

The defendants insist, also, that they were, by the terms of the contract itself, to deal only with infringements and royalties, and that the plaintiff had no interest in the patent left to him beyond his one-fourth share in what might be realized from royalties, as such, and from infringements. The collection of royalties and suing of infringers were alone expressly provided for as things to be done by the defendants; but, in addition, they were generally to "so manage the same"—that is, the patent—as they might deem best for the interest of all. These water systems could not be put in but under, or by infringement of, this patent. As they held it, they could not be infringers of it, and putting in the systems by them while they so held it must have been under it, and a part of their management of it. This seems to be a part "of the business aforesaid," one-fourth of the net proceeds of which was to be paid to the plaintiff.

Let a decree be entered for an account.

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NEW DEPARTURE BELL CO. v. HARDWARE SPECIALTY CO.

(Circuit Court, D. New Jersey. June 5, 1894.)

PATENTS—CROSS BILL IN SUIT FOR INFRINGEMENT.

In a suit to restrain infringement of certain patents, a cross bill alleged that defendant owned prior patents, which complainant infringed, and prayed an injunction and account. It also alleged that the patents of complainant and defendant were interfering patents, and prayed that complainant's patents be declared void; and it prayed that damages for the alleged infringements be set off. *Held*, that the cross bill must be stricken out, on motion, as not germane to the subject of the original bill.

This was a suit by the New Departure Bell Company against the Hardware Specialty Company for infringement of patents. Defendant answered the bill, and also filed a cross bill. Complainant moved to strike out the cross bill.

J. J. Jennings, for the motion.

J. C. Clayton, opposed.

GREEN, District Judge. The original bill of complaint was filed to enjoin the infringement by the defendant of letters patent No. 456,056, dated July 14, 1891, and letters patent No. 471,982, dated March 29, 1892. The defendant has duly answered the bill of complaint, setting up various defenses to the suit; and it has also filed a cross bill, in which it is alleged that it also owns certain patents, which antedate the patents of the complainant, and which the complainant is guilty of infringing, and prays an injunction and account. It also alleges that the patents of the complainant and of itself are interfering patents, and prays, under the statute in such case made and provided, that there may be a decree declaring the patents of the complainant void for the whole territory of the United States, and, finally, that whatever damages it may receive against the complainant because of its infringement of the last-named patents may be set off against any damages which the complainant may recover against it for its alleged infringement. The cross bill also

prays that the complainant may be enjoined from prosecuting other actions against customers of the defendant for alleged infringement.

It is apparent, upon this statement of the allegations of the cross bill, and the scope of the relief sought, that it cannot be maintained as a cross bill. A cross bill must be in all respects germane to the subject-matter of the original bill. It is a bill brought by the defendant against the complainant touching and concerning only and exactly the same subject-matter with which the original bill concerns itself, and in which the defendant seeks affirmative relief which cannot be obtained by answer. So strictly has this restriction been applied that it is customary to refuse a decree upon new and distinct matters introduced by a cross bill which were not embraced in the original bill of complaint. Nor is this difficulty avoided by the contention that the allegation of interfering patents is based upon matters germane to the subject-matter of the original bill. It is not necessary to discuss the question whether they are or not. It is enough to say that the statute relied upon contemplates only such a suit in equity as presents but a single issue,—that of priority between the alleged interfering patents. This matter is *res adjudicata* in this circuit. *Lockwood v. Cleaveland*, 6 Fed. 721.

The motion to strike out the cross bill is granted, without prejudice to the right of the defendant to raise by original bill the issues stated in cross bill.

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GEORGE FROST CO. et al. v. SILVERMANN et al.

(Circuit Court, W. D. Pennsylvania. May 31, 1894.)

No. 25.

1. PATENTS—INFRINGEMENT—ADJUSTABLE GARTERS.

A patent for a stocking supporter consisting of a strip of elastic webbing extending partially around the limb, and having its two ends connected by a loop of cord, which renders freely through its connections with the ends of the webbing, and to which is attached a clasp to hold the garment to be supported, is infringed by a device which differs only in the substitution of a chain loop for the loop of cord, and in allowing the clasp to render freely on the loop, instead of being rigidly fixed thereto, as in the patent.

2. SAME.

The Brown patent, No. 210,666, for an improvement in stocking supporters, construed, and held valid and infringed.

This was a suit by the George Frost Company and Mary G. Brown against William Silvermann and others for infringement of patents. Complainants moved for a preliminary injunction.

Frederick P. Fish, for complainants.

H. A. Seymour, for defendants.

ACHESON, Circuit Judge. The plaintiffs sue for infringement of letters patent No. 210,666, dated December 10, 1878, granted to F. Barton Brown, for an improvement in stocking supporters. The patent shows and describes a garter consisting of a strip of elastic webbing extending partially around the limb, and having its two ends connected by a loop of cord which renders freely through its