

Ex parte KIE.

(District Court, D. Alaska. 1891.)

COMMISSIONERS—JURISDICTION—LARCENY.

Under the organic act of Alaska (section 5) commissioners of the United States exercise the jurisdiction, civil and criminal, conferred on justices of the peace by the general laws of Oregon. By the Justices' Code of Oregon, (section 2, subd. 1,) a justice has jurisdiction of larceny only where the punishment is imprisonment in the county jail or fine. *Held*, that a commissioner has no jurisdiction of a larceny committed "in any ship, steam-boat, or other vessel," which by Crim. Code Or. § 553, "shall be punished by imprisonment in the penitentiary not less than one nor more than seven years."

On *Habeas Corpus*.*Willoughby Clark*, for petitioner.

BUGBEE, J. The return to the writ shows that petitioner is detained by the United States marshal, by virtue of a commitment issued by Hon. James Sheakley, United States commissioner at Wrangel, on the 5th day of June, 1890, in a criminal action, for the crime of larceny, the amount stolen being less than \$35, whereof prisoner was adjudged guilty, and sentenced to imprisonment in the jail at Sitka for a period of one year. The transcript of the commissioner's docket, which is before me as part of the case of petitioner, shows that there was a "complaint filed on oath of W. W. Card, accusing the above-named Kie, an Indian, of the crime of larceny, by stealing a lady's satchel and contents from his room on board the steam-ship Geo. W. Elder, while in the port of Wrangel, the value of which is about thirty dollars." That on a plea of not guilty the prisoner was tried by the commissioner, and, the amount stolen being found to be less than \$35, he was convicted and sentenced. The crime charged undoubtedly comes under the provisions of section 553 of the Criminal Code of Oregon, which provides that, if any person shall commit the crime of larceny "in any ship, steam-boat, or other vessel, * * * such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years," and it makes no difference in such case whether or not the property stolen exceeds the value of \$35. A justice's court under the laws of Oregon has jurisdiction of the crime of larceny only where the punishment therefor may be imprisonment in the county jail or by fine. Justices' Code, § 2, subd. 1, c. 1. The commissioners for Alaska exercise all the duties and powers, civil and criminal, conferred at the time of the passage of the organic act on justices of the peace under the general laws of Oregon, so far as the same may be applicable in this district, and may not be in conflict with the organic act or the laws of the United States. Organic Act, § 5. The crime complained of, and of which, from all that appears to the contrary, he was convicted, was not one where the punishment might be imprisonment in the county jail or by fine, and was therefore not within the jurisdiction of the commissioner. It is therefore ordered that the prisoner be, and he is hereby, discharged.

KIRK *v.* DU BOIS.

(Circuit Court, D. Pennsylvania. March 21, 1891.)

1. INFRINGEMENT OF PATENTS—DAMAGES.

An infringer is liable only for profits or savings actually realized by him from the use of the patented invention, and shown by clear and definite proof.

2. COSTS ON ACCOUNTING.

Where a master, acting under a decree for an account of profits and damages, reports that the defendant has made no profits, and that the plaintiff is entitled only to "nominal damages, with costs," the court, in confirming his report, allowed full costs to the plaintiff.

In Equity.

W. Bakewell and *W. L. Pierce*, for complainant.

W. P. Jenks, *Geo. A. Jenks*, and *T. H. B. Patterson*, for respondent.

ACHESON, J. At the former hearing the grounds of defense set up and relied on were fully considered, and the conclusion reached that the plaintiff was entitled to an injunction and an account. The views of the court upon the case as then presented are distinctly set forth in the opinion of Judge McKENNAN, 33 Fed. Rep. 252. No reason is perceived for doubting the soundness of that opinion. But our former decree is not now regularly open to review, even were it conceded (as the defendant earnestly contends) that new proofs were adduced before the master upon the accounting, which impugn the right of the plaintiff to maintain his bill; for, if the defendant desired to reopen the questions heretofore passed on by the court, it was his business to apply for a rehearing, which, if granted at all, would have been upon terms securing to the plaintiff an opportunity of putting in additional rebutting evidence. We turn, then, to the consideration of the only matters properly before us. The plaintiff offered no evidence of any substantial damages sustained by him by reason of the defendant's infringement of the patent in suit, and the case before the master resolved itself into the question, what profits or gains were made by the defendant from his use of the plaintiff's invention? The conclusion of the master was that the defendant had derived no such profits or gains, and therefore he found that the plaintiff is entitled to nominal damages only, with costs. The report of the master is able and exhaustive, and relieves me from the necessity of discussing the case at any great length. The plaintiff's invention relates to movable dams, and consists of improvements therein merely. The claims of the patent are no less than 10 in number, but the defendant's infringement was of one of them only, the sixth claim, namely: "A bear-trap dam, having a relieving or open sluice extending from under the gates, so as to relieve them from unnecessary pressure, substantially as and for the purposes described." The operation of this relieving device is automatic, and the purpose is, when the water has reached a certain height or pressure under the gates, to permit all water not required to sustain the gates to escape from under them, and prevent the lower leaf from being forced out from under the upper leaf,