

and restrained from making or using cotton or hay presses as invented and made, and secured by the letters patent known as the Swift invention and patent, except as in connection with complainant's improvement, and under the rights conferred under the patent last issued. A decree will be entered accordingly, and that each party pay one-half the costs of this cause.

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MATTHEWS and others v. GREEN.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania. February 11, 1884.)

PATENT—LICENSE—SALE OF, TO SATISFY JUDGMENT DEBT.

A license to use a patented invention may, by a bill in equity, be subjected to sale for the payment of a judgment debt.

Hearing on Bill, Answer, and Proofs.

This was a bill in equity by John Matthews and others, citizens of New York, against Robert M. Green, a citizen of Pennsylvania, setting forth that by an agreement under seal, dated the thirteenth of February, 1874, complainants, in consideration of one dollar, granted to defendant the exclusive right to use Matthews, patent steel fountains for aerated beverages, patent dated June 25, 1872, No. 182,411, and "Mathews' patent wagons for transporting soda-water fountains," patent dated April 9, 1872, No. 125,592, for the term of the patents, within the city of Philadelphia, provided that defendant should purchase from complainant within four years a number of fountains, equal to one for each 500 inhabitants of the territory; and the defendant agreed to purchase from complainant all the fountains he might need in his business, and not to sell or dispose of the fountains to go outside of the territory without the written consent of the owner of the territory in which he might desire to send them, nor to continue to use the same, except within the territory granted after notice given by complainants. In pursuance of this agreement, a large number of fountains, to the value of about \$24,000, were furnished to defendant, and for a balance of the price he gave certain promissory notes, upon which the complainants had obtained judgments, in the court of common pleas of Philadelphia, for \$4,709.99, \$1,117.17, and \$1,203.16, respectively, and upon the first judgment a writ of *feri facias* had been returned, "no goods." That the defendant had neglected and refused to perform the covenants of said agreement by failing to pay the notes, and by using the fountains without the limits of Philadelphia, after notice. It was provided in the agreement that, upon the failure of the defendant to perform the covenants, the

<sup>1</sup>Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.

complainants, at their option, and they being the judges thereof, might cancel the same. The bill prayed an injunction restraining the further use of the patents; that the agreement should be delivered up and canceled; or, in the alternative, that the license or right (if any there be) of the defendant in the patents be ordered to be sold by the decree of the court, to satisfy, so far as may be, the complainants' judgments, and an account of the profits realized by the use of fountains outside of Philadelphia. The defendant claimed that he had sustained damage by reason of defects in the fountains, and by the failure of the complainants to protect him from an interference by parties manufacturing similar fountains, and contended that the written contract had been modified by an understanding that in certain cases he should have the right to use the fountains without the limits of Philadelphia. It appeared that the defense of defects in the fountains had been made by the defendant in the actions upon the above-mentioned promissory notes, and that in one case the jury had rendered a verdict for \$1,000 less than the claim of the plaintiffs, and in the remaining two cases the jury had rendered verdicts for the full amounts of the notes. The defense of failure to protect from infringement by other manufacturers was also set up as a defense in these suits. Whether, however, any evidence was given under it, or whether it entered into the computation of damages, was a question in dispute. It also appeared that in 1879 complainants made oath to the invalidity of their patent for fountains, and surrendered it for the purpose of obtaining a reissue.

*Wayne McVeagh*, (with whom was *G. T. Bispham*,) for complainants.

The matters of defense have passed *in rem judicatam*. The defendant's right was *to use*, not *to make and sell*, and not being a grant of an *entire* interest, was a mere license. *Gayler v. Wilder*, 10 How. 494; *Hayward v. Andrews*, 106 U. S. 673; S. C. 1 Sup. Ct. Rep. 544; Walk. Pat. 216. A patent-right may be taken in execution by bill in equity. *Ager v. Murray*, 105 U. S. 126. A license may be equitably conveyed. *Wilson v. Stolley*, 4 McLean, 275.

*Frank P. Prichard*, (with whom was *John G. Johnson*,) for defendant.

Complainants are not entitled to an injunction to restrain a purchaser from using purchased machines because he has failed to pay a balance of the price; nor are they entitled to an injunction restraining the use of the machines outside of Philadelphia since the remedy provided by the agreement for that use was the forfeiture of respondent's exclusive right within the territory. Complainants have shown no such irreparable damage as entitles them to the aid of a court of equity.

BUTLER, J. We see no serious objection to granting the relief asked for by the third prayer of the bill—that the license held by the respondent be sold towards satisfying the complainants' judgments. The paper of February 13, 1874, executed by the parties, was in-

tended to and does control and regulate the use of all the "fountains" obtained. It is, in effect, a license conferring on the respondent a right to use the fountains in the city of Philadelphia, to the exclusion of all other persons. The compensation or price named, and to be paid, was the consideration for the fountains, and the use, thus limited. The respondent having failed to pay the judgments recovered, for money due under this contract, it is just that the license should be subjected to sale for this purpose.

The questions arising out of the first and second prayers need not be discussed. It is sufficient to say that the relief just indicated is all the complainants should have on the bill.

A decree may be prepared accordingly.

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### THE ASHLAND.<sup>1</sup>

(Circuit Court, E. D. Louisiana. February 12, 1884.)

#### 1. SALVAGE.

Salvage refused in case where the facts showed that libelants should have had some knowledge of how the vessel got adrift, with her chains and ropes missing, she having been shown to have been securely fastened a short time before.

#### 2. COSTS.

Where both parties have unnecessarily encumbered the record, no costs will be allowed.

#### Admiralty Appeal.

*R. King Cutler*, for libelants.

*A. G. Brice, Joseph P. Hornor, and F. W. Baker*, for claimants.

PARDEE, J. The Ashland was undoubtedly cast adrift from the landing where she was tied by some person or persons, for unlawful purposes. If she was loosed from the shore the ropes and chains with which she was tied would have remained fastened to her, and been dragged along after her in her course down the river. If she was loosed from her deck or from aboard, the ropes and chains would have remained fast to the posts ashore. If she was loosed by casting off both ashore and aboard, the chains, at least, would have remained to show the fact. The shore showed signs of the ropes and chains having been dragged out as the boat went down stream, and neither ropes and chains were found attached to the mooring posts. The conclusion is irresistible that she was cast adrift by letting go the shore end of the ropes and chains with which she was moored, and that she dragged the ropes and chains out after her. The libelants say that they stood on the levee about one and one-half

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.