

So that, whether we consider the case from the standpoint of jurisdiction, or from the case made by the bill, we are constrained to the conclusion that the decree below was erroneous. The courts of the state furnish ample remedy for the wrong, if any, under which the appellee suffers. We have no right to redress or prevent trespass upon the common-law rights of the appellee, the citizenship of the parties forbidding jurisdiction. If it were allowable to us to assume jurisdiction to grant equitable relief upon the ground of fraud, if the bill were aptly framed to that end, the relief could only extend in restraint of the wrong, so far as it affected foreign commerce and commerce with the Indian tribes. The proofs show that such commerce in the case before us has been so slight as to be practicably immaterial, and that the real controversy is concerning state and interstate commerce in the manufactured article. Complete remedy for the wrongs suffered by the appellee can only be given in the courts of the state in which the parties are resident. It is therefore not becoming, as we think, to assume a doubtful jurisdiction under a statute of doubtful validity. The decree is reversed, and the cause remanded, with direction to the court below to dismiss the bill.

MESINGER BICYCLE SADDLE CO. v. HUMBER et al.

(Circuit Court, S. D. New York. November 19, 1898.)

PATENTS—BICYCLE SADDLES.

The Mesinger design patent, No. 25,423, for a design for a bicycle saddle, differs from prior patents only in the lines shown in the central space or opening in the saddle, and is not infringed by a saddle having a different pattern of such lines.

This is a suit in equity by the Mesinger Bicycle Saddle Company against Humber & Co. for infringement of a patent.

Robert C. Mitchell, for plaintiff.
John C. Dewey, for defendants.

WHEELER, District Judge. This suit is brought for an alleged infringement of design patent No. 25,423, dated April 21, 1896, and granted to Henry Mesinger and Frederick Mesinger, for a design for a bicycle saddle. The specification states that:

"The leading feature of our design consists, in brief, of an outline of general pelecoidal shape, having a centrally disposed opening, whose contour is substantially parallel with said outline. Upon the field inclosed by the outline of the said central opening are displayed lines extending both at right angles and diagonally to each other, said lines being interwoven, as shown.

"The letter a indicates that portion of our design corresponding to the rear end of the saddle, the same being semioval, and, from the extreme ends of said semioval portion, inwardly curved lines, b, b, extend forward, gradually approaching each other, being finally connected by a substantially semi-circular line, c, at the pommel end of the saddle design.

Fig. 1.

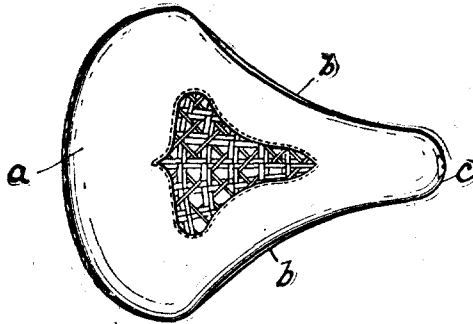
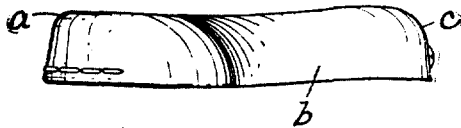


Fig. 2.



"The side walls of the said design extend upward, and curve inward."

The claim is for "the design for a bicycle saddle substantially as herein shown and described."

The case shows, among other patents for such a design, No. 24,988, dated December 17, 1895, and granted to Charles D. Cutting, the specification of which states:

"The leading feature of the design consists of a forwardly projecting pommel on the median line of the saddle, and a triangular opening at the center of the saddle, conforming generally to the outline of the saddle. At the center, the saddle has an opening, D, generally triangular in shape, the walls of which curve to conform to the general outline of the outer edges of the saddle. The design provides a saddle for bicycles which presents to the eye an ornamental, distinguishing, and characteristic appearance, varying from other designs of saddles in several general respects—First, that it is wider than it is long on the median line, that it has a forwardly projecting pommel, and that it has substantially vertical sides and a rounding top."

The patent in suit gives no proportions to the general pelecoidal shape described, which is similar to that of the Cutting patent; and there is no substantial difference between the designs of these two patents except that in the Cutting design the central opening conforming to the outline of the saddle is left vacant, while in that of the patent in suit, whose contour is substantially parallel with the outline of the saddle, lines extending both at right angles and diagonally are shown, interwoven. The later patentees were only entitled to a patent for this improvement or difference. *Railway Co. v. Sayles*, 97 U. S. 554. The alleged infringement does not show any such inter

woven right-angled diagonal lines, but only longitudinal lines, with one or two right-angled lines crossing them at the end of the opening. This display is not that, nor much like that, of the patented improvement, or difference; and infringement does not appear to be made out. Bill dismissed.

MESINGER BICYCLE SADDLE CO. v. HUMBER et al.

(Circuit Court, S. D. New York. May 11, 1899.)

1. DESIGN PATENTS—INFRINGEMENT.

Where the similarity of appearance between designs for bicycle saddles was due rather to the general similarity of such saddles than to the particular similarity between the two saddles in question, and the patent was not of a fundamental character, *held* there was no infringement.

2. SAME—BICYCLE SADDLES.

The Mesinger patent, No. 25,423, for a design for a bicycle saddle having a centrally disposed opening upon which are displayed lines extending "both at right angles and diagonally to each other, said lines being interwoven, as shown," construed, and *held* not infringed.

In Equity.

Robert C. Mitchell, for plaintiff.

John C. Dewey, for defendant.

WHEELER, District Judge. This cause has been reheard on petition, suggesting that the invention sought to be secured by the Mesinger design patent in question, No. 25,423, dated April 21, 1896, for a bicycle saddle, preceded the Cutting design patent, No. 24,988, dated December 17, 1895, held inadvertently to be an anticipation. The Hunt patent, No. 489,308, dated January 3, 1893, for a velocipede saddle, unquestionably antedates the Mesinger invention. It shows "an outline of general pelecoidal shape having a centrally disposed opening, whose contour is" somewhat "parallel with said outline," if not substantially so. It might be thought to be an anticipation but for the provision in the specification of the Mesinger patent that "upon the field inclosed by the outline of said central opening are displayed lines extending both at right angles and diagonally to each other, said lines being interwoven, as shown." As the only claim is for "the design of a bicycle saddle substantially as herein shown and described," this display upon this field is material, and especially so in view of the prior pelecoidal shapes and central openings. The alleged infringement does not display lines at right angles to each other, except at the extreme ends across longitudinal lines, nor lines diagonally to each other at all. If the question about this was as to mechanical equivalents to parts of a foundation patent, these longitudinal lines might perhaps be considered to be such; but, as this is a question of appearance only, and of appearance of this field made essential by the terms of the patent, it does not seem to be such. The similarity of appearance between this and the design of the patent grows out of the general similarity of such saddles, rather than out of the particular similarity of the defendant's saddles to the dif-