

tion of the court to require the defendants to meet in a single answer, and by connected proofs, the allegations made with respect to the five patents which the complainants have here set up.

The second and third grounds of demurrer need not be considered. It is not necessary to pass upon them in the present case, and it may be that they will not be applicable to any case which may be presented hereafter.

The cause of demurrer first assigned is as follows:

"First. That it appears from the face of the bill of complaint that the said bill of complaint is altogether multifarious, in that suit is thereby brought against said defendants for five separate and distinct matters and causes,—to wit, for an infringement of letters patent No. 233,746, granted to Oscar Gassett, for improvements in circuits and apparatus for electric railway signaling; for an infringement of letters patent No. 246,492, granted to Oscar Gassett, August 30, 1881, for improvements in electric railway signaling apparatus; for an infringement of letters patent No. 270,867, granted to George Westinghouse, Jr., for an improvement in electric circuits for railway signaling; for an infringement of letters patent No. 227,102, to Oscar Gassett and Israel Fisher, for an improvement in rail connectors for electric track circuits; and for an infringement of letters patent No. 273,377, granted to Charles J. Means, for an improvement in electric railway signals. That these several matters and things cannot be properly joined in one suit, and that these defendants, being by this bill of complaint required to litigate five distinct and unconnected controversies in this one suit, are thereby put to great and serious inconvenience and disadvantage, contrary to the spirit and purpose of equity, and cannot properly make answer thereto, as in right and justice they are entitled. That it nowhere in said bill of complaint appears, nor is it alleged, that the improvements recited in said patents are all conjointly used or infringed by these defendants, or are all conjointly used or infringed by the defendants in or upon one and the same machine, device, article, or apparatus, or are all capable of conjoint use in or upon one and the same machine, device, article, or apparatus, but, on the contrary, it appears on the face of the said bill of complaint, and of the aforesaid patents forming part thereof (proffer of each and all of which having been made therein), that the said improvements described and claimed in said several letters patent are of such a diverse nature and character that they are incapable of conjoint use, and cannot be used conjointly, or conjointly in one and the same machine, device, article, or apparatus."

For the cause thus assigned, the demurrer is sustained, and the bill adjudged insufficient.

UNION SWITCH & SIGNAL CO. et al. v. PHILADELPHIA & R. R. CO.
et al.

(Circuit Court, E. D. Pennsylvania. June 18, 1895.)

No. 66.

PLEADING IN PATENT CASES—MULTIFARIOUSNESS—AMENDMENTS TO BILL.

Where a bill for infringement of five separate patents was declared bad for multifariousness, *held*, that an amendment averring the conjoint use by defendants of the subject-matter of each of the patents in one and the same connected machine, mechanism, or apparatus should be allowed.

This was a bill by the Union Switch & Signal Company and others against the Philadelphia & Reading Railroad Company and others for infringement of five separate patents relating to improvements in electric signaling apparatus for railroads. The bill was hereto-

fore, on demurrer, held bad for multifariousness. 68 Fed. 913. Complainants now move to vacate the order sustaining the demurrer, and for leave to amend the bill.

J. Snowden Bell and George H. Christie, for complainants.
Witter & Kenyon, for defendants.

DALLAS, Circuit Judge. When the demurrer to the bill in this case was originally argued, the impression was made upon my mind that it was conceded by complainants that the respective subjects-matter of the five patents sued on were not used in one mechanism, but upon different, though contiguous, parts of the same railroad. Upon this understanding, I held the bill to be multifarious, and upon that ground sustained the demurrer. The complainants now move to vacate that order, and for leave to amend their bill by adding thereto the following:

“And your orators in this behalf further aver the fact to be that the joint use made by the defendants herein as herein averred includes a use of a material and substantial part of the subject-matter of each of the said recited patents in one and the same connected machine, mechanism, or apparatus.”

This proposed amendment is accompanied by an affidavit that, to the best of the affiant's knowledge and belief, the facts therein stated are true; and upon the argument of the present motions, complainants' counsel has strenuously insisted that the statement it embodies is supported by the several patents themselves. Counsel for defendants has quite as earnestly contended, on the other hand, that a proper understanding of the patents requires the negation of the averment sought to be introduced by amendment. Waiving any doubt as to whether it would be permissible to now enter upon a discussion of the question thus raised, I decline to do so, because I deem it inexpedient to express any opinion respecting the patents sued upon at this stage of the cause. For the present purpose, I assume the truth of the matter which the complainants ask leave to insert in their bill. The amendment is allowed. The order heretofore made is vacated, and the demurrer overruled. Any question regarding costs, which may call for further consideration of this matter, is reserved. The defendants are assigned to answer or plead *sec. reg.*

COLLINS v. GLEASON.

(Circuit Court, S. D. New York. June 28, 1895.)

1. PATENTS—NOVELTY.

The discovery that sheets of celluloid, which, by reason of their fragility, were not adapted for use as card cases and book covers, could be sewed between leather bindings, and held by their stitches so as to be used for these purposes, *held* to be sufficiently novel to support a patent.

2. SAME—CELLULOID BINDINGS.

The Collins patent, No. 405,874, for celluloid bindings of leather for card cases and book covers, *held* valid and infringed.

This was a bill in equity by Kate J. Collins against Thomas Jay Gleason for infringement of a patent for bindings of leather for celluloid card cases and book covers.