

JANOWITZ v. LEVISON.

(Circuit Court of Appeals, Second Circuit. July 21, 1897.)

PATENTS—NOVELTY—DRESS STAYS.

The Janowitz patent, No. 512,113, for a twin wire dress stay covered with rubber or other suitable waterproof material, preferably perforated in several places along the center between the seams, is void for want of novelty. 80 Fed. 731, reversed.

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

This was a suit in equity for alleged infringement of letters patent No. 512,113, issued January 2, 1894, to complainant, Janowitz, for a dress stay. The circuit court found that the patent was valid and infringed, and entered a decree for the complainant. 80 Fed. 731. The defendant has appealed.

Edwin H. Brown and Seabury C. Mastick, for appellant.

Louis C. Raegenar, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER OURIAM. The patent in suit is for a "dress stay," an article employed for stiffening women's garments, and belongs to the class in which steel is used as a substitute for whalebone, and covered with rubber or other suitable material to prevent the steel from breaking or rusting, and to enable the stay to be stitched in place on the garment. The patent contains three claims, which are as follows:

"(1) A twin wire stay, having a hard, resilient waterproof coating covering the two members of the stay on all sides, and forming a filling connecting the two contiguous edges of said members, substantially as described. (2) A twin wire stay covered with vulcanized rubber, having a filling of the same between the wires, firmly uniting their inner edges, substantially as and for the purpose specified. (3) A twin wire stay covered with vulcanized rubber, having a channeled filling of the same between the wires, firmly uniting their inner edges, substantially as and for the purpose specified."

The court below adjudged all these claims to be infringed by the defendant. The principal question upon this appeal is whether the patent is void for want of novelty. As described in the patent, the stay consists of two wires, arranged side by side at a short distance from each other, and surrounded by a covering of rubber or other suitable compound. The rubber is preferably perforated in several places along the center between the seams, the center being a longitudinal depression or channel between the two wires. The prior state of the art is approximately exhibited by the statement of the patentee in the patent itself. He says:

"Heretofore it has been proposed to cover single steel stays with rubber, and an example of this is shown in my patent No. 496,313; but such stays cannot be sewed through, as is required in making dresses of the better class, unless the steels are perforated; and, if so perforated, they are so weakened at the point of perforation as to be almost sure to break under the strain to which they are

subjected. To remedy this it has been proposed to use double or 'twin' stays, and cover them with textile material sewed onto the stays. This, however, is also objectionable, as the steels rust under perspiration and after washing, and this destroys the stitching, so that they not only iron-mold the clothing of the wearer, but they become loose and annoying besides. To overcome these difficulties is the object of my invention, which I do by embedding duplex or twin steels in a suitable composition, such as rubber or similar compounds."

It thus appears not only that steel stays covered with rubber were old in the prior art, but that twin stays covered with textile material were also old; and that it was customary to form the rubber coating with perforations to permit of stitching the stay to the garment. It appears abundantly by extraneous evidence that it was also old when the twin stays were covered with textile material to make them in the form of the stay of the patent, with perforations along the center or channel between the two wires, or without the perforations, in order to permit of stitching the stay to the garment either through the perforations or directly through the material of the channel. Consequently, the extent of the improvement made by the patentee was to substitute, when twin stays were used, the rubber covering for the textile covering. If the patentee had been the first to use a rubber covering for steel stays, this might have involved invention. But he was not even the first to use it for twin stays, as appears by the English patent to Knight, of October 31, 1890. If he had been the first to discover that a rubber covering could be stitched to the garment without perforating it, that might have involved invention; but he was not. Without referring to other evidence, it is sufficient to cite the patent of Van Orden of October 30, 1887, covering a steel stay enveloped in any plastic compound, including celluloid or rubber, and sewed to the garment through the projecting edges of the covering. We are constrained to conclude that, although the patentee was entitled to the credit of making a more artistic article than those who had preceded him, he did nothing new in the patentable sense. The form of his stay was old, the materials were old, and in bringing them together in the particular manner described in the patent he did not develop in either any new characteristics or capacity. The claims of the patent are devoid of novelty, and the judgment of the circuit court is reversed, with costs, and with instructions to dismiss the bill.

NASHVILLE, C. & ST. L. RY. CO. v. McCONNELL et al. LOUISVILLE & N. RY. CO. v. DUCKWORTH et al. WESTERN & A. RY. CO. v. SAME.¹

(Circuit Court, M. D. Tennessee. August 19, 1897.)

1. INJUNCTION—RESTRAINING BROKERAGE IN RAILWAY TICKETS.

The managers of the Tennessee Centennial Exposition at Nashville secured from railroads the issuance of special round-trip tickets to such Exposition at greatly reduced rates. Such tickets were receivable for transportation over different roads from those issuing them, but were not transferable, providing by their terms that they should be void if presented by a person other than the original purchaser, and such purchaser was required to identify himself before validating agents appointed for that purpose at the Exposition. Defendants were ticket brokers or "scalpers" engaged at Nashville in buying such tickets from the holders, and in reselling the return portions to others for use in violation of the contract contained therein; giving a guaranty of their acceptance for passage, and assisting the purchasers in fraudulently identifying themselves as the original purchasers before the validating agents. *Held*, that the railroad companies were entitled to injunctions to restrain defendants from carrying on the business of so dealing in such tickets.

2. SAME—MATTERS AFFECTING COURT'S DISCRETION—INJURY TO PUBLIC.

In such suits the national and state character of the Exposition, its public importance, and the fact that its success is imperilled by the withdrawal of such tickets from sale by some of the roads, and their threatened withdrawal by others, in consequence of the acts of the defendants, are matters proper to be taken into consideration as factors moving the court to some extent to the exercise of its discretionary power to grant an injunction.

3. SAME—JURISDICTION OF FEDERAL COURT—AMOUNT IN DISPUTE.

In a suit for an injunction the amount in dispute, for jurisdictional purposes, is not determined by the amount which the complainant might recover from defendant in an action at law for the acts complained of, but by the value of the right to be protected, or the extent of the injury to be prevented, by the injunction.

4. SAME—PARTIES—JOINDER OF DEFENDANTS.

In a suit by a railroad company for an injunction to restrain the purchase from passengers of partly-used tickets, nontransferable by their terms, and their resale for use in violation of the contract contained therein, where different brokers are engaged in dealing in the same class of tickets they may be joined as defendants.

5. SAME—PRINCIPLES GOVERNING THE REMEDY—NOVEL USE OF WRIT.

In the use of the writ of injunction, courts exercise a sound discretion, governed by recognized principles of equity jurisprudence and regulated by analogy. It is not a fatal objection that the use of the writ for the particular purpose for which it is sought is novel.

6. SAME—RESTRAINING INJURY TO BUSINESS.

The right to carry on a lawful business without obstruction is a property right, and its protection is a proper object for the granting of an injunction, when the ordinary remedies are inadequate.

7. SAME—SUBJECT-MATTER OF SUIT.

A suit by a railroad company to restrain ticket brokers from buying and reselling railroad tickets to be used in violation of the contract contained therein is not based on such contract, but the subject-matter is the illegal use made of the tickets by defendants, not parties thereto, to the injury of the business of the complainant; and hence any remedy provided by the contract itself for its violation is not a bar to the relief sought.

8. SAME—INDUCING THE BREAKING OF CONTRACT—INTERFERENCE BY THIRD PERSON.

One who wrongfully interferes in a contract between others, and, for the purpose of gain to himself, induces one of the parties to break it, is liable

¹ See note at end of case.