GARDINER ET AL. V. HOWE.

Case No. 5,219.
{2 Cliff. 462.}[1]

Circuit Court, D. Massachusetts. May Term, 1865.

PATENTS—INFRINGEMENT ON HIGH SEAS—AMERICAN VESSELS.

Where the defendant, an American citizen, had, without license, used the patented improvement of the plaintiff, on the high seas, on board an American vessel, *held*, that the plaintiff was entitled to recover damages for such use of his invention the same as if it had taken place within the territory of the United States.

This was an action on the case {by Charles L. Gardiner and others against Thomas Howe} to recover damages for the alleged infringement of a patent right. At a previous term the parties went to trial upon the pleadings in the case, and the jury, under the instructions of the court returned a verdict in favor of the plaintiff. At this time the defendant moved for a new trial, and alleged the following reasons: First, because of the misdirections of the court Second, because the verdict was against the evidence, and the weight of evidence in the case. The patent was on an improvement in the sails of vessels. The defendant was owner of the bark Robert, and the master applied the patented improvement to one of the sails of the vessel, on her passage from Liverpool to New York. She was an American vessel, and commanded by an American master. The evidence showed that the improvement was applied to the sail on the high seas, and without the jurisdiction of the United States. Some of the statements of the witnesses tended to show that the master used the improvement but once, and never after the vessel arrived within the jurisdiction of the state of New York, but other statements of the same witnesses showed that the sail, with the patented invention still on it remained on the vessel, and in a condition for use, even after the voyage was terminated, and while the vessel was at the wharf in her port of discharge. Evidence was also introduced to show that the defendant authorized the master to use the invention on his vessel, and clearly showed that he suffered the same to remain on the sail, after he had knowledge of its use, without giving any directions that it should, be removed. The defendant contended that the plaintiff was not entitled to recover, even if he proved the use of the patented improvement as alleged, because the case showed that the use was only on the high seas, and consequently, that it was not prohibited by the patent law. At the trial the court gave

the two following instructions to the jury: First, that if the jury found that the use was continued into the port of destination, then the reasoning of the defendant would not apply. Second, that the position, in any view of the evidence, could not be sustained if they found the use was without license, as it was on an American vessel bound to an American port.

Samuel Snow, for plaintiffs.

F. A. Brooks, for defendant.

CLIFFORD, Circuit Justice. Reference is made by the defendant to the cases of Brown v. Duchesne {Case No. 2,004}, and Id., 19 How. {60 U. S.} 183; but these cases do not apply where, as in this instance, the vessel where the act of infringement took place was American. "Were it to be held that in cases like the present the plaintiff is not entitled to recover, patents for improvements in the tackle and machinery of vessels, or in their construction, would be valueless. The patent laws of the United States afford no protection to inventions beyond or outside of the jurisdiction of the United States; but this jurisdiction extends to the decks of American vessels on the high seas, as much as it does to all the territory of the country, and for many purposes is even more exclusive.

The motion for a new trial is entirely without merit, as the evidence shows that the plaintiff is clearly entitled to recover. Motion overruled. Judgment on the verdict.

[1] {Reported by William Henry Clifford, Esq., and here reprinted by permission.}