

that the merchandise in question is both a "distilled oil" and a "product of coal tar," and that, therefore, the duty provided for "distilled oil," being the higher duty, should apply. The contention is untenable. In the first place, I am unable, as stated, to find from the evidence that the creosote in question is a distilled oil within the meaning of paragraph 60. In the second place, I do not regard the provision applicable to this case, for the simple reason that it cannot be said, strictly speaking, that there are two rates of duty which can apply to the merchandise in question. If I am correct in holding that creosote is a product of coal tar, within the meaning of paragraph 443, it then is not subject to any duty whatever, but is entitled to free entry. Under this condition of affairs, if the creosote be subject to duty at all, there is obviously but one rate of duty which is applicable. As was aptly remarked by the court in *Matheson & Co. v. U. S.*, 18 C. C. A. 144, 71 Fed. 394, 395, "as one [paragraph] imposes duty, and the other exempts from duty, it is obvious that congress did not intend both provisions to apply to the same article." Without discussing the questions any further, I am of opinion, both from the evidence and under the law, that the ruling of the board of United States general appraisers relating to the two importations involved in these two petitions was erroneous, and should be reversed, and it is so ordered.

AMBERG FILE & INDEX CO. v. SHEA SMITH & CO.

(Circuit Court of Appeals, Seventh Circuit. October 4, 1897.)

No. 371.

COPYRIGHT—SUBJECTS OF COPYRIGHT—LETTER FILES.

A system of indexes, constituting a letter file, being designed for use, and not for conveying information, is not a proper subject of copyright. 78 Fed. 479, affirmed.

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

The Amberg File & Index Company, the appellant, filed its bill in the court below to restrain the alleged infringement of 30 copyrights granted to William A. Amberg for as many so-called index books, styled "Amberg Directory System of Indexing," constituting a complete index for the proper filing of letters and other papers. A demurrer to the bill was sustained and the bill dismissed for want of equity. The bill charges that all of the so-called books, taken together, constitute a series or set of indexes, primarily designed for use by large commercial houses conducting a large correspondence, and wherein letters and other papers or documents may be so filed to be readily accessible, and that no one of the several so-called books, nor any number less than the whole number, can be practically employed as a general index for correspondence or other documents. The letter-file index consists of a number of sheets loosely arranged, and provided with letters in the outer margins, after the manner of an index, so that letters can be slipped in between the sheets and there temporarily held until the space is filled, when the sheets can be removed from the box and permanently filed. The letters on the different loose sheets are arranged in alphabetical order, the spaces between the letters varying to correspond with the supposed volume of correspondence to be arranged thereunder. In order to ascertain the proper space to be allowed, the bill states that Amberg, in preparing the same in such manner as to adapt such copyrighted books for such use,

spent much time and labor in consulting and reading directories of the inhabitants and businesses of numerous large cities of the United States, with a view to preparing such copyrighted books in substantial accordance with the spelling, number, and arrangement of names found in said directories, and that he did so arrange and prepare his said copyrighted books. In other words, he adjusted the spaces between the letters to the supposed average requirements as he ascertained them from different directories.

Bond, Adams, Pickard & Jackson, for appellant.

Banning & Banning, for appellee.

Before WOODS and JENKINS, Circuit Judges.

JENKINS, Circuit Judge, after stating the facts, delivered the opinion of the court.

In *Baker v. Selden*, 101 U. S. 99, the difference between that which may be protected by copyright and that which is the subject of letters patent is stated and illustrated, and the whole matter summed up in the language of the court:

"The object of the one is explanation. The object of the other is use. The former may be secured by copyright. The latter can only be secured, if it can be secured at all, by letters patent."

