

tem. For each and all of these reasons, we are fully satisfied that the prisoner is not entitled to any credits whatever, and it is so adjudged. And the sheriff of Alameda county is adjudged and directed to hold the prisoner in confinement for the full term specified in the judgment for contempt, without any deductions or credits.

ALEXANDER H. MALL & Co. v. ULLRICH.

District Court, N. D. Ohio, W. D. December Term, 1888.)

BANKRUPTCY—DISCHARGE—FRAUD—LIMITATION OF ACTION.

The period of two years, within which a petition to vacate the discharge of a bankrupt for fraud must be filed under Rev. St. U. S. § 5120, begins to run from the date of the discharge, and not from the discovery of the fraud.

In Bankruptcy.

The petition was filed by the petitioner, who was a creditor of and had a provable claim against the defendant, a bankrupt, to set aside a discharge granted to him in February, 1879, on the ground that the bankrupt had been guilty of fraud in his application for the benefit of the bankrupt law. The petition was filed in this case on the 27th of August, A. D. 1888. The defendant filed a demurrer on the ground that the petition to set aside the discharge was not filed within two years from the discharge. It was claimed that the limitation began to run only at the time the frauds were discovered.

J. A. Chase, for petitioner.

A. Farguharson, for defendant.

WELKER, J. Section 5120 of the Revised Statutes (bankrupt law) provided an absolute bar, where the petition was not filed within two years from the date of the discharge. The limitation is not in any way controlled by the discovery of the fraud; and the limitation provided by law in actions by or against assignees in bankruptcy founded upon frauds, and providing that the limitation begins to run from the discovering of the fraud does not apply in this class of proceedings. The demurrer is therefore sustained, and petition dismissed, with costs.

CARY *et al.* v. LOVELL MANUF'G Co., Limited.

(Circuit Court, W. D. Pennsylvania. January 26, 1889.)

PATENTS FOR INVENTIONS—INFRINGEMENT—DAMAGES—LICENSE FEE.

Two licenses for the future use of a patented process at a specified rate per pound of springs shown to have been regularly paid by the licensees, although one of said licenses was granted only a few days before the bill in this case was filed, and the other was granted during its pendency, and in each instance there was also the payment of a gross sum for past infringement, held to be admissible in this suit as evidence tending to show an established license fee; and sufficient, in connection with evidence of a previous settlement between the patentee and his firm at the same rate for the permitted use of said process, and other evidence of the reasonableness of said rate, to charge the defendant with damages on that basis.

In Equity. Bill for infringement of patent. See 31 Fed. Rep. 344.
On exceptions to master's report.

Witter & Kenyon, for complainants.

John K. Hallock and W. Bakewell & Sons, for respondent.

Before McKENNAN and ACHESON, JJ.

PER CURIAM. The master, being of opinion that the license for the future use of the patented process at the rate of two cents per pound of springs, granted to R. H. Wolff & Co., Limited, on March 2, 1885, and the like license, at the same rate, granted to Gibson, Parish & Co., on November 14, 1885, were inadmissible as evidence, refused to hold the defendants liable for damages upon the basis of an established license fee. And as he has found that there is no satisfactory evidence disclosing what part, if any, of the defendants' profits was due to the use of the patented process, or to show that the plaintiffs had sustained a loss of trade, or any other special damage, the up-shot of the matter is that, if the master's report stands, the plaintiffs will receive nothing but nominal damages for the defendants' infringement. Is this a just conclusion to this litigation? The only reason assigned by the learned master for his rejection of the licenses as items of proof is that "they were practically settlements of pending litigations between the complainants and the parties taking said licenses," and (unless in the case of the Wolff license) were "made after the commencement and during the pendency" of this suit. But to determine properly the question of the admissibility of these licenses as evidence, and the effect to be given to them, it is, we think, necessary, not only to consider more closely than the master seems to have done the licenses themselves, and the circumstances under which they were executed, but also to take a somewhat broader view of the case as a whole than his report presents. And reversing the above order of procedure, we first remark that this record throughout exhibits proof of the real merit of the Cary invention, and it is clearly shown that the patented process had great money value. For example, in each of the four proved instances in which there were settlements for past infringements, substantial damages therefor were paid to the plaintiffs.