Copyright Lore

19th-Century Infringement Ruling Shapes Copyright Law

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More than 130 years ago, the U.S. Supreme Court ruled in *Selden v. Baker* that even though copyright law protects the expression of an idea, it does not protect the idea itself. The 1879 ruling—widely called "seminal"—has influenced many court decisions and copyright doctrines in the years since.

Charles Selden, chief accountant to the treasurer of Hamilton County, Ohio, developed a bookkeeping system to simplify mid-19th-century accounting practices, writes legal scholar Oren Bracha in *Primary Sources on Copyright (1450–1900)*. Selden published his system in a book titled *Selden's Condensed Ledger*, consisting mainly of bookkeeping forms and examples, registering the copyright to several editions of the book in 1859, 1860, and 1861. He hoped to profit by licensing his new system, but was unsuccessful.

In 1867, W. C. M. Baker, auditor of Green County, Ohio, published a book describing a system closely resembling Selden's. Unlike Selden, however, Baker managed to license the system to more than 40 Ohio counties and to private firms. Selden died in 1871, bequeathing his copyrights and heavy debt to his wife, Elizabeth.

Later, Elizabeth Selden filed a copyright infringement suit against Baker in federal circuit court in Ohio. She alleged that Baker copied Selden's bookkeeping forms, thereby infringing Selden's copyright and damaging the market for Selden's book. In January 1875, the court ruled in favor of Elizabeth Selden, finding that Baker's book was substantially similar to Selden's, and it issued an injunction restraining Baker from selling or publishing his book.

In March 1875, Baker appealed to the U.S. Supreme Court, arguing that the content alleged to be infringed—the bookkeeping system Selden described—was not a lawful subject of copyright.

The Court agreed with Baker. "If [Selden] had the exclusive right to the use of the system explained in his book, it would be difficult to contend that the defendant does not infringe it," Justice Joseph Bradley wrote on behalf of the Court. "But there is a clear distinction between the book, as such, and the art which it is intended to illustrate.... To give to the author of the book an exclusive property in the art described therein,...would be a surprise and a fraud upon the public." Bradley reversed the circuit court decision and remanded it with instructions to dismiss the complaint.

Many decades later, the 1976 Copyright Act codified this rule in section 102(b): "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." ©

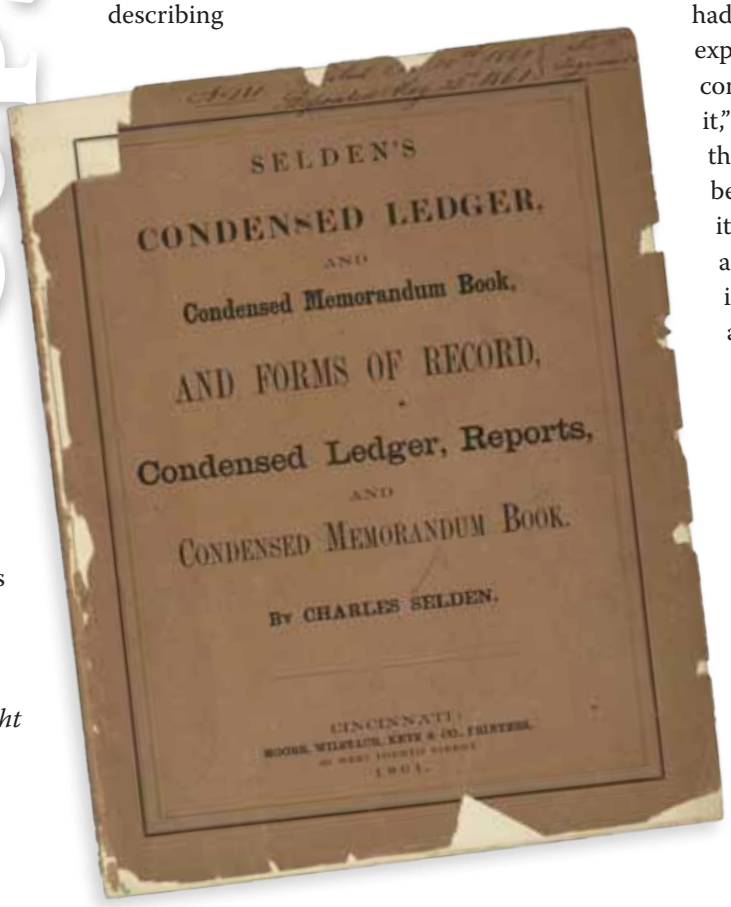
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Image of the copy of Selden's Condensed Ledger *deposited in 1861 for copyright registration.*