

Even if the sale of the piano, or of other property, after filing his petition and schedules, for the purpose of defraying expenses of bankruptcy proceedings, could in any case be justified, the explanation in this case is not sufficient, since it does not cover the whole proceeds, taking as it stands every word of the testimony given by the bankrupt and his attorney on that subject. While a portion of the expenses testified to might doubtless have been allowed out of the proceeds of the estate, it does not appear that this would apply to all or even the major part of the expenses testified to. It is plain, also, from the bankrupt's testimony, that there was no specific application of the proceeds of the piano to these expenses; but that, having got from \$200 to \$250 by this sale in 1877, he afterwards, as the proceedings in bankruptcy required,—most of which have been within a year past,—paid to his attorneys such sums as they demanded. I would not intimate, however, that a bankrupt, after having filed his petition and schedule, may dispose of his property even for the payment of bankruptcy fees. Such a course is incompatible with the rights of the assignee, would be liable to manifest abuses, would raise embarrassing questions concerning the manner and *bona fides* of such sales and the disposition of the proceeds, and is, I think, wholly inadmissible; and it is, also, so far as I have found, wholly unsupported by any authority. The provisions above quoted very plainly forbid any such disposition by the bankrupt, and make it his duty to turn over all the property belonging to him at the time of the presentation of his petition and inventory to his assignee, unless that is superseded by a composition approved by the court. The advice of counsel is, in such a case, no defense; nor is the absence of a fraudulent intent material. The statute declares the "discharge shall not be granted if he has been *negligent* in such delivery, or has caused or suffered any loss or waste of his property." I must hold his acts in regard to the sale of the piano unauthorized and unlawful, and such as section 5110 visits with a denial of his discharge. *In re Finn*, 8 N. B. R. 525; *In re Thompson*, 13 N. B. R. 300.

The discharge cannot, therefore, be granted.

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### HELLER and another v. BAUER and others.<sup>1</sup>

(Circuit Court, C. D. Missouri. January 7, 1884.)

#### PATENT FOR PROCESS—INFRINGEMENT.

Where a patent process consists of a number of steps, all well known except the first and last, the use of all except the first and last steps will not infringe the patent.

<sup>1</sup>Reported by Benj. F. Rex, Esq., of the St. Louis bar.

In Equity.

*M. McKeag* for plaintiffs.

*E. J. O'Brien* for defendants.

TREAT, J. This is a suit for an alleged infringement of plaintiffs' rights under patent No. 164,858. The patent is for a process "intended for all oil-finished work when it is desired to represent a rich veneering, or imitation of wood." The successive steps of the process are enumerated in the claim and set out in the specifications. There is nothing new in the pigments used, nor in their mixtures with oil. Such mixtures were known long before the patent was issued,—not only in oil, but also in water and beer. Nor was there anything new in the use of a crumpled cloth, for the manipulation mentioned, to work out the blending of colors, so as to imitate different kinds of woods. The patent contains no disclaimers, and therefore it is somewhat vague in its terms. A proper construction, however, shows clearly enough that it is for a process for enameling wood, consisting essentially of successive steps to be taken in the use of various pigments, etc., as described; each of which steps is an essential part of the process itself.

It appears from the evidence that the defendants did not use either the first or last of the steps named, and it is doubtful whether the plaintiffs have ever used either of them. The other steps were well known, and had long been in use, and no patent therefor would have been grantable. If the addition of the first and last steps enumerated made a new process within the purview of the patent law, it is obvious that there could be no infringement unless those were used. It is doubtful whether the patent is not void for want of novelty, but it is not necessary to decide that question. It is clear that no infringement has been proved.

The bill will be dismissed, with costs.

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UNITED STATES DAIRY Co. and others v. SMITH.

(Circuit Court, S. D. New York. August 4, 1880.)

PATENTS FOR INVENTIONS—PATENT No. 146,012—MOTION FOR INJUNCTION DENIED.

BLATCHFORD, J. Patent No. 146,012 seems to make the use of the udder necessary in divisions 6 and 7 of the specification, in obtaining from margarine the resulting material. There is no suggestion that it may be dispensed with, or that any good result can be obtained without using it. In the reissue the udder is omitted in the description, and in claims 5 and 6, and then it is stated that the use is "expedient." If the use of the word "expedient" brings in the ud-

der as parts of claims 5 and 6, the defendant does not infringe. If the use of the udder is no part of those claims, then the reissue, as to those claims, claims inventions not suggested or indicated in No. 146,012, and is invalid. It may be that the proofs for final hearing may put the case in a different aspect, but, as the case now stands, the foregoing considerations are sufficient to require that the motion for injunction be denied. The same disposition is made of the motions as to Flag and Boker.

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ROEMER *v.* NEWMAN and others.

(Circuit Court, D. New Jersey. December 22, 1883.)

1. PATENTS FOR INVENTION—INJUNCTION—CONTEMPT.

Where defendants have consented to a decree that a patent is valid, and an injunction restraining them from using the mechanism which it embraces, they must obey the writ until it is dissolved, and cannot, in a proceeding for contempt, assail the validity of the patent.

2. SAME—AGREEMENT BETWEEN PARTIES—EVIDENCE—DECREE REOPENED.

As the evidence in this case is conflicting, and leaves the question as to whether complainant allowed defendants the privilege of using the fastening claimed to infringe his patent, the rule to show cause why they should not be attached for contempt should not be made absolute, but the decree *pro confesso* should be reopened, the release of damages canceled, and the case proceed to final hearing.

On Attachment for Contempt.

*Briesen & Betts*, for the motion.

*A. Q. Keasbey & Sons*, contra.

NIXON, J. This is a motion for attachment for contempt against the defendants for violating an injunction. The petitioner brought an action in this court against the defendants for the infringement of letters patent No. 195, 233. No answer was filed. A decree *pro con.* was entered, and an injunction was issued restraining the defendants from any further infringement of said letters patent. The allegation of the petition is that the injunction has been violated. The defendants set up three grounds of defense: (1) That the complainant's patent is void; (2) that before the decree *pro con.* was taken the complainant conceded to the defendants the right to use the fastening which is now complained of; and, (3) that there has been no infringement.

1. With regard to the first defense, it is only necessary to say that the defendants are not allowed in this proceeding to assail the validity of the patent on which the injunction has been issued. They consented to the decree that the patent was valid, and to the injunction restraining them from using the mechanism which it embraced, and they must obey the order of the writ until it is dissolved. *Phillips v. City of Detroit*, 16 O. G. 627.