

strued. The complainants' acquiescence in the rejection of original claim 2, and its cancellation, amounted to a waiver of the broad claim therein made; and for that reason, also, the construction claimed, which would now, in effect, revive that claim, is altogether inadmissible.

The question, then, is, does the defendant infringe the claim, as above construed? The substitution of the metal valve for the rubber valve, and of the rubber seat for the metal seat, is a mere transposition, which any mechanic could make, without invention, and it would not avoid infringement. But the defendant's valve has no more tendency to wedge itself into its seat than has any of the well-known wash-basin or bath-tub valves; and it has, if not less, certainly not more, contact surface than most of the old forms of plug valves. When the complainants' valve is sunk to its place in the valve seat the upper edge of the seat is a little above the greatest lateral diameter of the valve. The result is that the valve is so wedged in as to be held tightly in position by the contracted mouth of the seat, and by its elasticity it expands and fits the inside surface of the seat below its mouth, thereby precluding its withdrawal until it is partially collapsed by the upward force exerted in pulling it out. On the other hand, the greatest lateral diameter of the defendant's valve, when sunk to its place in the valve seat, is more than a quarter of an inch above the top of the seat, and the peculiar gripping or holding effect of the seat upon the valve in the complainants' device is wanting. The valve seat is not cupped so as to receive the valve for more than half its size. More than half its perpendicular diameter is above the mouth of of the seat, and the mouth is flaring, not contracted. The defendant's construction is more nearly like the Dalton and Ingersoll valves, as shown by an exhibit put in evidence by complainants, made in accordance with prior patents issued to Scott, and admitted to have been in public and common use prior to complainants' invention. The defendant does not infringe the complainants' patent.

The bill will be dismissed at complainants' cost.

### VERMONT FARM MACH. Co. v. GIBSON, (two cases.)

(Circuit Court, D. Vermont. May 3, 1892.)

#### 1. PATENTS FOR INVENTIONS—INFRINGEMENT—JURISDICTION—WAIVER.

The circuit courts of the United States have jurisdiction of suits for the infringement of patents, without regard to the citizenship or residence of the parties; and a bill which fails to allege that defendant is an inhabitant of the district where suit is brought is not demurrable. The exemption from suit in any district other than that of defendant's residence is waived, if not pleaded.

#### 2. SAME—PATENTABLE NOVELTY—CREAMERIES.

Letters patent No. 187,576, granted February 20, 1877, to William Cooley, for "the process of treating milk for raising cream by sealing with water and air the cover, applied directly to the vessel containing the milk," is valid, as embodying patentable novelty. *Boyd v. Cherry*, 50 Fed. Rep. 279, 4 McCrary, 70, followed.

#### 3. SAME—LICENSE—WHAT AMOUNTS TO.

The sale of a creamery containing cans which embody this invention does not operate as a license to use new cans procured from other parties, which infringe the claims of this patent. *Machine Co. v. Gibson*, 46 Fed. Rep. 488, followed.

In Equity. Bill by the Vermont Farm Machine Company against Hugh G. Gibson for infringement of patents. Decree for complainant.

*William Edgar Simonds*, for orator.

*G. G. Frelinghuysen*, for defendant.

WHEELER, District Judge. One of these cases is brought upon patent 187,516, dated February 20, 1877, and granted to William Cooley, for, among other claims, "The process of treating milk for raising cream by sealing with water and air the cover, applied directly to the vessel containing the milk, substantially as set forth." The other is brought upon patent 321,340, dated June 30, 1885, and granted to Francis G. Butler, for a can for raising cream by water sealing, in substantially the same way, but with internal supports raising the cover from the rim of the can for circulation of air between the water and the milk. Both bills have, with other defenses, been demurred to for want of jurisdiction, because the defendant is not, in either, alleged to be an inhabitant of this district. If the court did not have jurisdiction of any such cases but those in which the defendants should be inhabitants of the district, this objection would probably be fatal, as such an objection is when courts only have jurisdiction of suits between citizens of different states, and the requisite citizenship is not alleged. But the circuit courts have jurisdiction of suits for infringement of patents, without regard to citizenship or inhabitancy, by the general law of the subject. The requirement elsewhere that they be brought in particular districts is a personal exemption, which may be waived. *Ex parte Schollenberger*, 96 U. S. 369. On principle, this exemption must be pleaded, or it is waived.

