, an allegation that complainant "is the author, inventor, designer, and proprietor of a certain photograph and negative thereof, known and entitled 'Photograph No. 23 of Lillian Russell, by B. J. Falk, N. Y.," is sufficient without giving a detailed description of the method of producing the photograph, or attaching a copy thereof to the bill.

2. SAME—INSCRIBED NOTICE.

It is sufficient if the notice of copyright inscribed on a photograph reads, "1889. Copyrighted by B. J. Falk, New York," instead of "Copyright, 1889, by B. J. Falk," as required by the literal directions of the statute.

In Equity. Suit to restrain infringement of copyright. On demurrer to bill. Demurrer overruled.

Isaac N. Falk and Roland Cox, for plaintiff.

John B. Talmage and Augustus T. Gurlitz, for defendants.

COXE, J. The complainant, as the proprietor of a photograph of Lillian Russell, prays for an injunction restraining the defendants from infringing his copyright. The first objection taken by the demurrer, that the bill does not show that the complainant, at the time he pro-

duced the photograph, was a citizen of the United States or a resident therein, (Rev. St. U. S. § 4952,) is fairly met by the allegation "that your orator, at all times hereinafter stated, was and still is a citizen of the United States and a resident therein, residing in the city, county and state of New York." The bill alleges further that the complainant "is the author, inventor, designer and proprietor of a certain photograph and negative thereof, known and entitled 'Photograph No. 23 of Lillian Russell, by B. J. Falk, N. Y.'" It is thought that this allegation is sufficient without entering into a detailed description of the *modus operandi* adopted by him in taking the photograph. It is not necessary in a suit upon a patent to allege the preliminary steps and experiments which culminated in the invention, and there is no reason why one who sues upon a copyright should be more explicit. The complainant was not required to attach a copy of the photograph to his bill any more than an author would be required to attach a copy of his book. If the photograph is not the subject of a copyright the defendants can allege and prove it.

The allegations of the bill regarding the mailing of the title and printed copies of the photograph to the librarian of congress, and particularly the allegation regarding the recording of the title by him, as required by section 4957 of the Revised Statutes, might well have been more full and complete, and, yet, it is thought that this paragraph of the bill cannot be held bad on demurrer. "A deposit of two copies of the article or work with the librarian of congress, with the name of the author and its title-page, is all that is necessary to secure a copyright." *Lithographic Co. v. Sarony*, 111 U. S. 53, 59, 4 Sup. Ct. Rep. 279. The bill alleges that the notice inscribed upon each copy of the photograph was, "1889. Copyrighted by B. J. Falk, New York." The notice required by the statute, if followed literally, was, "Copyright, 1889, by B. J. Falk." Why, with this simple provision of the law before him, the complainant saw fit to inscribe his photograph with a notice which not only is a departure from the strict letter of the statute, but is less symmetrical and concise, is indeed amazing. However, under the decision in *Callaghan v. Myers*, 128 U. S. 617, 9 Sup. Ct. Rep. 177, the notice is sufficient. "The statute was substantially complied with."

The only specific relief demanded is an injunction. Such an action is permitted by section 4970 of the Revised Statutes.

Although the bill might be more artistic and complete if some, at least, of the criticisms pointed out by the demurrer were observed, it is thought that in its present form it states a cause of action. The demurrer is overruled. The defendant may answer within 20 days.

FALK v. SEIDENBERG *et al.*

(Circuit Court, S. D. New York, November 12, 1891.)

In Equity. Suit to restrain infringement of copyright. On demurrer to bill. Demurrer overruled.

Isaac N. Falk and Roland Cox, for plaintiff.

John B. Talmage and Augustus T. Gurlitz, for defendants.

COXE, J. The decision in *Falk v. Schumacher*, 48 Fed. Rep. 222, disposes of this cause also. The demurrer is overruled. The defendants may answer within 20 days.

BRUSH-SWAN ELECTRIC LIGHT Co. *et al.* v. THOMSON-HOUSTON ELECTRIC Co.

(Circuit Court, D. Connecticut, November 7, 1891.)

PATENTS FOR INVENTIONS—LICENSE TO SELL—RIGHTS OF ASSIGNEE—SUIT FOR INFRINGEMENT—PARTIES.

An Ohio corporation owning an electric light patent gave another company an exclusive license to sell the patented article in New England. Afterwards a Connecticut corporation owning other electric light patents obtained a controlling interest in the stock of the licensor. *Held*, that the licensee, in a suit in the district of Connecticut against the Connecticut corporation for selling an infringing article within its territory, had *prima facie* implied authority, by virtue of the license, to join the licensor as a party plaintiff against the latter's will; especially as the latter, being out of the jurisdiction of the court, could not be served as a party defendant.

In Equity.

Morris W. Seymour and Wm. G. Wilson, for Brush-Swan Company.

F. L. Crawford and Charles R. Ingersoll, for Brush Electric Company.

SHIPMAN, J. This is a bill in equity, which is brought under the patent laws, to restrain an alleged infringement of letters patent No. 219,208, dated September 2, 1877, to Charles F. Brush. The bill alleges that the Brush-Swan Electric Light Company of New England, a New York corporation, which will hereafter be called the Brush-Swan Company, is vested with the exclusive license and agency for the sale of the described patented improvement throughout a specified territory of the United States, by virtue of sundry contracts, which are annexed to the bill, with the Brush Electric Company, an Ohio corporation, hereinafter called the Cleveland Company, which is, by assignment, the sole owner of the patent. These two corporations are the complainants. The bill further alleges that the defendant, the Thomson-Houston Electric Company, a Connecticut corporation, is and has been making, selling, using, and renting to others to be used, infringing electric lamps within the territory named in said contracts.