

Case No. 18,038.

WOOSTER V. MARKS ET AL.

[17 Blatchf. 368;¹5 Ban. & A. 56; 9 Reporter, 201.]

Circuit Court, S. D. New York.

Dec. 22, 1879.

INFRINGEMENT OF PATENT.

A man worked for the defendants by the piece, in the defendants' manufactory, and there used, in the defendants' business, folding guides, his own property, which infringed the plaintiffs patent. *Held*, in a suit in equity, that the defendants had infringed the patent.

[This was a bill in equity by George H. Wooster against Marcus Marks and others to enjoin the infringement of a patent.]

Frederic H. Betts, for complainant.

William A. Coursen, for defendants.

WHEELER, District Judge. Folding guides, for which the orator has a patent, have been used in the defendants' manufactory. The only question In this case is, whether they have been so used there as that the defendants are themselves liable for the infringement." They were procured and used by a man, whom one of the defendants, in his testimony, calls "our man," and who worked for them there and was paid for his labor by the piece, furnishing his own tools of this sort They knew of this use of the guides, but not that they were patented, and stopped the use when they were informed of that fact Under these circumstances, he was using the guides for them, in their business. The mode of payment made it none the less so; and they, at least, participated in the tort which constituted the infringement An action at law would be for this participation, and this bib in equity, which rests upon the same foundation, although, in some respects, for different relief, will be also. The question is not at all as to the extent of infringement, but only as to the fact of infringement at all. Upon the evidence as to that, although it was fairly debatable, it is found that the defendants have infringed to some extent.

Let a decree be entered for an injunction and an account, according to the prayer of the bill, with costs.

¹ [Reported by Hon Samuel Blatchford, Circuit Judge, reprinted in 5 Ban. & A. 56, and here republished by permission.]