

is substantially identical with that of the Holliday patent, when fuming acid of the density of 69 to 70 degs. Beaume is used, and an ordinary or moderate temperature is maintained. In other words, if, in the process of the Holliday patent, the use of fuming acid of the density of 69 to 70 degs. Beaume were essential, instead of optional, the second claim of each patent would be for the same process.

These views lead to the conclusions (1) that Holliday was the prior inventor of the process by which the tri-sulpho compound of rosaniline is produced; (2) that the first claims of the patents are interfering claims; (3) that the second claims are not interfering claims; (4) that the first claim of the defendants' patent is void as against the first claim of the plaintiffs' patent; and (5) that the second claim of the defendants' patent is invalid because Holliday was the prior inventor of the process.

If the action were not brought to restrain infringement, but only for the purpose of declaring the patent of the defendants void as against the patent of the plaintiffs, it is not entirely clear whether the defense of want of novelty as to either claim of the plaintiffs' patent would be pertinent to the issue. Such a defense was allowed in *Foster v. Lindsay*, 3 Dill. 126, where the point was considered, and the court made a decree declaring both patents void, upon the consideration that a court of equity should not grant relief to a plaintiff who has no equity, and the statute authorizes the court to adjudge either of the patents void, in whole or in part. But in the present case it is unnecessary to decide the question.

The first claim of the Holliday patent being valid, the plaintiffs are entitled to a decree annulling the interfering claim of the Caro patent, with costs. Upon filing a disclaimer respecting the second claim, they will be entitled to an injunction against infringement of the first claim, and an accounting.

A decree is ordered accordingly.

TENNINGS and others v. DOLAN.

SAME v. KIBBE and others.

(Circuit Court, S. D. New York. February 9, 1887.)

1. EQUITY—MASTER—EXCEPTIONS—FINDING—WAIVER.

Exception to a principal finding of a master, based on all the evidence in his report, is not waived by refraining from making the exception before the master, and subsequently making it before the court, since all that the parties could do would be to request the master to change his finding, a thing which they were under no obligation to do.

2. PATENTS FOR INVENTIONS—SEVERAL INFRINGERS—DAMAGES.

Where several parties infringe a patent, one by manufacturing and the others by selling the goods so manufactured, the torts are both joint and several, and there may be several judgments, though but one satisfaction; and it is not necessary that the fact that the same damages are included in two decrees should appear in the decrees, to limit the plaintiffs to one satisfaction.

8. SAME—MASTER'S REPORT.

The want of a statement in the master's report that the same damages were included in two suits is no ground for setting aside and recommitting the reports, the fact being conceded.

In Equity.

Arthur v. Briesen, for plaintiffs.

John R. Bennett, for defendants.

WHEELER, J. The master has reported that the defendant Dolan has made and sold 3,075 9-12 dozen nubias, in infringement of the plaintiffs' patent No. 218,032, and that the defendants in the other of these cases have sold 2,785 9-12 dozen, in like infringement, and that the plaintiffs have an established license fee of 50 cents per dozen nubias manufactured under that patent. It is conceded that those sold by the defendants in the latter case were sold for the defendant in the former, and are included in those reported as made and sold by him. The defendants in both cases except to the finding of the master that there was an established license fee, and object to a decree for anything beyond a merely nominal sum in the latter case. The master submitted a draft report to the counsel of the respective parties, and defendants' counsel deferred his objections, and made no further question to the master. The plaintiffs insist that he thereby waived all ground of exception to the report. But this exception is to a principal finding, upon all the evidence in the case, about which nothing could be done before the master except to request him to change his finding. The defendants were under no obligation to make that request after he had announced his conclusion upon that point, but could raise the question before the court as to whether the finding was warranted by the proofs, by filing his exception in court according to the rules of the court. *Hatch v. Railroad Co.*, 9 Fed. Rep. 856. The exceptions to that finding raise that question. There was evidence, however, tending to show that the plaintiffs had established that license fee under this patent for such nubias as Dolan made infringing upon it. The weight of the evidence was for the master, and his conclusion upon it should not be disturbed unless he has gone contrary to it. It was not contradicted in this respect, and his conclusion appears to be well warranted by it. The master does not report any profits made by the defendants, but damages suffered by the plaintiffs in consequence of the infringement. The established license fee is resorted to as a measure of such damages. All the defendants in both cases participated in the tort constituting the infringement so far as Dolan made and the others sold the same infringing articles. Such torts are both joint and several, and those who commit them are liable jointly or severally. There may be several judgments, but only one satisfaction. *Lovejoy v. Murray*, 3 Wall. 1; *Birdsell v. Shaliol*, 112 U. S. 485, 5 Sup. Ct. Rep. 244. The plaintiffs are therefore entitled to a decree against Dolan for the whole damages for making and selling all the infringing articles that he made and had sold for him; and against the defendants in the other case for the damages resulting from what of those articles they sold for

him. Satisfaction of these damages by any of the defendants in either case will, however, be satisfaction of that amount in both cases. It is not necessary that the fact that the same damages are included in both decrees should appear either in the reports or decrees in order to limit the plaintiffs to one satisfaction. If they should attempt to enforce collection of that amount a second time, they would be restrained by proper proceedings. It would be well, nevertheless, that this fact should appear. The master would doubtless have stated it in the reports if the defendants had so requested. As they did not so request, the want of the statement is no ground for setting aside or recommitting the reports. As the fact is conceded, it may be stated in the decrees.

Exceptions overruled, reports accepted and confirmed, and decrees to be entered accordingly.

IOWA BARB STEEL-WIRE Co. v. SOUTHERN BARBED-WIRE Co. and others.¹

(Circuit Court, E. D. Missouri. February 7, 1887.)

PATENTS FOR INVENTIONS—BARBED-WIRE FENCES.

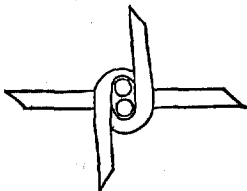
Letters patent No. 192,225, granted to Arthur S. Burnell, June 19, 1877, for an "improvement in barbed-wire fences," held valid, and infringed by wire fencing in which each prong passes between the strands, and is wound tightly around one of them, but not around the other prong.

In Equity.

Suit for the infringement of letters patent No. 192,225, granted to Arthur S. Burnell, June 19, 1877, for an "improvement in barbed-wire fences." The claim of the patent is as follows:

"A barb for double-strand cable-wire fences, composed of two pointed pieces of wire, each of which passes over a strand of the cable, thence between its strands, and reciprocally binds the other wire to the strand of the cable, wherefrom the points of the wires project as from a center, substantially as set forth."

The following drawing, which is a copy of fig. 3 of the drawings accompanying the specification, shows the prongs in position:



Each of the prongs of defendant's barb, which passes between the strands, is wound tightly around one of the strands, but does not pass

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