

SKINNER *v.* VULCAN IRON-WORKS.

Circuit Court, E. D. Illinois.

July 22, 1889.

PATENTS FOR INVENTIONS—INFRINGEMENT—ACCOUNTING.

Where a decree has been rendered in a suit for infringement of letters patent, awarding an injunction and an accounting, on a reference to a master to compute the damages, the question of the validity of the claims of complainant's patent alleged to have been infringed cannot be considered.

In Equity. Bill for injunction.

Coburn & Thacher, for complainant.

Offield & Towle, for defendant.

BLODGETT, J., (*orally.*) This is a bill for an injunction and accounting by reason of the alleged infringement of letters patent No. 185,458, granted to complainant in December, 1876, for a "steam pile-driver," and patent No. 273,904, on the same subject, granted to the complainant on the 13th of March, 1883. The case was heard on pleadings and proofs, and a decree rendered, awarding to the complainant an injunction and an accounting. The case went to a master for an accounting,

SKINNER v. VULCAN IRON-WORKS.

and the master has filed his report, finding that the damages sustained by the infringement of the patent amount to \$2,883.31 in the aggregate.

There is no contest over the damages as to seven of these machines, it being conceded that the royalty which the defendant had been paying upon machines under a license to use these two patents is a fair compensation for the damages sustained by the construction of these seven machines, and, therefore, as to \$1,183 of the damages reported there is no contest. But the controversy in the case is over thirteen machines made after the expiration of the license to use these patents, and which the defendant constructed under a patent which had been granted to another patentee for a pile-driver. The master has found that these thirteen machines infringe one claim of each of the complainant's patents, and I, after an examination of the proof submitted, concur with the conclusions of the master in that regard. An elaborate brief is filed by the defendant in which the validity of these claims is called in question, but that question I do not consider as open upon the consideration of damages, and, if it were, I see no reason for changing the ruling made at the hearing of the case. The master's report is confirmed, and the full amount of damages awarded, \$2,833.31, and the costs in the case.