

In re HARRISON, Bankrupt.

(District Court, D. New Jersey. December 11, 1884.)

BANKRUPTCY—NEGLIGENCE OF ATTORNEY—DISCHARGE.

Where six years has been allowed to elapse by the attorney of a bankrupt without obtaining his discharge, such negligence will be imputed to the bankrupt, and he will be held responsible for such delay, and, on motion of his creditors, the proceedings may be dismissed.

On Motion to Dismiss, etc.

Riker & Riker, for petitioners.

Samuel Kalisch, for bankrupt.

NIXON, J. This is an application to dismiss bankruptcy proceedings for want of prosecution. It is admitted in the testimony, by stipulation of the parties, that the debtor filed his petition for the benefit of the bankrupt act on April 29, 1878; that the petitioning creditors, on this motion, have a claim resting in judgment on promissory notes for \$14,500 and upwards; that an order for reference was made to the register on the day of filing the petition, requiring the debtor to appear before him on May 11, 1878, on which day an adjudication of bankruptcy was duly entered, and a warrant issued to the marshal, returnable June 4th, and was returned unexecuted; that no other steps were taken until May 22, 1884, when an *alias* warrant was issued, which also was returned unexecuted; that on July 5, 1884, a second *alias* warrant was handed to the marshal, returnable September 17, 1884, and that before the said return-day the petition of the opposing creditors was presented to the court, asking for the dismissal of the proceedings on the ground of *laches* in the bankrupt. More than six years elapsed between the adjudication of bankruptcy and the service of any warrant upon the bankrupt. His present attorneys, not controverting the delay, seek to put the responsibility of the same upon his former attorney, and there is certainly evidence that he has been most negligent in prosecuting the case. It is not clear to what extent a client should be held responsible for the *laches* of his attorney. It is difficult to lay down any general rule upon the subject, but each case must be left to its own circumstances. It may be said, however, that whilst courts should be indulgent to suitors who are prejudiced by the neglect and delays of those to whom they have committed the management of their business, there is a limit to such indulgence. In the present case the creditors had a right to assume, after the lapse of six years, that the bankrupt had abandoned the proceedings, and especially since in one instance, at least, he had renewed the notes of a creditor which were about to be barred by the statute of limitations.

I must hold that the culpable neglect of the attorney will not excuse the bankrupt for the long delay, and that he must hold him responsible for all damages which he may suffer for such neglect. The motion to dismiss is granted.

FISCHER v. HAYES.

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

PATENTS FOR INVENTIONS—INFRINGEMENT OF ONE CLAIM ONLY—PROFITS—EVIDENCE.

Where it is shown that an infringer has infringed one of several claims in a patent only, in estimating the profits it is not admissible to prove that the patent, as an entirety, was capable of producing greater profits than other inventions in use.

In Equity.

SHIPMAN, J. The defendant was adjudged to have infringed the fourth claim of the plaintiff's patent. An accounting was decreed, and a reference to a master, to take and state the account, was ordered. The invention is described in *Fischer v. Wilson*, 16 Blatchf. 220. In taking the account the plaintiff is now attempting to prove that the Fischer patented machine, as an entirety, was capable of forming or bending a greater number of feet of sheet-metal moulding, in a given time, than the other machines known to the art, and free to the defendant to use for accomplishing the same purpose, the object of the proof being to show the profit derived by the defendant by his infringement. The defendant has excepted to these interrogatories and answers upon this point, and the question as to the proper course to be pursued has been certified to me by the master for decision. The fourth claim is as follows: "Arranging the female die, G, above the male die, E, for the purpose of keeping the female die clear, as set forth," and is apparently solely for the special arrangement of the dies with relation to each other. As a matter of course, the female die is to be moved by some suitable, though not necessarily patented, device. The question for the master to settle is the advantage which the defendant derived from the use of that part of the patented invention which was infringed over what he had in using other machines then open to the public, and this accounting must be confined to an account of the profits received by the defendant as a direct result of the use of that part of the invention which was infringed, and which is specified in the decree. *Mowry v. Whitney*, 14 Wall. 620; *Littlefield v. Perry*, 21 Wall. 205.

It will not be proper for the master to infer, because a certain amount of advantage can be derived from the use of the patented machine, as an entirety, that, therefore, the amount of profit was enjoyed by the defendant from the infringement of the feature of the machine specified in the fourth claim. It is the distinctive advantage which was gained by the use of the arrangement of the female die, G, above the male die, E or F, which is to be recovered by the plaintiff, and which must be affirmatively shown by the evidence which he introduces. *Schillinger v. Gunther*, 15 Blatchf. 303. But if, in addition to showing the amount of advantage gained by the