

To the Honorable the Justices of the Circuit Court
of the United States for the District of Massachusetts,

Frederick Emerson of Boston in the State of
Massachusetts, Esquire, a citizen of the said State,
brings this, his Bill, against Charles Davies of
New York in the State of New York, postmaster
of the United States' Army, and a citizen of said
State of New York, and Alfred S. Barnes of
Philadelphia in the State of Pennsylvania, book-
seller, and a citizen of said State of Pennsylvania,
the said Davies & Barnes being partners in trade
jointly negotiating in the business of bookellers
under the firm of Alfred S. Barnes & Company, of
Philadelphia aforesaid

And thereupon your Petitor complains
and saith, that he is a citizen of the United States,
and is the author and proprietor of a certain book
entitled "Emerson's First Course - The North American
Arithmetic, Part First containing Elementary Lessons
by Frederick Emerson"; and that on the twenty
eighth day of August in the year of our Lord one
thousand eight hundred & twenty nine certain persons
doing business under the firm of Lincoln & Edmonds,
to wit, Ensign Lincoln and Thomas Edmonds, both
citizens

citizens of the said United States and resident in said
District of Massachusetts, published the above-
mentioned book composed by your Orator, who at the
same time for a good & valuable consideration to him
paid by said Lincoln & Edmonds did by his agreement
in writing agree with them, that they should and
hereinafter mentioned, be the exclusive proprietors
& publishers of said work & take out a copy right in
their names for the same; a printed copy of the title
of which book the said Lincoln & Edmonds, on the
28th day of August A.D. 1829, they being then & there
such exclusive proprietors of said book, & solely
entitled to a copy-right of the same, deposited in
the Office of the Clerk of the District Court of the
United States for said District of Massachusetts
before the said book had been published, which title
was on that day recorded in the said Office of the
Clerk of said District Court, & the said Lincoln
& Edmonds caused to be published & inserted in the
page immediately following the title page of said
book a copy of the record of the Certificate of the
Clerk of the said District Court of the United States
that the title of said book had been deposited in
the Office of said Clerk on the day last aforesaid;
& within two months from the date of said Certificate
said Lincoln & Edmonds caused a copy thereof to be
published.

published in a newspaper printed in Boston in said District for the space of four weeks, and within six months from the publication of said book caused a copy of the same to be delivered to the Secretary of State of the United States, to be preserved in the Office of said Secretary, & took all the measures & steps required by law for securing said copy-right; and by & in virtue of the statutes of the United States, they the said Lincoln & Edmonds & their assigns have had the lawful & exclusive right of publishing said book from the time of the date of said Certificate until & at the filing of this Bill

And your Orator further shows, that on the nineteenth day of February in the year of our Lord one thousand eight hundred and thirty five by a certain assignment in writing of that date for a good & valuable consideration, the said Thomas Edmonds and one Charles D. Gould administrator of the said Ensign Lincoln then deceased, conveyed, and assigned to your Orator all their the said Lincoln & Edmonds's right, interest & property in the said book and the copy-right thereof, and your Orator thereby became the sole legal proprietor of such copy-right; and ever since the date last aforesaid, has been & now is such sole proprietor having the sole & exclusive right of printing publishing & exposing to sale and selling
copies

copies of the said work as aforesaid,

And your Orator further says, that afterwards, to wit in the year of our Lord one thousand eight hundred & thirty eight he revised and amended his said book, and in the same year took out a copy right thereof in his own name, he being then & there the author and exclusive proprietor of the said book and of the said revisions and amendments thereof; which said revised & amended book was entitled, "Emerson's First Part - The North American Arithmetic. Part First for Young Learners By Frederick Emerson"

And your Orator further says, that before the publication of the said revised & amended book, he deposited a printed copy of the said title thereof in the clerk's office of the District Court of the said District of Massachusetts, and did within three months from the publication thereof cause to be delivered a copy of the same book to the said clerk, and did also give information of the copy-right thereof being secured, by causing to be inserted, in the several copies of the same on the page immediately following the title page thereof the following words, to wit - "Entered according to act of Congress in the year 1838 by Frederick Emerson, in the clerk's office of the District Court of the District of Massachusetts."

And your Orator further says, that the purpose of both the said editions of his said book is, to teach children the elements of Arithmetic, & that the plan of the lessons therein contained is his own invention; and, that in the execution of his said plan, he has arranged a certain set of Tables in the form of Lessons, and the said Davies and Barnes in the construction of a book hereinafter mentioned, purporting to be composed by said Davies, have adopted the same arrangement & of the same Tables and have published the same in their said work hereinafter mentioned.

And the said Emerson in his said book has also arranged a gradation of Examples to precede each Table, in such manner as to form with the Table a peculiar & unsymmetrical appearance of each page; and the said Davies & Barnes in their said book have adopted the same arrangement, giving the Lessons of the said Davies's book a similar appearance page for page to those of the said Emerson's book; and farther, that the said Emerson in his said book illustrated his Lessons by attaching to each example Unit charts representing the numbers embraced in the Examples, which said method of illustration is his own invention;

and

and the said Davies and Barnes have also in the said book of said Davies adopted this method of illustration in divers lessons contained in said work

All which will appear by a reference to and comparison of certain pages of the said Emerson's book aforesaid, & the said several editions thereof, with certain pages in the said book of said Davies; to wit - page 5 of said Emerson's book with page 6 in said Davies's book each of said pages being taken in its connection with the preceding and succeeding page of said books respectively; and also by a comparison of page 8 of said Emerson's book with page 10 in said Davies's book; of page 9 in said Emerson's book with page 11 in said Davies's book; of page 10 in said Emerson's book with page 12 in said Davies's book; of page 13 in said Emerson's book with page 15 in said Davies's book; of page 14 in said Emerson's book with page 16 in said Davies's book; of page 15 in said Emerson's book with page 17 in said Davies's book; of page 16 in said Emerson's book with page 18 in said Davies's book; of page 17 in said Emerson's book with page 19 in said Davies's book; of page 27 in said Emerson's book with page 37 in said Davies's book; of page 28 in said Emerson's book

with

with page 38 in said Davies's book; of page 29
in said Emerson's book with page 39 in said
Davies's book; of page 30 in said Emerson's book
with page 40 in said Davies's book; of page 31
in said Emerson's book with page 41 in said
Davies's book; of page 32 in said Emerson's book
with page 42 in said Davies's book; of page 33
in said Emerson's book with page 43 in said
Davies's book; of page 34 in said Emerson's book
with page 44 in said Davies's book; of page 36
in said Emerson's book with page 52 in said
Davies's book; of page 37 in said Emerson's book
with page 54 in said Davies's book; and of
page 38 in said Emerson's book with page 56
in said Davies's book

And Your Orator further shows,
that he being the lawful proprietor of said
book called "Emerson's First Part" and the said
copy-right thereof and in possession of the same,
& having divers copies of said book on hand, and
offered for sale at a reasonable price & always
having had on hand & offered for sale at a rea-
sonable price a sufficient number of copies of
said book & being in the enjoyment of the profits
of the same, the said Charles Davies & Albert
Barnes on the twentieth day of February in the

year

year of our Lord one thousand eight hundred and
forty three without the consent & allowance of your
Orator, exposed to sale & sold, fifty copies of the said
work, purporting to have been composed by said Davies,
& have at divers times before & since that day exposed
to sale and sold divers to wit one thousand copies
of the same work, and still have on hand and
offer for sale copies of the same; the said work
being entitled "First Lessons in Arithmetic Designed
for beginners. By Charles Davies" - which said last
mentioned work in divers parts thereof as
hereinbefore specified, is adopted from the book
first above mentioned, composed by your Orator;
and the printing & selling thereof, & the exposing
of the same to sale are infringements of the
said copy right of your Orator

And the said Davies & Barnes
at the time of making such sales & of
exposing to sale the said copies of said
work of said Davies, knew that your
Orator was the author & proprietor of
said "Emerson's First Part" and that
he had the copy-right aforesaid, and
they knew the said copies by them so sold,
and exposed for sale to have been copied
from

from the said work of your Orator,
and knew that the printing, exposing
to sale & selling the same without
the consent of your Orator was an
infringement of such copy-right
and knew the said copies by them
to sold, and so exposed, to sale to
have been printed, and published,
without the consent of your
Orator.

And your Orator further
shows, that the said work of
said Davies is copied, and pirated,
from that of your Orator and is
an infringement of your Orator's
copy-right in the particulars
hereinbefore set forth and specified.

And

And your Orator further shows, that in
consequence of the said Davies & Barnes
begging to exposed to sale & sold the said
work of said Davies the sales of your Orator's
book have been hindered & rendered less
in number than they would have been
had not the said Davies & Barnes so
exposed to sale and sold said pirated
works

~~that~~
~~to take and sold said pirated~~
~~works and Barnes to exposed~~
~~have been not the said~~
~~less in number than they would~~
~~have been hindered and rendered~~
~~the sales of your Orator's book~~
~~the said work of said Davies~~
~~to exposed to sale and sold~~
~~the said Davies & Barnes having~~
~~shown that in consequence of~~
~~which your Orator~~

All which acts and doings of the said Davies and Barnes are contrary to equity and good conscience, and tend to the ~~very~~ manifest wrong and injury of your orator in the premises; all consideration whereof, and inasmuch as your orator is remediless in the premises at and by the rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this & the like nature are properly cognizable & relievable, your orator prays, this Honorable Court to issue a Writ of Subpoena in due form of law, directed to said Davies and Barnes thereby commanding them at a certain day and under a certain penalty therein specified to appear before this Honorable Court to answer all and singular the matters & things hereinbefore set forth and complained of, particularly, how many copies of said Davies's work aforesaid they have sold, and what number they have on hand; & that they may abide such orders and decrees as the Court shall make in the premises; and that they the said Davies & Barnes may be restrained by Injunction from selling or exposing to sale, or causing, or being any way concerned in the selling or exposing to sale, or otherwise disposing of any copies of said Davies's work; and that they be ordered to render an account of the copies of the same that they

they have sold, & to pay over the profits of such sales to your orator; and that they be ordered to surrender & deliver up to your orator all the copies of said Davies's said work that they have on hand, & that they be ordered & decreed to pay to your orator his costs in this suit; and that your orator may have such further & other relief in the premises, as to this honorable court may seem meet & as the nature and circumstances of the case may require -

Frederick Emerson

Jno Pickering
of counsel for plff

Massachusetts District, ss. June 28, 1844 -

Then personally appeared Frederick Emerson above named & made oath, that the facts stated in said Bill, as far as they have come within his knowledge are true, and such as are derived from information of other persons or ~~statements~~ stated upon his belief, he truly believes to be true. Before me

Francis Russell, Clerk

83 (774)

Emerson in E. W. Davis et al

Bill

From 20th / 1844 - Forward
in the Clerk's Office of
Sub. Sect. at the Requests
of
Purley -

In the Circuit Court
of the United States for
the District of Massachusetts

The joint & several answer
of Charles Davies and Alfred
S. Barnes to the Bill of
Complaint of Frederick Emerson

These defendants, saving and reserving to them-
selves all and all manner of benefit of exception to the
manifest errors, uncertainties and insufficiencies
in the complainant's said Bill of complaint contained,
for answer thereto as to such parts thereof as these defen-
dants are advised that it is material & necessary for
them to make answer unto answering

Say

This defendant Charles Davies from his own
knowledge, and this defendant Alfred S. Barnes
from his information and belief; that the defendant
Charles Davies was assiduously engaged for several
months previous to the month of September in the year
of our Lord 1840 in devising, composing and preparing
for publication a small book intended for the use of
beginners in the study of Arithmetic, and to precede and
be studied before a larger and fuller work on Arith-
metic theretofore published, ^{by this defendant Charles Davies} and which small book this
defendant Charles Davies had completed and these
defendants did publish or cause to be published about the said month of
September in said year of our Lord 1840, under the

following title, viz,
"First Lessons in Arithmetic designed for Beginners"

