

HAMMERSCHLAG MANUF'G CO. *v.* SPALDING *ET AL.*<sup>1</sup>

*Circuit Court, D. Massachusetts.*

November 17, 1886.

PATENTS FOR INVENTIONS—INFRINGEMENT—WAXED PAPER.

In view of the broad construction given to the fifth claim of reissued letters patent No. 8,460, of October 22, 1878, to Siegfried Hammerschlag, for a process of making waxed paper by machinery, in *Hammerschlag v. Wood*, 18 Fed. Rep. 175, and other similar decisions, *held*, that the "Spaulding Machine" was an infringement, and that a preliminary injunction should issue.

In Equity. On motion for preliminary injunction.

The bill was filed to enjoin an alleged infringement of reissued letters patent No. 8,460, of October 22, 1878, (original No. 193,867, of August 7, 1877,) to Siegfried Hammerschlag, for a process of making waxed paper by machinery. The fifth claim of the reissue is as follows:

"The method herein set forth of waxing paper, consisting in spreading the wax upon the surface, heating the paper from the opposite side to spread and fuse the wax into the fabric of the paper, removing the surplus wax, and re-melting and polishing the wax upon the paper, substantially as set forth."

*Frost & Coe and Livermore & Fish*, for complainants.

*H. D. Hadlock, Thomas Weston, Jr., and Lorenzo Dow*, for defendant.

COLT, J. In view of the broad construction given to the fifth claim of the Hammerschlag patent by various courts, and especially in view of

the decision of Judge LOWELL in the *Wood Case*, 18 Fed. Rep. 175, I am clearly of opinion that the complainant is entitled to a preliminary injunction. The Spaulding machine manifestly comes within the scope of these decisions. Differences of such a class as exist between the Spaulding and Hammerschlag machines have been held not to relieve a party from the charge of infringement. Injunction granted.

<sup>1</sup> The opinion in this case reached us but recently. It is now published in connection with the opinion on final hearing, reported *infra*.