

UNITED STATES v. DURHAM.

(District Court, W. D. South Carolina. February, 1888.)

INTERNAL REVENUE—SPECIAL LICENSE—TO RETAIL AT DISTILLERY—SALES COVERED BY.

If persons dealing in liquor have paid the special retail tax for retailing at the distillery, they may receive and fill orders at their place of business, and send the liquor to persons residing at a distance. But they cannot make sales in small quantities from barrels to persons along the road, who pay them on receipt of the liquor.

Indictment for carrying on the business of retail liquor dealer, without having paid the special tax.

C. M. Furman, Asst. U. S. Atty., for plaintiff.

A. Blythe, for defendant.

SIMONTON, J., (*charging the jury*.) The defendant is indicted for carrying on the business of a retail liquor dealer, and not having paid the special tax. Some witnesses swear to purchases of whisky from defendant at various times. You are to decide whether they are credible witnesses. If you believe them, this will form your verdict. But the defendant, testifying in his own behalf, gives this account of the matter: He says that he and two other persons were the owners of a licensed distillery, near the North Carolina line, in this state; that they also had paid the special tax for retailing liquor at the distillery; that they received, in due course of business, orders for whisky, and, filling these orders, they sent their wagon, containing whisky in barrels, to different parts of the state, 20, 30, and 50 miles from their distillery; that all the liquor which he delivered had been ordered in this way. When defendant was arrested he was in charge of a wagon in which were three barrels,—two full of whisky, and one nearly empty. I am requested to charge you, on this point. If parties dealing in liquor, who have paid the special tax, receive orders for whisky at their place of business, and fill the orders so that the sale is consummated at their place of business,—so consummated that the property in the liquor passes to the purchaser,—this is no violation of the law, although they may sell and may send the liquor to parties residing at a distance.

If, however, they receive orders from persons at a distance, and in consequence of such orders they send out whisky in barrels, and, going through the country, they draw from the barrels, and deliver in small quantities,—say a pint, quart, or gallon,—to parties who pay them on receipt of the liquor, this is a violation of the law; the property in the whisky in the barrels remains in the sellers until it is delivered to the purchaser. The sale is consummated upon the delivery of the whisky, and it is not protected by the tax paid for sales at the distillery.

FIFIELD *v.* WHITTEMORE.*(Circuit Court, D. Massachusetts. February 6, 1888.)*

PATENTS FOR INVENTIONS—INFRINGEMENT—USE OF COMBINATION—DAMAGES.

The entire commercial value of machines made and sold by defendant was due to the use of a combination described in the fourth and fifth claims of the Dodge patent, which consisted in a new combination of old elements, and not in a mere improvement upon certain prior machines. *Held*, in an action for infringement, that it was proper not to deduct from damages awarded the value of such prior machines.

In Equity. On exceptions to master's report.

Action by Charles S. Fifield against David Whittemore, to recover damages for the infringement of a patent.

James E. Maynardier, for complainant.

George L. Roberts and T. W. Porter, for defendant.

COLT, J. By order of court this cause was recommitted to the master to determine whether the defendant's machine contains the invention of Hodges or of Addy, or any contrivance, whether patented or unpatented, on account of which the master's finding of profits, heretofore made, should be modified, and to what extent such findings should be modified. The master finds (1) that each and every part and piece of the Dodge machine was old, and that many of these parts and pieces are found in the Smith, Hodges, and Addy, and other machines older than they; (2) that Dodge made a wholly new combination as described in the fourth and fifth claims of his patent, each element of which was old; (3) that this combination is found both in complainant's and defendant's machines; (4) that the entire commercial value of the machines made and sold by both complainant and defendant is due to the combination described in the fourth and fifth claims of the Dodge patent. To this report the defendant has filed numerous exceptions. In these exceptions the defendant insists that the master should have found that the prior Hodges machine and Addy machine were each capable of performing all the operations of complainant's machine; that Smith's power transmitter and Smith's patent embodies every essential feature of the machine described in complainant's patent, except the ball and socket joint at the ends of the pendent rod; that no evidence has been offered to determine the value of the specific difference in construction between these machines and the Dodge machine; that the complainant's patent was for an improvement, and not for an entirely new machine; that, in producing his machine, Dodge borrowed from the Smith, Hodges, and Addy machines, all except the ball and socket joint connection at the end of rod *r*.

The main question raised by these exceptions is whether the master has committed any error in making no deduction in the damages found for the value of these prior machines, and in finding that the entire commercial value of the Dodge machine is due his patent. I have read