These defendants further answering say, that the said book was well received by the public and widely circulated, and that the sale and circulation thereof have gradually increased from that time to the present and largely so, within the past year - That this defendant said Charles Davies has from time to time, since the first publication thereof, corrected, enlarged, and improved the same, which corrections, enlargements and improvements have from time to time appeared in new editions of said book; but that every page and part thereof charged by, said Complainant in his said bill of complaint to have been copied or taken from his book therein mentioned was published in the first edition of said book composed by this defendant Davies, and has remained in every edition thereof unaltered -

These defendants further answering say, that they are informed and believe and state the fact to be that said Emerson knew of the publication of said book composed by this defendant Davies, and became acquainted with the contents thereof soon after the same was first published; and they further say that he never made any complaint respecting the same to either of them or intimated to either of them that his the said Complainant's copy right, of his said book had been invaded until the filing of his said Bill of complaint

These defendants further answering, this

Defendant Charles Davies from his own knowledge and this defendant Alfred S Barnes from ~~his~~ information and belief say, that neither the said work composed by this defendant Davies nor any part thereof was copied, adopted or taken from the said book of the said Complainant or any part thereof -

These Defendants further answering say, that the said book of the said Complainant is only new and distinguishable from other books on the same subject previously published and in general use, in the following particulars viz - Adopting the representation of sensible objects as unit marks, and by such marks instead of the unit marks in common use, illustrating the combinations of figures, and this the said Complainant has in substance avowed by an endorsement printed or caused to be printed by him on the back of his said book in the following words viz - "The plan of this little book is entirely original and very peculiar, the lessons are illustrated with cuts and unit marks and are rendered at once interesting and impressive" And these Defendants further say that the unit marks used by said Complainant in his said book and which do not represent sensible objects and are used by this defendant Davies in his said book, were in common use long before the publication of the Complainant's said book; and thus leaving the said Complainant's original invention to consist merely as above stated in adopting the representations of sensible objects for unit marks -

And these Defendants further answering say, that

the book of this Defendant Charles Davies does in no respect adopt, copy, or use, said original invention of said Complainant. He having in no instance used any unit marks representing or with the intent to represent sensible objects.

These Defendants further answering say, that after a careful consideration of the Allegations contained in the Complainant's said Bill, with the aid and advice of their Counsel, they are unable to determine whether the said Complainant insists that this Defendant Charles Davies has adopted any thing in his said book which the said Complainant claims to be original in his; and these Defendants for this cause, demur to the Complainant's said bill of complaint and claim the same advantage thereof as if they had in form demurred to said Bill for such cause.

These Defendants further answering say, that if the said Complainant is understood by his said bill to allege that "the plan of the Lessons" contained in his said book and which he claims to be his own invention has been adopted by this Defendant Charles Davies in his said book then these Defendants further answer and say, that such plan, which alone consists in respect of using the representation of sensible objects for unit marks, in the combinations of numbers, the arrangement of these combinations and the tables of numbers none of which were original with said Complainant, and they were in general use before the publication of his said work.

And these Defendants further answering say, that if the said Complainant is understood by his said Bill to allege that he has arranged a certain set of

tables in the form of lessons and that this Defendant Charles Davies has in his said book adopted the same arrangement of the same set of tables; then these defendants further answering say that the same arrangement of a like set of tables embracing the same combinations of numbers, was in general and common use long before the publication of the complainant's said book, and is not original with him nor as these defendants understand the allegations of his said Bill does he claim the same to be original with him

These defendants further answering, this defendant Charles Davies from his own knowledge and this defendant Alfred S Barnes from information and belief say, that in respect to the similarity alleged by the complainant in his said bill of complaint to exist in the appearance of certain pages of his book and in the book of this defendant Davies; that such similarity of appearance if it do exist, which these defendants deny, was purely accidental and was not intended, expected or desired by this defendant Davies; that in the preparation of the manuscript of his said work, he made no arrangements or divisions for pages, and when the same was completed, he handed it ^{over} ~~at once~~ to Richard Hobbs of Hartford, in the state of Connecticut, a skillful compositor and stereotyper, to be composed and stereotyped, with a general direction to arrange the matter of the book in the best form and without any instruction or intimation as to what he should put upon one page and what upon another; and these defendants each answering from his own knowledge further say that they never knew, heard or believed that any such similarity as is stated by the complainant in his said Bill of Complaint between certain

pages of said books (if it existed at all) - existed or that the said Complainant or any other person alleged that any such similarity existed, until after the filing of said Bill of Complaint; and these Defendants are informed by said Richard Hobbs and believe the information to be true that he arranged the matter of said book of this Defendant Davies according to his own taste and judgement, without copying from and without reference to the said books of said Complainant; and which book the said Richard Hobbs never saw until after he had composed, stereotyped and these Defendants had published the said work of this Defendant Davies, and as evidence of the foregoing allegations in respect to the alleged similarity of appearance of certain pages of said books, these Defendants say, that the matter in the book of this Defendant Davies respecting Subtraction contained on pages 25 to 36 inclusive is similar in all respects to the matter and the arrangement thereof under multiplication and division upon the pages of his said book charged by said Complainant to be similar in appearance to the pages of his said book; but the matter on the said 25th page of the book of this Defendant Davies not throwing the table ~~on~~ ^{at} the bottom of that page, the tables on all of said pages from 25 to 36 inclusive fall on different parts of such pages and such pages are not claimed by said Complainant to be similar in appearance to those in his said book on which he treats of Subtraction.

These Defendants further answering say, that the location of neither the examples nor the tables on particular parts of the pages

Composed by this Defendant Davis, and they
may to be dismissed from this Honorable
Court with their reasonable costs and charges
to be paid by said Complainant -

Charles Davis.
Alfred S. Barnes

Saml. A. Foot of
Counsel for Defs D
Jesse J. Justice

Southern District of New York sp. on this 19th
day of September A.D. 1844 personally appeared
before me Charles Davis and Alfred S.
Barnes the Defendants above named and
made oath that the facts stated in said
answer as far as they have come within
their knowledge are true, and such as
are derived from information of other
persons or stated upon their belief, they
truly believe to be true

Thomas Rapali
Notary Public

Handwritten text, possibly a signature or name, located on the right side of the page.

Circuit Court of
the United States
District of Massachusetts
In Equity.

Frederick Emerson

vs.
Charles Davies &
Alfred J. Barnes

Answer

Circuit Court of the
United States for the
District of Massachusetts
In Equity

Fredrick Emerson

vs

Charles Davies and
Alfred S Barnes.

State of Connecticut, Hartford County,
J. Richard Hobbs of the City of Hart-
ford, being duly sworn, says that
he resides in said city of Hartford,
and is a compositor and stereotyper
that in or about the month of
July in the year of our Lord one thou-
sand eight hundred and forty, he
was employed by Charles Davies,
one of the above defendants, to stereo-
type a work then written or a-
bout being written by said Da-
vies entitled "First Lessons in Arith-
metic designed for Beginners"

That this Deponent received
the same in Manuscript from
time to time from said Charles
Davies, with a general direc-
tion to arrange the matter of
the Book in the best form and
without any instruction or inti-
mation as to what he should

put upon one page and what up
on another.

That this Deponent there
upon composed and stereotyped
said Book from said Manuscript
according to his own taste and
judgment, without copying from
or without reference to any Book
composed or published by the said
Complainant:-

That this Deponent
never saw the said Book of the
said Complainant until he
had composed and stereotyped
the said Book so written by the
said Charles Davies and until
after the same had been publish-
ed by the said Defendants, and
that the arrangement of the
matter upon the published pa-
ges of said last mentioned Book
was entirely the act of this de-
ponent, dictated only by his taste
and judgment, & without any
knowledge of or reference to the
arrangement of the matter in
the said Book of the said Com-
plainant.

And further this Deponent
saith not.

Richard W. Hobbs

Subscribed this 25th

25th Sept 1844. before me J. H. Fellows U.S. Com.

United States of America, District,
of Connecticut, Hartford City & County
p. September 21st A. D. 1844. Before
me Francis Fellows, United States
Circuit Court Commissioner for the
said District of Connecticut, this
day personally came Richard
H. Hobbs aforesaid, who being by
me duly examined, cautioned, & sworn
to testify the whole truth, subscribed
the foregoing deposition in my pres-
ence, & made oath to the truth
of the same in due form of law.
The reason of taking said Deposition
is that the Defendant resides more
than one Hundred Miles from
the place of trial. The adverse
party not residing within that
distance from the place of caption
and having no known agent or
attorney within that distance,
was not notified nor present
at the taking of said deposition.
The said deposition was by me
taken & reduced to writing to be used
in the trial of the above entitled
cause, & was taken at the request
of the 2d Defendant.

Francis Fellows

U. S. Circuit Court Com-
missioner for the District
of Connecticut.

(53)

Emerson in Eq. W. David et al.

Answer

Sept. 26th 1844. Filed in
the Clerk's office -



Circuit Court of the United States

Mass. District SS.

Term 1845

Frederick Emerson vs. Chas Davis & al

And now it appearing to the Court that
the ^{Said} Dependents have declined the issue
heretofore offered to them ~~in this cause~~, by
a decretal order on file in this cause,
on consideration of the merits of this cause
it is declared by the Court that the said
plaintiff hath a copyright in the book
mentioned in his bill, entitled

and hath the sole right to print publish
and vend the same, as author and
proprietor, according to the Statutes in
such case made and provided;

And it is farther declared by the Court
that the book published by the said
dependents, in the Bill and other
proceedings in this cause mentioned,

entitled

is a violation and infringement of the said copyright of the plaintiff, in the several pages thereof from the tenth to the nineteenth pages inclusive and from the twenty fifth to the thirty fourth pages inclusive, and that the said several pages of the said Defendants are copied and pirated from the said book of the plaintiff; and it is accordingly ordered and adjudged by the Court that the said Defendants be and they hereby are perpetually enjoined and prohibited from printing publishing or selling or exposing to sale, by themselves or their agents, any copy or copies of their said book containing the said several pages and the contents thereof, without the license of the plaintiff, or any copy or copies of any other book or pages

or parts of a book containing the
same or any part of the same
contents ~~form~~ and method of
~~teaching~~ ^{method} plan, arrangement and
illustrations used and invented
by the plaintiff in and upon
the several pages of the plaintiff's
said book from

to inclusive.

QAT 1
1848
4757

Circuit Court of the United States.
District of Massachusetts:
May Term A. D. 1845.

Frederick Emerson In Eq.
vs
Charles Davies & al.

This cause came on to be heard at this Term and was argued by counsel: and thereupon upon consideration thereof, it was ordered adjudged and decreed as follows - viz:

That the Jdts. elect on or before the 1st day of September next whether they will elect to try the question of the violation of the Copyright involved in this cause before a jury, and that if they elect to try the same before a jury that the issue to be tried by such jury shall be tried at the bar of this Court and be in the following form and on the following terms - viz. The jury to find "whether the Jdts. Davies in his work entitled "First Lessons in Arithmetic stated in the case in the pages thereof from the tenth to the nineteenth pages inclusive and from the twenty fifth to the thirty fourth pages inclusive, and from the thirty seventh to the forty fourth pages inclusive

"did use the work of the Plff entitled the North
"American Arithmetic. Part First, stated in
"the case as a model and copy or imitate the
"plan arrangement mode of illustration and
"tables thereof, or whether the same pages of
"the work of the said Davies were prepared
"without knowledge or use of or reference
"to the said work of the Plff. and the coincidences
"therein arose from the use of common sources
"of information and common materials open
"to both and were accidental and undesigned",
"and that no other evidence be laid before the
"jury except that contained in the record and
"the works therein referred to. That the Defats -
"shall be at liberty to offer evidence (if they
"choose) to show what were in point of fact
"the original sources and works to which he
"the Defat. Davies resorted or which he used
"in compiling his work. And that the Plff.
"shall be at liberty to offer evidence (if he chooses)
"that the Defat. Davies had before or in compiling,
"his work seen, known and used the Plff's
"work and for this and for no other purposes
"the Plffs shall be at liberty to require the
"Defat. Davies to answer upon oath such written
"interrogatories as to his having seen, known
"or used the Plff's work before or in compiling
"his own work, as he shall be advised." And
"that the Defats "pay the ordinary taxable costs

"of the suit to the Plff. up to the present time, the
"expense of the printing, the record being divided
"between the Plff. and the Defats and the future
"costs to abide the result of the verdict and the
"decree of the Court".

