

"Out of a few cases of the same general character seems to have grown the idea that it is possible for a man, by putting restrictions on the use of his books by subscribers, however numerous they may be, to retain in him forever the common-law right of first publication. If that position be sustained by the judgment of the courts, then will have been obtained judicial legislation of far broader scope and much greater value to authors and others than that offered by the copyright statute."

The opinion in that case is an exhaustive one, and is applicable to the one at bar; and if that decision is correct, as I believe it is, there was a publication in the present case, and the copyright is void.

Furthermore, the notice in the edition of 1886, that it was copyrighted in England, was equivalent to a notice that it had been published therein, and I think that the notice of a United States copyright, known by Loissette to be untrue, estops his representatives from denying that it was published here.

Complainant's counsel insisted that defendants could only have obtained a copy of Loissette's work, from which to make the publication sought to be prohibited, by means of a breach of trust, and that, therefore, they should be enjoined. The jurisdiction of this court is founded only on copyright, and there is no copyright. Complainant and the principal defendants are alleged to be citizens of New York, and if complainant has any cause of action founded on breach of trust, which the decision in the Jewelers' Agency Case would seem to indicate that she has not, her place to prosecute it is in the courts of New York, rather than in those of the United States.

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COLGATE et al. v. ADAMS et al.

(Circuit Court, N. D. Illinois, N. D. July 5, 1898.)

**TRADE-MARKS—INJUNCTION—CASHMERE BOUQUET SOAP.**

The manufacturer of Cashmere Bouquet soap, who has built up a large business in making and selling it, may have an injunction restraining the use by a rival manufacturer of the words "Violets of Cashmere" to describe another soap.

**In Equity.**

Suit by Bowles Colgate and others against Charles L. Adams and others to enjoin infringement of a trade-mark, and restrain unfair competition in trade.

Rowland Cox and William O. Belt, for complainants.

Banning & Banning, for defendants.

GROSSCUP, District Judge. The bill alleges that about the year 1869 the complainants began the manufacture and sale of a toilet soap, to which they gave the trade-mark or trade-name of "Cashmere Bouquet," a designation never before used in connection with soap or similar products; that the complainants have spent large sums of money in advertising and popularizing their product, so that it has become one of the most popular toilet soaps in the United States; that their business in the manufacture and sale of this soap under this trade-mark or trade-name has become one of great magnitude; that in the trade their soap has come to be known and called

for as "Cashmere Soap"; that the words "Cashmere Bouquet" and the word "Cashmere" have become invested with a secondary meaning, as indicating complainants' product; that the defendants, soap manufacturers in Chicago, well knowing the value of the complainants' good will, have knowingly and fraudulently made use of the word "Cashmere" in connection with their manufacture and sale of soap; that the defendants have stamped the word "Cashmere" upon their soap, and upon the boxes the designation "Violets of Cashmere," being displayed and accentuated so as constitute, to all intents and purposes, the name and designation of the soap. It is alleged that this use of these words by the defendants, whether the complainants had a technical trade-mark or trade-name in the word "Cashmere" or not, constitutes an inequitable and fraudulent competition in business, and is a trespass upon the good will in the manufacture and sale of Cashmere Bouquet soap. The answer denies all these material allegations, and the especial defense is set up that the word "Cashmere" is a geographical word, and therefore incapable of exclusive monopoly as a trade-mark or otherwise. The proof satisfies me that the statement of the case by the complainants is substantially correct, and that the defendants' manufacture and sale of soap under the name "Cashmere," or the name "Cashmere" in connection with some other name, as "Violets," is calculated to mislead the public into the belief that in purchasing such soap they are purchasing complainants' soap. I think I am justified in holding, too, that the selection of this name by the defendants for their soap was due to the fact that the complainants had already built up a large trade under that name. This would constitute unfair competition. Whether the word "Cashmere," were this a case of technical trade-mark, would be held to be a geographical word, and therefore unsusceptible of use, under the doctrine of *Mill Co. v. Alcorn*, 150 U. S. 460, 14 Sup. Ct. 151, I need not decide. I doubt, however, if the word carries to the senses any conception of place or geography. It was adopted, probably, because of its familiar sound to the public ear in connection with shawls, and conveys, if anything, an impression rather of fineness and softness, than of place. It is not, of course, strictly a word of quality, but by association impresses the mind with the thought of superior or desirable quality, rather than of place. Whatever would be my ruling were it a trade-mark case, pure and simple, the case, as presented, being one of unfair and inequitable competition, is controlled by *Flour-Mills Co. v. Eagle*, 30 C. C. A. 386, 86 Fed. 608, recently decided by the circuit court of appeals for this circuit, and an injunction must go against the defendants.

The defendants insist that complainants are entitled to no injunction, by reason of abandonment. This contention finds no satisfactory support either in the proven facts or the law. A decree may be drawn for an injunction only and costs.

## NEW DEPARTURE BELL CO. v. CORBIN et al.

(Circuit Court, D. Connecticut. June 23, 1898.)

No. 891.

**1. PATENTS—INVENTION—SPECIAL EQUITIES.**

The fact that, from the previous relations and conduct of the parties, there are special equities in favor of complainant (as where an employé, after making an invention and assigning it to his employer, leaves the employment, enters that of another, and procures a new patent to avoid the former one), is not to be considered in determining the question of patentable invention, since the public interest demands that the true facts shall be known as against the original patent.

**2. SAME—LIMITATION OF CLAIMS.**

When, on the face of the specifications and claims, and through the file wrapper and correspondence with the patent office, the inventor has stated that he confines himself to the specific form shown, and when, furthermore, the prior art shows that on any other theory the patent must be void for lack of novelty, the patentee will not be permitted to extend the scope of his claims.

**3. SAME—BELLS FOR CARS.**

The Rockwell patent, No. 517,395, for improvements in bells, construed, and held not infringed.

This was a suit in equity by the New Departure Bell Company against P. & F. Corbin and E. D. Rockwell for alleged infringement of letters patent No. 517,395, issued March 27, 1894, to E. D. Rockwell, for improvements in bells.

Newell & Jennings, for complainant.

Mitchell, Bartlett & Brownell, for defendants.

**TOWNSEND**, District Judge. This case presents the common features of a complainant claiming as assignee under a patent to one of its employés, of the employé entering the service of another company, and getting up a new patent to avoid the former one, and the defenses of lack of patentable novelty and noninfringement in view of the relations of the parties and the prior art. It is strenuously argued in these cases, and seems to be assumed by counsel, that, inasmuch as the equities are against such defenses, the patent is entitled to a favorable consideration upon the question of validity against them. I do not so understand the law. It may be true that, upon the naked question of infringement, these considerations are relevant in suggesting a favorable consideration to the patent; but as was said by Mr. Justice Shiras, in *Haughey v. Lee*, 151 U. S. 285, 14 Sup. Ct. 332, "the defense of want of patentable invention in a patent operates not merely to exonerate the defendant, but to relieve the public from an asserted monopoly." In such cases the public interest demands that the true facts shall be shown as against the original patent, which has been secured by the patentee from the patent office, upon representations that it covers a valuable invention.

This patent is limited in terms to a certain form of gong or bell for cars. Every element of the patented combination was old, and it is difficult to understand upon what theory the patent office granted it. The only theory which receives any support is that advanced by the