

ing. The mere expansion of these parts where brought in contact does not involve invention. It gives them no new function and produces no new result. It was what any skilled mechanic would do if it was found, in practice, that the parts in contact were liable to twist. It is the same idea as is involved in the common and well-known device of what is called the fifth wheel to a wagon, that is, a larger bearing surface is given, in order to secure steadiness, and less liability to breakage of the parts. It is true that the form of the parts or elements of the appellant's device differs somewhat from that shown in the prior devices which I have cited, but the essential principle of the appellant's machine is found in the prior devices which have been referred to.

"A change of form of a machine, without a change of mode of operation or result, is not patentable." *Winans v. Denmead*, 15 How. 330. "A change of mechanical structure is not patentable unless it produces a new and entirely different result." *Sargent v. Larned*, 2 Curt. 340; *Mabie v. Haskell*, 2 Cliff. 510; *Aiken v. Dolan*, 3 Fish. Pat. Cas. 204.

The fifth claim of the Gardiner & Downey patent is a combination claim, the elements of the combination being the head, b, the forked plate, c, the pivot pin, d, and the screw, i. All these elements are presumed to be old, but a combination of old parts may make a valid patent, if a new result is produced by such combination. The efficient member of this combination is the screw, i, which is applied to hold the pivot, d, firmly in the head, b. It is, as the specifications say, "tapped into the rear side of the head," so that it may be made to bear upon and hold the pivot. It is merely what is known in mechanics as a "set screw." A "set screw" is defined to be "a screw, as in a cramp, screwed through one part lightly upon another to bring pieces of wood, metal, etc., in close contact." *Imperial Dict.* "Set screw. A screw employed to hold or move objects to their bearings, as the bits in a cutter head or brace." *Knight, Mechanical Dict.* The only function or office of this set screw, i, is to hold the pin, d, in place,—the same result as is produced by a set screw in a cutter head, that of holding the bit or cutter in place; or, as the first definition quoted says, it brings the pieces of metal, that is, the pin and the head, in close contact. No new result is produced by this combination from that produced by the use of a set screw in a cutter head. This claim of the patent is therefore void for want of novelty.

The decree of the circuit court is affirmed.

ARMSTRONG et al. v. SAVANNAH SOAP WORKS et al.

(Circuit Court, S. D. Georgia, E. D. April 13, 1892.)

TRADE-MARK—BILL FOR INFRINGEMENT—PARTIES.

The directors of a corporation may be included as parties defendant in a bill against the corporation for infringement of a trade-mark.

In Equity. Bill by Armstrong & Co. against the Savannah Soap Works and others to enjoin infringement of trade-mark. Demurrer for improper joinder of parties defendant. Overruled.

William G. Henderson, for plaintiffs.
J. R. Saussy, for defendants.

SPEER, District Judge. The plaintiffs have brought their bill against the defendants named, and are met by a demurrer, first, upon the ground that the bill, as originally filed, did not state an amount of damages exceeding \$2,000, exclusive of interest and costs. This has been cured by an amendment, and it will not be necessary to consider the able argument of the plaintiffs' attorney, in which he insists that the court has jurisdiction of a suit for the infringement of a registered trademark, irrespective of the amount involved. A further ground of demurrer is that the directors of the defendant corporation are joined as parties defendant, which, it is insisted, is a misjoinder. In support of this proposition the defendants rely upon Story, Eq. Pl. § 235; 1 Daniell, Ch. Pr. p. 145, note 2; 9 Ch. Div. p. 552, reporting the case of *Wilson v. Church*. In the case last mentioned it was held that, under the English judicature act, the defendants, being officers of the corporation, were improperly joined. It is to be observed, however, in the language of Jessel, master of the rolls:

"The legislature, in adopting this act, inaugurated a totally new system of pleading, and established a new court of justice, for that is what the high court is, and one system for all kinds of actions, whether common-law actions or equity actions. There is no other practice extant applicable to equity actions. The old practice has ceased to exist. There is only one kind of action and one kind of procedure."

