

ington book to any particular form of binding, and the defendant cannot escape the charge of infringement by holding together the record-leaves and blanks checks by other well-known means.

A decree must be entered for the complainant.

FAY and others v. ALLEN.

(Circuit Court, N. D. New York. October 15, 1885.)

PATENTS FOR INVENTIONS—INFRINGEMENT—DOANE AND BUGBEE PATENT.
On rehearing, former opinion, 24 Fed. Rep. 804, adhered to.

In Equity.

Parkinson & Parkinson, for plaintiff.

Duell & Hey, for defendant.

BLATCHFORD, Justice. I have considered the argument made in support of the petition for a rehearing in this case in respect to the Doane and Bugbee patent, (24 Fed. Rep. 804,) and the result is that I am confirmed in the conclusions at which I arrived; and a decree will be entered in conformity with those conclusions.

FISHER and others v. CONSOLIDATED AMADOR MINE, ETC.

(Circuit Court, D. California. September 7, 1885.)

PATENTS FOR INVENTION—ACTION AT LAW FOR INFRINGEMENT—PRIOR SUIT IN EQUITY.

An answer in an action at law by a patentee to recover damages for the use of a patented article that sets up that the article used was purchased by the defendant from a manufacturer, against whom plaintiff had obtained a decree in equity for an accounting, does not state a defense unless it also avers that the accounting included the article in question, and that the decree has been satisfied by payment or otherwise.

Demurrer to Special Answer.

Langhorne & Miller and W. H. H. Hart, for plaintiff.

J. A. McKenna, for defendant.

SAWYER, J. This is a demurrer to a special answer. The action is brought to recover damages for the unlawful use of certain hydraulic machines, which are alleged to infringe upon reissued letters patent No. 8,876, owned by plaintiffs. The answer sets up that the same plaintiffs had previously brought suit in equity against one Hoskins, to recover the profits resulting from an infringement of the patent by Hoskins in manufacturing and selling machines constructed

according to the specifications of the patent; that a decree had been rendered in that case in favor of plaintiffs, and against Hoskins, and, upon an accounting had, the sum of \$16,465.33 had been awarded to plaintiffs as the profits realized by Hoskins from manufacturing and selling said machines. The answer further alleges that the particular machines used by the defendant, and for the use of which the present action is brought, were purchased by defendant from Hoskins, and that the profits of their manufacture and sale had been included in the decree against Hoskins, and that, therefore, the plaintiffs had received satisfaction for the said machines, and defendant was not liable to plaintiffs for using the same. But the answer nowhere alleges that the Hoskins decree has ever been satisfied by payment or otherwise. In order to be a defense it must allege that said decree has been paid, or otherwise satisfied, as well as that the accounting against Hoskins included the machines in question. In the absence of such allegation the answer does not state a defense. *Gilbert & B. Manuf'g Co. v. Bussing*, 1 Ban. & A. 621; *Birdsell v. Shalio*, 112 U. S. 485; S. C. 5 Sup. Ct. Rep. 244; *Steam Stone-cutter Co. v. Sheldons*, 21 Fed. Rep. 875; Walk. Pat. § 314. It follows, therefore, that the demurrer must be sustained; and it is so ordered.

If the defendant desires, it can have time to amend, though I cannot see that it can properly amend unless it can truthfully state that the decree has been satisfied, and I have good reason to know that it has not been satisfied.

THE MAGGIE P.

CITY OF ST. LOUIS *v.* THE MAGGIE P.¹

(Circuit Court, E. D. Missouri. September 22, 1885.)

1. MUNICIPAL CORPORATIONS—DUTY AS TO WRECKED IN HARBOR.

It is not a part of the public duty of a city to pump out and raise boats which sink at its levee, even where its charter gives it control of its levee and harbor, and makes it its duty to keep its wharf and the river along the shore free from wrecks and other improper obstacles.

2. SAME—CONTRACTS TO PERFORM PRIVATE SERVICE.

Where public duty does not interfere with private service, a city may make a valid contract to use its instrumentalities and employ its employes in the latter; and in case of a breach by it of such a contract it becomes liable like a private contractor.

3. SAME—ESTOPPEL.

Where a city has been in the habit of making contracts for the use of certain of its instrumentalities, and the employment of the employes connected therewith, through officers in charge thereof, and of receiving compensation for the performance of such contracts, it will be estopped, in case of a breach by it of

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.