

CELLULOID MANUF'G CO. v. AMERICAN ZYLONITE CO.

*Circuit Court, S. D. New York.*

April 9, 1888.

PATENTS FOR INVENTIONS—INFRINGEMENT—ACTIONS FOR DAMAGES—PLEADING.

Rev. St. U. S. § 4919, providing that damages for the infringement of a patent may be recovered by action on the case, and Rev. St. U. S. § 914, providing that the forms of pleading in the federal courts shall be the same as those employed in the same action in the state courts, are construed together, and the pleadings in an action for damages for infringement of a patent should be in the state form, except as modified by Rev. St. U. S. § 4930, providing that in such action defendant may plead the general issue, and, having given notice, may prove certain special matters.

At Law. Motion to strike out certain pleas.

*Betts, Atterbury, Hyde & Betts*, for complainant.

*Starr & Ruggles*, for defendant.

LACOMBE, J. This is a motion to strike out pleas filed by the defendant, or to treat them as an answer. The action is for the recovery of

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damages for the infringement of a patent. The summons and complaint are in the forms approved in state practice. The defendant contends that because section 4919 of the Revised Statutes prescribes that such damages "may be recovered by action on the case," the only method of securing such relief is by the archaic form and procedure of the common-law action of case, modified only by the rules of this circuit in force before the passage of the act of 1872, now preserved in section 914 of the same Revision. He is unquestionably correct in the proposition that sections 914 and 4919 are to be construed together, but to such construction it is by no means necessary to exclude actions brought under section 4919 from the operation of section 914. An action on the case is undoubtedly the mode in which such damages can be recovered, but the forms of pleading and procedure in such action in the federal courts should be the same as those employed in the same action in the state courts. The substance of an action on the case was not abolished by the reformed procedure, though its pleadings and practice were reconstructed in conformity with the new system. By the operation of section 914 an action on the case in the federal courts is assimilated to the state model, except so far as it is modified by express enactment of congress, as by section 4920. Motion granted.