

AMERICAN DIAMOND ROCK BORING
COMPANY *v.* THE RUTLAND MARBLE
COMPANY.

Circuit Court, D. Vermont.

March 8, 1880.

PATENT—BILL TO ENJOIN AFTER EXPIRATION OF
PATENT—WHAT MUST BE ALLEGED.—A bill to
enjoin the use of a patented device, after the expiration
of the patent, must allege that the defendant is using
machines manufactured during the existence of the patent,
or that the orator fears such use.

In Equity.

Charles F. Blake, for orator.

Prout & Walker, for defendant.

WHEELER, D. J. This cause has been heard upon
a motion for a preliminary injunction against
infringement of a patent, the term of which has
expired. The bill alleges that the defendants have,
since the date of the patent, and since the title to
it became vested in the orator, infringed by using
machines embodying the patented invention, and that
the orator fears the defendant will continue to use
such machines; 356 but does not allege that the
defendant is using machines made during the term of
the patent in infringement upon it, nor that the orator
fears such use. Without these allegations the case is
not within the decision in *Crossley v. Derby Gas-Light
Co.* 4 Law Jour. N. S. Pt. 1 Chan. 25, and shows
no ground for relief by injunction. The other cases in
favor of the orator, in which similar motions have been
made, stand in the same way, and are to follow this.

Motion denied.

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