

"There is no such diversity of the subject-matter embraced in the assault upon the two patents that they cannot be conveniently considered together; and although it may be possible that one patent may be sustained, and the other may not, yet it is competent for the court to make a decree in conformity with such finding. It seems to us in every way appropriate that the question of the validity of the two patents should be considered together."

With the adjudications to which I have referred, and the principle which they plainly enunciate, in mind, I have carefully examined the present bill, in connection with the printed books and papers, which, upon the argument, it was agreed should be taken to constitute a part of the bill itself. This examination has led me to the conclusion that there is no reason for supposing that the infringement charged of the several copyrights in question, as well as of the alleged trade-name or trade-mark, and, in short, every subject-matter proposed for investigation, may not conveniently, and most conveniently, be considered together; and, if each of the alleged infringements had been made the subject of a separate suit, it is, I think, very doubtful, at least, whether it would not have been the duty of the court to decline to entertain such separate suits, without requiring their consolidation. *Case v. Redfield*, 4 McLean, 529, Fed. Cas. No. 2,494.

I do not deem it necessary to decide the particular point presented by the fourth assignment. Whether or not the allegation in the bill that the copyrighted books are capable of conjoint use is "obviously untrue," or, if true, is of any materiality, are questions upon which my judgment is to no extent based. It rests upon the broader consideration which I have, I think, sufficiently adverted to. The demurrer is overruled, with leave to answer sec. reg.

HARPER et al. v. HOLMAN et al.

(Circuit Court, E. D. Pennsylvania. December 29, 1897.)

1. EQUITY—PRELIMINARY INJUNCTION—WHEN GRANTED.
A preliminary injunction will not be awarded except in a plain case.
2. EQUITY—PRELIMINARY INJUNCTION—UNFAIR COMPETITION—TITLE TO BOOK.
Although a preliminary injunction will not be awarded where, in the opinion of the court, an alleged infringement of copyright by the defendant, in the text of a book published and sold by him, has not been so clearly established as to exclude substantial doubt, yet the defendant will be restrained pendente lite from making use of a title to his publication which in its "essential portion" imitates the title of the complainants' publication in a manner adopted for the purpose of misleading and calculated to mislead ordinary purchasers.
3. SAME—PRIOR USE OF COMPLAINANTS' TITLE.
In such a case the prior use of the "essential portion" of the title of complainants' book is not a valid objection to the exclusive right claimed by the complainants.

This was a suit in equity by Harper & Bros. against William A. Holman and others, trading as A. J. Holman & Co., for alleged infringement of complainants' right in the name of a book, and also for an infringement of their copyrights. A demurrer to the bill was heretofore overruled. See 84 Fed. 222. The cause is now heard upon a motion for a preliminary injunction.

George L. Rives, Josiah R. Sypher, and Augustus T. Gurlitz, for complainants.

Hector T. Fenton, for respondents.

DALLAS, Circuit Judge. The plaintiffs have moved for an injunction pendente lite to restrain the defendants—First, from continuing an alleged violation of copyright; and, second, from using, in connection with any book whatever, the name or designation “The Fram Expedition-Nansen in the Frozen World.”

1. A preliminary injunction will not be awarded except in a plain case; and, upon careful consideration of the proofs as now presented, I cannot say that the infringement of copyright alleged has been so clearly established as to exclude substantial doubt upon that subject. It must not be supposed that I have reached a final conclusion upon this matter; but, while I deem it inexpedient to enter at this stage upon a discussion of the question, I may say that I am not now entirely satisfied that the text of the defendants’ publication was not derived from sources which they were at liberty to use.

2. But, even upon the assumption that the defendants may lawfully put their volume upon the market in competition with those of the plaintiffs, equity requires such competition to be fair, and that the work of the defendants shall not be so named, advertised, or offered for sale as to indicate that it is that of the plaintiffs. *McLean v. Fleming*, 96 U. S. 245; *Estes v. Williams*, 21 Fed. 189; *Estes v. Leslie*, 27 Fed. 22; *Association v. Howard*, 60 Fed. 270. The titles of the conflicting books are not identical, and it is not necessary that they should be; but in that part which may well be called, in the words of Mr. Justice Clifford, the “essential portion,” the imitation is manifest, and in connection with the other facts proved, especially as to the method of sale adopted by the defendants, and their instructions to their agents, is certainly such as would, I think, lead ordinary purchasers of the defendants’ book to suppose that they were buying that of the complainants; and it is difficult to escape conviction that this result was foreseen and intended. *McLean v. Fleming*, *supra*; *Estes v. Leslie*, *supra*; *Manufacturing Co. v. Trainer*, 101 U. S. 65 et seq., per Clifford, J., dissenting.

The prior use of the words “Farthest North,” as shown, is not a valid objection to the exclusive right now claimed by the plaintiffs (*Estes v. Worthington*, 31 Fed. 154); and the doctrine of the cases with respect to the use of words or names which are descriptive of quality and the like is inapplicable. The title used by the plaintiffs is, as is usual, indicative of the nature and contents of their book; but the defendants’ imitation of it is applied to a volume which it does not aptly designate or describe, and its selection, instead of one more appropriate, can effect no object but to mislead purchasers, and deprive the plaintiffs of the reward earned by their enterprise and expenditures. A decree for a preliminary injunction, in accordance with this opinion, will be entered.

THE H. C. GRADY.

BLACK DIAMOND COAL-MINING CO. v. THE H. C. GRADY (LOUGHERY, Intervener).

(District Court, N. D. California. December 29, 1897.)

COSTS IN ADMIRALTY CASES—DOCKET FEE.

Where a number of libels against the same vessel are consolidated, and heard at the same time, and represented by the same proctor, but one proctor's docket fee should be allowed.

This was an intervening libel by Frank Loughery in the cause of the Black Diamond Coal-Mining Company against the steamer H. C. Grady. The suit was consolidated with various others against the same vessel, and all were heard together. The cause is now before the court on exceptions to the action of the clerk in disallowing a docket fee for the intervener's proctor.

D. T. Sullivan, for intervener.

DE HAVEN, District Judge. This suit having been consolidated with others against the steamer H. C. Grady, and final hearing in all of said actions having been had at the same time, but one proctor's docket fee should be allowed in the cases represented by the same proctor. The *Medusa*, 47 Fed. 821. The exceptions to the action of the clerk in disallowing docket fee for proctor of said intervener are overruled.

NATIONAL HARROW CO. v. HENCH et al.

(Circuit Court, N. D. New York. January 3, 1898.)

MONOPOLIES—COMBINATION OF PATENT OWNERS—INFRINGEMENT SUIT.

A combination among manufacturers of spring-tooth harrows, whereby a corporation, organized for the purpose, becomes the assignee of all patents owned by the various manufacturers, and executes licenses to them, so as to control the entire business and enhance prices, is void both as to the assignments and licenses, so that the corporation cannot maintain a suit against one of its assignors who violates the agreement, for infringement.

This was a bill in equity by the National Harrow Company against Samuel N. Hench and others for alleged infringement of a patent.

Risley & Love, for complainant.

Cookinham, Sherman & Martin and Strawbridge & Taylor, for defendants.

COXE, District Judge. This is an equity suit for the infringement of letters patent, granted to the defendants and by them assigned to the complainant. The bill is in the usual form. The demand is for an injunction and an accounting. The plea alleges that the defendants assigned the letters patent in question to the complainant as part of an unlawful agreement, which was void as in restraint of trade and as against public policy, and that it was declared void by the