

thereon. On the fifteenth of May, 1884, the register made his report, in which he found that no money belonging to the assignees has been withheld by the bankrupts or either of them. The case is now before the court on exceptions filed to the said report.

*Henry M. Field*, for assignees.

*Daniel L. Benton*, for bankrupts.

COXE, J. It cannot be said, upon the evidence submitted, that the register has reached an incorrect conclusion. In a proceeding of this nature, where fraud is charged and a summary remedy demanded, the court should be clearly satisfied that the accusations of the petition are sustained by the proof. The evidence is not of this convincing character. It is contradictory, conjectural, and replete with inaccuracies. It cannot be said that fraud on the part of the bankrupts has been so clearly established that the court would be justified in making the order asked for in the petition.

I do not think that the findings of the register should be disturbed. Exceptions overruled.

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ALLEN *v.* DEACON.

(*Circuit Court, D. California.* July 28, 1884.)

PATENT—UNSTAMPED ARTICLE—INNOCENT INFRINGER—SECTION 4900, REV. ST.

In the case of a patented article which does not bear the required stamp or label, recovery shall not be had upon infringements occurring while the infringer is ignorant of the patent, under the conditions stated in section 4900, Rev. St., but shall be limited to infringements arising after notice.

In Equity.

*W. H. Sharp*, for complainant.

*John C. Hall*, for defendant.

SAWYER, J. The defendant had been employing the patented article in steam-engine condensers manufactured by him for several years prior to 1875, in entire ignorance of the existence of the patent sued on. The patentee did not affix the word "patented" to the article manufactured by him, or to a label attached, or in any other way indicate that it was patented. Several engines in steamers came into the port of San Francisco, having the article manufactured and sold, by authority of the patentee, in their condensers, without any indication that it was patented, and the defendant had often examined them. He was entirely ignorant that there was a patent upon it till the month of June, 1875. While building the condensers of the *Constantine*, at that time, after he had got the larger part of the patented packing in, he was notified that there was a patent upon it. This was the first information he had of the patent. He at once of

ferred to pay the royalty for that already used in the condensers of the Constantine, and for enough to finish them; but the proprietor of the patent refused to accept such payment unless he would pay the royalty on all he had used during the preceding years while he was ignorant of the patent. He thereupon finished the condensers already well advanced towards completion, but he has in no other way infringed the patent since he had notice. This defense was set up in the answer, and established by the evidence. It is therefore available as a defense. *Rubber Co. v. Goodyear*, 9 Wall. 801. The master only made an allowance for the infringement by use of the patented article in the condensers of the Constantine, in accordance with the provisions of section 4900, Rev. St., that "in any suit for infringement by the party failing so to mark, (as before provided in the section,) no damage shall be recovered by the plaintiff except on proof that the defendant was duly notified of the infringement, and continued after such notice to make, use, or vend the article patented." The complainant excepts to the master's report on this ground, and insists that damages and profits should have been allowed for all prior infringements. The complainant insists that, when the defendant continues to infringe after notice, he is not limited in his recovery under the statute to the damages and profits accrued from the infringement subsequent to the notice, but claims that, if the defendant continues to infringe after notice, he is entitled to recover all the profits and damages resulting from the infringement, from the beginning of the infringement. I am unable to take this view. No case has been brought to my notice in which this precise point has been decided. I think, however, the fair construction of the provision of the statute is that the recovery shall not be had upon infringements occurring while the infringer is ignorant of the patent under the conditions stated in the statute, but shall be limited to the infringements arising after notice. If mistaken in this, I do not think the infringement after notice in question is of such a willful nature as to incur the penalty of a recovery for all prior infringements without notice of the patent. Immediately upon receiving notice, before completing the machine already far advanced in construction, defendant offered to pay the full royalty established, for the whole machine, and plaintiff refused to accept it without payment for all prior infringements. It was his own fault that he did not receive compensation for the liability that accrued under the statute after notice.

I think complainant entitled to costs. Although there was a general offer to pay the royalty, which complainant refused to accept, there was no actual tender of any specific sum of money, and no tender kept good and brought into court, such as would be required in an action at law to relieve a party from costs. Besides, the answer raised other issues which the complainant was required to contest.

The exceptions to the master's report are overruled, and the report confirmed.

Let a final decree be entered in favor of the complainant for the amount found by the master, with costs.

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SESSIONS *v.* ROMADKA and others.

*Circuit Court, E. D. Wisconsin. July 26, 1884.*

1. PATENT LAW—IMPROVEMENTS IN TRUNKS—TAYLOR'S INVENTION.

Examination of Taylor's patent for improvement in trunks—alleged to have been infringed—and comparisons made with patents of others in the same line, and defendants adjudged to be infringers.

2. SAME—SEPARATE INVENTIONS UNCONNECTED CANNOT BE EMBRACED UNDER ONE PATENT.

A patent is not valid which is for several distinct and separate inventions not connected in design or operation. The question whether the requisite connection exists among such is often a perplexing one, however, and must be left largely within the discretion of the head of the patent office.

3. SAME—DISCLAIMER—TAYLOR PATENT.

It being extremely doubtful whether the Taylor patent is not obnoxious to the objection that it is for several distinct inventions a disclaimer of all claims in the patent, except that in controversy, duly filed in the patent office, is required as a condition to granting the relief prayed in the bill.

4. SAME—OMISSION OF STAMPED WORD "PATENTED."

When a patented article is so small that it is difficult to stamp upon it the word "patented," with the date of the patent, the requisite is answered by such a stamp or label being placed upon the packages in which the articles are shipped.

In Equity.

*Mitchell & Hungerford, B. F. Thurston, and Joshua Stark, for complainant.*

*Jenkins, Winkler & Smith and Geo. W. Hey, for defendants.*

DYER, J. On the ninth day of July, 1872, Charles Asa Taylor obtained letters patent No. 123,925, for an improvement in trunks. The specification states that the invention—

"Consists in a yielding roller of novel construction, to be applied entirely on the outside of the trunk; in spring catches to hold the trunk shut; in a brace of peculiar construction to be applied to the outside of the body, for the purpose of holding up the top or lid; and in a spring arm for supporting the tray when it is turned up."

As descriptive of so much of the invention as relates to the spring catches, there is a further statement in the specification as follows:

"Instead of providing the top of the trunk with the usual straps for fastening it down, I attach to its front two spring catches, I, and to the top two tangs or plates, J, which lock into and are held by the catches. Each catch consists of a metal socket, e, provided with a hinged latch or hook, f, and with a flat spring, g, which bears against the lower end of the latch and keeps its upper end pressed inward against the socket. The upper end of the latch