successfully achieved their object in making the door which is the subject of complaint, I think no one can doubt that the attempt is a failure; that to present what is a mere copy of the Complainers' door, but to place it so that the moulding overlaps instead of fitting in between the adjacent parts, is not an independent design, but a very plain and obvious imitation of the Complainers' design. I do not call it a colourable imitation, because I rather think it is the identical thing. It is either directly and literally the complainers' design, or it is, in my judgment, a very obvious imitation of it; and, that being my view of the facts, I shall give decree in the terms sought, interdicting the Respondents from making, vending, or using fire doors of the description complained of, with expenses.

IN THE HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Before MR. JUSTICE KAY.

December 8th, 1887.

BRITAIN *v.* HIRSCH.

Patent.—Action for alleged infringement.—Validity of a patent.—Subject-matter.

The grantee of a patent for an automatic dancing figure brought an action alleging infringement and asking for an injunction. The Defendants denied infringement, and denied the validity of the patent on the ground that it was not the subject of a patent.

Held, that a claim contained in the Specification for a mode of actuating the movement of the figure as therein described was clearly old and the patent was invalid.

In 1884 a patent, No. 13,671 of 1884, was granted to *William Britain* for an automatic dancing figure. The Specification stated as follows:—"My "invention consists firstly of a new combination of disc and spindle within "a model of any figure—a girl preferred—and a wheel, or roller, or other "point of support upon its feet, or other suitable place, in such a manner "that, when the disc is caused to revolve rapidly the figure shall stand "erect upon its feet and perform—in a series of gyrations—as if in the "act of dancing. Secondly. Of an improved method of causing the said "disc to revolve by means of a coiled spring within a separate case or "stand." The Specification then described the drawing, and continued:— "The action is as follows. The trigger being placed so that the click acts "upon the ratchet, the coiled spring is wound up, and the stand placed "upon the table; the foot of the figure containing the spindle is then "placed in position on the top of the arbour and held with one hand, while "with the other, the trigger is pressed and the spring released; the sudden "recoil of the spring acting through the arbour and spindle on the disc "causes it to revolve rapidly and—the cross-cut in the arbour being formed "into two inclined planes—the spindle is thrown out of gear when the "recoil is exhausted. The figure is then placed upon its feet on the table, "and goes through its performance until the revolutions of the disc are too

"slow to support it." The Specification concluded thus:—"Having now "particularly described and ascertained the nature of my said invention, "and in what manner the same is to be performed, I declare that what "I claim is: 1st The application of a revolving disc and spindle, in combination "with a wheel or wheels, or other point of support for the purpose of "producing automatically the action of dancing as herein described. 2nd "A new combination of a coiled spring, ratchet, click, and trigger, for "the purpose of actuating the said disc as herein described."

In 1886 the Patentee commenced an action against Messrs. *Hirsch, Pritchard and Co.*, alleging infringement and claiming an injunction and damages. By his particulars of breaches the Plaintiff alleged infringement by the manufacture or sale or use of dancing figures, and in particular by sale of dancing figures by the Defendants to *M. A. Molteni*, of 49, Grange Street, Newcastle-on-Tyne, manufactured according to the Plaintiff's invention. The Defendants by their statement of defence and particulars of objections, denied infringement, and stated among other grounds that the alleged invention was not subject-matter, and was not new, but was anticipated by "the ordinary top, and the "various kinds of tops, such as humming tops."

Aston, Q.C., and *Fryer* (instructed by *J. E. Phillips*) appeared for the Plaintiff, *Millar*, Q.C., and *Edward E. Ford* (instructed by *R. H. Harris*) appeared for the Defendants.

Aston, Q.C., for the Plaintiffs. The invention is a new and useful combination. The second claim is purely appendant and does not invalidate the patent. *British Dynamite Co.* v. *Krebs*, Goodeve, 88, 92, 93.

The evidence of infringement was very slight.

At the close of the Plaintiff's case—

KAY, *J.*—I do not require to hear you, Mr. *Ford*. It seems to me that the case is hopelessly bad, and about the most frivolous case brought in a Court of Justice. Here is a patent claiming two things, first, "The application of "a revolving disc and spindle in combination with a wheel or wheels or "other point of support, for the purpose of producing automatically the "action of dancing as herein described." Then he describes it. The invention, according to the evidence before me, has no novelty in it. It consists of having a top with a dress and a figure to make it look like a dancing girl. The top of the body of this dancing girl is made to revolve, and the spindle on which the top rests comes down on the point of a pin. As it is, it is hopeless to hold anything but that it is a mere top dressed up like a dancing girl. The only element of novelty in it is that on the feet there is another point of support, besides the spindle on which the top rests, that point of support being a little wheel that alters the motion of the top, and makes it, as it is called, gyrate, that is, makes it not spin for ever on one point, but travel round and round and make a series of circles, which, I presume, if they were drawn upon paper would describe something like spirals. There may be some elements of novelty in that, but it makes it look what everybody in the world knows is the plan of making a whipping top or any other top describe eccentric curves, where it is spinning, by altering the nature of the foot. Supposing that to be the subject-matter of a Patent, there is included in this Patent this other claim, "A new combination of a coiled "spring, ratchet, click, and trigger, for the purpose of actuating the said disc