It was there held that, as the officers of the corporation were joined merely for the purpose of discovery, and as the discovery could be had by interrogatories in a court of law, the joinder was improper. It is perhaps unnecessary to point out that this system has no standing in the courts of the United States, where the domain of law and equity procedure is entirely distinct. In his admirable work on Equity Pleading, quoted above, Judge Story declares that the officers of a corporation, although they may be witnesses, may be joined in a suit against a corporation, because discovery may be sought from them; and in the case of *Glasscott v. Miners' Co.*, 11 Sim. 305, cited in 1 Daniell, Ch. Pr. p. 145, the plaintiff was sued at law by a body corporate, and filed his bill for discovery only, making the governor, deputy chairman, one of the directors, and secretary of the company codefendants with the company. It was objected, upon demurrer to the bill, that an officer of the corporation could not be made a codefendant to the bill which sought for discovery only, or at any rate that the individual members could not be joined as defendants with the corporation at large; but the demurrer was overruled. These are the authorities for the decision. On the other hand, the current of authority in this country seems clearly to justify the plaintiffs' action in joining the directors. In the case of *Poppenhusen v. Falke*, 4 Blatchf. 493, it was held that, where persons were acting in concert in infringing a patent, although they act merely as employes of a corporation, they are liable to be sued therefor jointly in one suit. In *Estes v. Worthington*, 30 Fed. Rep. 465, it was held, Judge

Wallace delivering the opinion, that in torts of misfeasance, like the violation of a trade-mark, agents and servants are personally liable to the injured party; citing *Bell v. Josselyn*, 3 Gray, 309; *Richardson v. Kimball*, 28 Me. 463; *Mitchell v. Harmony*, 13 How. 115; *Phelps v. Wait*, 30 N. Y. 78. It is true that there is a class of agents—such as mere workmen in the employ of a manufacturer—against whom there can be no recovery, although they may have participated in the acts of infringement, (*Id.*) but ordinarily the infringer cannot escape the responsibility by showing that he was acting for another. *Maltby v. Bobo*, 14 Blatchf. 53; *Steiger v. Heidelberg*, 4 Fed. Rep. 455. In view of the authorities cited, the demurrer must be overruled.

THE KODIAK.

UNITED STATES v. THE KODIAK.

(District Court, D. Alaska. December 5, 1892.)

1. ADMIRALTY JURISDICTION—"WATERS OF ALASKA"—FORFEITURE—FUR FISHERIES.

Where a vessel is seized for violation of Rev. St. § 1956, forbidding the killing of fur-bearing animals within the limits of Alaska territory, or the waters thereof, such seizure being made within the entrance of Cook's inlet, as determined by a line drawn from Cape Douglas to Point Bede, by a United States vessel acting in pursuance of orders from the government, it must be presumed that such orders were given in the assertion of territorial jurisdiction over the waters of the inlet; and, as the right to such jurisdiction is a political question, the courts will not inquire into it, but will assume jurisdiction as thus determined by the political branch of the government.

2. ALASKAN FUR FISHERIES—FISHING BY NATIVES—TREASURY REGULATIONS.

Rev. St. § 1956, forbids the killing of fur-bearing animals within the limits of Alaska territory, or the waters thereof, but empowers the secretary of the treasury to authorize the killing of such animals, except fur seal, under such regulations as he may prescribe. By an order of April 21, 1879, the secretary forbade the killing of such animals by any other persons than natives, prohibited the use of firearms by the natives during certain months, and declared that no vessel would be allowed to anchor in the well-known otter-killing grounds, except vessels carrying parties of natives to or from such killing grounds. *Held*, that this regulation was not violated by a fur company which, in pursuance of an agreement made with natives at the beginning of the season, took on board of its ship parties of such natives, and anchored with them in the killing grounds, furnishing them with clothing, provisions, and the necessary outfit, and allowing them to live on board and make hunting excursions therefrom in their canoes, and at the end of the season usually purchasing the skins from them, though each native was free to sell his skins elsewhere; no firearms being used, and no white men taking any part in the hunting or killing, and the natives not being in any way hired or engaged by the company.

In Admiralty. Libel filed in behalf of the United States for the forfeiture of the schooner Kodiak for a violation of Rev. St. § 1956, forbidding the killing of fur-bearing animals within the limits of Alaska territory, or the waters thereof. Libel dismissed.

C. S. Johnson, Dist. Atty.

A. C. Barry and John S. Bugbee, for claimant.