

Case No. 4,242.

EARL V. DEXTER ET AL.

[1 Ban. & A. 400;¹ 1 Holmes, 412; 6 O. G. 729.]

Circuit Court, D. Massachusetts.

Sept., 1874.

PATENTS—INFRINGEMENT SUITS—DEFENSE OF PRIOR USE—NOTICE.

In a suit in equity, to restrain the infringement of a patent, it is not admissible to give in evidence, against the objection of the complainant, copies of drawings of foreign patents, with evidence respecting them, for the purpose of showing, that the patentee was not the original and first inventor of the improvement, where the answer of the defendant denies that the patentee was such original and first inventor, but does not, in compliance with the statute, give any notice of the persons by whom, or the places where, the alleged invention was known or used before the invention of the patentee.

[This was a bill in equity by Benjamin A. Earl against Richard Dexter and others for the alleged infringement of letters patent No. 47,938, granted to Earl and Holcraft, May 30, 1865.]

C. Howson and A. K. P. Joy, for complainant.

H. L. Parker and Dane & Baker, for defendants.

SHEPLEY, Circuit Judge. The defendants have offered in evidence, against the objections of the complainant, certain exhibits purporting to be copies of drawings of foreign patents, accompanied with evidence respecting them, for the purpose of showing that the patentees were not the original and first inventors of the improvement in apparatus for oiling wool, described in the patent, for an alleged infringement of which, this bill is brought. The answer of defendants denies that the patentees were the original and first inventors, but does not in compliance with the statute, give any notice of the persons by whom, or the places where, the alleged invention was known or used before the invention of the patentees.

The only question, presented by the record, is one of infringement. Treating the patent as a good and valid one, as I am compelled to do on this record as against these defendants, I must come to the conclusion that the mechanism used by the defendants for oiling wool, consisting of an oil reservoir and a sprinkler, having such a movement imparted to it that it will enter the oil in the reservoir, and then, by percussive action, discharge the adhering oil, in the form of drops or spray, on to the wool, so as to effectually and uniformly saturate the traversing wool, is an infringement on the mechanism, patented to B. A. Earl, as assignee of B. A. Earl and Henry Holcraft. Decree for injunction and account.

¹ [Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.]