

TUTTLE and others v. GAYLORD.¹

(Circuit Court, N. D. New York. July 6, 1886.)

PATENTS FOR INVENTIONS—INFRINGEMENT—DAMAGES—VALUE OF PATENTED FEATURE MUST BE SHOWN.

When, in a suit for infringement of a patent which covers only one feature of a machine, there is no proof that the profits made by the infringer on the entire machine are due to the patented feature, only nominal damages can be allowed.

Exceptions to Master's Report.

C. H. Duell, for complainants.

J. R. Bennett, for defendant.

COXE, J. The complainants' patent is not for a harrow, but for a curved tooth, fastened at one end to the frame of the harrow, so that it forms an arch above the plane of the frame, and descends to the ground between the bars, its point inclining forward. *Reed v. Chase*, 25 Fed. Rep. 94. Upon the hearing before the master the defendant was required to produce, and did produce, a statement showing the number of harrows purchased and sold, and the prices paid by him to the manufacturers, and received by him from his customers. A copy of the complainants' record was also introduced in evidence. Here the proof closed. The defendant did not appear. The report of the master allows the complainants the entire gross profits upon the defendant's sales, being the difference between what he paid for the harrows at wholesale and sold them for at retail. To this award the defendant excepts.

No proof was offered showing, or tending to show, that the profit realized upon the sales of the harrows was due to the patented feature. No attempt was made to segregate the gross sum so received, for the purpose of ascertaining what proportion was due to the curved tooth, as distinguished from the other parts of the harrow. In the absence of such proof, it is entirely clear, that, in a case like the one at bar, where the patent does not cover the entire machine, but only one feature of it, the complainants can recover nominal damages alone. *Garretson v. Clark*, 111 U. S. 121; S. C. 4 Sup. Ct. Rep. 291; *Dobson v. Hartford Carpet Co.*, 114 U. S. 439; S. C. 5 Sup. Ct. Rep. 945.

The exceptions are allowed, and a decree for one dollar, nominal damages, may be entered.

TUTTLE and others v. LOOMIS and others.

(Circuit Court, N. D. New York. July 6, 1886.)

COXE, J. A decree in accordance with the decision in *Tuttle v. Gaylord*, *supra* may be entered in this cause.

¹ Edited by Charles C. Linthicum, Esq., of the Chicago bar.

TUTTLE and others v. MATTHEWS.¹

(Circuit Court, N. D. New York. July 6, 1886.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—INVENTOR'S RIGHTS.

The owner of a valid patent secures, by virtue thereof, three substantive rights: the right to make, the right to sell, and the right to use the patented article. He who invades any one of these rights is an infringer. *Birdsell v. Shaliol*, 112 U. S. 485; S. C. 5 Sup. Ct. Rep. 244.

2. SAME—RECOVERY AGAINST MANUFACTURER DOES NOT DEDICATE INVENTION TO USER.

The chief value of many patented machines is in their use. If a recovery against a manufacturer dedicates the machines to the public so that it can thereafter be used by all with impunity, the "exclusive right" of the patentee does not exclude the most dangerous trespasser upon his property.

3. SAME—INJUNCTION—COLLECTION OF ROYALTY FROM USER OF MACHINE.

An injunction will not be granted, at the instance of a manufacturer of an infringing machine, to restrain the collection of royalty from the user of such machine, although the manufacturer, in a suit against him for his infringement, has included the machine in an accounting had before a master; no final decree having been entered against him, and nothing having been paid by him to the owner of the patent.

Motion by the Defendant for an Injunction.

J. R. Bennett, for the motion.

C. H. Duell, opposed.

COXE, J. The complainants are the owners, for the state of New York, of reissued letters patent No. 9,148, dated April 13, 1880, issued to David L. Garver for an improvement in harrows. An interlocutory decree was entered on the eighteenth of May, 1886, and the complainants proceeded to an accounting. While the hearing was pending before the master, the defendant ascertained that the complainants' agents, by means of threatened litigation, had collected, or were attempting to collect, money from the users of the infringing harrows for which defendant has accounted in this action. No final decree has been entered, and nothing has been paid by the defendant to the complainants. The court is now asked to grant an injunction restraining the complainants and their agents from interfering with the defendant's customers in the use of the harrows sold to them by him. The owner of a valid patent secures, by virtue thereof, three substantive rights: the right to make, the right to sell, and the right to use the patented article. He who invades any one of these rights is an infringer. *Birdsell v. Shaliol*, 112 U. S. 485; S. C. 5 Sup. Ct. Rep. 244. The chief value of many patented machines is in their use. If a recovery against a manufacturer dedicates the machine to the public so that it can thereafter be used by all with impunity, the "exclusive right" of the patentee does not exclude the most dangerous trespasser upon his property.

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