And it is further ordered adjudged
and decreed,

That if the Defats shall not
elect within the time aforesaid to try the said
question of Copyright in the preceding form
and on the preceding terms that then ~~by~~ the
~~Plff. shall~~ ~~be~~ Defats be and they hereby are
severally and perpetually restrained and
enjoined from printing, publishing, selling,
or exposing to sale or causing or being in any
way concerned in the printing, publishing
selling, or exposing to sale any copy or copies
of the whole or any part of the pages of the
work of the said Defat Davies entitled First
Lessons in Arithmetic from the tenth to the
ninesenth pages inclusive and from the
twenty fifth to the thirty fourth pages inclu-
sive

District of Massachusetts ss.

In the Circuit Court of the United States for the First
Circuit -

Frederick Emerson

v.

Charles Davies & alt.

The replication of the Complainant :

The said Frederick Emerson for replication to said Answer of the Defendants says, he will aver and prove his said Bill to be true ~~and~~ certain and sufficient in law to be answered unto, and that the said Answer of the said Defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said Answer contained material or effectual in law to be replied unto confessed or avoided, traversed or denied, is true; All which matters & things this repliant is and will be ready to aver and prove, as this honorable Court shall direct; and humbly prays as in and by his said bill he hath already prayed -

By Geo Pickering
of counsel for Plaintiff

Emerson in Eg. M. Davies's seal.

Replication

Oct. 5th 1844. Filed in
the Clerk's office

Circuit Court of the United States.
 District of Massachusetts:
 May Term, A. D. 1845.

Frederick Emerson In Cop.
 vs
 Charles Davies Gal.

(Aug 17. 1845.

This cause came on to be heard at this Term and was argued by Counsel; and thereupon upon consideration thereof, it was ordered adjudged and decreed, as follows, viz:

That the Judges elect on or before ~~the~~ ^{8th} ~~10th~~ ^{15th} day of September next whether they will ~~elect to try the question~~ of the violation of the copyright involved in this cause before a jury, and that if they elect to try the same before a jury that the issue to be tried by ~~a~~ ^a jury shall be tried at the bar of this Court and be in the following form and on the following terms, viz: "The jury do find whether the said Davies in his work entitled 'First Lessons in Arithmetic', stated in the case in the pages thereof from the tenth to the nineteenth pages inclusive and from the twenty fifth to the thirty fourth pages inclusive and from the thirty seventh to the forty fourth pages inclusive

to be tried

"did use the work of the Plff. entitled the North
"American Arithmetic Part First, stated in the
"case as a model and copy, or imitate the
"plan, arrangement made of illustration
"and tables thereof or whether the same pages
"of the work of the said Davies were prepared
"without knowledge or use of, or reference to
"the said work of the Plff, and the coincidences
"therein arose from the use of common sources
"of information and common materials, open
"to both and were accidental and undesigned";
"and that no other evidence be laid before
"the jury, except that contained in the record
"and the works therein referred to. That the
"Defat^s shall be at liberty to offer evidence (if
"they choose) to show what were in point of
"fact the original sources and works to which
"he the Defat. Davies resorted or which he
"used in compiling his work. And that
"the Plff. shall be at liberty to offer evidence
"(if he chooses) that the Defat. Davies had before
"or in compiling his work seen, known, and
"used the Plff's work, and for this and for
"no other purpose the Plff. shall be at liberty
"to require the Defat. Davies to answer upon
"oath such written interrogatories as to having
"seen, known or used the Plff's work before
"or in compiling his own work, as he ^{is} ~~is~~
"shall be advised." And that the Defat^s pay

"the ordinary taxable costs of the suit to the Plff.
"up to the present time, the expense of the printing
"of the record being divided between the Plff.
"and the Defs: and the future costs to abide the
"result of the verdict and the decree of the Court":

And it is further ordered, adjudged
and decreed.

That if the Defs: shall
not elect within the time aforesaid to try the
said question of copyright in the preceding
form and on the preceding terms that then
by the Court that said Defs: be and are
hereby severally and perpetually restrained
and enjoined from printing, publishing, selling
or exposing to sale or causing or being in any
way concerned in the printing, publishing
selling or exposing to sale any copy or copies
of the whole or any part of the pages of the
work of the said Defs: Davies entitled First
lessons in Arithmetic from the tenth to the
nineteenth pages inclusive and from the
twenty fifth to the thirty fourth pages inclusive.

And it is further ordered adjudged
and decreed that

Edw. Emerson

to
Ch. Davis Esq.

Introductory note
to edition of treatise
by J. J. J.

Circuit Court of the United States, Oct. 5. 1845.

Wash. District In Equity.
Frederick Emerson, Plaintiff
vs. Charles Davies & al^{ms.} Defendants

This cause came on to be further heard at this term; and was argued by counsel, and thereupon upon consideration thereof it was ordered, Adjudged and Decreed as follows. viz. That the said Defendants be and they hereby are severally ^{perpetually} restrained and enjoined from printing, publishing, selling, or exposing to sale, or causing or being in any way concerned in the printing, publishing, selling, or exposing to sale, any copy or copies, of the whole or any part of the pages of the work of the said Defendant here, in the said Bill and Answer mentioned, entitled First Lessons in Arithmetic, from the tenth to the nineteenth pages inclusive, and from the twenty fifth to the thirty fourth pages inclusive.

And that the Plaintiffs do recover their costs against the said Defendants including one half the expense of printing the record.
Attest: J. B. Ross Clerk.





J. P. Landon,
Highway M.
Ch. L. Davis tal.
Frank Krum.

Oct. 10/1911

UNITED STATES OF AMERICA.

No. 49

District of Massachusetts, Dec 2. A. D. 1845

In the Cause of

Fredrick Emerson In Equity

vs.

Charles Davies & Co.

It is ordered, that the following property, in the Registry of the Circuit Court, in this Cause to wit, Fifty Dollars being the Amount paid by said Defendants as security for Costs on Petition for rehearing in said Cause which said petition by consent of parties on file is & shall be delivered or paid over to said Defendants

to their Collector for the account of said Defendants

and that a Check or order be issued by the Clerk for this purpose.

Judge of Mass. Dist. Court

City of Boston

Boston, Dec 2nd 1845
Wm B Robb

1845.—Received of Clerk of said Circuit Court,

Fifty — Dollars and $\frac{00}{100}$ ths pursuant to the foregoing order, by his Check on the Bank of the United States, having signed duplicate Receipts.

Wm B Austin

\$ 50.00

Term 1845 No. 37

Oct 10

Amesbury

11.

June, 1841.

Order for payment
of money, 1000.

Dec 2, 1841

Circuit Court of the United States.

First Circuit District of Massa-
chusetts.

Frederick Emerson } vs. Charles Davies &
in Equity } Alfred S. Barnes.

The Defendants having presented a petition for a rehearing of this cause, and the same being under argument, the Counsel for the Plaintiff stated to the Court that he had been instructed by the Plaintiff to say, that he had become convinced in the course of the hearing that the Defendant Davies, in the construction of his book had acted under a misapprehension ^{with respect both to} of the law and to the originality of the Plaintiff's Book. That although the Plaintiff's right had been infringed, the infringement was not intentional on the part of Mr. Davies: and that the Plaintiff had determined not to enforce against the Defendants the decree entered in this cause, and asked leave to enter an order to that effect, and it was granted. It is then fore ordered with the consent

and at the request of the Plaintiff
that no injunction issue against
the Defendants as directed in
the final decree.

The Counsel for the
Defendant then stated to the Court
that they had applied for a rehearing
and intended ultimately to take
an appeal if necessary under the
full belief that the decision of
this Court is erroneous; but
that the above statement of the
Counsel for the Plaintiff and
order entered thereon are satisfac-
tory to the Defendants and
they asked leave to withdraw
their petition for a rehearing
and agreed not to take an
appeal or file a bill of review.
It is therefore ordered, with the
consent and at the request
of the Defendants that they have
leave to withdraw their said
petition.

agreed to
S A Frost
Geo. S. Curtis

J. Emerson

^{n.}
Davis tal.

Agreement of your
to that petition
preparing to
withdraw same
entered. &

Nov 24 1844
m. Court.

United States of America.

MASSACHUSETTS DISTRICT.....SS.

THE *Circuit* Court of the
United States, within and for the
Massachusetts District

TO *Thomas C. Amory Jr.*
Esquire, of Boston in said
District.

KNOW YE, That, reposing confidence in your wisdom, prudence and
fidelity, we have appointed, and by these presents do authorize and empower you
to take the answers to the interrogatories hereunto annexed of

Timothy H. Carter, of said Boston,
Bookseller,

to be used in a certain cause now pending in said Court, wherein

Frederick Emerson is Complainant in Equity
versus
Charles Davies & al. Defendants.

And to this end, at certain days to be by you appointed for that purpose, to
cause said witnesses, as aforesaid, to be brought before you, and each witness, while
present before you, to examine carefully on oath touching the premises. And when
you shall have taken the examination as aforesaid, to reduce or cause the same to be
reduced to writing, and to be subscribed by each of said witnesses in your presence.
And the same, so taken and subscribed, to return, together with this Commission and
your doings herein enclosed, sealed and directed to the *Circuit* Court aforesaid,
~~next to be~~ holden at Boston, on the _____ day of _____
~~next~~ as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said *Circuit*
Court to be hereunto affixed.

Witness, the Honorable *Roger P. Thayer* at Boston,
this *twelfth* day of *February* in the year of our Lord
one thousand eight hundred and *forty five*

Francis Bennett CLERK.

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the de-
position, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent
whilst giving *his* deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition
in a place separate and apart from all other persons, and permit no person to be present during such examination, except the
deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reduc-
ing the deposition to writing. And you shall put the severest interrogatories and cross-interrogatories to the deponent in their
order, and take the answer of the deponent to each, fully and clearly.

U.S. Circuit Court
Massachusetts District Oct. 5. 1844.

Frederick Emerson in Eq. vs. Charles Davies & al.

Interrogatories to be proposed to Timothy H. Carter of Boston in ^{the} said District, bookseller a witness to be produced, sworn and examined on the behalf of the Def^s in said Action.

- 1st What is your name, age, business, place of residence and place of business?
- 2^d Whether or not you were a member of the firm of T. H. & C. Carter in 1823, and previous and subsequent thereto?
- 3^d Whether your said firm stereotyped a work called "First Lessons in Arithmetic on the plan of Pestalozzi with some improvements, by Warren Colburn"? If yea, when or about when did said firm stereotype the same?
- 4th Please to examine the book hereto appended and marked A. on the cover and state whether or not the same is a copy of the said work stereotyped by your firm?
- 5th Please to state whether said copy was printed

or published in 1823 or any time previous to the year 1829?

6th Please to compare said work marked A. with the book hereto appended, marked B. on the cover and say whether there is any difference between them, and if any, what?

7th - Whether the paging of the preface is carried through the said work marked B. and ^{carried} not through in said work marked A.

8th - Whether ~~the~~ said works are not otherwise the same page for page?

