CLEVELAND v. TOWLE.

Case No. 2,888.

{3 Fish. Pat. Cas. 525.}[1]

Circuit Court, D. Maryland. April, 1869.

PATENTS–PRIOR USE–INFRINGEMENT.

1. A manufacture and sale, by persons other than the patentee, of articles made upon the same principle as the patented thing, for more than two years prior to the application of the patentee, avoids the patent.

2. The defendant will infringe the complainant's patent if he use the invention of complainant as one of the elements of a combination which he has himself patented.

This was an action on the case {against William P. Towle}, tried by Judge Giles and a jury, to recover damages for the infringement of letters patent {No. 69,629} for "improvement in suspenders," granted to plaintiff {Charles H. Cleveland} October 8, 1867.

The claim of the patent was as follows:

"The shoulder brace meets at each end in a single attachment that buttons to the sides of the waistband.

"The suspender or shoulder brace, composed of two single straps, CC, each passing from its attaching strap at the one side over the shoulder to the attaching strap on the other side of the body, substantially as herein described."

Joseph L. Brent and Robert J. Brent, for plaintiff.

William H. Norris, for defendant.

GILES, District Judge, (charging the jury). The patent of complainant is for a suspender composed of two straps, either elastic or non-elastic, crossing each other on the back and passing over and under the shoulder, and being attached to the pantaloons at two points, one on either side, just above the hip, as described in said patent. And if the jury shall find from the evidence that, in 1858, and more than two years before the complainant applied for his patent, suspenders made upon this principle were manufactured and sold by the American Suspender Company, in Connecticut, or sold by Mr. Church, their agent in the city of New York, then the said complainant was not the first and original inventor of the said suspender, and the jury will find the first issue in the negative.

2. If the jury shall find that the patent of defendant, although for a combination which contains as one of its elements the same principle or substance which is embodied in complainant's patent, the same is an infringement on complainant's patent, and the jury will find the second issue in the affirmative.

3. If the jury shall find that the defendant manufactured or vended suspenders which, in their manufacture, contained the principle which is described in the first instruction, as patented to complainant, they will find the third issue in the affirmative, if the jury shall find the first issue in the affirmative.

[1] {Reported by Samuel S. Fisher, Esq., and here reprinted by permission.}