

HORNE v. HOYLE.<sup>1</sup>

(Circuit Court, E. D. Missouri. March 24, 1886.)

## PATENTS FOR INVENTION—SALE—ACTION—INFRINGEMENT.

The fact that the purchaser of a patented machine has been sued as an infringer by third parties, and put to expense in making defenses, is no defense to a suit by the vendor on the contract of sale, even where that contract provides that indemnity bonds shall be given the vendee, and none have been furnished.

At Law. Suit for damages for breach of contract. Motion to strike out part of answer.

The allegations of the answer as to the guaranty, and contract to give an indemnity bond, referred to in the opinion of the court, are as follows:

"Further answering herein, this defendant says that, in and by the terms of said contract sued on in this action, it is provided and stipulated that the plaintiff herein should personally guaranty the validity of the patents under which said machine was made, and that he would furnish to this defendant indemnity bonds to save him harmless in the event of any litigation from the use of said Excelsior Electric Light plant, which plaintiff \* \* \* agreed to furnish to this defendant under the terms of said contract; and this defendant says that plaintiff herein \* \* \* has wholly failed \* \* \* to furnish to this defendant any indemnity bond or bonds."

The other material facts are sufficiently stated in the opinion of the court.

*George D. Reynolds*, for plaintiff.

*Dyer, Lee & Ellis*, for defendant.

BREWER, J., (*orally*.) In the case of *Horne* against *Hoyle* there is a motion to strike out parts of the answer. The petition alleges a contract to place an electric plant in a building in this city, the performance of the contract, non-payment of part of the purchase money, and an assignment of the contract to the plaintiff. The answer in one defense avers that it was a part of the contract that the contractor should furnish an indemnifying bond, guarantying against all infringements, and that that bond was not given. Of course that states a perfect defense. It further alleges that since the putting of the plant in the building two suits have been commenced for infringement, and are pending, and that the defendant has been put to the expense of employing counsel to defend those suits. The motion is to strike out this last defense. Obviously, it should be sustained. If no bond was given, there is a perfect defense. If there was no stipulation for a bond, then it is immaterial whether defendant has been sued or not. If a bond was given, the remedy of the defendant is on that bond. *Non constat*, that neither the contractor nor the

<sup>1</sup>Reported by Benj. F. Rex, Esq., of the St. Louis bar.

plaintiff were parties to that bond or liable on it, and the averment presents simply an immaterial matter for traverse and testimony.

The motion will be sustained.

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HALLIDAY and others v. COVEL.<sup>1</sup>

(Circuit Court, N. D. Illinois. March 22, 1886.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—SAW-SHARPENING MACHINES.

Claims 12, 13, and 14, of reissued letters patent No. 10,252, granted December 5, 1882, and the fourth claim of patent No. 254,869, granted March 14, 1882, for improvements in saw-sharpening machines, construed, and *held* infringed.

2. SAME—EQUIVALENTS.

The only defense in this case was non-infringement; and while it was true that defendant's mechanism was not an exact copy or reproduction of the patented machines, and there was a noticeable display of ingenuity and skill in an attempt to evade the patent, *held*, that defendant's mechanism worked out the same result as complainants', and by substantially the same means, using equivalent parts to perform the functions performed by the complainants' construction.

In Equity.

G. L. Chapin, for complainants.

Pliny B. Smith, for defendant.

BLODGETT, J. Complainant, by this bill, seeks an injunction and accounting for the alleged infringement of reissued patent No. 10,252, granted December 5, 1882, to complainant, as assignee of W. L. Covell, for "an improvement in saw-sharpening machines," and patent No. 254,869, granted March 14, 1882, to William H. Halliday, for "an improvement in saw-sharpening machines." As to the reissued patent, the original was granted May 11, 1876, but the infringement is only alleged as to claims 12, 13, and 14 of the reissue, which are substantially the claims found in the original patent.

As to the Halliday patent, No. 254,869, infringement only of the fourth claim is charged. The bill in terms also charges the infringement of patent No. 222,386, granted December 9, 1879, to W. L. Covell, and assigned to complainant; but this charge in the bill was not pressed, and no claim was made under it at the hearing. Both patents in controversy pertain to machines for sharpening saws, in which the saw and the grinding wheel are brought in contact automatically. It is shown by the proof that saw-sharpening machines were used before any of these devices were invented; but it is contended by complainant that a difficulty was encountered in all the older machines from the fact that as the teeth in the same saw are not of equal length, therefore no reliable automatic adjusting feed had been obtained be-

<sup>1</sup> Edited by Charles C. Linthicum, Esq., of the Chicago bar.