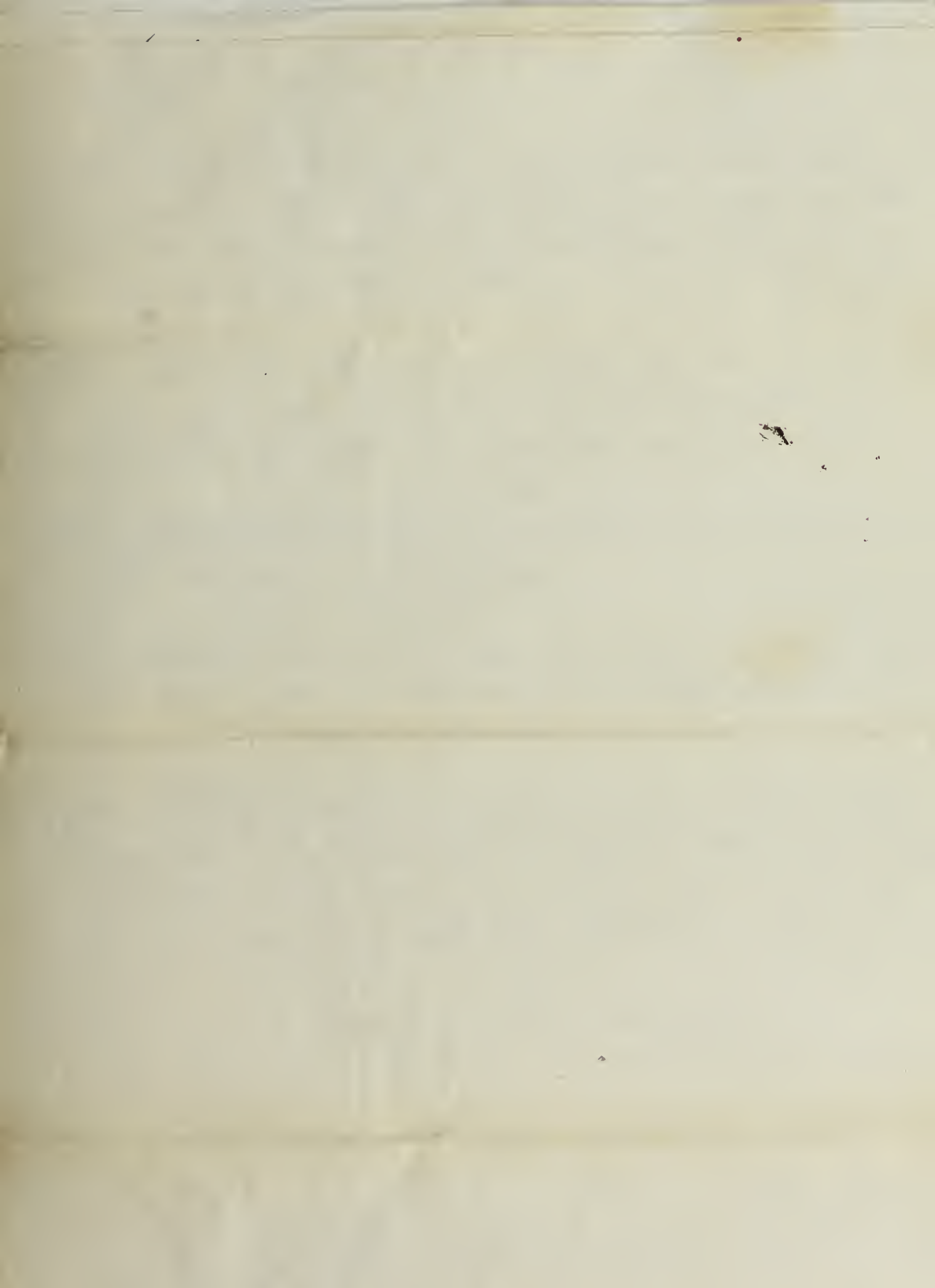
9th - Whether or not a set of plates was published to accompany the said work by Colburn? If yea, by whom were said plates so published?

10th - Please to examine the pamphlet hereto appended, marked C. on the cover and say whether the same is a copy of said plates inquired of in the last preceding interrogatory.

Ivers J. Austin
of Counsel for Defd^o

A true copy Attest

Francis Bennett Clerk



1 - 2 -

The Deposition and answers under oath of
Timothy H. Carter of Boston, in reference
to the several Interrogatories annexed to the
foregoing Commission, viz.

1. To the First Interrogatory he saith - My name
is Timothy H. Carter; aged Forty six years. I am
a resident of Boston and a publisher and
bookseller there.
2. To the Second Interrogatory he saith. I was
a member of said firm in the year Eighteen
hundred and Twenty three, and previous
and subsequent thereto.
3. To the Third Interrogatory he saith - Said
work called "First Lessons in Arithmetic on
the plan of Pestalozze, with some improvements,
by Warren Colburn, was stereotyped by the said
firm. Said work was stereotyped by said
firm in the year Eighteen hundred twenty
two or Eighteen hundred twenty three.
4. To the Fourth Interrogatory he saith - The
book appended to the foregoing Commission and
marked **A.** on the cover is a genuine copy of
said work as stereotyped by said firm.
5. To the Fifth Interrogatory he saith - I have
no doubt as member of said firm that said
work was published in the year Eighteen hundred
and twenty three.

6. To the Sixth Interrogatory he saith. There is no difference between said work marked **A.** and the book hereto appended marked **B.** on the cover, with this exception - that in the work marked **A.** the paging of the preface is distinct from that of the work itself; in the work marked **B.** the paging is continued from the beginning of the preface to the end of the work itself.
- 7 To the Seventh Interrogatory he saith - The paging of the preface is carried through the said work marked **B.** and not carried through the said work marked **A.**
- 8 To the Eighth Interrogatory he saith - Said works I believe to be otherwise the same, page for page.
- 9 To the Ninth Interrogatory he saith - A set of plates was published to accompany said work by Colburn. Said plates were so published by the firm of Cummings, Hilliard and Company.
- 10 To the Tenth Interrogatory he saith - The pamphlet appended to the foregoing Commission, marked **C.** on the cover is a genuine copy of the said plates engraved of on the last preceding Interrogatory.

J. H. Carter

United States of America.
District of Massachusetts.

On this Fifteenth day of February in the year Eighteen hundred and forty five, by virtue of the foregoing Commission I caused Timothy H. Carter, the deponent therein mentioned, to come before me in Boston in said District; and the said Deponent, being first duly cautioned and sworn to testify the whole truth, and nothing but the truth, in answer to the several interrogatories thereto annexed to be propounded to him, then and there gave the foregoing answers by him subscribed in my presence; and the same were by me reduced to writing in his presence, and by me read to him before signing. And no person was present at the time of taking the said answers, other than the said deponent and myself.

Thomas C. Amory Jr
Commissioner

Deponent's Fees 1.25
Commissioner's Fees 5.00

\$6.25

Entered by Davis Oct

Deportation for 878

March 4th 1845 -

Grand of base

F. B. M.

5

Circuit Court of the United States
District of }
Massachusetts } Oct. Term. A. D. 1845

Frederick Emerson in Eq.

vs

Charles Davies Del.

Pursuant to an order of the Hon. Judge
Sprague granting permission to the Plaintiff
in said case to take from the files certain
books used on the trial of said case on
condition that the title pages of said
books together with the place of deposit
of the same be placed on file I hereby
certify that the following are true copies
of said title pages and a true state-
ment of the places where said books
are deposited and further I acknowledge
that said books have been taken by me
and returned to said places of deposit
whence the same were taken.

Joel S. Austin
of counsel for Plaintiff

Over

Johannis Wallis, S. J. O.

Geometriae Professoris Savioliani
in celeberrima Academia Oxoniensi
opera Mathematica.

Volumen Primum
Oxoniae

E. Theatro Sheldoniano MDCXCV

Deposited in the library of Harvard College

Arithmétique Élémentaire
Théorique et Pratique

Par P.-F. Souaino

Professeur de mathématiques spéciales au
collège Royal de Pontivy

Paris

Bachelier (successeur de M^{me} V^e Courcier)

Libraire pour les sciences

Quai des Augustins N^o 55

1826.

Deposited in the library of Harvard College

Cours complet de Mathématiques Pures
Dédié à S. M. l'Empereur 1^{er} Empire
de Russie; Par L. B. Francoeur.

Professeur de la faculté des Sciences de Paris, de
l'école normale et du Lycée Charlemagne,
Officier de l'Université, et Examinateur des
Candidats de l'école royale Polytechnique,
membre honoraire du département de la Marine
Russe, correspondant de l'Académie des sciences
de Saint Pétersbourg, des Sociétés d'Encourage-
ment pour l'industrie nationale, d'instruction
élémentaire et des méthodes d'enseignement
des Académies de Rouen, Cambrai, Toulouse etc

Ouvrage destiné aux élèves des écoles nor-
male et polytechnique et aux candidats
qui se préparent à y être admis

Seconde Edition

Revue et considérablement augmentée

Tomé Premier

Paris

M^{onsieur} B^e Courcier Imprimeur-Libraire
Rue du Jardinet-Saint-Arne-des-Arts

1819

Deposited in the library of Harvard College

Arithmétique d'Émile. ouvrage adopté
par le conseil académique du canton de
Vaud pour servir aux b' usages des col-
lèges

Par M. Crevier

Professeur de mathématiques, membre correspon-
dant de l'Académie impériale des sciences de
St. Pétersbourg, des Académies de Harlem et de
Geneve, des sociétés de Montauban, de Bordeaux
de Lyon, de Besançon, de la société économique
de Saxe, et de la société helvétique des sciences
naturelles

Troisième Édition,
corrigée et augmentée



Leussemme

Chez la comtesse et C^{ie} Libraires

1823

Deposited in the Library of the U. S. Mil-
itary Academy at West Point

The philosophy of arithmetic exhibiting
a progressive view of the theory and practice
of calculation with tables for the multi-
plication of numbers as far as one ^{thousand} ~~hundred~~
By John Leslie Esq^r formerly professor of math-
ematics and now of natural philosophy
in the University of Edinburgh

Second Edition improved and enlarged
Edinburgh

Printed by Abernethy & Walker

For Williams and Charles Sart 78 Prince's Street
over Longman, Hurst, Rees, Orme and Brown

Deposited in the
Library of U.S. M. A.
107

London 1820



Emerson & Darwin
R. E. G.

Early Copy Letter press
contains book annotated
to Dep. '03 + index of
Cont. &

Dec 1. 1891. Filed

U. S. Circuit Court
Massachusetts District Oct. 7. 1844

Frederick Emerson Jr Esq^r

vs

Charles Davies & al

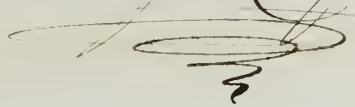
It is agreed in the above named
case that the time for taking testimony
may be extended to the first Mon-
day of March 6 @ 1845.

In Testimony

for plff

Isaac S. Austin

for Defts



Emerson Jr Esq

by

James A. A.

(2) Agree to return home
to take testimony to
1st necessary extent

Jan'y. 30. 1845. Filed —

United States Circuit Court
Massachusetts District
October Term A D 1844

In Chancery

Frederick Emerson

vs

Charles Davies & al.

The parties in the above entitled action do hereby agree that the time allowed for taking testimony may be extended to the first Monday of February A D 1845.

J^r Pickering for pl^{ff}.

Ivers S. Austin
of counsel for pl^{ff}



Emerson in 19th

by
Dovee & al.

Agreement for extra
doing time to take

testimony

==

Dec. 11th 1844.

