

Case No. 7,461.

JONES V. FIELD ET AL.

[12 Blatchf. 494; 2 Ban. & A. 39.]<sup>1</sup>

Circuit Court, E. D. New York.

April 8, 1875.

PATENTS—INJUNCTION TO RESTRAIN INFRINGEMENT—WHEN DENIED.

An injunction was applied for to restrain the infringement of a patent reissued within five months previously. On the motion, the validity of the patent was disputed, the novelty of the invention was denied, exclusive possession in the plaintiff was not shown, the defendants were shown to be able to respond in damages, and, on

a broad construction of the claim of the patent, for which the plaintiff contended, the affidavits in opposition raised a doubt as to the novelty of the invention: *Held*, that the motion must be denied.

[Cited in *Foster v. Crossin*, 23 Fed. 400.]

[This was a bill in equity by Willis Jones against Charles H. Field and Maurice Flynn for the alleged infringement of plaintiff's patent.]

John J. Allen, for plaintiff.

Andrew J. Todd, for defendants.

BENEDICT, District Judge. This is a motion for an injunction to restrain the defendants from making a certain form of self-lubricating vehicle axles, which, it is claimed, infringes upon a patent owned by the plaintiff. The patent relied on was first issued to the plaintiff on March 10th, 1874 [No. 148,368]. It was re-issued November 10th, 1874, No. 6,129. The claim in the re-issue is for "a wheel axle, with recesses in the upper part of such axle, substantially in the manner and for the purposes set forth."

Neither the construction nor the validity of the re-issue has ever been adjudicated. Upon this motion, the validity of the patent is disputed and the novelty of the invention is denied. If, as the plaintiff contends, his invention covers every form of recess made in the upper part of an axle, for the purpose of containing oil and permitting it to be drawn there from as the wheel revolves, the affidavits produced in opposition to this motion raise sufficient doubt as to the novelty of the invention, to defeat a motion for injunction, where, as in this case, the patent was issued within five months, where exclusive possession is not shown, and where the defendants are responsible and able to respond to any claim for damages that may be made out against them. The motion must, therefore, be denied.

<sup>1</sup> [Reported by Hon. Samuel Blatchford, District Judge; reprinted in 2 Ban. & A. 39: and here republished by permission.]