

WHEELER, J. The defendant was a^a July 11, 1883. licensee under the plaintiff's patents. The plaintiff canceled the license pursuant to its terms on account of a breach of them by the defendant, and brought this suit against him as an infringer, and obtained an injunction against the use by him of an infringing machine. At the defendant's request the plaintiff withdrew the cancellation. The item of \$270 mentioned in the master's report, and the decision of the court upon it, is made up of royalties reckoned at the licensed rate for the use of the infringing machine. The report of the master appears to be based wholly upon a stipulation filed, and neither the report nor stipulation shows what the relation of the parties was in respect to the license,—whether it was while the cancellation was in force, or while the license was in force, that the use was made of the infringing machine for which the \$270 was allowed. This was a material matter in the disposition of the case, but was treated by the master and court as the parties by the stipulation left it. Since the decision, and before final decree entered, the defendant has moved to have the report recommitted to the master for the purpose of having the fact appear as to when this use was had, and presented an affidavit in support of the motion tending to show that it was while the cancellation was in force. The plaintiff insists, in opposition to the motion, that it was while the license was in force. It is not contended but that it is still within the power of the court to recommit the report. The amount involved is so small that if the right to that sum was all there was to follow the final disposition of the case, it might seem wisest to leave the case to stand as it would upon the facts as left by the stipulation of the parties. But this appears to be a test case to some considerable extent, and one that is likely to be appealed, for the

purpose of settling some of the questions involved, in view of other and greater interests, and upon which the matter desired to be shown may be quite material. Under these circumstances it seems to be better that this case should be so completed as to present the questions to be decided in all the aspects which may ultimately be found to be material. For these reasons the motion is granted.

Motion granted and report recommitted to master.

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