

BOSTOOK AND WIFE V. GOODRICH.<sup>1</sup>

*Circuit Court, E. D. Pennsylvania.* November 6, 1885.

PATENTS FOR  
INVENTIONS—INFRINGEMENT—PROFITS—DAMAGES—EVIDENCE.

Complainants received letters patent 64,404 and 80,269 for improvements in tuck-markers, which proved to be of little value. Defendant made improvements on same which cured the defects and rendered the device marketable. Complainants obtained a decree for assessment of damages and profits for infringement of the above patents. *Held*, that complainants must show what proportion of profits arising from the sale of the improved tuck-markers was due to the original invention, and that, failing in that, they were entitled to nominal damages only.

In Equity.

*H. T. Fenton*, for complainants.

*L. L. Bond*, for respondent.

BUTLER, J. The infringement complained of and decreed against, is of claims 2, 3, 5, and 6 of patent No. 64,404, and claim 1 of patent No. 80,269.

These claims are for *improvements* in “tuck-markers,” consisting of minor combinations and devices employed in such machines. Tuck-markers (differing from the complainant’s only as respects these combinations and devices) had been in use for many years prior to the date of these patents. The complainant simply improved the old machines, rendering them more serviceable than before, by increasing their adaptability to the use contemplated.

The rule for ascertaining profits, applicable to the case, is therefore, the one applied in *Garretson v. Clark*, 111 U. S. 120, S. C. 4 Sup. Ct. Rep. 291, and more recently in *Dobson v. Carpet Co.*, 114 U. S. 439, S. C. 5 Sup. Ct. Rep. 945.

While, therefore, we might possibly not agree in all the master has said upon the subject of profits,

his conclusion is right. The burden rested on the complainant to prove the proportion of profits justly ascribable to his improvements. Having failed in this he is entitled only to nominal damages.

The exceptions must be dismissed and the report confirmed.

<sup>1</sup> Reported by C. B. Taylor, Esq., of the Philadelphia bar.

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