Case No. 10,965a.

PENTLARGE v. PENTLARGE.

{14 Reporter, 579.}[2]

Circuit Court, E. D. New York. July 25, 1882.

PATENTS—PRELIMINARY INJUNCTION—THREATS.

In a suit for the infringement of a patent the court will not grant a motion for a preliminary injunction to restrain the defendant from threatening to bring suits upon his patent before it is adjudged invalid, and the injunction will not be granted where the court has held the defendant's patent invalid, but the adjudication has been set aside upon an agreement of compromise between the parties.

On motion for a preliminary injunction.

BENEDICT, District Judge. In so far as the object of this action is to set aside the agreement of compromise made between the parties November 22, 1880, upon the ground of duress, manifestly upon a motion like the present for a preliminary injunction the jurisdiction of the court to entertain the action, all the parties thereto being citizens of this state, cannot be assumed, although the subject-matter of such agreement be the rights of the parties in and by virtue of certain letters patent. For the purposes of the present motion the bill can be treated only as a bill filed by virtue of section 4918, Rev. St. for the purpose of having the defendant's patent reissue No. 9,733 declared void as interfering with the plaintiff's patent reissue No. 5,937. In such an action it has been decided by Judge Blatchford, in this circuit, that the court is not authorized to restrain the defendant from bringing suits on his patent before his patent is adjudged to be invalid. Asbestos Felting Co. v. United States & F. S. Felting Co. {Case No. 570}. The present application comes within the principle of that decision. If in such action the defendant cannot before final decree be restrained from bringing suits upon his

patent, neither can he be restrained from proclaiming the validity of his patent and threatening with suits all who infringe it. Says Judge Blatchford in the case referred to: "The granting of the patent confers the right to bring suits thereon for infringement." The right to bring suits against infringement involves the right to threaten such persons with suit. How is the case changed by the fact stated by the plaintiff, that the threatenings of the defendant to sue customers of his tend to intimidate them and prevent them from buying of him the article he claims to make under his patent? The want of authority in the court continues the same. Nor is the plaintiff helped in this action by the fact that in former actions between the same parties this court has held the original patent, of which the defendant's patent is a reissue, to be invalid, for by the agreement between the parties contained in the agreement of compromise made in 1880 those adjudications have been set aside, and that agreement must, upon this motion, be treated as valid and subsisting. The application therefore stands upon the same ground as did the application for an injunction in the case before Judge Blatchford, already referred to, and upon the authority of that case it must be held that the court has no authority in this stage of the controversy to grant the preliminary injunction asked for. Motion denied.

{See note to Case No. 10,963.}

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