

of several part owners of a chattel sues alone for a tort, and the defendant does not plead in abatement, the other part owners may afterwards sue alone for the injury to the individual shares, and the defendant cannot plead in abatement to such action. *Sedgworth v. Overend*, 7 Term R. 279. The defendant has litigated the case on its merits, and therefore will not be permitted to raise for the first time at the hearing the question of a defect of parties, unless indispensable parties are absent; and in that event the court would refuse to decree if the objection were not suggested. The rights of the absent, if there are any, will not be prejudiced by an accounting between the complainants and the defendants respecting the injury to the complainants' rights. There are no merits in the application for a rehearing, and the application is denied.

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INTERNATIONAL TOOTH CROWN CO. v. MILLS and others.

(Circuit Court, S. D. New York. December 1, 1884.)

PATENTS FOR INVENTIONS—PATENTS Nos. 277,941, 277,943—INFRINGEMENT—LICENSE—PRELIMINARY INJUNCTION.

A preliminary injunction will not be granted where, upon the same proofs and allegations, final relief would not be granted. Injunction denied.

In Equity:

*Dickerson & Dickerson*, for complainant.

*S. J. Gordon*, for defendant.

WALLACE, J. The motion for a preliminary injunction to restrain the infringement by defendants of letters patent of the United States granted to Cassius M. Richmond, No. 277,941 and No. 277,943, and of letters patent to Alvan S. Richmond, No. 277,933, and of letters patent to J. E. Low, No. 238,940, must be denied. Whatever may be decided finally as to the validity of these patents, enough is shown in the opposing affidavits to suggest doubts which are fatal upon an application for an injunction *pendente lite*. The complainant mainly relies upon the effect of certain conditions contained in licenses asserted to have been taken of complainant by the defendants under all the patents except the Low patent, whereby, in substance, the defendants covenant never to contest the validity of the patents, and to consent to the issuing of an injunction in case of a violation of the license agreement, and never to encourage any infringement of the patents.

There are no allegations in the bill of complaint that such licenses were ever granted by complainant or accepted by the defendants, or any to show that defendants are not ordinary infringers, and proof of such facts would not, therefore, be considered if the case were here

upon final hearing. Preliminary relief will not be granted when, upon the same proofs and allegations, final relief would not be granted.

There is nothing in the affidavits on the part of the complainant in regard to the licenses. Copies of licenses are annexed, which purport to be signed by persons bearing the same name as the defendants, but there is nothing to show that licenses were ever delivered to or accepted by the defendants, or that there has been any breach, or that the licenses are not now in force. Enough may be spelt out from the affidavits of the defendants, and from the answer to the bill, to supply these omissions, though not without difficulty; but the court should not be asked to spend much time to find out whether the vital facts upon which the moving party relies, but which he has not taken the trouble to assert, can be exhumed from some other source. Ordered accordingly.

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TATE and others v. THOMAS.

(Circuit Court, S. D. New York. January 10, 1885.)

PATENTS FOR INVENTIONS—TATE QUILTING-MACHINES—THOMAS MACHINE—INFRINGEMENT.

The eighth claim of the patent granted August 22, 1871, to William John Tate, for an improvement in quilting-machines, is infringed by the Thomas machine.

In Equity.

*Edwin H. Brown*, for complainants.

*S. J. Gordon*, for defendant.

WALLACE, J. Infringement is alleged of the patent granted August 22, 1871, to William John Tate, for an improvement in quilting-machines. The court has been relieved by the concessions of counsel made at the hearing from the consideration of any question except whether the defendant's machine, known as the "Thomas machine," and made under a license from the owner of the patent granted June 9, 1874, to M. A. King; is an infringement of the eighth claim of the complainants' patent. It has been conceded that the other machines made by the defendant are infringements of one or more of the claims of that patent. The object of the invention is to effect the quilting by machinery of complex patterns over the surface of materials used for bed-coverings, the lining of garments, etc. One feature of the invention relates to the production of diamond patterns or figures in the material quilted, and as the infringing machine is adapted to produce such patterns only, it will not be necessary to consider the other features of the invention.

It is obvious that Tate was the first to invent a quilting-machine which would produce the various complex and elaborate patterns which before his invention were produced by hand-work. The near