

RECENT DECISIONS RELATING TO PATENTS, COPYRIGHTS, ETC.

Supreme Court of the United States.

PARKS *et al.* vs. BOOTH.

1. It is essential to the validity of a patent that the particular invention be pointed out and distinguished from what is old, and when the invention consists merely of a new combination of old elements or devices, where nothing is or can be claimed except the new combination, it is sufficiently described to constitute a compliance with the letter and spirit of the law if the devices of which it is composed are specifically named, their mode of operation given, and the new and useful result to be accomplished is pointed out, so that those skilled in the art and the public may know the extent and nature of the claim and what the parts are which co-operate to do the work.

2. It is not necessary to allege or prove, in order to sustain the defense of prior patent or printed publication, that such patent or publication was issued or given two years earlier than the patentee's invention.

3. Where the patent covers an entirety it cannot be defeated by showing that the several component parts are old in other connections. It must appear that they have existed together in the same relation.

4. More than one patent may be included in one suit and more than one invention may be secured in the same patent, in which cases the several defenses of prior invention and public use may be made to each patent in the suit and to each invention to which the charge of infringement relates.

5. The patent act allows the infringer to plead and prove that the invention of the patentee had been in public use or on sale in this country for more than two years before the inventor applied for a patent; but no question of priority is open under that defense, nor will evidence sustain it that another had made or patented the invention two years before the application without the knowledge of the patentee whose invention is in question.

6. It not appearing that the complainant was guilty of laches in applying for a patent, or that his improvement ever went into public use or was on sale in this country before he applied for a patent, the patent was held to be valid.

7. Interest on the profits decreed to the complainant should not be allowed. The profits in such cases to be regarded in the light of unliquidated damages, which usually do not draw interest without the special order of the court.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

Mr. Justice Clifford delivered the opinion of the court.

U. S. Circuit Court—Southern District of New York.—Choate, J.

ROSENBACH vs. DREYFUSS *et al.*—COPYRIGHT.

Decided April 28, 1880.

Section 4,963 of the Revised Statutes, providing that "every one who shall insert or impress such notice" [Entered according to act of Congress, in the year —, by A. B., in the office of the Librarian of Congress, at Washington] "or words of the same purport in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty and one-half to the use of the United States," is a penal statute to be strictly construed, and its terms cannot be extended beyond the case of articles subject to copyright, which is the limit indicated by the terms of the statute itself if read in connection with the other sections.

2. The purpose of the statute is to protect persons entitled to copyright from their privilege being impaired, and the offense against the statute is deceiving the public by the false assertion of a valuable privilege; but where the article marked as copyrighted is not the subject of copyright, neither the right of another is impaired nor can the public be deceived.

3. A print of a balloon or hanging basket, with printing indicating the embroidery and cutting lines, does not fall under either of the heads of "print," or "model or design intended to be perfected as a work of the fine arts," or "pictorial illustrations or works connected with the fine arts," enumerated in the copyright statutes.

4. Under the general rule of pleading that the plaintiff must state with reasonable certainty a case for recovery a demurrer was sustained where it did not appear by the complaints that the articles described therein were subjects of copyright under the laws of the United States.

By the Acting Commissioner of Patents.

HIBBARD vs. RICHMOND.—FEATHER DUSTERS.

Decided April 30, 1880.

Patent granted to Susan M. Hibbard May 30, 1876, No. 177,939. Application of Gilbert M. Richmond filed September 10, 1874.

NEW TRIAL:—Where in an interference between two applicants for a patent priority of invention was awarded to one of them and a patent issued accordingly: *Held*, that the issue of the patent constituted no bar to the reopening of the interference between the defeated applicant, whose application was pending in the Office, and the patentee, upon proof of fraud or newly-discovered evidence and in the absence of laches on the part of such applicant, and that upon proof on the new trial that the applicant was the original and first inventor he was entitled to the patent.

Appeal from Examiners-in-Chief.

United States Circuit Court.—District of New Hampshire.—Lowell, J.

PERKINS vs. NASHUA CARD AND GLAZED PAPER COMPANY.
—WHAT CONSTITUTES PUBLIC USE.

Decided May 15, 1880.

