

Case No. 1,648a.
[19 O. G. 1,140.]

BOOTH ET AL. V. SEEVERS ET AL.

Circuit Court, D. Maryland.

April 8, 1881.

PATENTS—INFRINGEMENT—ACTION FOR DAMAGES—EFFECT OF RECOVERY.

The recovery of profits and damages from the manufacturers of an infringing machine debars the patentee from recovering from a user for the use of the same machine.

[Cited in *Allis v. Stowell*, 16 Fed. 787. Disapproved in *Kelley v. Ypsilanti Dress-Stay Manuf'g Co.*, 44 Fed. 21.]

This suit was brought under reissue patent No. 1,826, granted to complainant on November 29, 1864, for improvement in grain separators, for the use of a machine, which was one of a number, for the manufacture of which the complainant had recovered from the makers. [Bill dismissed.]

Sebastian Brown and J. B. Perkins, for complainant.

Bakewell & Kerr, for defendants.

Before BOND, Circuit Judge, and MORRIS, District Judge.

This cause having been argued by counsel and submitted for decree, the pleadings, exhibits, and testimony have been read and considered, and it appearing to the court that the machine used by the defendants, complained of in the complainant's bill of complaint, and therein alleged to be an infringement of complainant's patent, is one of the machines manufactured by Turner, Parks & Co., and by them sold to Grant B. Turner, and sold by him to the defendants, and is also one of the machines included in the account in the case of the complainant against Turner, Parks & Co., No. 2,249, in equity, in the United States circuit court for the northern district of Ohio, and is one of the machines for which, since the institution of this suit, the complainants, by the decree in that case, recovered from said manufacturers profits and damages, and it also appearing that said decree has been satisfied, it is considered by the court that the complainant is not entitled to any recovery in this suit against the defendants in respect to their use of said machine; and it is therefore, this 8th day of April, 1881, ordered and decreed that the said bill of complaint be, and the same is hereby, dismissed, but with costs to the complainant. *Perrego v. Spaulding* [Case No. 10,994]; *Steam Stonecutter Co. v. Windsor Manuf'g Co.* [Id. 13,335]; *Parks v. Booth* [102 U. S. 96]; *Birdsell v. Hagerstown Co.* [Case No. 1,437].

[NOTE. For another case involving this patent. see note to *Booth v. Parks*, Case No. 1,648.]