

merous parties, there is a common title out of which the question arises, and which lies at the foundation of the proceeding." In all of these cases, and many more of like kind, any one may separately, but not jointly with another, maintain an action at law, or any one or any number together, to save multiplicity of suits, and prevent irreparable injury, may maintain a bill in equity to enjoin. The doctrine is too common to require the citation of authorities.

In the examination of the cases upon the subject of fraudulent competition in trade we have found many like this, where both individuals and corporations having a common interest have united together to maintain the action in equity, only one or two of which we will refer to. In the case of *Society of Accountants v. Corporation of Accountants*, 20 Scot. Sess. Cas. (4th Series) 750, the Society of Accountants in Edinburgh, the Institute of Accountants and Actuaries in Glasgow, and Society of Accountants in Aberdeen, three several and distinct societies, all incorporated by royal charter, as well as the individual members of each, joined in a suit to prevent the Corporation of Accountants, Limited, and certain of its members, from using the letters "C. A." (chartered accountants). From the date of the incorporation of complainants these letters had been used to designate their members, and were so understood by the public. Each of the complainant societies consisted of a body of professional men who had associated themselves for the purpose, inter alia, of keeping up a high standard of professional education and efficiency. The court, in granting the interdict, said:

"Here each of the corporations is not only incorporated, but each has a distinct patrimonial interest in enforcing its conditions of membership,—an interest attaching both to the corporations as such, but also to its individual members. But, if this be so,—if a wrong is done,—and a title to sue exists where there is only one corporation, does it make any difference that there are here three corporations, and that the injury consists in conduct which involves a false representation of membership of one or other of the three? I do not, I confess, see that this makes a difference in principle—at least assuming that, as here, the three corporations jointly complain. There may be a difference in degree,—that is to say, there may be a difference in the degree of the injury to each body individually,—but I think that that is all, and I am not able to hold that that is enough. Each corporation suffers a legal wrong, greater or less, and, that being conceded, the question becomes one merely of title to sue."

The case upon appeal was unanimously affirmed. The same rule was recognized and adopted in *Northcutt v. Turney* (Ky.) 41 S. W. 21. The order of the court below is reversed, and the case remanded, with instructions to grant the injunction as prayed.

BATCHELLER v. THOMSON.

(Circuit Court, S. D. New York. April 15, 1898.)

TRADE-MARK—USED BY TWO FIRMS IN DIFFERENT COUNTRIES.

Where a trade-mark is used by a manufacturer in England and also by a firm in the United States in which he is a partner, and its use began in both places at about the same time, and it came to identifying the article manufactured by the United States firm by use in its business for many

years, and the English manufacturer retired from the United States firm, the right to use it passed to his successors as part of the business, and he will not be allowed to use it in this country in a separate business of the same sort.

S. D. Cozzens, for complainant.

Hamilton Wallis, for defendant.

WHEELER, District Judge. Here are two suits and a cross cause which turn upon the right to use the words "Thomson's Glove-Fitting" as a trade-mark for corsets. Prior to 1867, Thomson and his brother were in business in France under the name of Thomson Freres, and in England under the name of W. S. & C. H. Thomson & Co.; and he, Charles H. Langdon, and Batcheller were in business in New York under the name of Thomson, Langdon & Co. A peculiar style of corsets was patented for Thomson Bros. in France, and called "Thomson's Corset Gant," meaning glove; and for Thomson, Langdon & Co. in the United States, and called "Thomson's Glove-Fitting." Thomson's brother died, and the English firm became W. S. Thomson & Co., and was continued, and he remained a member of the firm of Thomson, Langdon & Co. in New York until December 31, 1878. This trade-mark was used in its business at considerable expense, and with great success; and it became very important and valuable to the firm, in the United States, and its use there was not interfered with. Thomson retired under a written agreement with Langdon dated October 31, 1878, whereby he assigned to him:

"Also all interest and claims of said Thomson of, in, and to any and all trade-marks of any description whatever heretofore used by said Thomas, Langdon & Co. in the United States, with the full privilege and liberty to use the same during his lifetime in such manner as said Langdon may deem best; and also the full and undisturbed right to use, in any and all business in which said Langdon may be hereafter engaged, the business designation of Thomson, Langdon & Co., so long as said Langdon shall be personally engaged in the business in the United States now carried on by the said firm."

A written agreement between them, and agreed to by Batcheller, securing Thomson on the business of the firm for what Langdon was to pay Thomson, and a further written agreement between the three for the same purpose, contained a provision that:

"The said Langdon and Batcheller also both agree, and each for himself agrees, that so long as the new firm of which they two shall be partners shall continue to use for the new firm the business designation of Thomson, Langdon & Co., or stamp the name of Thomson upon their goods, the said new firm will entirely abstain from selling any goods manufactured by said new firm, of which the London business house of W. S. Thomson & Co. now make the same or similar goods to or for the markets of Canada or Great Britain."

