

BASSETT *v.* MALONE AND ANOTHER.

Circuit Court, S. D. New York. December 27, 1880.

INJUNCTION—WHEN NOT DISSOLVED.

Where defendant is using the infringing machine for purposes in respect to which the plaintiff has an exclusive right under his patent, an injunction will not be dissolved on motion founded on the non-joinder of a party.

J. B. Staples, for plaintiff.

R. B. Dawson, for Malone.

BLATCHFORD, C. J. I see no ground, on the merits of the case, for dissolving the injunction. It is not clear that on the terms of the contract between Loft and the plaintiff the suit is not well brought in the name of the plaintiff alone. But at all events, by the terms of that contract, the plaintiff has a right to use Loft's name, in conjunction with his own, in bringing suits, and it is not necessary to obtain Loft's consent or signature for each suit. The plaintiff may join Loft with himself as co-plaintiff, and may amend his bill to that effect. This had better be done, and an order to that effect will be entered. It sufficiently appears that Malone is using the infringing machine for purposes in respect to which the plaintiff has an exclusive right under the patent.

The motion to dissolve the injunction is denied.

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