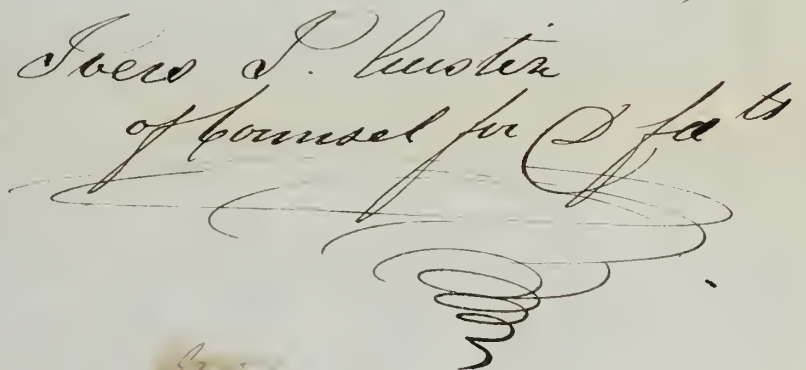
Filed in the Clerk's office.

United States Circuit Court
Massachusetts District Oct. 1. A.D. 1844

Frederick Emerson Junr Esq^r
vs
Charles Davies Del

The parties in the above entitled
action agree that an order for the
publication of testimony may be
passed on the filing thereof.

for Pickering for plf

Ives S. Pluister
of counsel for D & fa^{ts}


Argument as to publication
of Testimony

Filed at March Rules '45

UNITED STATES OF AMERICA.

Massachusetts District, ss.

To *Charles Davies of New York in the State of New York, paymaster of the United States Army and a citizen of said State of New York and Alfred G. Barnes of Philadelphia in the State of Pennsylvania Berkeley a citizen of said State of Pennsylvania - being partners in trade*

GREETING.

FOR CERTAIN CAUSES, offered before the Circuit Court of the United States of America, for the first Circuit, within and for the Massachusetts District, as a Court of Chancery, WE COMMAND AND STRICTLY ENJOIN YOU, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said Circuit Court, at the Rules, to be holden at the Office of the Clerk of our said Court, in Boston, in said District, on the first Monday, being the *fifth* day of *August* next, to answer concerning those things, which shall then and there be objected against you by

Fredrick Emerson of Boston in said District of Massachusetts, versus, in his Bill of Complaint.

and to do further and receive that which our said Circuit Court shall consider in this behalf. And this you are in no wise to omit, under the penalty of *five hundred* dollars
And have you there this writ.

Witness, the Honorable *Roger B. Taney* at Boston
this *twenty eighth* day of *June* .A. D. 1844, in
the *Sixty eighth* year of the Independence of the United States of America.

Franis Barrett Clerk.

MEMORANDUM. The defendant is to enter his appearance in the suit in the Clerk's Office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

United States of America

Massachusetts District, ss.

Boston June 28th 1844

I certify, I have notified the within named Barnes, for his appearance as within ordered, by giving him in hand this day, a true and attested copy thereof. And by direction of John Pickens, Justice of the Peace for the within named Precinct, I gave in hand to said Barnes, for the within named Justice, his Eschertner in trade, a like copy for said Barnes appearance at Court.

Solomon Lincoln
U. S. Marshal

D. son: 54.

D. cat: 2.

D. fav: 1/10

50/10

Subpoena

Process by Barnes, 1844

3
U. S. Circuit Court.

~~May~~ ^{Oct.} Term. A.D. 1845

Frederick Emerson In Equity

vs

Charles Davies & al.

The parties to the above suit hereby agree
that the copyrights of the books in question in
the series ~~of~~ ^{series} ~~of~~ ^{of} the books to be pro-
duced in evidence at the hearing ^{thereof} ~~of~~ ^{of}
~~and~~ ^{and} were ^{severally} ~~severally~~ ^{severally} ~~severally~~
expressed in the ~~printed~~ ^{printed} copies ~~thereof~~
printed in the series books,

Jno Pickering, for plt

Mrs J. Austin
of counsel for Def^{ts}



Agreement of
Parties as to Copy
rights in

United States of America.

MASSACHUSETTS DISTRICT.....SS.

THE Circuit Court of the United States, within and for the Massachusetts District

To T. J. D. Kinsley, Esquire, of West Point, in the State of New York

KNOW YE, That, reposing confidence in your wisdom, prudence and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of

William H. Bartlett, Albert C. Church, and Claudius Berard, all of said West Point

to be used in a certain cause now pending in said Court, wherein

Dr. Frederick Emerson in Complainant in Equity, versus Charles Davies & al, Defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this COMMISSION and your doings herein enclosed, sealed and directed to the Circuit Court aforesaid, ~~not to be~~ holden at Boston, on the ~~day of~~ ~~month~~ as soon as the same shall have been executed.

In testimony whereof, we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Roger B. Taney at Boston, this twelfth - day of February in the year of our Lord one thousand eight hundred and forty five.

Francis Parrott CLERK

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving ~~his~~ depositions in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

The execution of the within Commission
appears in the papers hereto annexed and
marked AA, BB, and CC, respectively.

J. D. Kinsley,
Commissioner.

United States Circuit Court }
Massachusetts District }

October Term 1844.

Frederick Emerson In Equity

vs.

Charles Davies & al.

Interrogatories to be propounded unto William H. C. Bartlett of West Point in the state of New York, Professor of Natural and Experimental Philosophy in the U. S. Military Academy, and Albert C. Church of West Point aforesaid, Professor of Mathematics in said Academy, and Claudius Berard of West Point aforesaid, Instructor in the French Language in said Academy, witnesses on the part ^{of} the ~~Defds~~ ^{Pl. behind} in the aforesaid suit, to be produced, sworn and examined.

Interrogatories to said Bartlett & Church

- 1.st What is your name, age, occupation, place of business, and place of residence?
- 2.^d Have you ever rendered your deposition in the above entitled case? If yea, when and before whom?
- 3.^d Did you refer in your said deposition to any Arithmetical works? If yea, please state the titles of the works you referred to?

4th— Whether or not there is a Library at West Point belonging to the U. S. Military Academy and whether or not you procured said books or either ~~of~~ them out of said Library?

5th Will you cause said books to be annexed to your answers so that the same may form a part thereof? and state whether said Books are or are not, those referred to in your first deposition?

Ivers J. Austin
of Counsel for Dfts.

Interrogatories to said Berard.

- 1st What is your name, age, occupation, place of business, and place of residence?
- 2^d Whether or not you are the Librarian of the U. S. Military Academy? If yea, how long have you been the Librarian?
- 3^d Whether or not there is in the Library of said Academy a work entitled "The Philosophy of Arithmetic exhibiting a progressive view of the theory & practice of Calculations with tables for the multiplication of numbers as far as one thousand, by John Leslie Esquire, formerly Professor of Mathematics, & now of Natural Philosophy in the University

of Edinburgh - Second Edition enlarged and improved"?

4. If you answer the preceding interrogatory in the affirmative please to say how long said Book has been in said library, who placed it there?

5. Whether or not ~~it~~ there is in said Library a book with the following title? viz,
"Arithmetique & D'émile, ouvrage, adapté par le conseil Académique que au Canton de Vaud pour servir à l'usage de collèges. Par Em Develey".

6.th If you answer the preceding interrogatory in the affirmative please to state how long said Book has been in the said Library, and who placed it there?

7.th Will you please to cause to be attached to the Commission accompanying these interrogatories each of the aforementioned works, so that the same may form parts of your answer?

Ivers J. Austin
of counsel for Def^{ts}

A true copy attest

Francis Bennett Clerk

(A A.)

to the first interrogatory the said Bartlett saith:

(1st) My name is W^m H. C. Bartlett; my age is forty one years next birth-day; I am Professor of Natural and Experimental Philosophy at the U. S. Military Academy, West Point (N. Y.).

to the second he saith:

(2nd) I have: in the latter part of December last before L^d D. Winsley, Esqr. Commissioner to take depositions in this cause.

to the third he saith:

(3^d) I did, to several. I referred to a work on arithmetic entitled "The Philosophy of Arithmetic exhibiting a progressive view of the Theory and Practice of Calculation, with tables for the Multiplication of Numbers as far as one thousand by John Leslie, Esqr. formerly Professor of Mathematics" and afterwards Professor of Natural Philosophy in the University of Edinburgh, 2nd Edition improved and enlarged, Published in Edinburgh and printed by Abernethy and Walker for Wm & Charles Tait, 78 Princes Street, and Longman, Hunt, Rees, Orme, and Brown, London, 1820; and to another work on arithmetic entitled "Arithmétique d'Émile, ouvrage adopté par le conseil académique du canton de Vaud, pour servir à l'usage des Collèges; par Ém. Develley; Professeur de Mathématique" &c. "Troisième Édition, corrigée et augmentée. Lausanne, chez Lacombe et Co., Libraires, 1823."

To the fourth he saith:

(4th). There is: I did not. These books I believe belong to the Library. The first referred to is borne upon the Catalogue of this Library published in May, 1830.

To the fifth he saith:

(5th). The books referred to are now in the possession of the Court and I desire they should form part of my answers to the interrogatories of the Court. These are the books I referred to in my former deposition.

Attest

E. S. Hensley

Wm. H. C. Bartlett

(B. B).

In the first interrogatory the said Church saith:

(1st) My name is Albert E. Church; my age is thirty seven; I am Professor of Mathematics at the U. S. Military Academy, West-Point, (N. Y.).

To the second he saith:

(2nd) I have: in the early part of last January, before E. J. D. Winsley, commissioner to take depositions in this cause.

To the third he saith:

(3rd) I did: I referred to Adams' Arithmetic, Colburn's First-Lessons, Arithmétique d'Emile par Em. Develley, and Leslie's Arithmetic or the Philosophy of Arithmetic by John Leslie, Esq.

To the fourth he saith:

(4th) There is a Library at West-Point, and I procured from said Library the Arithmétique d'Emile, and Leslie's Arithmetic or the Philosophy of Arithmetic by John Leslie, Esq.

To the fifth he saith:

(5th) I will: this is Leslie's Arithmetic to which I referred, and this is the Arithmétique d'Emile to which I referred, in my first deposition.

Attest,
E. J. Winsley }

A. E. Church



(cc.)

To the first interrogatory the said Berard saith:

(1st). My name is Claudius Berard; my age is fifty-nine years; I am Teacher of French at the U. S. Military Academy, West Point, N. Y.

To the second he saith:

(2nd). Yes, I am: ever since the year 1818.

To the third he saith:

(3rd). Yes, there is such a work.

To the fourth he saith:

(4th). It has been there ever since the year 1823; I placed it there as Librarian & recorded it in the Librarian's Book, a Manuscript still extant.

To the fifth he saith:

(5th). Yes.

To the sixth he saith:

(6th). That has been in the Library since the year 1831. I placed it there.

To the seventh he saith:

(7th). These two books now in the possession of the Court are the books to which I refer, and I desire to have them attached to the Commission so as to form part of my answer.

Attest

J. Kinsley }

C. Berard

Teacher of French & Librarian
in the Military Academy
at West Point, N. Y.



United States of America
Massachusetts District ss.

In the Circuit Court of the United States } October Term
within and for the District of Massachusetts } A. D. 1844.

By virtue of the Commission hereto prefixed and directed to me the subscriber the Commissioner therein named on the fifteenth and seventeenth days of February A. D. 1845, before me personally appeared Albert E. Church, one of the deponents in said Commission named; and on the seventeenth and nineteenth of said February, before me personally appeared Wm H. C. Bartlett, another of the deponents named in said Commission; and on the seventeenth of said February before me personally appeared Claudius Berard the last deponent in said Commission named. And the said Church being by me duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the matter for which his deposition was about to be taken, to the interrogatories to said Commission annexed gave the answers by him heretofore stated to have been given and the same were reduced to writing by myself, and were then signed in my presence by said Church; and in answering the 5th Interrogatory named in said Commission, the said Church presented to me the two works on Arithmetic which are unto this said Commission annexed and sealed. And the said Bartlett being by me duly sworn according to law in manner as aforesaid to the aforesaid interrogatories gave the answers by him hereinbefore stated to have been given and the same were

in like manner reduced to writing by me and were then signed by said Bartlett in my presence. And the said Berard being by me duly sworn according to law as aforesaid, to the interrogatories unto him in said Commission propounded, gave the answers by him herein before stated to have been given and the same were by me in like manner reduced to writing, and were then signed by said Berard before me. Said Commission was duly executed by me in exact compliance with the instructions therein contained and no person was present at the examination of said Church besides said Church and myself; and no person was present at the examination of said Bartlett besides said Bartlett and myself; and in like manner, no person was present at the examination of said Berard besides said Berard and myself. Said depositions are to be used at the hearing of a bill of complaint exhibited in Equity in the above named Court against Charles Davies and another at the suit of Frederick Emerson Complainant. Witness my hand & seal, at West-Point in the State of New-York this nineteenth day of February, A. D. 1845.

