

combination, yet there remains the well-known rule of law that it is unnecessary to indict all the persons involved in a conspiracy. Of course, the court would have felt less doubt in meeting this objection if it had been alleged that the corporation named was a party to the conspiracy, or if the relations of the accused to it, or some other matter of a kindred character, had been set out. It may be that, when the proofs are developed at the trial, some unforeseen difficulty will arise, which need not now be anticipated; but, on the whole, the court concluded that this objection was not well taken.

In order that the defendants' exceptions may be undoubtedly saved at this term, the general demurrer having been overruled at the last, and that the defendants may be able to show to the appellate court specifically the points taken on demurrer in this court, I conclude to regard the so-called "special demurrer," in connection with the motion filed March 17, 1893, as a petition for a rehearing, and the clerk will enter the following order:

Leave to the defendants to file special demurrer granted February 28, 1893, annulled as inadvertent. Petition of defendants for rehearing on general demurrer granted. Order overruling demurrer as to counts 4, 9, 14, and 18, entered February 28, 1893, annulled. Matters set out in the so-called "special demurrer" are, by leave of court, assigned as additional causes for demurrer under the general demurrer. Counsel for the defendants and for the United States heard anew touching demurrer to counts 4, 9, 14, and 18. Demurrer overruled as to those counts; defendants to answer over, as provided by statute.

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NEW HOME SEWING MACHINE CO. v. BLOOMINGDALE et al.

(Circuit Court, S. D. New York. December 30, 1893.)

TRADE-MARK—INFRINGEMENT.

The use of the word "Home" in connection with a make of sewing machine for over 25 years entitles the manufacturer to protection against one who puts the words "Home Delight" in a similar way on machines offered for sale by him.

In Equity. Suit by the New Home Sewing Machine Company against Lyman G. Bloomingdale and others to enjoin infringement of a trade-mark. Injunction granted.

John Dane, Jr., for orator.

D. Solis Ritterband, for defendants.

WHEELER, District Judge. The pleadings and proofs show that during about 25 years the predecessors of the orator have, and lately the orator, a corporation of Massachusetts, has, used the word "Home" in making and selling sewing machines; that by this name, which was registered by them as a trade-mark March 15, 1892, their machines acquired a wide and favorable reputation; and that the defendants are putting the words "Home Delight" in

a similar way upon sewing machines offered by them for sale. This use of that word seems to be well calculated to lead ordinary purchasers of such machines to think that these machines come from the orator or its predecessors. The defendants have no right to so pass off their machines as those of the orator. *McLean v. Fleming*, 96 U. S. 245. This proof is sufficient for preventive relief without proof of actual sales by these means of defendants' machines for the orator's.

Decree for orator for an injunction.

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WALES v. WATERBURY MANUF'G CO.

(Circuit Court, D. Connecticut. January 1, 1894.)

1. PATENTS—ANTICIPATION.

One who takes old devices, having material defects, and, with a definite idea of remedying the same, retains the desirable features, and adapts them by novel modifications to new and varying conditions, so as to produce an article confessedly superior to all others, is not anticipated by such prior devices.

2. SAME—INVENTION—PRIORITY—LEVER BUCKLES.

The Wales patent, No. 172,527, for an improvement in lever buckles, was not anticipated as to claims 1, 2, and 3 by the House or Wardwell patents, Nos. 147,325 and 152,200; and was prior in time to the Smith patent, No. 167,947; but is void for want of invention as to claims 4, 5, and 6.

In Equity. Suit by Harriot H. Wales against the Waterbury Manufacturing Company for infringement of patent. Decree for complainant.

Geo. R. Blodgett, for complainant.

Geo. E. Terry, for defendant.

TOWNSEND, District Judge. This is a bill in equity, alleging infringement of letters patent No. 172,527, granted January 18, 1876, for an improvement in lever buckles. The defense alleges prior invention by Dwight L. Smith, and anticipation by prior patents. Complainant's device belongs to the class of lever buckles adapted to receive the edge of a fabric of indefinite length, and to hold it in attachment by the use of a lever. It consists of a metal blank, constituting the baseplate, with its two opposite sides so bent as to form side lugs parallel to each other at right angles to said plate. The base plate is slitted at the sides or corners, and extends at its center beyond said lugs, so as to form a tongue. The outer or lower ends of the side lugs are perforated, so as to make the bearings for a lever. This lever consists of another metal blank, having one of its ends so bent at right angles to the main part or body of the blank, and so journaled at the corners made by said angle, as to bring the bent end of said lever against the base plate, and at right angles thereto when the buckle is closed, and to then permit the body of the lever to fit between the upturned sides of said lugs.