

isfaction all that he says he can prove, still the proof would be defective for the want of a certain fact which he is bound to establish,"—say so at the beginning and say so at the end,—I see no objection to it, and I do not know that you want to try a case if you are satisfied that I am going to treat it that way. If we once get into the merits, Mr. Cook made a threat to me that he had another defense,—that his client was not responsible for his action; that he was insane.

Mr. Cook. I think the letter is pretty good proof of that.

The Court. I don't want to go into the question of insanity. The jury will come in to-morrow morning, and I will tell them that if the facts stated were proved no conviction could be had.

Here a recess was taken until the next day, at 11 A. M.

HAWLEY, J., (*charging jury.*) You have been sworn to try this case. Judge HOFFMAN, upon hearing the statement of the district attorney, setting forth the facts which he expected to prove, has become convinced that there is not sufficient corroborative evidence to justify a jury in finding a verdict of guilty, and that it would be his duty to instruct the jury to find a verdict in favor of the defendant. As Judge HOFFMAN is unable to be present to-day, I am here simply to speak for him, to announce to you his conclusion in the matter, and to instruct you to appoint some one of your number as foreman, and to find a verdict of not guilty.

The jury thereupon returned a verdict of not guilty.

SOCIETE ANONYME v. WESTERN DISTILLING Co.

(*Circuit Court, E. D. Missouri, E. D. June 20, 1891.*)

TRADE-MARKS—INFRINGEMENT—PROFITS—EXPENSES.

In the computation of profits realized by defendant in imitating complainant's labels, brands, trade-marks, etc., deduction for expenses will not be made where the business was conducted in connection with defendant's regular business, increasing the gross profits without increasing the gross expenses.

In Equity. On exceptions to master's report.

F. N. Judson, for complainant.

Rassieur & Schnurmacher, for defendant.

THAYER, J., (*orally.*) The chief contention in this case arises over the refusal of the master to make allowance for certain expenses, in his computation of the profits realized by the defendant by imitating complainant's labels, brands, trade-marks, etc. I have looked into this matter,

and reached the following conclusion: That while it is customary in the computation of profits in this class of cases to make allowance for expenses, yet the expenses so allowed must be expenses necessarily incurred in the unlawful venture, which would not have been incurred but for engaging in such venture. When an unlawful business is carried on in connection with the defendant's regular business, and the same agencies are employed in doing that which is lawful and that which is unlawful, no rule of law of which I am aware requires any deduction for expenses in estimating the profits of the unlawful business. In this case defendant was a distilling company. It had a place of business, a license for doing business, traveling salesmen, etc. The proof does not convince me that any additional expenses were incurred by the defendant in the manufacture and sale of Benedictine, other than such as the master has allowed. The manufacture of Benedictine was carried on in connection with its ordinary business, by the usual number of employes. The unlawful venture increased the gross profits without swelling the gross expenses. Furthermore, the wrongful act in question was committed knowingly, without a shadow of excuse.

Under the circumstances, I am compelled to agree with the master on this and all other points covered by the report.

STROBRIDGE *et al.* v. L. H. SMITH WOODEN-WARE Co., Limited.

(Circuit Court, D. Pennsylvania. May 11, 1891.)

PATENTS FOR INVENTION—INFRINGEMENT—COFFEE-MILL.

Reissued letters patent No. 7,583, dated March 27, 1877, granted to Turner Strobridge for a coffee-mill having a detachable hopper and grinding shell formed in a single piece, and suspended within the box by the upper part of the hopper or a flange thereon, are not infringed by a coffee-mill having such a hopper and grinding shell, kept in place within the box by a clamping mechanism, whereby the flange of the hopper is pressed up against the under side of the top of the box. The cases of *Strobridge v. Lindsay*, 2 Fed. Rep. 632, and *Same v. Landers*, 11 Fed. Rep. 880, distinguished.

In Equity.

W. Bakewell & Sons, for complainants.

Wm. L. Pierce, for defendant.

Before ACHESON and REED, JJ.

ACHESON, J. The bill charges the defendant with the infringement of reissued letters patent No. 7,583, dated March 27, 1877, being a re-issue, on application filed March 1, 1877, of original patent of February 2, 1875, to Turner Strobridge, for an improvement in coffee-mills. The specification and drawings of the reissued patent describe and show a coffee-mill in which the hopper and grinding shell are formed in a single piece, and suspended within the box by means of lugs formed upon the