

rial matter, without which, as we have seen, the patent here would not have been granted.) The reference to the English patent in the specifications is unimportant, under the circumstances. If this reference could be appealed to, in the absence of contrary evidence, it certainly weighs nothing against the evidence found in the English patent. We are referred, however, to the testimony of Mr. Jenkins and Mr. Gandy to show that the invention dated back to 1876; that the plaintiff was then engaged in making this belting, using the peculiar canvas here claimed. If this is accepted as satisfactory proof of the fact, it goes too far, showing more than two years' public use and sale of the invention prior to his application. We allude to the application here, the only one we can consider. The bill must therefore be dismissed.

I have not reached this conclusion without some feeling of reluctance. If Mr. Benjamin Plumber, one of the defendants, stood alone, it is possible the result might be different. His instrumentality in procuring the patent; his representations to the plaintiff, who was not in the country, counseling and urging the expenditure of money to this end, with a view to his own interests in the premises; his subsequent conduct in entering the plaintiff's manufactory in England, to obtain an intimate knowledge of his methods of manufacture; persuading the plaintiff to embark in business here, under the supposed protection of the patent, with a view to obtaining employment for himself, (Plumber;) taken in connection with his subsequent conduct in establishing a rival manufactory and business, employing the plaintiff's system and methods, infringing his patent, and attacking its validity,—are not calculated to excite much sympathy for him. He is not alone interested, however, and these matters which were urged against him (as in the nature of an estoppel) cannot be used against others. A decree must therefore be entered dismissing the bill.

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### GANDY v. MAIN BELTING Co.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania. June 29, 1886.)

#### PATENTS FOR INVENTIONS—NOVELTY—PATENT NO. 269,519.

Letters patent No. 269,519 were granted December 26, 1882, to Maurice Gandy for improvement in stretching by means of an apparatus consisting of a frame work on the ends of which is a series of rollers free to revolve upon their axis. The belts are placed upon the rollers, and the ends are fastened with a taking-up device. Pressure is then applied, and the belt is submitted to a continuous strain as if in actual use until all the elasticity in the belt is killed. The taking-up device serves to keep the belt taut throughout the entire proceeding. *Held*, that the process and apparatus possessed novelty, and that the patent was therefore valid.

<sup>1</sup> Reported by C. B. Taylor, Esq., of the Philadelphia bar.

In Equity.

*Amos Broadnax*, for complainant.

*E. Cooper Shapley*, for respondent.

BUTLER, J. Starting with the usual presumption in favor of the plaintiff's patent, (269,519,) we do not find anything in the state of the art that would justify us in deciding it to be invalid. Each of the claims should receive a strict construction. Even in this view we think both of them are infringed by the defendant's device. As respects the first, infringement is scarcely denied; and as respects the second, we think it is plainly shown. A decree must be entered in the plaintiff's favor.

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BURR v. KIMBARK.<sup>1</sup>

(Circuit Court, N. D. Illinois. July 26, 1886.)

PATENTS FOR INVENTIONS—INJUNCTION—ESTOPPEL.

Where defendant had been a licensee under the patents on which he was sued, and at one time claimed to own them, and had dealt extensively in the patented articles, the infringement being clear, *held*, that he was hardly in position to deny the validity of the patents, and a preliminary injunction granted.

In Equity.

*Munday, Evarts & Adcock*, for complainant.

*Coburn & Thacher*, for defendant.

BLODGETT, J. This is a motion for an injunction restraining the defendant from the use of devices covered by patents issued to the complainant as follows: One dated September 23, 1873, for an "improvement in wagon bodies;" one dated February 27, 1877, for "an improvement in dash-boards;" and one dated February 20, 1877, for "an improvement in wagon-body irons." The infringement of these patents by the defendant is fully established by the proof filed in the case, and in fact is not denied by the defendant. The defendant, however, denies the validity of the patents, and the utility of the devices covered by them, and also denies complainant's title to the patents in question. The fact of infringement being established clearly by the proofs, and it also appearing by the proof that the defendant has been a licensee of the complainant for the use of these patents, and at one time claimed to be the owner of the patents, and entitled to their use, and that he has extensively dealt in the patented article, it would seem that defendant is now hardly in position to seriously question the validity of the patent. At least, under the

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