In that case one Selden had obtained copyright of a book entitled "*Selden's Condensed Ledger, or Bookkeeping Simplified*," the object of which was to exhibit and explain a peculiar system of bookkeeping. There was an introductory essay explaining the system of the author's bookkeeping, and certain forms or blanks, consisting of ruled lines and headings, were employed to illustrate the system, and to show how it could be used and carried out in practice. The court held that no copyright could be obtained, that blank account books are not the subject of copyright, and that the copyright of Selden's book did not confer upon him the exclusive right to make and use account books ruled and arranged as designated by him, and described and illustrated. In this case there is no explanation accompanying the indexes. The arrangement of letters is the thought of the author. These indexes or so-called books are not made for explanation, but for use. They do not convey information. They are of no possible service until subjected to use in the filing of letters. It is, as observed by Judge Showalter in the court below (*Amberg File & Index Co. v. Shea Smith & Co.*, 78 Fed. 479), "a mechanism or device for the storage of letters so that they can be preserved and conveniently found afterwards." The copyright law embraces those things that are printed and published for information, and not for use in themselves. The device of the appellant is not within the law of copyright, and the bill cannot be sustained. Decree affirmed.

J. L. MOTT IRON WORKS v. CLOW et al.

(Circuit Court of Appeals, Seventh Circuit. October 4, 1897.)

No. 325.

COPYRIGHT—SUBJECTS OF COPYRIGHT—PRICE CATALOGUES.

A price catalogue, constituting a volume containing illustrations of wares offered for sale, such as washbowls, bath tubs, footbaths, etc., which articles are without ornamentation, and cannot well be the subject of artistic treatment, is not the proper subject of a copyright, the letterpress being confined to a statement of dimensions and price.

On Appeal from the Circuit Court of the United States for the Northern District of Illinois.

This is an appeal by the J. L. Mott Iron Works from a decree sustaining the demurrer to its amended bill of complaint, and dismissing the bill for want of equity. The bill charges, in substance, that the J. L. Mott Iron Works since the year 1873 has continuously been engaged in the manufacture of various articles and appliances of useful or ornamental character, or both, in iron and other base metals, and for many years has maintained an office and show room in the city of New York and in the city of Chicago, and has conducted a large business in the articles described throughout the United States; that, during the period from the year 1888 to and including the year 1893, the complainant became the proprietor of certain illustrated books or circulars, with respect to each of which, and before publication, a printed copy of the title was duly deposited with the librarian of congress, and within ten days after publication two completed printed copies were deposited in the same office, and notice of the copyright given by inserting on the title page of each printed and published copy of the work the usual notice that the books or circulars were entered according to the act of congress. The titles to these different publications were as follows: "1888. Catalogue G. Illustrating the Plumbing and Sanitary Department of the J. L. Mott Iron Works." "1890. Imperial Porcelain Baths." "1890. Imperial, Newport, Yorkshire, and Hygeia Slop Sinks." "1891. Imperial Porcelain Baths." "1892. Lavatories for Use in Steamships, Yachts, Offices, etc., and All Places Where Economy of Space is Required." "1892. Imperial Porcelain Lined Iron Seat and Foot Baths." "1893. Imperial Porcelain Baths." "1893. Mott's Patent Slop Sinks." "1893. Bath-Room Fitting." Copies of their publications are filed as exhibits to the bill. It is alleged that each and every of such books and publications was designed and adapted to be used, and has constantly been used since their several publications, as books of reference by architects, plumbers, builders, and other persons interested in constructing houses, or requiring articles of the nature described, or information concerning styles, designs, dimensions, and other qualities of articles of the kind described, and for purposes of comparison of such designs with those of other manufacturers of similar goods. The bill further charges that the defendants, who are engaged in the manufacture of similar articles, published certain catalogues, entitled: "1894. Illustrated Catalogues of James N. Clow and Son, Manufacturers in and Dealers in Supplies for Plumbers, Steam and Gas Fitters, Water and Gas Works, Railroads and Contractors;" that such catalogue is composed to a large extent of cuts and designs copied from those in the copyrighted catalogues of the complainant, or in some of them, and such cuts or designs, and the plates from which they were printed, were not taken or made from physical copies of articles manufactured by the defendants, or made by artists or engravers originating them, but they were copied directly from the plates, designs, or cuts in the catalogue or circulars of the complainants, taken by photography, or by some other mechanical process not involving the thought or artistic skill prerequisite to make an original design or cut, or to engrave a plate from a physical object or manufactured article. It is charged that the copying of such designs or cuts, and their publication in the catalogue of the defendants, is a piracy of the copyrighted catalogues of the complainant, and an infringe-