

a further diversity, which is worthy of more consideration. The complainant's device is hinged only between the top of the standard, or support, and the exterior of the cover, but in the defendants' there is a hinge also at the lower end of the support, hinging it to the base or stand. The object and function of this lower hinge, as stated by the defendants' expert, is "to transfer the strain from the binding edge or back of the book to the said hinged junction between the upright rod and the supporting stand; but it has also the disadvantageous tendency to cause the book, when closed, to slip from the stand, and, as it seems to me, there is but slight, if any, advantage secured by the transference of strain referred to. Even, however, if the function claimed to be performed by this additional hinge was undoubtedly, and in the highest degree, beneficial, by reason of its facilitating the working of the hinge of the complainant, and making it perform its assigned part in the combination better, yet, by making such addition, the defendants could acquire no right to appropriate the patented invention. As I have before said, there are some structural differences between the two mechanisms, but the important fact remains that every element of the complainant's combination is present in the defendants' device, and the latter produces substantially the same result as the former. This is infringement, and it is not justified by showing that the defendants have added something, whether improving or otherwise, of their own.

A decree in favor of the plaintiff, in the usual form, may be prepared and submitted.

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GILBERT v. REINHARDT NUMBERING MACHINE CO. et al.

(Circuit Court, E. D. New York. December 7, 1893.)

1. PATENTS—INFRINGEMENT.

One who appropriates the idea of a patent, and perhaps improves upon the invention, but without really reducing the number of elements in the combination, is an infringer.

2. SAME—INVENTION—NUMBERING MACHINE.

The Bowman patent, No. 166,681, for an improvement in consecutive-numbering machines, shows invention, and is valid.

In Equity. Suit by William J. Gilbert against the Reinhardt Numbering Machine Company and others for infringement of a patent. Decree for complainant.

Edward C. Davidson, for plaintiff.

Edward A. Greeley, for defendants.

WHEELER, District Judge. This suit is brought upon the third claim of letters patent No. 166,681, dated August 17, 1875, and granted to Thomas S. Bowman for an improvement in consecutive-numbering machines. In these machines the nine numbers are placed on the faces of wheels, for units, tens, hundreds, and so on, hung on a shaft in a box, and are brought up to place to print the numbers consecutively from 1 upward by automatic contrivances

moving the wheels along around the shaft consecutively one after another. Ciphers are not wanted so constantly as the figures are which print units, but only for printing tens and multiples of tens. If they are made stationary on the wheels with the numbers, they print ciphers when not wanted. To avoid this, M. Duchateau, in a certificate of addition made January 26, 1865, to French patent No. 16,299 of April 26, 1856, describes placing the cipher on a movable stem dropping into a recess in the shaft when not wanted, and brought out when wanted by the movement of the shaft, in a machine having three numbering wheels moved by hand. In Bowman's patent the ciphers are each placed on such a movable stem having a stud, which a cam around the shaft that is stationary holds down by a projection when the cipher is not wanted, and works against and moves, carrying the stem and bringing the cipher up to place, when it is wanted. In the defendants' machine the cam is made on the shaft, and by a projection holds the stem down when the cipher is not wanted, and, working against the stud, brings the cipher up to place when it is wanted. Bowman could not, at the time of his invention, be the first inventor of dropping the cipher out of the way when not wanted in a numbering machine, for Duchateau had before that done the same thing. He could be, and appears to have been, an original and the first inventor of means for doing it in his more complex and extensive automatic machine. These means are the combination of the wheel carrying the numbers, the stem carrying the cipher, with its stud, the cam, and the shaft supporting the wheel and cam, which is the combination of this third claim. This claim, therefore, seems to be valid.