J. D. Kinsley } Commissioner
to whom said Commission
is directed.

Magistrate's fees — \$15.00

J. D. Kinsley.

Circuit Court of the U. S.
 Map District In Equity
 Emerson vs Davis et al.

	Bill in Equity	3.00
	Entry	5.00
	Subpoena	2.00
May T. 1844	Marshals fees for serving same	6.10
	Attendance 15 days	4.95
	Continuance	.50
Oct. T. 1844	Attendance 41 days	13.53
	Continuance	.50
May T. 1845	Attendance 42 days	13.86
	Filing answer	.40
	Recd	.50
	Counsel fee	10.00
	Opening & filing 26 Depositions	5.20
	Attendance at Rule 14 d.	4.62
	Continuance " " 14 d.	4.20
	Depositions of McArthur & four others. Coun ^r fee.	50.00
	Witness "	13.75
	clks "	5.50
		<hr/> 69.25
		143.64

Current Court
to be to Sep 11th

Report of Sherman, Atty gen. 2.50
Com? " 10.00
Witness " 12.50
143.61

" " Lincoln Atty " 2.50
Com. " 5.00
Witness " 1.25 8.75

1/2 Expense of printing Record
the whole being \$139.00
69.50
229.36

Smart
in spirit
u.
D. W. J. O. C.
C. J. J. J.

Traced by
Ex. "

Pliff atty
Atty

OCT 1945
#30

United States of America.

MASS. DISTRICT...SS.

THE *Circuit* Court of the United States, within and for the Massachusetts District.

Charles Sumner, George S. Hillard, Edward G. Loring, George T. Curtis and William M. Story, Esquires, or either of them.

KNOW YE, That, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of

Joshua Lincoln of Boston in said District,

to be used in a certain cause now pending in said Court, wherein

Frederick Emerson in Complainant in Equity versus Charles Davies & al Defendants

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this COMMISSION and your doings herein enclosed, sealed and directed to the *Circuit* Court aforesaid, ~~next to be~~ holden at Boston, ~~on the~~ *as soon as* ~~day of~~ *the same* ~~next.~~ shall have been executed.

In Testimony whereof, we have caused the seal of the said *Circuit* Court to be hereunto affixed.

Witness, the Honorable *Roger B. Taney* at Boston, this *third* day of *March* in the year of our Lord one thousand eight hundred and *forty five*

Francis Parrott CLERK.

N. B.—You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either in person or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving *his* deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

March 1865

Spent of

Time in the Clerk

Office

F. B. Clark

United States Circuit Court
Massachusetts District of
Oct. 1. 1844.

Frederick Emerson)
vs) In Equity
Charles Davies & al)

Interrogatories to be propounded to Joshua Lincoln of Boston in the County of Suffolk & District of Massachusetts book-seller a witness in behalf of the said plaintiff to be produced sworn and examined in the above entitled cause,

1. What is your age, occupation, place of business & residence,
2. Whether or not your father was a partner in a publishing firm in Boston aforesaid, and whether or not you knew said firm,
3. Whether or not the said firm were the first publishers of a certain book entitled "Emerson's First Part, The North American Arithmetic Part First containing Elementary Lessons"; if you state the circumstances which led you to be acquainted with said firm, and to have any knowledge of their publishing said book.

4. When said book was first published by said firm, whether or not was the demand for it large or small among the book-sellers or other persons; and whether or not it was considered by the book-sellers as a new or original ^{work} in the market, and dealt in by them as such or otherwise.

5. Whether or not was the demand for said book, when first published large or small

6. Have you any interest in the publication of said book or in the event of the above mentioned suit now pending between the said parties relative to the copy-right of said book

Jno. Pickering
for Plf

The Dfts. object to fourth interrogatory especially to ^{that} part of it commencing as follows to wit "and whether or not it was considered by the booksellers &c"

Jesse J. Austin
of counsel
for Dfts.

A true copy
Attest

Francis Barrett Clerk



Deposition of Joshua Lincoln
in answer to the several Interrogatories
proposed.

- First - I am thirty years of age; my occupation is that of a bookseller; my residence is Boston My place of Boston 59 Washington St Boston
- Second. My father was a partner in a publishing firm in Boston, & I knew the said firm.
- Third. The said firm, under the names of Lincoln & Edmunds, were the first publishers of a certain book entitled "Emerson's First Part, The North American Arithmetic, Part First containing Elementary Lessons". I was led to become acquainted with the said firm, because my father was a partner in it, & because I was a boy in their employ, & I had ^{was led} particular occasion to know of the publication of this book, because it took place while I was in their employ, & I was in the habit of carrying the proof-sheets from the store to the stereotypers.
- Fourth. When this book was first published the demand for it was very large among the booksellers & others. It was considered by the booksellers as new & original & dealt in by them as such.
- Fifth. The demand for this book when first published was very large.

Sixth. I have no interest in the publication of the
said book, or in the event of the suit now
pending relative to the copyright thereof.

Joshua Lincoln.

Boston April 1st 1845. Then & there personally
appeared the above-named Joshua Lincoln, & being
suborned deposed as is above-written, the same
being reduced to writing by me in his presence,
in answer to the interrogatories annexed to
the Commission herewith.

Charles Sumner
Counsel

Fees -

Witness \$1,25

Commission - 5,00

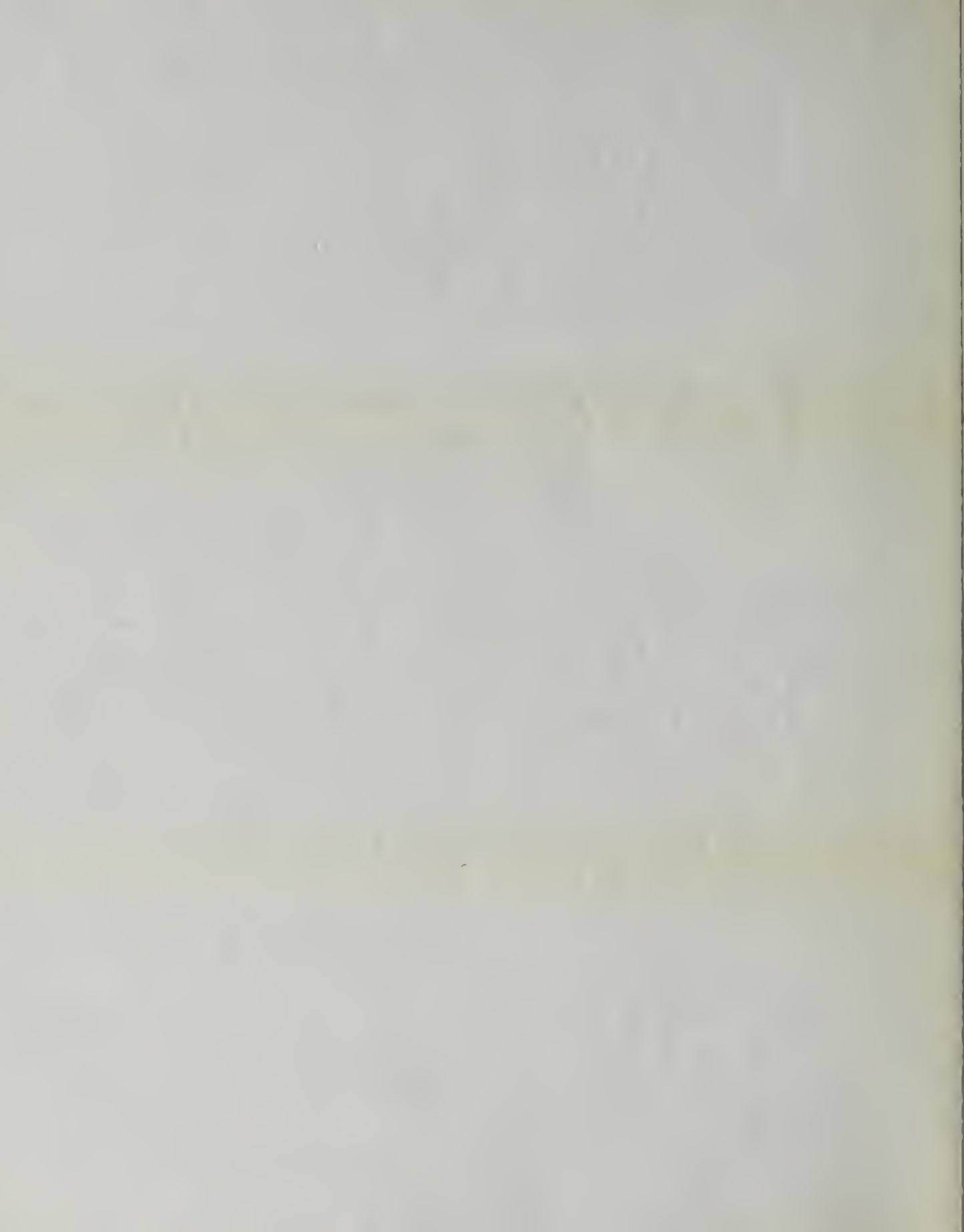
United States Circuit Court

First Circuit } October Term
District of Massachusetts } 1 D. 1845

Charles Davies & al } In Equity
vs }
Frederick Emerson }

The ^{sever} ~~sever~~ ^{of} ~~of~~ ^{the} ~~the~~ ^{Honorable} ~~Honorable~~ ^{Court} ~~Court~~ ^{has} ~~has~~ ^{passed} ~~passed~~ ^{an} ~~an~~ ^{order} ~~order~~ ^{to} ~~to~~ ^{stay} ~~stay~~ ^{proceedings} ~~proceedings~~ ^{on} ~~on~~ ^{the} ~~the~~ ^{deceit} ~~deceit~~ ⁱⁿ ~~in~~ ^{sever} ~~sever~~ ^{case} ~~case~~ ^{until} ~~until~~ ^{the} ~~the~~ ^{petition} ~~petition~~ ^{for} ~~for~~ ^a ~~a~~ ^{rehearing} ~~rehearing~~ ^{of} ~~of~~ ^{sever} ~~sever~~ ^{case} ~~case~~ ^{is} ~~is~~ ^{disposed} ~~disposed~~ ^{of} ~~of~~ ^{and} ~~and~~ ^{if} ~~if~~ ^{the} ~~the~~ ^{petition} ~~petition~~ ^{is} ~~is~~ ^{granted} ~~granted~~ ^{until} ~~until~~ ^{the} ~~the~~ ^{decision} ~~decision~~ ^{is} ~~is~~ ^{pronounced} ~~pronounced~~ ^{upon} ~~upon~~ ^{sever} ~~sever~~ ^{rehearing} ~~rehearing~~.

