right secured by the copyright act is the property in the literary composition, and not in the name or title given to it. In no case, so far as this court is advised, has protection been afforded by injunction under the copyright laws to the title alone, separate from the book or dramatic composition which it is used to designate. Osgood v. Allen, 1 Holmes, 185, Fed. Cas. No. 10,603. Whatever rights complainant may have to restrain appropriation by another of the title of his work, on general principles of equity, cannot be considered in this suit, which is a controversy between citizens of the same state, and presents no federal question. Motion for injunction denied.

RELIANCE NOVELTY CO. v. DWORZEK et al.

(Circuit Court, N. D. California. May 17, 1897.)

PATENTS—PRELIMINARY INJUNCTION—GAMBLING DEVICES.

The Wertheimer patent, No. 26,684, for a design to be placed on a case containing a coin-controlled machine, known as a "card-playing slot machine," *held* to cover a gambling device, for which reason a preliminary injunction would be denied, though it was claimed that the patent was applicable to other purposes; it appearing that, up to the time of the present proceeding, it had never been used except upon a card-playing machine.

This was a bill for infringement of design patent No. 26,684. Order to show cause why a preliminary injunction should not be granted the complainant pendente lite. Objected that patent covers a coin-controlling, card-playing machine used for gambling purposes. Injunction denied.

John L. Boone, for complainant.
Isaac Frohman, for defendants.

MORROW, District Judge. This case comes up on an order to show cause why a preliminary injunction should not be granted the complainant pendente lite. The bill charges the infringement of letters patent No. 26,684, issued to Benny J. Wertheimer on February 23, 1897, under section 4929, Rev. St., for a design upon the cases of coin-controlled machines, generally known as "nickel in the slot machines," which, in the case at bar, are of the kind commonly known as "card-playing slot machines."

Several objections are made by the defendants to the application for a preliminary injunction. It is claimed (1) that the defendants' design is different and does not infringe; (2) that complainant's design does not disclose originality and the exercise of the inventive faculty, it being claimed, in this connection, that complainant's patented design case is substantially the same in form and general appearance as the case of the Nafew-Goldberg Manufacturing Company; and (3) that it has no element of utility, but is used on a gambling device.

If the last ground be deemed to be supported by the proofs, it will be unnecessary to consider the other grounds. The design covered by complainant's patent is placed on a case, with a glass front, con-

taining the coin-controlled machine referred to. This machine is composed of a mechanism, chief among which is a cylinder, to which playing cards of convenient size are attached. Upon dropping a five-cent nickel coin in the slot fixed in the front of the case, and pressing the push bar, also fixed in the front of the case, the cylinder is caused to spring and revolve with some rapidity, carrying the cards on the cylinder around with it. The losses or winnings of the player are determined by the combinations formed by the cards which ultimately rest face upright in the case. This brief description of these coin-controlled, card-playing machines, upon which complainant's design is placed, will be sufficient to show the nature and purpose to which they are put. The machines are used principally in saloons, cigar stands, and other such places of resort by the frequenters and visitors thereto. The winnings of the successful player consist generally in cigars or drinks. The complainant claims, however, that these coin-controlled, card-playing machines, inclosed by its design case, may be put to other uses, among which is the exhibition of photographs, kinetoscope pictures, automatic toys, and views of celebrated places and persons. But its own affidavits show that the only use to which the card-playing machines containing its design case have been put is for gambling purposes.

It is a general principle, based upon public policy, that the patent laws of the United States do not authorize the issue of a patent for an invention which is injurious to the morals, health, or good order of society. Bedford v. Hunt, 1 Mason, 302, Fed. Cas. No. 1,217; Device Co. v. Lloyd, 40 Fed. 89. The latter case, in principle, is directly in point, the device being also a nickel in the slot machine, similar in its general operations with that involved in the case at bar. It was known as, and the patent granted for, a "toy automatic race course." Judge Blodgett held it to be a gambling device, and not a useful invention, within the meaning of the patent laws of the United States, and declined to grant the complainant an injunction pendente lite. With respect to the claim, which is made in the case at bar, that the machine could be devoted to other than gambling purposes, the learned judge said:

"It is urged that this machine is susceptible of being utilized as a toy or child's plaything; but it is a sufficient answer to this suggestion that no such use has been as yet made. The patent has been very recently issued, and it is possible that a useful application may yet be found for it; but, as the case now stands, the only use to which the invention has been put being for gambling purposes, I must hold that it is not a useful device, within the meaning of the patent law, as its use so far has been only pernicious and hurtful."

This language appears to be peculiarly applicable to the design in the case at bar. It is true that the device referred to in the case cited was an invention of a machine, while in the case at bar the patent is for a design inclosing a machine; but I see no reason why the same principle of law should not be applied to the one as to the other. In Simonds' Summary of the Law of Patents (page 211) he says:

"It is true that the act hereinbefore quoted [section 4929, Rev. St.] specifies as patentable 'any new, useful, and original shape or configuration of any article of manufacture'; but it is not at all unreasonable to suppose that the

legislator who drafted the clause meant that the word 'useful' should have substantially the same meaning here that it has in the part of the act creating utility patents,—that is, that the things presented for patent shall be designed for some useful purpose, in distinction from a hurtful, frivolous, or immoral purpose."

I shall, therefore, deny the application for a preliminary injunction.

STEEL-CLAD BATH CO. v. DAVISON.

(Circuit Court of Appeals, Second Circuit. May 26, 1897.)

PATENTS—ANTICIPATION—BATH TUBS.

Claim 1 of the Booth patent, No. 458,995, for a bath tub composed of a smooth sheet metal casing, having a lining of copper or other light flexible metal hammered, rolled, or pressed into close contact therewith, does not describe a patentable invention in view of the Holmes patent, No. 189,559. 77 Fed. 736, reversed.

Appeal from the Circuit Court of the United States for the Northern District of New York.

This was a suit in equity by Samuel Davison against the Steel-Clad Bath Company for alleged infringement of a patent for an improved bath tub. The circuit court entered a decree for the complainant (77 Fed. 736), and the defendant has appealed.

Henry P. Wells, for complainant.

Wm. Raimond Baird, for defendant.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This appeal is from a decree of the circuit court for the Northern district of New York, which found that the defendant had infringed claims 1, 2, 5, and 7 of letters patent No. 458,995, granted to George Booth on September 8, 1891, for an improved bath tub. The specification described the invention as follows:

"The object of the invention is to construct a cheaply-made, but practically indestructible, bath tub; and it consists, essentially, of a bath tub composed of a casing made of light sheet steel, or such other light sheet metal as has a perfectly smooth surface; the said casing being lined with copper, aluminum, or other light, flexible metal, hammered, rolled, or pressed into close contact with the smooth inner surface of the casing; the said bath tub being preferably made in three sections, each section having an outwardly projecting flange formed on it to correspond with the flange on the section against which it abuts. * * * The outer casing of each section is preferably made of light sheet steel, as the surface of sheet steel is perfectly smooth, so that the inner lining, a, can be hammered, rolled, or pressed into close contact with its outer casing, A. This inner lining, a, is made of copper, aluminum, or other light, flexible metal. By using metal, like sheet steel, with an absolutely smooth surface, I am able to use an extremely thin lining, a, which enables me to produce a highly-finished bath tub at a low price, and which will be very light and portable."

The patentee also said that an outer casing of cast metal could not be used, because the inner surface of the casing could not be made sufficiently smooth to receive the lining. The top edges of the tub were bent inwardly, so that the lining was held firmly