

## MOYES v. STIRLING CO.

(Circuit Court, E. D. Pennsylvania. December 19, 1895.)

No. 19.

## JURISDICTION OF FEDERAL COURTS—REMOVAL OF CAUSES.

A bill in equity, filed in a state court, alleged that defendant had asserted to persons intending to purchase boilers from complainant that such boilers were an infringement of defendant's patent, and that defendant had threatened legal proceedings against such intending purchasers. It further alleged that such statements were false; that defendant would not bring suit for infringement, "in order that said statements might be answered and refuted in a court of justice"; and prayed that he might be enjoined from making such assertions in the future, and ask damages by reason of such assertions in the past. *Held*, that the substantial controversy was as to the infringement of the patent, and that the federal court had jurisdiction, and the cause was a removable one.

This was a bill in equity by Laurie M. Moyes against the Stirling Company for injunction and damages. The bill was filed in the state court of Pennsylvania, and was removed by defendant to this court. Complainant moves to remand the cause.

Paul, Biddle & Ward, for complainant.

Charles Heebner and Banning & Banning, for defendant.

DALLAS, Circuit Judge. This is a suit in equity, which was originally brought in a Pennsylvania court. It has been removed to this court by the defendants, and the plaintiff now moves for an order remanding it to the state court. There is nothing from which the nature of the suit can be ascertained except the complainant's bill. It alleges that the defendants (one of whom is a corporation, and the other its agent) have asserted to persons intending to purchase the complainant's boilers, that they are an infringement of the patented boilers of the defendant company, and that they have threatened such persons with legal proceedings. Its prayers are that the making of such assertions in the future may be restrained, and that damages by reason of their having been heretofore made may be awarded. Is the case thus presented one which cannot be determined without necessarily, and mainly, and not incidentally merely, deciding a question arising under the patent laws of the United States? In my opinion, this inquiry must be affirmatively answered. The plaintiff avers by his bill that the statements to which he objects are false, and he complains that the defendant company will not bring suit for infringement, "in order that said statements might be answered and refuted in a court of justice." This obviously means that, because the defendant company declines to sue upon the patent, the plaintiff himself has been obliged to bring this suit to obtain an adjudication of their respective rights; but it is evident that the essential question is precisely the same as it would have been if the defendant company had been the actor. The substantial controversy, notwithstanding the reversal of the position of the parties on the record, is as to the infringement of a

patent, and therefore the jurisdiction thereof is vested in the courts of the United States, to the exclusion of those of the several states. The motion to remand is denied.

---

McGLASHAN v. UNITED STATES.

(Circuit Court of Appeals, Seventh Circuit. January 15, 1896.)

No. 245.

TERMS OF COURT—CHANGE — TERM HELD AT WRONG DATE—ACT CONG. JUNE 9, 1890.

Under the statutes in force on September 14, 1889, one term of the United States district court for the district of Kansas was appointed to be held at W., in that state, on the first Monday of September in each year. On September 14, 1889, defendant became surety on a recognizance in the district court at W. for the appearance of one G. at the next term of the court, to be held at W. on the first Monday of September, 1890. By an act of congress of June 9, 1890 (26 Stat. c. 403), the district of Kansas was divided, and the terms of the courts at W. were appointed to be held on the first Monday of March and the second Monday of September. The district court convened at W. on the first Monday of September, 1890, and, before the second Monday, G. having failed to appear, his recognizance, on which defendant was surety, was declared forfeited, and ordered to be prosecuted. *Held*, that the act of June 9, 1890, repealed the former provisions regarding the terms of court at W., and, accordingly, that the session of the district court, held there on the first Monday of September, 1890, was without authority of law, and its proceedings, including the forfeiture of G.'s recognizance, were inoperative and void.

In Error to the Circuit Court of the United States for the Eastern District of Wisconsin.

This was an action brought by the government to recover of the plaintiff in error, upon a recognizance alleged to have been forfeited, in which Guy S. McGlashan was the principal, and the plaintiff in error and J. W. Surfis were the sureties. The cause was tried before the court below without a jury, and judgment rendered for the government for the sum stated in the recognizance, with costs. The facts found by the circuit court are substantially these: At the September term, 1889, of the district court of the United States for the district of Kansas, an indictment was found by the grand jury against Guy S. McGlashan, and by virtue of a capias issued out of the court he was arrested by the marshal of the district and thereupon, on the 14th day of September, 1889, was admitted to bail upon the execution and delivery of the recognizance here sought to be enforced. The recognizance was conditioned that "Guy S. McGlashan shall be and appear in his own proper person before the district court of the United States for the district of Kansas, at the next term thereof, to be holden in the city of Wichita, in said district, on the first Monday of September, 1890, and not depart therefrom without leave of the said court first had and obtained." The district court of Kansas convened in session at Wichita on the first Monday, being the 1st day, of September, 1890, at which time Guy S. McGlashan failed to appear and on the 6th day of September, 1890, being Saturday of the first week in September, proceedings were had in that court by which the recognizance was forfeited and ordered to be prosecuted. The opinion of the court below is reported in 66 Fed. 537.

J. H. M. Wigman, U. S. Dist. Atty., for the United States.

George E. Sutherland, for plaintiff in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.