Per J. Austin
Solicitor for ^{of} ~~of~~ ^{the} ~~the~~ ^{part} ~~part~~



Enclosure
No
Darius & al
Warden for a stay
of proceedings in
the cases,

Circuit Court of the United States

First Circuit } Oct. Term
District of Massachusetts } A. D. 1845

Charles Davies vs }
 } In Equity
Frederick Emerson }

The said facts move the Honorable Court that an order for a temporary stay of proceedings under the decree in said cause be passed to remain in force until the motion now pending before the Honorable Court for a stay of proceedings until the petition for a rehearing of said cause be disposed of and of said petition be granted until the decision upon said rehearing be pronounced, shall be decreed

Jess P. Austin
Solicitor for Facts

Emerson

Ms^A

Carver's Place

Provision for a term -
forward copy of
proceedings

District of Massachusetts

Circuit Court of the U. S. } May 9.
for the 1st Circuit } 1845

Frederick Emerson Ju. Eq.

vs
Charles Quincy & al

The Cfats in said suit move the
Hon. Court that they were leave to
withdraw their election to take the
issue allowed by the Hon. Court and
that the cause may stand in the same
position as if they had declined to
take such issue.

James S. Austin
of counsel for Cfats

Emerson Le Es

19

Dances

Whether to withdraw
election for votes

John S. West
Court.

J. M. W.

District of Massachusetts.

Circuit Court of the United States
May Term 1845

Fredrick Emerson In Eq

vs

Charles Davies Pal

The Ofets in the above entitled action
do hereby withdraw their election for an
issue made on Thursday Sep^r 4th

Oliver J. Austin

of Counsel for Ofets

Emerson Jr. Esq.

My
Dear Sir

I felt with pleasure
of this election
in your.

Sept. 9. 1845

Circuit Court of the United States

First Circuit

District of Massachusetts

Pavies & Barnes

vs

Frederick Emerson

Decree made by his Honor Judge
Sprague dated 15th October 1845

Enter caveat against enforcing
this decree as of the interest to petitioner
for a rehearing.

Ivers S. Austin

Solicitor for P^{ts}

To

James P. Robb Esq.

clerk U. S. Circuit Court

for the 1st Circuit

F. Emerson July.

27.

Ch. Davis Oct.

Carroll against em.
willing: there.

Oct 20 1841 Peter
in the Clerk's office

George S. Hartes
Note Sep. 8/65

Messrs. J. Austin Esq
9 & 10 Gray's Buildings.

Sept. 8

Emerson

Davies & al.

Dear Sir

Having made
no preparation for the
trial of the Issue,
involving costs, we are
not aware that it
concerns us to assent
or to object to the
withdrawal of the election
which was made by
the Defdts of the issue

Offered by the
Court.

Yrs truly
Geo. S. Curtis
of Counsel for
Plff.

James J. Austin Esq
of
Counsel for
Defds. —

Boston,

May 27 1845.

M^r Frederick Emerson

To S. N. Dickinson & Co. D^r

For ^{the} Printing 20 Copies, "The Document",
"Emerson vs. the Case of J. S. Warner" 1839.

Doston June 15 1845. P^d Cash
of F. Emerson Esq

Saml^l Dickinson & Co
of Ch^o Carterbury

The above bill, according to order of court is to be taxed one half
upon the Defendant
F. Emerson Plaintiff

BOOK WORK
FINE
OR PLAIN AND



JOB PRINTING,
OF EVERY DESCRIPTION.
Done at the short notices and on the most
reasonable terms by
S. N. DICKINSON,
AT NO 32 WASHINGTON STREET, BOSTON.
(STEREOTYPING)
Executed in the very best manner and from
SCOTCH CUT LETTER the most beautiful Type
ever offered to the Trade in this country
FOR DURABILITY IT IS UNEQUALLED.

Type Founding.
BOOK, JOB, AND NEWSPAPER TYPE,
OF THE MOST APPROVED KINDS.
On hand or cast to order from Scotch or American Matrices.
Printing material in general promptly furnished.

EMBOSSED CARDS:
A great variety of patterns, both large and
small, constantly on hand, among which
are many beautiful patterns for

MARRIAGE CARDS REWARDS OF MERIT & C



Peckham

Emerson & Davis
Bill of Penning

Sept. 1 1845 Filed

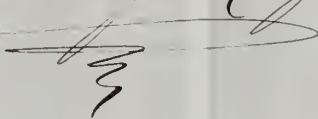
Circuit Court of } Pitney L.
the United States }
for the 1st Circuit } 1845

Frederick Emerson in Eq.

vs

Charles Davies & al

The Defts in the above en-
titled action elect to take the
issue allowed by the Court
in their opinion in said
case. Jers S. Austin

of Counsel for Defts


Emerson. In Equity

vs.

Charles Davis & al.

Defendants' election
of trial by jury.

Thursday morning
11 1/2 o'clock, Sept 4/45
Filed in the Clerk's office
J. R. K. Clerk

United States of America

*Provy
-lover
seal*

MASSACHUSETTS DISTRICT COURT

The Circuit Court of the
United States, within and for the
Massachusetts District

TO

*Perley Dodge, Esquire,
of Amherst,
New-Hampshire,*

KNOW YE, That, reposing confidence in your wisdom, prudence and
fidelity, we have appointed, and by these presents do authorize and empower you
to take the answers to the interrogatories hereunto annexed of

*Daniel Adams, of Mount-Vernon,
in the State of New-Hampshire,
Physician.*

to be used in a certain cause now pending in said Court, wherein

Dedrick Linton is Compt.

versus

Charles Davis et al. Defendants

And to this end, at certain days to be by you appointed for that purpose, to
cause said witnesses, as aforesaid, to be brought before you, and each witness, while
present before you, to examine carefully on oath touching the premises. And when
you shall have taken the examination as aforesaid, to reduce or cause the same to be
reduced to writing, and to be subscribed by each of said witnesses in your presence.
And the same, so taken and subscribed, to return, together with this COMMISSION and
your doings herein enclosed, sealed and directed to the Circuit Court aforesaid,
~~next to be~~ ^{now} holden at Boston, ~~on the~~ ^{day of} ~~next~~ ^{as soon as the same shall have been}
~~next~~ ^{expedited}

In testimony whereof, we have caused the seal of the said Circuit
Court to be hereunto affixed.

Witness, the Honorable Roger B. Taney, at Boston,
this ~~twenty~~ ^{twenty} seventh day of ~~December~~, in the year of our Lord
one thousand eight hundred and ~~forty~~ ^{forty} four.

Warren Bennett CLERK.

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the de-
position, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent
whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition
in a place separate and apart from all other persons, and permit no person to be present during such examination, except the
deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reduc-
ing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their
order, and take the answer of the deponent to each, fully and clearly.

The execution of the within commission
appears in the Schedule herewith,
marked mark A A

P Dacey Commissioner

In the Circuit Court of the United States
for the District of Massachusetts

Frederick Emerson Complainant

vs

Charles Davies et al Defts

Interrogatories to be propounded unto
Daniel Adams of Merrit Vernon in the
State of New-Hampshire Physician a wit-
-ness to be produced sworn and examined
on the part and in behalf of the Defts
on the above entitled action

1st Will you please to state your name,
age, occupation, place of business, and place
of residence?

2^d Are you acquainted with and have you
examined an arithmetical work for young
children composed by Frederick Emerson
the Plaintiff in this action and entitled
"Emerson's First Part - The North American
arithmetic part first for young learners
by Frederick Emerson?"

3^d Are you acquainted with and have
you examined an arithmetical work for
children composed by Charles Davies one
of the Defts in said action and entitled

First Lessons in Arithmetic designed ^{for beginners} by Charles
Davies?

2nd Have you carefully compared said
works each with the other?

3rd Whether any and if any which of the
materials of said Emerson's work are new
and original with said Emerson and
whether said Davies has adopted or used in
his aforesaid book any and if any which
of said new and original materials?

6th Whether unit marks are an invention
of said Emerson or whether they had been
in general use before the first edition of
his said book was published to wit August
28th 1829?

7th If you say that said Emerson did
not invent said unit marks please to
say who did invent them and how long
before said 28th August 1829, and how
by whom they had been previously in-
vented or used?

8th Please to state whether the explanation
of Plate 1st of Colburn's First Lessons does
does not combine and use the unit mark in
the same manner as used by said Davies
in his said Book?

9th Whether or not is the method of teaching the combination of numbers in addition adopted by said Davies in his First Lessons in arithmetic essentially the same as that explained by the Abacns and whether or not was that method well known and in common use before the publication of said Emerson's book in the year 1829, and if yea, how long before such publication?

10th Is there in said Emerson's book anything and if yea what that is new or original with said Emerson in the use and application of said unit marks? Please to be minute and particular in your answer.

11th Whether said Davies in his said book has adopted or used anything in the application of said unit marks which is new and original with said Emerson? If yea, what is it?

12th Whether the illustrations of lessons in arithmetic by attaching to each example unit marks representing the numbers embraced in the examples is the invention of said Emerson, or was in general use before said, "28th August 1829."? If you state that such method of illustra-

tion was in general use please state by whom, where and how whether in any and what arithmetical works published before said Emerson's?

13th Whether any, and if any which of the tables in said book of said Emerson are his invention or whether the same were in general use before his said work was published?

14th Whether anything and if yea what in the arrangement of said tables is the invention of said Emerson or whether said arrangement or similar arrangements were in general use before his said book was published?

15th Whether or not in said Emerson's book there are any and what new combination of numbers invented or discovered by said Emerson and not in general use before his said book was published?

16th Whether there are any and if any what tables of numbers or arrangement of tables or arrangements of the combinations of numbers in said Davies' book not to be found in any other than said Emerson's book or which are the invention or discovery of said Emerson?

17th Will you state in what particulars the plan of the lessons in the said work of said Emerson consists? Please to point out very minutely and exactly what there is if anything in the plan of his said lessons new original or distinguishable from other works previously published on the same subject and how or why the same is new or original?

18th Whether the said Davies in his said work has adopted or used anything in the plan of the lessons in his said book new and original in the plan of the lessons of the said Emerson?

19th Are you acquainted with a work composed by Warren Colburn entitled "Intellectual Arithmetic upon the Inductive Method of Instruction commonly called Colburn's First Lessons" if yea, whether any and which of the said tables or arrangement of tables or combinations of numbers in said Emerson's work are found or used or pointed out and mentioned in the said Colburn's book and when or about when was such book first published?

20th Whether or not you composed a work entitled "Adams new arithmetic" if yea, whether any and which of said tables or arrangement of tables or combinations of numbers in said Emerson's work are found in said new arithmetic first published? and when or about when was said new arithmetic first published?

21st Whether or not either the said Colburn or yourself have used in the aforesaid Colburn's first lessons and new arithmetic the same tables which the said Emerson has used in his said work in a similar or in the same or in a different manner from that in which the said Emerson has used the said tables? and if in a different manner please to point out the differences very particularly?

22^d Is there anything in the plan or system of the said book of said Davies or in the principle of such plan or system of the said book of said Emerson and which was not in any other book or books published before the said book of said Emerson was published or in common use before his said book was published? If yea, please state wherein?

23^d Whether or not the combination of numbers in said Colburn's book are accompanied with and illustrated by examples? If yea whether or not such combinations and examples are systematically arranged or how otherwise and whether or not the form in which said examples are arranged in said Colburn's book is different from or similar to the form in which the said Emerson in his said book has

arranged his said examples?

24th Whether said Emerson's said book is new and distinguishable from other books on the same subject previously published in any and what particulars and whether or said differences or any and which of them are essential or material?

25th Whether the gradation of examples which precede each table in the said book of said Emerson is new and original with said Emersons? or whether the same was in use before said Emerson's book was published and if yea how long before & by whom?

26th Have composed and caused to be published any and what arithmetical or Mathematical works? besides the aforesaid new arithmetic? Please to state whether there is any similarity between the plan arrangement and combination of the materials in the said work of the said Emerson & the plan, arrangement and combination of the materials in the said work of the said Davies and if any what is it, and is or is not such similarity greater than would be likely involuntarily to occur to persons composing elementary works on arithmetic? Please also to state whether such similarity if it does exist exists in any thing and what peculiar to or new in the plan arrangement or combination of

the materials in the said work of the said Emerson?

