# RAPP *v.* KELLING.

*Circuit Court, S. D. New York.* February 27, 1890.

1. PATENTS FOR INVENTIONS—ASSIGNMENTS.

A grant of the exclusive right to make, use, and sell a patented article throughout the United States for the full term of the patent is to be treated as an assignment, enabling the assignee to bring suit in his own name against the patentee for ail infringement.

2. SAME—ACTION FOR INFRINGEMENT—JURISDICTION.

The circuit courts have jurisdiction of such a suit, as arising under the laws of the United States, even though one issue in the case is whether the grant is still in force.

In Equity. On motion for preliminary injunction.

Suit by John W. Rapp against Max Kelling for infringement of letters patent No. 416,265, issued to defendant, Kelling, December 3, 1889, for improvement in fire-proof doors. Defendant had granted to plaintiff the exclusive right to make, use, and sell doors embodying such improvement for the full term of the patent.

*Francis Forbes,* for complainant.

*A. Britton Havens,* for defendant.

WALLACE, J. It seems quite plain in this case that the complainant is not a licensee of the defendant, but that the instrument by which the defendant transferred to him the sole and exclusive right to make, use, and sell the subject of the patent throughout the United States is to be treated as an assignment. Even if the instrument did not vest the complainant with the legal title of the patent, it enables him to maintain a suit in his own name against the patentee for an infringement. *Little-field* v. *Perry,* 21 Wall. 205; *Gayler* v. *Wilder,* 10 How. 477. The bill is in the ordinary form of one brought by the owner of a patent against an infringer for an injunction and an accounting. The case which it makes differs from ordinary actions for infringement only in the fact that the defendant is the person to whom the patent was originally granted. The bill, therefore, presents a controversy of which this court has jurisdiction, and, even though one issue which may be raised in the case is whether the grant is still in force, that circumstance does not pervent the controversy from being one arising under the laws of the United States. But, although the complainant may have failed to comply with some of the terms of the agreement by which his interest in the patent was acquired, his failure to perform them does not work a forfeiture of the grant, and the only remedy of the defendant is an action for damages for breach of contract. *Hartshorn* v. *Day,* 19 How. 211; *Mackaye* v. *Mallory,* 12 Fed. Rep. 328. If the complainant has refused to comply with the conditions of the contract on his part, and without sufficient reason insists upon ignoring them, the court should not assist him by a preliminary injunction in enforcing rights which at a final hearing it may be constrained to protect. A party cannot ask the court for any extraordinary assistance

preliminary to a final decree, if he does not come into court proposing to deal fairly with his opponent.

The only question in the case is whether the complainant should be denied a preliminary injunction because he has violated the agreement under which he acquired the exclusive right to the monopoly of the patent. As this question has not been argued, counsel will be heard upon it at the time to which the motion was continued.