There is very little conflict of evidence in this case. The patentee made a machine containing his invention in the year 1857, and in 1863 he substituted for it another, varying in form and proportions but not in principle. These machines he used successively in the ordinary way of his business as a maker of card and pasteboard until he applied for his patent in 1876. The specification and model represent precisely the machine of 1863.

During the time that the machines were used they stood in the room with several other machines necessary for the other processes of making, drying, and coloring pasteboard, and were operated chiefly by one man, Moulton, who was sometimes assisted by one other. About twenty-three workmen were employed upon the other parts of the manufacture.

The doors of the factory were usually kept locked, and each of the twenty-five workmen had a key. How many visitors came to the factory is one of the disputed points. There were occasional visitors, but not many persons came to the factory from mere curiosity.

During some months Mr. Denison, a friend of the patentee, was given the use of an upper room for making tags, and his workmen passed in sight of the pasting machine. It is not proved that any workmen, visitors, or other persons acquired or divulged a knowledge of the mode of operation of the machine until the workman Moulton gave that information to the defendants in 1876.

Was the invention in public use for more than two years before Perkins applied for his patent? The time was enough. Was the use a public use? The law desires to encourage inventors to make their discoveries known for the improvement of the art and to discourage an extension of the monopoly beyond the statutory period. For these reasons and because of the difficulty of ascertaining the amount of knowledge which may have been derived from the exhibition, publication, or use of the invention, it has always been held that when the public have had means of knowledge they have had knowledge of the invention. Thus if a book has been published describing the invention it is not important that no one has read it. (*Stead vs. Williams*, 7 M. & G., 818.) If a pier has been placed in the bed of a river or a pipe underground it is conclusively presumed to be known to all men. It has been intimated that a use in a workshop where the workmen are pledged to secrecy may not be a public use. (*Kendall vs. Winsor*, 21 How., 322; charge of Curtis, J.,; *Bevin vs. Easthampton Bell Company*, 9 Blatchf., 50; *Heath vs. Smith*, 3 Ellis & B., 255.) In the last of these cases it is held that if the invention has been worked in the ordinary way without an injunction of secrecy the use is public. In *McClurg vs. Kingsland* (1 How., 202), it is said by Mr. Justice Baldwin, *obiter*, that use in a factory is a public use. A use very trifling in amount, or a publication purely technical, or a single sale has often been held to deprive an inventor of his patent, without evidence that any one interested to acquire knowledge of the invention had acquired it. (*Henry vs. Providence Tool Company*, 14 O. G., 855; *Egbert vs. Lippman*, 14 O. G., 822; *McMillan vs. Barclay*, 5 Fish., 489; *Re Adamson's patent*, 6 DeG., M. & G., 420; *Patterson vs. Gaslight Company*, 3 App. Cas., 239; *Lange vs. Gisborne*, 31 Beav., 133.)

The difference between this case and *Manning vs. Cape Ann Isinglass Company* is that in that case the inventor after dissolving his partnership permitted his partner to continue to use the invention. Neither of the partners used the invention excepting in their respective factories (the circumstance makes that case a little stronger), but my opinion was that the use by the firm before they dissolved their partnership was a public use. Taking these decisions together, I understand the law to be that actual knowledge of the invention need not have been derived by any one interested to practice it. It is enough that any one or more persons not under a pledge of secrecy saw the invention practiced, or even might have seen it if they had used their opportunities, provided it was in fact practiced in the ordinary way after being completed. And it must be held either that the workmen and visitors were a part of the public or that they were persons from whom the public might have acquired the art without a breach of trust.

There was no pledge of secrecy proved here, and there was some evidence that none was exacted from anybody. There was no evidence of concealment except that the factory was not open to chance visitors. It was understood, I suppose, as most factories are conducted with no intention of divulging any secrets and none to have curious and prying persons admitted; but without any special precautions beyond what prudent men who do not care to be interrupted in their business would usually adopt. For my own part, I should have some doubt whether a pledge of secrecy exacted of a number of workmen who had nothing to do with the machine in question and had opportunity to examine it if they chose would make the use a secret one.