27th Whether or not is there anything in the plan of said Davies book requiring the tables of said book to be at the bottom, rather than on any other part of a page, and whether there is any advantage to be derived ~~from~~ ^{by} Teacher or Pupil from the fact that some of the tables of said Davies book are at the bottom of pages, if yea, what is such advantage?

28th Whether the mode of illustrating lessons in arithmetic by attending to the examples and unit marks illustrative of the numbers contained in the examples was ever used by you on the black board or in any other way, and how before you saw the said work of said Emerson and whether such mode of illustration is a new invention, whether in instructing Pupils in Mathematics you ever used the same or similar modes of illustration, if yea, please explain the same exactly.

29th Whether or not you ever saw similar unit marks, and with the same arrangements as are exhibited on the fifth page of Emerson's first lessons? If yea, please

state where?

30th Please to state whether the example numbered 10, on the 28th page of your said New arithmetic of the edition of 1843 did or did not appear in the first edition of your said work?

Duers J. Austin
of Counsel for Defts

Cross Interrogatories to be proposed to Daniel Adams a witness produced on behalf of the Defendants

1st If you are able to answer the Defendants fifth Interrogatory then please to explain what you understand the term "materials" to mean in the said Interrogatory; whether you understand it to mean only words, figures, tables of figures, cuts, mit marks, and arithmetical truths; or whether the term means also the combination and connexion in which these materials are placed? Please to state also whether you ever saw an

Arithmetic or any book, published before August 28th 1829, in which unit marks or counters were attached to the several questions or examples for teaching addition illustrating the numbers embraced in the examples, and showing their sums respectively, If yea, then state what book.

2^d. If you are able to answer the defendants sixth Interrogatory, then state whether the plan of illustrating the addition of numbers by attaching unit marks or counters to each example as seen in Emerson's First Part is, so far as your knowledge extends, the invention of the said Emerson, And state also whether this plan is adopted in Davies' First lesson under the head of Addition,

3^d. If to the Defendants 8th Interrogatory you answer yea - then please state then please to point to any one instance mentioning the page and the paragraph in Colburn's First lessons where the unit mark is used in the same manner as used by the said Davies in his said book

4th. If to the Defendants 9th Interrogatory you answer yea then please state whether by the term "abacus" you mean a book

or price of apparatus, If a book then state when and where published. If a price of apparatus, then describe the apparatus, and the method of teaching by it, and state wherein the method adopted by said Davies is essentially the same as the method explained by such authors,

5th If in answer to the 14th Interrogatory of the Defendant you should say that the same arrangement of tables, or arrangements similar to that in Emerson's First Part were in general use before said Emerson's First Part was published, then please state in what book or books the same or similar arrangement existed,

6th If you are able to answer the 16th Interrogatory of the Defendant then please state whether you have ever seen in any book published before August 28th 1829, and if in any, in what book, an arrangement of tables, and an arrangement of combination of numbers, which are the same as, or similar to, the arrangements now standing in Emerson's First Part, or in Davies' First Lessons?

7th If you are able to answer the 17th Interrogatory of the Defendants, please state,

whether Davies' First Lessons does or does not resemble Emerson's First Part in the arrangement of the tables of numeration, Addition, Multiplication and Division? - also in the method of illustrating Addition by means of unit marks or counters, also in the prefixion of a set of gradual examples to each table. Please state further whether the said Emerson's book is not, in the above mentioned arrangement of tables and method of illustrating addition and prefixion of gradual examples, unlike any arithmetic, within your knowledge published before August 28, 1829.

Jos. Pickering
for Pff

A true copy
Attest

Francis Bennett Clerk





The deposition of Daniel Adams of North
 Vernon in the County of Hillsborough and State
 of New Hampshire Physician, a witness produ-
 ced sworn and examined on the 23^d & 27th
 days of January in the year of our Lord one
 thousand eight hundred and forty five, under
 and by virtue of a commission issued out of
 and under the Seal of the Circuit Court of the
 United States, within and for the District of
 Massachusetts in a certain cause therein depend-
 ing and at issue wherein Frederick Emerson is
 Plaintiff in Equity against Charles Davies &
 al. Defendants in equity, on behalf of the Def-
 endants. And the said Adams being duly
 sworn according to Law, to the several inter-
 rogatories and cross interrogatories of said
 Commission annexed and propounded to
 him in their order, doth answer and say
 as follows.

1. To the first Interrogatory the said Adams
 saith. That his name is Daniel Adams
 and 71 years. My occupation is the prac-
 tice of Medicine, North Vernon New Hamp-
 shire is both my place of business and
 residence.
2. To the second Interrogatory he saith:
 I have seen the North American Arith-
 metic Part First by Frederick Emerson,
 and have examined it so far as to
 satisfy myself as to the question of its
 adaptation to the purposes for which
 it was intended.

3^d To the third Interrogatory he saith.
I am not acquainted with the Arithmetical work by Charles Davies entitled "First Lessons in Arithmetic designed for beginners," nor have I ever seen the work only as it has been laid before me at the present time.

4th To the fourth Interrogatory he saith.
I have not.

5th To the fifth interrogatory he saith.
What materials in Scia Emersons work are original and new with him has never been a subject of my investigation. To answer the interrogatory here proposed, it would be necessary for me to go into an examination of books, some of which, I have never seen, requiring time and attention, which I am not at leisure to bestow.

6th To the sixth interrogatory he saith.
I believe unit marks were in use before the publication of Scia Emersons Book Aug 28. 1829.

7 To the seventh interrogatory he saith.
Having made no use of unit marks in any Arithmetical work of my own, I have not pursued my inquiries here as otherwise, probably I should have done, consequently to this interrogatory I can only answer that Mr Colburn and others I believe in Europe were in the use of unit marks antecedent to August 28. 1829.

8th To the eighth interrogatory he saith,
I am not prepared to answer for
reasons before stated in my answer
to interrogatories 3, 5th, & 7th,

9th To the ninth interrogatory he saith.
I am not prepared to answer
for reasons before stated.

10th To the tenth interrogatory he saith.
I am not prepared to answer for
reasons before stated.

11th To the Eleventh interrogatory he saith.
I am not prepared to answer for
reasons before stated.

12th To the Twelfth interrogatory he saith.
I am not prepared to answer
for reasons before stated.

13th To the thirteenth interrogatory he saith.
I am not prepared to answer for
reasons before stated.

14th To the fourteenth interrogatory he saith.
I am not prepared to answer
for reasons before stated.

15th To the fifteenth interrogatory he saith.
I am not prepared to answer
for reasons before stated.

16th To the sixteenth interrogatory he saith,
I am not prepared to answer for
reasons before stated.

17th To the seventeenth interrogatory he saith,
I am not prepared to answer for
reasons before stated.

18th To the eighteenth interrogatory he saith,
I am not prepared to answer for
reasons before stated.

19th To the nineteenth interrogatory he saith,
I am not prepared to answer for
reasons before stated.

20th To the Twentieth interrogatory he saith,
I composed a work entitled Adams'
new Arithmetic, It was stereotyped
in the Autumn of 1827, and the first
impression came off in December of
that year. If there are tables or an
arrangement of tables and combina-
tions of numbers, in said Emersons
work, found in said new Arithmetic
it has escaped my notice. I never
made an examination with a
view to such a discovery.

21st To the Twenty first interrogatory he saith
I am not prepared to answer
for reasons before stated.

22^d To the twenty second interrogatory
by Smith.

I am not prepared to answer
for reasons before stated.

23^d To the Twenty third interrogatory by Smith
I am not prepared to answer
for reasons before stated.

24th To the Twenty fourth interrogatory,
by Smith.

I am not prepared to answer
for reasons before stated.

25th To the Twenty fifth interrogatory,
by Smith.

I am not prepared to answer
for reasons before stated.

26th To the Twenty sixth interrogatory,
by Smith.

The "Schools Arithmetic" was com-
posed and published by me enter-
ior to the aforesaid "New Arithmetic".
Further I am not prepared to answer,
having never seen said Davies
book till the present time. I should
consider it a labor requiring consid-
erable time ^{to} make the necessary com-
pensation; more time than I have now
to bestow upon it.

27th To the Twenty seventh interrogatory he saith:

The tables being placed at the bottom of the page, the pupil is carried forward progressively from operations with concrete numbers, to the same operations with abstract numbers. This is the advantage as it comes to me on a moment's inspection.

28th To the Twenty eighth interrogatory he saith.

I have had no pupils in Arithmetic under my instruction for more than ^{thirty} ~~four~~ years.

29th To the Twenty ninth interrogatory he saith.

I do not recollect having ever before seen a similar arrangement of unit marks in connection with unit figures, leading the pupil progressively from a knowledge of the one to a cognition of the other, as presented on the fifth page of Emerson's first lesson.

30th To the Thirtieth interrogatory he saith.

Example numbered 10. on the 28th page of my "New Arithmetic" has ever appeared the same in every successive edition.

Answers to the Cross Interrogatories

1st To the first Cross interrogatory the said Adams saith.

Not being able to answer the Defendants fifth interrogatory but negatively I have no answer to make to this.

2^d To the Second Cross interrogatory He saith.

The plan of illustrating the addition of numbers by attaching unit marks as counters to each of numbers, as seen in Emersons first part, was new to me so far as my recollection extends, on opening Scire Davies book at addition a somewhat similar plan appears to have been adopted.

3^d To the third cross interrogatory he saith
Not having answered the Defendants 8th interrogatory I have no answer to make to this.

4th To the fourth cross interrogatory he saith
Not having answered the Defendants 9th interrogatory I have no answer to make to this.

5th To the fifth cross interrogatory he saith.
Not having answered the Defs. 14th interrogatory I have no answer to make to this.

6th To the sixth cross interrogatory he saith
not being able to answer the Depts
16th interrogatory I have no
answer to make to this.

7th To the seventh cross interrogatory he saith
not being able to answer the Depts
17th interrogatory I have no answer
to make to this.

Daniel Adams

United States of America,
Massachusetts District Ct.

In the Circuit Court of the United
States for the District of Massachusetts,
Oct. T. 1844.

By virtue of the Commission unto prefixed
and directed to me the Subscribing the Com-
missioner therein named, on the 23 and
27th days of January A.D. 1845 personally appear-
ed before me Daniel Adams the deponent
in said Commission named and being
by me duly cautioned and sworn ac-
cording to Law to tell the truth the whole
truth and nothing but the truth relative
to the matter contained in the interrogatories
and cross interrogatories to said Com-
mission annexed and propounded
to him in their order, gave the answers
heretofore stated to have been given and
the same, were reduced to writing by
me and the said answers were then
signed by said Adams in my presence.
and said Commission is executed in
exact compliance with the instructions
therein contained, and no juror
was present at the execution thereof
but the said Adams and myself
said deposition is to be used at
the hearing of a bill of complaint
exhibited in equity in the above
named Court against Charles
Davies &c. at the Court of Frederick

Amerson Campbell.

Witness my hand and seal
at Amherst in the State
of New Hampshire this 27th
day of January AD 1845.

Perry Dacey (Commissioner
Notary Public
Commissioner
deputé)

Fees for witness and taking deposition

Witness Travel 3 miles	-----	.36	
" Attendance 2 days	-----	2.00	
		<u>2.36</u>	= 2.36

Commissions for

Notary witness to appear	1.00	
Making Deposition	2.00	
Notary witness & Caption	<u>.34</u>	
	3.34	3.34

Additional expenses for
books &c

	1.00	-----	1.00
Whole expense of Deposition			<u>\$ 6.70</u>

Examined and allowed

By me Perry Dacey Commissioner
to take said deposition

Amerson & Davis did
Deposition for \$49
March 4th 1845 -
Gentl of filed
F. B. alk