The other defenses are want of patentable novelty, and a license from the orator, arising from a sale to the defendant of a creamery having a tank for water, and cans made according to the patent to Butler, operating according to the patent to Cooley. These claims of the patent to Cooley were held to be valid against the defense of want of novelty in *Boyd v. Cherry*, 4 McCrary, 70, 50 Fed. Rep. 279. The same, and that the sale of the creamery did not license new cans got from others, was held by this court on a motion for a preliminary injunction in these cases. *Machine Co. v. Gibson*, 46 Fed. Rep. 488. Further consideration, after the full argument now had, leads to the same conclusion, for substantially the same reasons, which need not be repeated. Neither of the patents put in evidence, nor the proof of knowledge and use, seems to show the invention of this part of the patent to Butler. These claims of both patents appear to be valid, and the orator appears to be entitled to a decree in each case. Let decrees be entered, continuing the injunctions, and for an account, with costs.

## AMERICAN BOX CO. v. WILSON.

(Circuit Court, N. D. Illinois. January 13, 1892.)

## 1. PATENTS FOR INVENTIONS—BOX MACHINE—NOVELTY.

Letters patent No. 244,919, granted July 26, 1881, to Gordon Munro, for a machine for covering pasteboard boxes with paper, consisting of a frame upon which is mounted a spindle for carrying a roll of paper, a paste box, through which the ribbon of paper passes as it is unwound from the roll, and a guide roll for guiding the paper as it is delivered from the paste box to the box to be covered, are not void for want of novelty. *Box Co. v. Day*, 32 Fed. Rep. 585, followed.

## 2. SAME—INFRINGEMENT.

Said patent is infringed by a device which differs from the patented machine only in using bent rods over which the paper passes, in place of the guide rolls described in the specifications.

## In Equity.

*Wetmore & Jenner and W. E. Furness*, for complainant.

*Curtis & Rodman*, for defendant.

BLODGETT, District Judge. In this case defendant is charged with the infringement of letters patent No. 244,919, granted July 26, 1881, to Gordon Munro for a "box machine." The scope of the invention covered by the patent is stated by the patentee in his specifications as follows:

"My invention relates to improvements in machines for covering pasteboard boxes with paper, in which the paper is taken from a roll or coil, and passed over a roller resting in a paste box, and over or under other rollers, to a box resting upon a form adapted to revolve; and the objects of my improvements are to produce an inexpensive machine, in which the amount of paste received on the paper can be regulated, the paste or glue retained in a warm or hot state, and the delivery of the paper from the coil is adjustably accomplished."

Dispensing with the letters of reference, the machine described in and covered by the patent consists of a frame upon which is mounted a spindle for carrying a roll of paper, a paste box, through which the ribbon of paper, as it is unwound from the roll, passes, and a guide roll for guiding the paper as it is delivered from the paste box to the box which is to be covered. The patent contains two claims, as follows:

"(1) The combination of the table top, A, paper roll supporting frame, paste box, F, and heating pipe F', with guide rolls, L, M, N, and block, e, adapted to revolve, substantially as and for the purpose described. (2) The combination of the table top, A, paper roll supporting frame, paste box, F, and adjustable scraper, K, with guide rolls and block, e, adapted to revolve, substantially as and for the purpose described."

The defenses interposed are (1) want of novelty; (2) that the defendant does not infringe.

The defense of want of novelty is based upon a large number of prior patents, introduced in evidence, but the principal reliance seems to be upon the Orr & Wright device, patented October 2, 1866. The case of *Box Machine Co. v. Day*, heard before the United States circuit court for the eastern district of Pennsylvania, (32 Fed. Rep. 585,) was upon a double