The cam formed on the defendants' shaft is the same, in form and operation, as that formed about Bowman's shaft, and the defendants' shaft and cam upon it are equivalents of Bowman's shaft and cam about it; the shape of the foot of the defendants' stem makes it operate like the stud of Bowman, and it is the equivalent of his stem and stud; and these parts in each machine are combined with like numeral wheels. The patent under which the defendants operate may be an improvement upon Duchateau's as improved by Bowman's, but it does not appear to be an improvement upon Duchateau's independent of Bowman's. The defendants do not come within *Railway Co. v. Sayles*, 97 U. S. 554, but are rather brought within *Imhaeuser v. Buerk*, 101 U. S. 647. The defendants appear to have taken Bowman's idea, and not really to have reduced the number of elements of the combination of this claim. The stud and stem appear to be really one piece with two names. The defendants, therefore, appear to infringe. Let a decree be entered for the orator.

## In re CILLEY.

(Circuit Court, D. New Hampshire. December 11, 1893.)

No. 400.

## 1. REMOVAL—CASES REMOVABLE.

The right of removal is restricted by section 2 of Acts 1887-88 to the classes of cases in which original jurisdiction is given by section 1.

## 2. SAME—DIVERSE CITIZENSHIP.

The right of removal on the ground of diverse citizenship is limited by Acts 1887-88 to suits of a civil nature "at common law or in equity."

## 3. SAME—PROCEEDINGS TO PROBATE WILLS.

A proceeding to establish and probate a will is not a suit "at common law or in equity," and is therefore not removable under Acts 1887-88.

Petition of Horatio G. Cilley for the removal of a probate appeal on the ground of local prejudice. Petition dismissed.

For prior reports relating to this litigation, see 46 Fed. 892, and 1 C. C. A. 522, 50 Fed. 337.

Statement by ALDRICH, District Judge:

This cause was before the circuit court at the May term, 1892, (COLT, Circuit Judge, and ALDRICH, District Judge, sitting) upon a rehearing of a motion to remand to the state court, which had previously been denied. The removal was on the ground of diverse citizenship, and within the limit in which a party may remove a proper cause as a matter of right, and was subsequent to the act of 1887. The proceeding removed was a probate appeal from the decree of the probate court in the county of Merrimack, and state of New Hampshire, allowing and establishing a certain instrument as the last will and testament of one Matilda P. Jenness, wherein the contestant (which is the petitioner) alleged undue influence as ground of appeal, and issues of fact thereon were framed for the jury in this court; and upon reargument and reconsideration the cause was remanded, the court, at the August term, announcing its conclusion orally, in substance, as follows, (COLT, Circuit Judge, and ALDRICH, District Judge, concurring):

"The general question is whether the decree of the probate court admitting the will to probate shall be affirmed, and the immediate question comes, upon a rehearing ordered by the court, under the motion to remand on the ground that such proceeding was not removable, and that this court therefore has no jurisdiction. Upon the former argument of the question involved in the motion to remand, which was denied, due consideration was not given to the effect of section 2 of the acts of March 3, 1887, and August 13, 1888. Upon reargument and reconsideration, we are of opinion that the acts referred to are restrictive in respect to the right of removal, and that section 2, under reasonable construction, operates to narrow or withdraw such right in certain classes of cases. Judicial decision since 1887 sustains this view. If we were to assume, for the purpose of determining this question upon reargument, that prior to March 3, 1887, proceedings to establish wills were removable after reaching such a stage as to be termed a 'suit' or 'controversy' within the meaning of the older statutes, we should still be of opinion that such right did not exist in this cause at the time of the removal, for the reason that the effect of section 2 of the acts referred to was to withdraw such right in this class of cases. In determining this question it is not necessary at this time, and would not be useful, to refer to reasons which prompted this restrictive legislation. It is evident, however, if the right of removal ever existed in will cases of this character, that congress, upon such considerations of public policy, convenience, economy, and a proper administration of justice in such affairs as seemed to it controlling, intended to withdraw such right, and leave this class of probate business to the courts of the states; and we have, therefore, no hesitation in accepting such legislation as intended to settle this mooted question of jurisdiction against the right of removal, at least in proceedings of this character."