

to an injunction against the public production of a play or drama which presents characters, plot, incidents, dramatic situations, and dialogues appropriated from the novel.

**2. SAME—NAME OF NOVEL.**

The owner of the copyright of the novel "Trilby" is not entitled to protection against the use of that name in connection with a dramatic composition which does not present any scenes, plot, or dialogue imitated or adapted from the novel; for it is the name in connection with the novel, and not the name alone, which the copyright protects.

This was a suit by John W. Harper and others against William V. Ranous for infringement of the copyright of the novel "Trilby." Complainants moved for a preliminary injunction.

A. J. Dittenhoefer and George L. Rives, for complainants.  
John J. Thomasson, for defendant.

**LACOMBE**, Circuit Judge. The act of March 3, 1891 (26 Stat. 1106), amends section 4952 of the United States Revised Statutes so that it now contains this provision: "Authors or their assigns shall have the exclusive right to dramatize and translate all of their works for which copyright shall have been obtained under the laws of the United States." Complainants' title to the copyright of the novel "Trilby," as set forth in the bill, is not seriously disputed; and the affidavits show quite plainly that defendant's drama or play called "Trilby" presents characters, plot, incidents, dramatic situations, and dialogue appropriated from the novel thus copyrighted. Complainants may take an injunction pendente lite restraining the defendant, his agents and servants, from producing or publicly performing any play or drama presenting the scenes, incidents, plot, or dialogue of the said novel, "Trilby," or any substantial part thereof, or any simulated or colorable imitation or adaptation thereof. The application, however, for an injunction against the mere use of the name "Trilby" as the title of any dramatic composition which does not present such scenes, incidents, plot, or dialogue, or simulated or colorable imitation or adaptation thereof, is denied. It is the name in connection with the novel, not the name alone, which the copyright law protects.

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**OLIVER DITSON CO. v. LITTLETON et al**

(Circuit Court of Appeals, First Circuit. April 25, 1895.)

No. 111.

**COPYRIGHT—MUSICAL COMPOSITIONS—MANUFACTURE IN UNITED STATES.**

The proviso in section 3 of the copyright act of March 3, 1891, that "in the case of a book, photograph, chromo, or lithograph," the two copies required to be delivered to the librarian of congress shall be manufactured in this country, does not include mere musical compositions though published in book form, or made by lithographic process. 62 Fed. 597, affirmed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a suit in equity by Alfred H. Littleton and others against the Oliver Ditson Company for infringement of the copyright on three musical compositions, two of which are in the form of sheet music, and one (a cantata) consists of some 90 pages of music bound together in book form, and with a paper cover. Two of these pieces were printed from electrotype plates, and one from stone, by the lithographic process. An injunction was granted by the circuit court, after delivering an opinion, which is reported in 62 Fed. 597. The defendant appeals.

Linus M. Child and Causten Browne, for appellant.

Lauriston L. Scaife, for appellees.

Before PUTNAM, Circuit Judge, and WEBB and ALDRICH, District Judges.

PER CURIAM. We are satisfied with the conclusion of the circuit court in this case, and adopt the opinion of the learned judge of that court, except that we do not deem it necessary to investigate the history of the bill which resulted in the copyright statute of March 3, 1891 (26 Stat. 1106), in question, or to determine how far that history is pertinent to the construction of the act. The case deals with copyrighted matters alone, which are only the musical parts, or notations, of complainants' publications. We are not called on to consider a case in which more than the notation is covered by a copyright. That musical compositions, as such, differ, in the view of the copyright law, from books, as such, necessarily follows from the fact that when musical compositions were first made copyrightable the penalty for infringing was made expressly and distinctively other than that for infringing the copyrighted book. Act Feb. 3, 1831 (4 Stat. 437, 438, §§ 6, 7). And it so stands in the present statute. Act March 3, 1891 (26 Stat. 1109, §§ 7, 8). There are other particulars in which the statutes make the same distinction, but in this one the result is unavoidable. What were copyrighted here were clearly musical compositions, and nothing else, and the distinction thus made by these penal provisions cannot be maintained unless the result reached by the circuit court is accepted. The word "lithograph," found in the proviso in section 3 of the statute under consideration, represents only a subdivision of the matters embraced in the word "print," in the same section, which gets its meaning and limitation, for the purposes of this statute, from its immediate association with the words "engraving, cut." This is emphasized by the third section of the act of June 18, 1874 (18 Stat. 78), which expressly limits the word to pictorial illustrations, or works connected with the fine arts. Moreover, the introduction of the proviso by the words "in the case" constitutes a legislative selection from what precedes it, and shows that the qualifying effect of the proviso was intended to be limited to a part only of the things named in the body of the section. These words necessarily make the whole section in *pari materia*. It is true that in some parts of the statutes the words "book," "print," and "musical composition," refer to the intellectual conception as the essential element, and in other parts may refer more particularly to the material form in which it is expressed; but nowhere does either

element exclusively exist, because no intellectual conception is copy-rightable until it has taken material shape. Therefore, there is no reason for holding that the use of the words "book, photograph, chromo, or lithograph," in the proviso, involves a departure from the distinctive idea appertaining to either in other parts of the statutes touching the subject-matter of copyright. If the statutes were of doubtful meaning, the history of the bill, the omission of the words "dramatic composition" from some of the provisions of the statutes, the contemporaneous construction by the departments or officers of the United States, and perhaps other propositions urged upon either side, might have weight; but, in a case so clear as the one at bar, we do not deem it necessary to invoke such aids, or to note the conditions or limitations under which such considerations should weigh in the interpretation of doubtful statutory provisions. The decree of the circuit court is affirmed.

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CONSOLIDATED ELECTRIC MANUF'G CO. et al. v. HOLTZER.

(Circuit Court of Appeals, First Circuit. April 16, 1895.)

No. 123.

1. PATENTS—WHAT CONSTITUTES PATENTABLE INVENTION.

The right to improve on prior devices by making solid castings in lieu of constructions of attached parts is so common and universal in the arts that the burden rests upon any one claiming patentability for such an improvement to show especial reasons in support of his claim.

2. SAME—COMMERCIAL SUCCESS.

That the patented article is a commercial success, and rapidly supercedes others of its general type, are considerations which are to be applied with caution, and only in doubtful cases, turning on questions of utility or invention. *Olin v. Timken*, 15 Sup. Ct. 49, 155 U. S. 141, and *De Loria v. Whitney*, 11 C. C. A. 355, 63 Fed. 611, followed, and *Watson v. Stevens*, 2 C. C. A. 500, 51 Fed. 757, distinguished.

3. SAME—"NEW RESULTS."

On the question of the patentability of an improvement in galvanic batteries, consisting in casting the cover, cup, and lip in one solid piece, instead of using several pieces secured together, no weight is to be attached to the alleged achievement of new results, consisting in the avoidance of the resistance encountered by electricity in passing joints, and in preventing the weakening effect of the corrosive liquid upon the joints themselves, for these results are the same that are achieved in all the arts using corrosive liquids when metallic and other joints are dispensed with.

4. SAME—GALVANIC BATTERIES.

The Holtzer patent (No. 327,878) for an improvement in galvanic batteries held void for want of invention. 60 Fed. 748, reversed.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

This was a bill by Charles W. Holtzer against the Consolidated Electric Manufacturing Company and William Rotch and Charles G. Winter, its president and treasurer, respectively, for alleged infringement of letters patent No. 327,878, issued October 6, 1885, to Charles W. Holtzer, for an improvement in galvanic batteries.