On October 29, 1893, by an agreement signed by Langdon and delivered to Thomson, all accounts between Thomson and Thomson, Langdon & Co. were to be considered as settled, and the writing contained this further clause:

"(4) That in case I shall have any interest in any new co-partnership which may be formed after the expiration of the present co-partnership on the 1st January, 1885, or at any earlier date, for the transaction of business in corsets, busks, crinolines, or goods of that character, then Mr. William A. Nettleton shall be a partner in said business, and shall have for his services an interest therein

of 25% without the necessity of furnishing any capital to the same; and, in case I retire from the business, I hereby agree that the contract and agreement made between us on the 31st October, 1878, shall in that case become null and void, and that all the rights and privileges ceded by you to me shall then revert to you."

A new partnership was formed January 1, 1885. Nettleton became a member of it, and remained until 1888, having 25 per cent. of the profits, and Langdon remained till January, 1893, when Batcheller bought his interest, and has continued the business ever since; and Langdon is still living.

Thomson now claims that he originated this trade-mark in England, that it has been used in the business of the New York firm by his license, and that it is still within his control. Batcheller claims that it originated in the New York business, has always belonged to it, and came with it to him. Exactly how its use began is not clear; but it began in the New York firm and the English firm at about the same time. It came to identifying the corsets of the New York firm by its use in the business of that firm, and its importance and value as such an identifying mark must have grown up from such use there. It would belong with that business as it grew, and could not be legitimately used in a separate business of the same sort within the range of that business. Such other use would, to be of value, make it misrepresent other goods to be those of this business. When Thomson sold to Langdon he sold his interest in this trade-mark in this business, which was all that he assumed to, or could, sell, and which was his interest in the right to use it in the business of the New York firm in New York and the United States.

The agreement of Langdon of October 29, 1883, much relied upon to show a reversion of the right to Thomson, could not, in this view, operate to reconvey or transfer any right to this trade-mark separate from this business; and, as no interest in the business was thereby changed, there was nothing for the trade-mark to follow. Besides this, the provisions of that clause of that agreement seem to hinge upon what should be done upon the expiration of that partnership on January 1, 1885, or before, in respect to Langdon's remaining, and taking in Nettleton, and not upon Langdon's eventually retiring. Langdon remained, and Nettleton was received, as partners, and the contingency upon which there was to be a reversion to Thomson did not take place.

Langdon's right to the use of the trade-mark in this business seems to have followed his interest in the business on the sale to Batcheller, as good will would; and the right to the trade-mark now seems to belong to him with the business, as a part of it, where only it can lawfully as such a trade-mark belong. The trade-mark was registered by both, but as the right now passed upon relates only to use within the United States, and not in foreign commerce, the registrations are deemed to be wholly immaterial.

Decree for plaintiff in original bills, and dismissing cross bill.

PERRY et al. v. REVERE RUBBER CO.

(Circuit Court, D. Massachusetts. January 7, 1898.)

No. 469.

1. PATENTS—NOVELTY AND INVENTION.

Dowels, and couplings in the nature of dowels, being common to all the arts, the presumption of want of invention in the application of a dowel to any particular art cannot be overcome by mere proof of novelty, or by the presumption arising from the issue of a patent, or by indecisive proofs that it met a long existing want which persons skilled in the art had not been able to overcome, or by all these combined.

2. SAME—STEAM-JOINT PACKING.

The Perry patent, No. 462,278, for a steam-joint packing, consisting of a hollow core of cotton duck or other woven fabric, a covering of elastic material, and a coupling the ends of which enter the ends of the packing, is void for want of invention.

This was a suit in equity by Edward L. Perry and others against the Revere Rubber Company for alleged infringement of letters patent No. 462,278, granted November 3, 1891, to Edward L. Perry, for a steam-joint packing.

Edwin H. Brown and Edward P. Payson, for complainants.
Henry M. Rogers and Alex. P. Browne, for defendant.

PUTNAM, Circuit Judge. The patent in issue relates to steam packing, or gaskets, and contains a single claim, as follows:

"A steam-joint packing consisting of a hollow core of cotton duck or other woven fabric, a covering of elastic material, and a coupling the ends of which enter the ends of the packing, substantially as and for the purpose specified."

Questions have arisen as to the true construction of the patent, growing mainly out of inconsistent expressions found in the specification. As originally applied for, it contained several claims, of which only one, and that in an amended form, was allowed to remain. The phraseology of the specification was not meanwhile amended, and this accounts to some extent for its confused expressions. The proceedings in the patent office show that the examiners entertained and expressed certain views as to the construction of the claim in issue, but they were not of a character to operate as an estoppel, and cannot be accepted as of any effect; and the true construction must be determined from the face of the patent.

One question relates to the nature of the coupling. This, as shown in the drawings annexed to the application, is hollow; and the specification proceeds as follows:

"In order to secure the compression of the packing more readily, the core, B, is made hollow, which also provides means for attaching the ends of the hollow coupling tube, C, to join the two ends of the packing together, after which the joint thus made is covered with a piece of suitable material. The coupling tube is preferably of metal, but other material may be used, and is made hollow to enable it to be compressed with the packing. Although it is considered materially advantageous to have the coupling in the form of a hollow tube, a solid coupling may be used, but possibly not with as good results."

In view of its connection, the word "materially," found here, preceding the word "advantageous," cannot be accepted in its proper sense; because, if so construed, the coupling which is made an