BOSTOCK and Wife *v.* GOODRICH.[1]

(Circuit Court, E. D. Pennsylvania. November 6, 1885.)

PATENTS FOR INVENTIONS—INFRINGEMENT—PROFITS—DAMAGES—EVIDENCE.

Complainants received letters patent 64,404 and 80,269 for improvements in tuck-markers, which proved to be of little value. Defendant made improvements on same which cured the defects and rendered the device marketable. Complainants obtained a decree for assessment of damages and profits for infringement of the above patents. *Held,* that complainants must show what proportion of profits arising from the sale of the improved tuck-markers was due to the original invention, and that, failing in that, they were entitled to nominal damages only.

In Equity.

H. T. Fenton, for complainants.

L. L. Bond, for respondent.

BUTLER, J. The infringement complained of and decreed against, is of claims 2, 3, 5, and 6 of patent No. 64,404, and claim 1 of patent No. 80,269.

These claims are for *improvements* in "tuck-markers," consisting of minor combinations and devices employed in such machines. Tuck-markers (differing from the complainant's only as respects these combinations and devices) had been in use for many years prior to the date of these patents. The complainant simply improved the old machines, rendering them more serviceable than before, by increasing their adaptability to the use contemplated.

The rule for ascertaining profits, applicable to the case, is therefore, the one applied in *Garretson* v. *Clark,* 111 U. S. 120, S. C. 4 Sup. Ct. Rep. 291, and more recently in *Dobson* v. *Carpet Co.,* 114 U. S. 439, S. C. 5 Sup. Ct. Rep. 945.

While, therefore, we might possibly not agree in all the master has said upon the subject of profits, his conclusion is right. The burden rested on the complainant to prove the proportion of profits justly ascribable to his improvements. Having failed in this he is entitled only to nominal damages.

The exceptions must be dismissed and the report confirmed.

[1] Reported by C. B. Taylor, Esq., of the Philadelphia bar.

FRAIM v. KEEN.[1]

(Circuit Court, E. D. Pennsylvania. November 2, 1885.)

1. PATENTS FOR INVENTIONS—IMPROVEMENTS IN SCANDINAVIAN PADLOCKS—INVENTION.
   Reissued letters patent No. 10,272, granted to Edward T. Fraim (inventor) jointly with Miller W. Fraim, (assignee,) January 16, 1883, for an improvement in Scandinavian padlocks, *held* not void for want of novelty and invention.
2. SAME—INFRINGEMENT.
   Where one party stands by and permits another to take out a patent, and then takes out a patent for a different invention, he cannot set up that he is the inventor of the first improvement.
3. SAME—NOVELTY.
   Although the question of patentable invention may be open to doubt, the court will not reverse the decision of the patent-office except upon clear evidence,

In Equity.

The facts are as follows: Both parties claimed priority of invention. Complainant obtained a patent January 16, 1883. Defendant claimed that he made the invention at a time when he was employed by complainant in his shop, and it appears that he stood by while complainant made application for a patent without making any claim, and subsequently took out letters himself for another and a different invention.

Joseph C. Fraley, for complainant.

Grady & Gendell, for defendant.

BUTLER, J. While the question of patentable invention, respecting complainant's improved lock, may be open to debate and doubt, we do not feel justified in reversing the decision of the patent-office, by anything appearing in the case.

Nor do we think the evidence would justify a conclusion that Fraim was not the first inventor. While the direct evidence in favor of Shallass' claim is not satisfactory, the inferences arising from his conduct are strongly against him. He not only stood by and saw Fraim assert his right to the patent, without objection, but directly after took out letters for a different improvement.

The infringement of the second claim is clearly proved; and the infringement of the third is virtually admitted.

The bill is sustained, and a decree must be entered accordingly, and for costs.

[1] Reported by C. B. Taylor, Esq., of the Philadelphia bar.