UNITED STATES & FOREIGN SALAMANDER FELTING CO. *v.* ASBESTOS FELTING CO.*

Circuit Court, S. D. New York. September 1, 1880.

George E. Betton, for plaintiff.

Johnathan Marshall, for defendant.

BLATCHFORD, C. J. This suit is brought for the infringement of patent No. 114,711, granted to the plaintiff on the invention of John Riley, May 9, 1871. The bill sets up that the plaintiff brought a suit at law for the infringement of that patent in the Massachusetts district against the Merrimack Manufacturing Company; that the material used by the defendant in that suit was supplied and put on by the agents of the defendant in this suit, and is the same as that made and used by the defendant in this suit; that the defendant in this suit defended that suit, its president being personally present at the trial and giving directions with regard to the same; that the answer in that suit set up as a defence a patent granted to one Baumann, No. 100,354, March 1, 1870; that the judgment of the court was in favor of the plaintiff, and that the defendant is bound by said decision.

The answer in this suit does not deny that the defendant in this suit defended the Massachusets suit, but avers that the Baumann patent was not introduced in evidence in the Massachusets suit. The plaintiff put in evidence in the suit the record of the Massachusetts suit, under an objection of the defendant that it was incompetent. It appears by the 817 proof and in this suit that the defendant supplied the covering for boilers and pipes used by the defendant in the Massachusets suit; that the president of the defendant employed the counsel who defended that suit, and that the defendant paid for the services of said counsel. The record in the Massachusets suit shows that that suit was brought on said patent No. 114,711, with

other patents; that the answer in that suit sets forth that the things claimed in the Riley patent were before Riley invented those described in the patent No. 100,354, granted to Baumann March 1, 1880, and known to and used by said Baumann; and that the finding of the court was that the defendant had infringed the first and second claims of the patent No. 114,711. On the foregoing facts it must be held that the record in the Massachusets suit is proper evidence in this suit, and that the judgment in that suit concludes the defendant as to the Baumann patent, and as to the alleged prior knowledge and use by Baumann.

For the same reasons that judgment concluded the defendant as to the patent No. 76,773, granted April 14, 1868, to Henry W. Johns, and as to any alleged prior knowledge and use by Johns, the Riley patent is not invalidated by the Hardy & Lay patent, No. 94,739, or the Selden & Kid patent, No. 83,414, or the French patent, No. 94,882, or any of the other patents or matters put in evidence by the defendant.

The proof is satisfactory that the defendant has infringed the first and second claims of the plaintiff's patent, and there must be a decree for the plaintiff for a perpetual injunction, and an account of profits and damages, with costs.

* See *ante,* 813