

## JOHNSON v. BROOKLYN &amp; C. R. Co.

## SAME v. STEINWAY &amp; H. P. R. Co.

(Circuit Court, E. D. New York. October 24, 1888.)

## PATENTS FOR INVENTIONS—INFRINGEMENT—EXPIRATION OF PATENT.

An injunction against the infringement of a patent for an invention consisting of a combination of known appliances, is not violated by using the combination after the expiration of the patent.

In Equity. On motion to punish for contempt.

*Duncan, Curtis & Page*, for complainant, cited:

*Birdsell v. Shalioi*, 112 U. S. 487, 5 Sup. Ct. Rep. 244; *Suffolk Co. v. Hayden*, 3 Wall. 315; *Root v. Railway Co.*, 105 U. S. 189; *Needham v. Oxley*, 8 Law T. (N. S.) 604; *Frearson v. Loe*, 9 Ch. Div. 48; *Boring Co. v. Marble Co.*, 2 Fed. Rep. 356; *Boring Co. v. Sheldon*, 1 Fed. Rep. 870; *Belting Co. v. Magowan*, 27 Fed. Rep. 111; *Powder Co. v. Powder Co.*, 9 Fed. Rep. 316; *Goodyear v. Mullee*, 5 Blatchf. 429; *Hamilton v. Simons*, 5 Biss. 77; *Wells v. Railway Co.*, 19 Fed. Rep. 20; *Craig v. Fisher*, 2 Sawy. 345; *McKay v. Machine Co.*, 20 O. G. 372, 12 Fed. Rep. 615; *Wetherill v. Zinc Co.*, 5 O. G. 460; *Phillips v. City of Detroit*, 16 O. G. 627; *Wilson v. Simpson*, 9 How. 109; *Chaffee v. Belting Co.*, 22 How. 217; *Farrington v. Com.*, 4 Fish. Pat. Cas. 216; *Gottfried v. Brewing Co.*, 8 Fed. Rep. 322.

*Frost & Coe*, for defendants, cited:

*Reaper Co. v. Johnston*, 24 Fed. Rep. 739; *Merston v. Furnace Co.*, Id. 741; *Lord v. Machine Co.*, Id. 801; *Valve Co. v. Valve Co.*, 26 Fed. Rep. 319; *Safety-Valve Co. v. Gage Co.*, 113 U. S. 157, 5 Sup. Ct. Rep. 513; *Boring Co. v. Sheldons*, 2 Fed. Rep. 353; *Telephone Co. v. Kitsell*, 35 Fed. Rep. 523.

LACOMBE, J. Complainant's patent (Newman, No. 117,198, July 18, 1871) is for "the combination of an oscillating platform, arranged for operation by the weight of the draught animals (of a horse car) with a (horizontally moving) switch." In the combination only was found novelty and invention sufficient to induce the court to sustain the patent. *Johnson v. Railroad Co.*, 33 Fed. Rep. 499. Rocking or oscillating platforms generally, and as devices for automatic switches, were known to the art before the date of Newman's invention. Horizontally moving switches were also old. It was only the inventor's "ingenious assembling of known appliances" which Judge COXE, in the case above cited, recognized as patentable. In the case at bar the use of several infringing machines in defendants' tracks being shown, injunctions were granted during the life of the patent. Thereupon defendants ceased the use of the patented combination, disconnecting the oscillating tables from the switch-tongues, and employing men or boys to operate the switches. Some weeks, however, after the expiration of the patent, they substituted new switch-tongues for those in use when the injunction was granted, connected them with the oscillating tables, and are now using the combination of parts thus formed. Complainant contends that this is a violation of the injunction, and moves to punish defendants for contempt. His motion is based upon the principle that an infringing article or machine made

before the expiration of the patent cannot be used after such expiration, and that, upon sufficient cause shown, an injunction against such use will be indefinitely continued. The authorities cited sustain this proposition mainly upon the theory that the court could during the life of the patent order the destruction of the machine or article, and that the injunction forbidding its future use is merely the practical equivalent of such destruction. The contention of the defendant as to the effect upon this proposition of *Root v. Railway Co.*, 105 U. S. 189, need not be now considered. The case at bar is not within those authorities. All the parts of the patented article were old; their manufacture, sale, accumulation, or use was free to all. The patentee's monopoly extended only to their combination. The infringing article would be destroyed when the combination of its parts was broken up, and the further destruction of those parts themselves which were not covered by the patent would be an interference with defendants' property not warranted by any of the authorities cited. The combination of parts in the defendants' infringing articles, having been once *bona fide* broken up, a recombination of the old parts after the complainant's monopoly has expired will not be enjoined. Motion denied.

### THE MARGARET J. SANFORD.

#### PARTRIDGE *v.* THE MARGARET J. SANFORD.

(*Circuit Court, S. D. New York, December 1, 1888.*)

#### 1. COLLISION—VESSELS AT BULK-HEAD—OBSTRUCTING CHANNEL.

The ship T. moored at a bulk-head with her bow projecting about 16 feet into a canal 157 feet wide, leaving sufficient space for vessels to pass. Afterwards a bark moored at a bulk-head on the other side, with her bow projecting so far into the canal that it would be difficult for vessels to pass between. The S., with a car-float in tow, and in an unfavorable condition of the tide, attempted to pass between the vessels, and collided with the T. *Held*, that the T. was also in fault in remaining in her position after the bark moored on the other side, and the damages should be divided.

#### 2. SAME—DAMAGES—DETENTION OF VESSEL.

The T. was a "tramp" steamer, occasionally visiting the port of New York, and was under a charter for a voyage to Bombay, under which she would have earned, above expenses, \$100 per day. The charter stipulated for demurrage at the rate of £45 per day, while it appeared that the customary allowance at the port of New York for detention of vessels the size of the T. was \$200 per day. The vessel had no engagement beyond the immediate voyage, and it was not shown that after her arrival at destination she found immediate employment. *Held*, that neither the demurrage rate specified in the charter, nor the customary demurrage rates at the port of New York, supplied a satisfactory criterion of the loss sustained by the vessel's detention during repairs; that the amount of the consequential loss was the difference between the market value for the use of the vessel or her probable net earnings during the period of detention; and one way of ascertaining this was by finding what she was earning at the time, or immediately before and after the collision; and that if at the time she was employed under a charter for a long period of time, the average daily earnings under the charter may be taken as the criterion.