

was at Norwich, where the papers were actually kept and were in his actual custody. It is not necessary to serve a subpoena upon the person who is merely technically in control, but who is not in the town, and not in charge of the office where the papers are actually kept. The person in actual possession, as the head of the office where the papers are kept, should produce them. *Corsen v. Dubois*, 1 Holt, 239; *Amey v. Long*, 1 Camp. 17.

The writ of habeas corpus is dismissed.

SACKS v. BROOKS et al.

(Circuit Court, D. Massachusetts. June 19, 1896.)

No. 460.

PATENTS—VALIDITY AND INFRINGEMENT—BOOT OR SHOE LAST.

The Sacks & Richmond patent, No. 443,199, for a combination, in a reversible boot or shoe last, of a last adapted to be mounted on a standard having vertical and inclined edges and a standard adapted to be used with such a last, construed, and held infringed by a device made in substantial accordance with the Kupperle patent, No. 519,067.

This was a suit in equity by Louis Sacks against George Brooks and others for alleged infringement of a patent for a boot and shoe last.

William P. Preble, Jr., for complainant.
Benjamin F. Rex, for defendants.

CARPENTER, District Judge. This is a bill in equity to enjoin an alleged infringement of letters patent No. 443,199, issued December 23, 1890, to Louis Sacks and Henry Richmond, for boot or shoe last. The claim alleged to be infringed is as follows:

"The combination, in a reversible boot or shoe last, of the standard, B, terminating in a flat tenon, B', having one of its edges vertical and the other inclined, and a last, A, having a narrow, elongated socket or mortise, with one of its edge walls vertical and the other inclined, corresponding in shape with the inclination and vertical edges of the tenon on the standard, and adapted to engage the same, as herein described and set forth."

The respondents have used a device substantially such as is shown in the drawings of the letters patent No. 519,067, issued May 1, 1894, to John C. Kupperle, for a last. I do not find any evidence of the existence, prior to the invention of the patented device, of a last adapted to be mounted on a standard having vertical and inclined edges and of a standard adapted to be used with such a last. The respondents, however, point out that, by amendments made in the patent office in consequence of the opinions of the examiner, the claim was confined in terms to a flat tenon and a narrow elongated socket, and they argue that the complainant is thus confined to a structure specific in these respects. If the patent is to be

construed to cover only this specific form, then, doubtless, the respondents do not infringe. But I take it now to be the rule that limitations in the terms of the claim do not import any limitation in the construction of the claim, in cases where such limitation is not imposed by the state of the art. Construing this patent to be as broad as the state of the art will permit, it is plain that the tapered inclined rib of respondents is quite the same, in both structure and function, as the tenon with converging edges shown and claimed by the patent.

There will be a decree for an injunction and for an account.

CLARK THREAD CO. v. ARMITAGE.

(Circuit Court of Appeals, Second Circuit. May 28, 1896.)

1. TRADE-MARK—INFRINGEMENT—EQUITABLE RELIEF—COMPLAINANT'S MISREPRESENTATIONS.

The firm of J. J. Clark & Co. began manufacturing thread in Scotland early in this century, and continued to do so under that name, and afterwards as Clark & Co., until 1880, when it became a Scotch corporation under the latter name. The firm established a selling agency in this country about 1826, and continued the same until 1866. George A. Clark, a member of the Scotch firm, was their selling agent here from 1854 to 1862, when two of his brothers became his partners, under the firm name of George A. Clark & Bros. This firm continued to be selling agents until 1866, when its members, together with the members of the Scotch firm, incorporated the Clark Thread Company, under the laws of New Jersey. To this company the Scotch firm sold all their stock, good will, and trade-marks pertaining to their business in this country, the firm of George A. Clark & Bros. becoming its selling agent. The corporation built large factories in this country, and has since done a large business here. It uses on its labels and boxes, among other things, the following: "Manufactory established 1812. George A. Clark, Sole Agent." "It has been awarded prize medals at all the great international exhibitions from 1855 to 1878." *Held*, that by these expressions the corporation was legitimately representing its commercial origin and the beginning of its mercantile history; that in the words "George A. Clark, Sole Agent" (who died in 1873, and never was its sole agent), it was properly using the trade-mark assigned to it by the Scotch firm to indicate that it was the successor of that firm, whose representative in this country was George A. Clark; and that consequently there was no such fraud or misrepresentation as would prevent it from obtaining equitable relief against a fraudulent infringement. 67 Fed. 896, affirmed.

2. SAME.

During the four years preceding the commencement of the suit, the Clark Thread Company sent to its agents 31 dozen boxes, of a dozen spools each, bearing on the box covers the words, "J. & J. Clark & Co., Paisley," being part of one of the trade-marks purchased from the Scotch firm. Defendant contended that this indicated that the thread was made in Paisley, and was a fraudulent misrepresentation. *Held*, that the amount of these sales was so insignificant as to be of no importance in determining the corporation's right to maintain the suit. 67 Fed. 896, affirmed.

3. SAME—INFRINGEMENT—IMITATION OF LABELS.

The Scotch firm and their American agents, and the New Jersey corporation which succeeded them, had always characterized their thread as