

**KEYES v. UNITED INDURATED FIBRE CO.**

(Circuit Court, N. D. New York. July 1, 1897.)

No. 6,254.

**1. PATENTS—INFRINGEMENT.**

The use of a plain iron ring to prevent the ends of barrel bodies molded from paper pulp from shrinking or losing their proper shape while drying, is not an infringement of a patent for an article consisting of a ring having an inwardly-extending flange and a cross fastened down on the flange, its arms extending beyond the outer periphery of the ring.

**2. SAME—END SUPPORTER FOR PULP BARRELS.**

The Laraway patent, No. 339,064, for an improvement in mechanism for preventing a molded barrel body from shrinking in diameter at either end while being dried, if valid at all, must, in view of the prior state of the art, be restricted to the precise mechanism described.

Tracy C. Becker, for complainant.

Frederick P. Fish, W. K. Richardson, and John E. Pound, for defendant.

COXE, Circuit Judge. This action is based on letters patent No. 339,064, granted, March 30, 1886, to George W. Laraway for an improvement in mechanism for preventing a molded barrel body from shrinking in diameter at either end while being dried. The specification says:

"Barrel-bodies molded from paper pulp are now extensively made and used. In drying a body of such kind after its formation in a molding-machine it is important that each mouth or part that receives the barrel-head should retain its proper size and shape to fit such head, and this is the purpose of my invention or barrel-body-end supporter, which, on the barrel body being taken in a moist state from the molding-machine, is inserted in it (the said body) at its end and kept there until the body may have become dry. The said body in becoming desiccated shrinks in size; but by having in the mouth or opening at each end of it one of the said supporters while the drying operation is taking place the mouth is preserved in its proper condition and size to receive a barrel-head."

The device shown in the drawings and described in the specification consists of a ring having an inwardly-extending flange and a cross fastened down on the flange, its arms extending a short distance beyond the outer periphery of the ring. The claim is as follows:

"As a new article of manufacture, for the purpose described, the pulp barrel end supporter substantially as represented, consisting of the cross and the flanged ring, substantially as set forth."

The defense of noninfringement only need be considered. If there be any invention in the complainant's patent, and this is exceedingly doubtful in view of the use of rings for similar purposes in this and in analogous arts, it is clear that it must be confined to the precise mechanism described and shown. The patent is not entitled to a broad construction. It is clear that when properly construed the claim is not infringed. The defendant uses a plain angle iron ring. It has no inwardly-extending flange and no strengthening or supporting cross. The bill is dismissed.

## HALE v. BUGG et al.

(Circuit Court, W. D. Arkansas. March 31, 1897.)

## 1. FEDERAL COURTS—ENJOINING SUIT IN STATE COURT—CONCURRENT JURISDICTION.

A circuit court of the United States will not, at the instance of a receiver appointed by a state court in another state, enjoin creditors who have attached property in a state court in this state from prosecuting their suit in the state court; nor will it make any order requiring the sheriff to deliver property in his custody under attachment proceedings to the receiver of the circuit court. The general rule is that, where there are two or more tribunals competent to issue process to bind the goods of a party, the goods shall be considered as effectually bound by the authority of the process under which they were first seized, and the court which first obtains possession of the res must be allowed to dispose of it without interference or interruption from a co-ordinate court. Under the state of facts above set out, a circuit court of the United States will not look into the pleadings in the state court to see whether any cause of action is stated, for the reason that the pleadings, if defective, may be amended; and, if the facts are such as not to admit of an amendment, the state court is the proper tribunal to determine that question.

## 2. SAME—REMEDY FOR WRONGFUL ATTACHMENT BY STATE COURT.

If a party, where property has been attached wrongfully in a state court, desires to pursue it in a circuit court of the United States, his remedy is trespass, not replevin, and not by proceedings for an injunction or receiver. The rights of domiciliary and ancillary receivers of the assets of insolvent mutual benefit associations, and the rights of creditors, casually discussed, but not decided. *Marshall v. Holmes*, 12 Sup. Ct. 62, 141 U. S. 589, does not contravene any principle decided in this case.

Suit in equity by William D. Hale, as receiver of the American Savings & Loan Association, against T. W. Bugg and others. Heard on the pleadings and stipulation of facts.

Eugene G. Hay and Jos. M. Hill, for plaintiff.

T. W. M. Boone, for defendants.

ROGERS, District Judge. The facts necessary to a correct determination of this cause are as follows: J. W. Hood, Antone Maree, George H. Lyman, and several other creditors, all citizens of Arkansas, on the 21st of February, 1896, filed a creditors' bill in the Sebastian circuit court for the Ft. Smith district against the American Savings & Loan Association of Minneapolis, Minn., and, having made the necessary affidavits, caused an attachment to be issued and levied upon a body of land belonging to said association, situate in the Ft. Smith district of Sebastian county, Ark., and which, for convenience, is called the "Tilley Tract." While said Tilley tract was in the custody of the sheriff the defendant association appeared in the state court, and removed the case into this court. Upon its being docketed here a motion was filed to remand the same, which was accordingly done; and that case is now pending in the Sebastian circuit court for the Ft. Smith district, its status being the same as when it was originally removed into this court. Subsequently, on the 19th of November, 1896, the bill in this case was filed in this court by William D. Hale, as receiver of the American Savings & Loan Association, against all the plaintiffs in the suit in the state court, the agents for the Arkansas land, and the sheriff of Sebastian county, who holds the