" herein described." That so far is a separate and distinct claim of a thing described in the Patent "A new combination of a coiled spring, ratchet, click, " and trigger," to actuate this disc. It is not a combination of "A coiled " spring, ratchet, click, and trigger" with this top, but it is that thing which is described, and it is so described that if it be a good subject of a Patent, that combination of "A coiled spring, ratchet, click, and trigger" could not be used for any other purpose in the world. I am pressed with an argument drawn from the case of *Krebs* v. *Dynamite Company*, a case in which, there being a patent for dynamite, as I understand, there was described in the same claim, a mode for firing that dynamite by means of a cap. The cap was not claimed as a thing separate from the dynamite, but there was described in the claim for the dynamite a mode of firing, and the House of Lords said in effect this is not a claim for a cap (I am not pretending to give the words), but a claim for a particular mode of firing this dynamite, that is, there is included in the claim for dynamite, a claim for a mode of firing it, which is described. Everybody who knows anything about dynamite knows that one of the great peculiarities of it is, that you are obliged to have a particular mode of firing it. It will not fire like gunpowder, by only being touched by a spark, but you require a percussion cap in order to fire it. What the House of Lords held, as the case was read to me, was this ; that the words in the claim did not invalidate the whole patent because the cap was old, but the thing claimed was only a mode of firing the dynamite which might be rejected as surplusage, so as not to invalidate the rest of the patent ; treating it as a kind of description of the mode of using the thing, which is the subject of the patent.

Here I have a thing as different as possible ; and I will illustrate the difference in this way. Suppose the claim had been a separate claim for the mode of actuating this disc by a string wound round the spindle and rapidly pulled. That would be the ordinary mode of spinning a top, and if that had been claimed as a separate claim, could it have been possible to maintain this patent ? It seems to me quite impossible. Now I have got this thing before me, and it really needs no evidence to see that there is no invention whatever in this part of the patent. It is simply winding up a spring, then attaching the spindle of the top inside the dancing figure to this spring, so that when the spring is released the uncoiling of the spring will make the top revolve. The notion that the use of a spring in that way, for that purpose, by means of the coiled spring, ratchet, click, and trigger, could be the subject of a patent—that there is enough invention in the combination of the coiled spring, ratchet, click, and trigger—to support a patent, seems to me perfectly ridiculous. Everybody knows that not only are clocks and watches wound up by such a thing, but musical boxes are actuated by coiled springs. You release it and let the spring go. To say that you can patent that mode of making a dancing figure revolve, and that you can patent an arrangement for that mode of making a dancing figure revolve, is ridiculous. If the claim be good nobody could use the combination of "coiled spring, " ratchet, click, and trigger " for any purpose whatever. It is not confined to the actuating of this particular dancing figure, but the combination as claimed is a thing produced by this patent for all purposes. That makes the difference in this case from the cases decided. Besides that, I have got a distinct proof that this mode of actuating was known years and years before this patent was taken out. Here I have got in my hand a top of which it is admitted is a very old invention indeed. There is on the spindle at the top a little box containing the coiled spring. You put the box at the bottom, as is arranged, and there is a small peg in the spindle catching a knob at the bottom of the box ; by holding the box in one hand and the bottom in the other you wind it up. By pressing your finger on the knob at the top of the little box you release the little projection in the spindle and the spring uncoils, and causes it to revolve with the same motion. Then you lift the box off. To all intents and purposes it is a combination of "coiled spring, ratchet, click, and trigger." It is for the purpose of making the top spin, and therefore it seems to me to be, for all essential

purposes, identical with the second claim in this patent. If there be any difference whatever between the thing described, which is the subject of the claim, in my opinion there is not that amount of invention in it which justifies it being the subject of a patent. Therefore it seems to me this is bad, and I dismiss the action with costs.

IN THE HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Before MR. JUSTICE STIRLING.

December 16th, 1887.

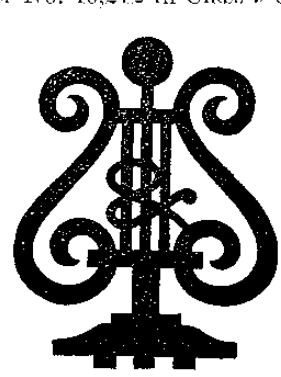
STEINWAY AND SONS *v.* HENSHAW.

Action for infringement of trade mark.—Interlocutory injunction.—Resemblance calculated to deceive.—Conflicting expert evidence.

Steinway and Sons, *the Plaintiffs in the action, registered as trade marks for pianos* (a) *the name* "Steinway and Sons," *which they had been using for* 34 *years, and* (b) *a device which they had been using for* 10 *years. The Defendant applied to register a trade mark for pianos consisting of* (a) *the name* "Steinberg," *and* (b) *a device bearing a close general resemblance to the Plaintiffs', although on inspection it was obviously different. The Plaintiffs opposed the application, which was abandoned by the Defendant. Subsequently the Plaintiffs discovered that the Defendant was using his trade mark upon pianos, and an action having been commenced, the Plaintiffs moved for an interlocutory injunction to restrain until the trial of the action the use of his trade mark by the Defendant. Affidavits were made by several members of the trade, on behalf of the Plaintiffs, that the Defendant's trade mark was calculated to deceive the public. Affidavits to the contrary were made on behalf of the Defendant.*

Held, that the Defendant's trade mark was calculated to deceive, and that the Plaintiffs were entitled to an injunction.

Messrs. *Steinway and Sons*, who carry on business as manufacturers and vendors of pianofortes in London and in America, have ever since 1853 placed conspicuously on their pianofortes the name "*Steinway and Sons,*" and for ten years have also placed upon their pianofortes the subjoined trade mark, which they registered under No. 46,212 in Class 9 on the 9th June, 1885.



They also registered in the same class on the following dates the following trade marks under the following numbers: "*Steinway and Sons,*" in Old English type, No. 29,544, on the 30th October, 1882; "*Steinway and Sons,*" in ordinary