

I have discussed with you the facts and the law bearing on this case at greater length than is usual in cases of no more importance, because your verdict will probably be accepted as settling all other cases of like character. Of course, you understand you are the sole judges of the facts in the case, and that any fair or reasonable doubt in your minds as to the defendant's guilt should be resolved in his favor.

ROOSEVELT v. WESTERN ELECTRIC CO.

(Circuit Court, S. D. New York. July 7, 1884.)

PATENT LAW—SALE OF PATENTED ARTICLE—VENDOR AND VENDEE.

The purchase of a patented article from the patentee or owner of the patent confers upon the buyer the right to use the article to the same extent as though it were not the subject of a patent; but the sale does not import the permission of the vendor that it may be used in a way that will violate his exclusive property in another invention.

In Equity.

Dickerson & Dickerson, for complainant.

Geo. P. Barton, for defendant.

WALLACE, J. The case made by the motion papers is this: The complainant's patent is for an improvement in electric batteries, consisting of a prism and other elements, and the claims are for the prism, and for various elements in combination with it. The defendant is selling an electric battery which contains the prism in combination with the several other elements which are covered by the claims of the patent; having purchased the prisms from complainant, but having obtained the other elements of the battery from other sources.

If it were true that the prisms are not capable of any use except in combination with the other elements covered by the several claims of the patent, the complainant can nevertheless insist that the purchaser should only be permitted to use them as substitutes for prisms which have been deteriorated or destroyed, or to sell to others. They could be used in this way without infringing the complainant's rights.

The purchase of a patented article from the patentee or owner of the patent confers upon the buyer the right to use the article to the same extent as though it were not the subject of a patent; but the sale does not import the permission of the vendor that it may be used in a way that will violate his exclusive property in another invention. Where the article is of such peculiar characteristics that it cannot be dealt in as a trade commodity, and cannot be used practically at all, unless as a part of another patented article of the vendors, it would be preposterous to suppose that the parties did not contemplate its use in that way. It would be against good conscience to allow an injunction to a vendor under such circumstances. He

would be estopped from asserting a right which the purchaser must have understood him to waive.

Upon the argument of the motion, the case seemed to be like the one last stated, but it is not such a case.

The motion for an injunction is granted.

NEW PROCESS FERMENTATION CO. v. MAUS and others.

(Circuit Court, N. D. Indiana. June, 1884.)

1. PATENTS FOR INVENTIONS—PROCESS—RIGHTS OF HOLDER OF PATENT.

A party is not entitled to the exclusive right to have his beer ferment or be come clarified, by stopping up the bung-holes of the casks and making the carbonic acid gas escape some other way.

2. SAME—PROCESS—PATENTABILITY.

A person cannot patent a result, but only the means or art by which the result may be effected.

3. SAME—CHEMICAL COMBINATION — MECHANICAL COMBINATION—NO CONFLICT.

If a process consists of a chemical combination, by which the particular result is produced, its existence does not prevent another inventor from making a mechanical combination which produces the same result.

This was a bill filed against the defendants for an alleged infringement of a patent granted May 20, 1879, to Bartholomae, as assignee of Meller & Hofmann. Bartholomae has assigned his interest to the plaintiff, a corporation of the state of Illinois. Meller & Hofmann had previously (1876 and 1877) taken out patents in France and Belgium. The specifications give a description of the manner in which beer had been brewed previously, viz.: That after cooking and cooling it was put in open vessels for fermentation, and after a certain number of days it was drawn off from the yeast into large casks nearly closed, where it remained for a considerable time, in some instances for months, to settle; that the beer was then put into shavings casks and mixed with young beer or krausen; that during the process of fermentation the carbonic acid gas rose, so that often the lighter particles of yeast and solid matter were thrown to the top and escaped over the edges of the cask, some portion of the beer being thus wasted, which had to be replaced daily by new beer. This wastage was supposed to be about one barrel in 40; the escape of the beer in this manner, falling upon the floor of the cellar where the casks were, affected the air so as to be injurious to persons there working, and the flavor of the beer. In remedying this, by the washing of the outside of the barrels, the temperature of the cellar was raised. After the beer had been in the shavings casks from 10 to 15 days, the clarifying substance was introduced and the beer became clear. The casks were then closed, in order to confine the last portions of the rising carbonic acid gas; that then it must be immediately drawn off