There is some evidence intended to prove that the use was experimental; but upon the whole record it is clear that the machines were used for about twenty years in the ordinary business of the patentee, and worked so well that when Moulton first expressed an intention of leaving the factory and building a machine for the defendants the plaintiff raised

his wages one-third. He did not say it would involve a breach of trust.

A short time before the patent was applied for some experiments were made which resulted in nothing of importance, and, I fear, were intended to benefit the patent rather than the machine. An improvement has now been made, but it is not described in the specification shown in the model. At all events, a machine which, whether entirely satisfactory or not, has been run in the ordinary course of business for twenty or thirty years, and which is patented precisely as it was used, cannot properly be called an experimental machine.

The decree must therefore be, bill dismissed, with costs.

United States Circuit Court.—Southern District of New York.—Wheeler, J.

ALLEN vs. CITY OF NEW YORK.—FOLDING SEAT PATENT.

1. Reissued patent No. 21, to Aaron H. Allen, January 15, 1861, for improvements in seats for public halls, declared valid.

2. The seats in the original patent were to be turned up by weights, while in the reissue the weights may be dispensed with and the seats moved up otherwise: *Held*, that the reissue is not for an invention different from that contained in the original patent.

3. Although the stove door, carriage seat for a child, and opera board to a carriage, relied upon in defense, are returned down, stopped, and held and turned up out of the way as are these seats, such contrivances are not anticipations of this invention, since they could not be arranged as seats in public halls without additions and alteration requiring the exercise of invention.

4. A description in a prior patent is no anticipation of a patent the application of which was filed before the application of such prior patent.

5. The defendant in this case is a proper party to account for profits, as are also its board of education and department of instruction, by whom the seats constituting the infringement were introduced into the schools.

Decree sustaining the patent.

United States Circuit Court.—Southern District of New York.—Wheeler, J.

SHARP vs. TIFFT.—GAS STOVE PATENT.

Decided May 8, 1880.

1. Substantially the same combination of devices, although of different form and capacity, having been used before the patentee's invention, he is entitled only to his particular form of devices which are really different, and the combination of those devices with each other or with others so as to produce a new result or an old result in a new way.

2. A reference in a disclaimer to a particular form of the device not so limited in the claim is merely descriptive of that form without taking away or adding anything thereto.

3. When the reissue describes only what was described in the original patent, both as to the devices and the nature of the invention, it cannot be said that the invention in one is different from that in the other, although the claims have been changed and enlarged.

4. A patent for a combination of known parts, materials, or elements is not infringed by the use of any number of the parts, materials, or elements less than the whole.

5. Where some parts of the combination are new, and those parts are taken and used in the same manner, but with different elements for the rest of the combination patented, a part of the invention is taken, although the whole is not, and it is an infringement to that extent.

6. A disclaimer filed after the suit was brought ordinarily deprives the plaintiff of costs in the suit; but where the disclaimer was not necessary to sustain the patent to the extent it is held valid, was inoperative, in the view taken of it, upon the patent, and has no effect in maintaining the suit, cost may be allowed the plaintiff as though no disclaimer had been filed.

Test for Organic Impurities in Water.

The use of a dilute solution of tannic acid has been suggested for this purpose by J. P. Dahlen. The test solution should contain five per cent of tannin, and five parts of it should be added to one hundred of the water. If organic matters be present, a pellicle or scum will rapidly form; this scum formation can be recognized by the immediate appearance of an iridescence or play of colors, and the growth of fungus vegetation can be detected without a microscope by the little bubbles of carbonic acid which collect around the edges of the surface. In every sample of water where this turbidity or scum is formed, or where a fungoid growth occurs soon after addition of the tannin solution, it is a sure sign that organic matters are present. When these organic matters have been destroyed by evaporating, heating, etc., no such turbidity or fungoid growth occurs on addition of the tannin solution.

Train Wrecking in Spain.

A gang of train wreckers have met with the kind of punishment in old Spain which we would like to see that class meet with in this country. A gang which recently wrecked a train in Andalusia was court-martialed, thirteen of them sentenced to death and thirteen to imprisonment for twenty years. This country stands very much in need of Spanish civilization, and if it could be introduced into Illinois, Missouri, Iowa, and certain other parts where the industry of train-wrecking and robbing is followed with considerable success it would be a good thing.