

in the prior art. But the nearest approximations to it were the ribbon-shaped carbon burner of low resistance of Mr. Adams, (which was not a part of the prior art, but an isolated example, known only to a select few,) and the low resistance carbon rod burners of the patent of Sawyer & Man. Undoubtedly the improvements that have been made in the art—such, for instance, as the method of electrical carbonization of the filament—since Mr. Edison's inventions have been of great value, and the perfected commercial lamp of to-day is far superior to the one which could be made by applying to the description of the patent all the the knowledge and skill then possessed by those to whom it was more particularly addressed; but as was said by BOWEN, L. J., in the court of appeal in England: "The evidence shows that lamps made solely on the patent will and do succeed, although subsequent improvements have been ingrafted on the original design." It is impossible to resist the conclusion that the invention of the slender thread of carbon as a substitute for the burners previously employed opened the path to the practical subdivision of the electric light.

The questions which have seemed the most meritorious of those argued at the bar have now been considered. Others, to which no reference has been made, have not been overlooked, and may be dismissed without discussion, and with the single remark that nothing which has been presented by the voluminous proofs and the exceedingly able and elaborate arguments of counsel seems to supply any valid reason for refusing to decree for the plaintiff. The usual decree for an injunction and accounting is accordingly ordered.

JUDSON MANUF'G Co. v. BURGE-DONAHOO Co.

(Circuit Court, N. D. California. July 27, 1891.)

PATENTS FOR INVENTIONS—EVIDENCE OF INFRINGEMENT.

In an action by an assignee of a patent for its infringement, it appeared that ten machines alleged to be infringements had been manufactured by a third person, and consigned to defendant prior to the assignment. Of these, eight were in defendant's shop unsold, and two, which had been sent out on trial, were condemned and returned; but it did not affirmatively appear when they were sent out or tried. In settlement with the manufacturer, these two had been billed back and held subject to its order. *Held*, that the evidence failed to show any infringement, sale, or use of the machines prior to the filing of the bill.

In Equity. Bill by Judson Manufacturing Company against the Burge-Donahoo Company for infringement of a patent.

John L. Boone, for complainant.

Wm. Hoff Cook, for respondent.

HAWLEY, J. This is a suit in equity for the infringement of letters patent No. 327,683, granted October 6, 1885, to L. B. Hogue, for "combined cultivator and weed-cutter." Hogue assigned the patent to Mi-

chael Ayers on the 11th day of December, 1889, and on the 17th of said month Ayers assigned the same to complainant. Respondent contends that there is no proof of any infringement by respondent subsequent to such assignment, and that complainant, having failed to prove that respondent ever made, sold, or offered for sale any of the machines alleged to be an infringement of the patent, is not entitled to a decree. It is alleged in complainant's bill that respondent since the 1st day of January, 1890, and before the commencement of this suit, at the city and county of San Francisco, state of California, did make, construct, use, and vend to others to be used, and does now continue to make, construct, use, and vend to others to be used, combined cultivators and weed-cutters, containing the invention patented in and by the letters patent aforesaid.

Has this averment been proved? The bill was filed in June, 1890. From the testimony it appeared that the machines claimed to be an infringement of the patent came from the Moline Plow Company, in Illinois. Ten machines were consigned to respondent, dealer in agricultural implements. They were received in March or April, 1889. In November, 1890, when the testimony was taken, respondent had eight of the machines in its shop in San Francisco. Respondent never sold, made, or manufactured any of the machines. It sent out two machines on trial, which were condemned and returned. One was sent to Donahoo, Emmons & Co., of Fresno, Cal., and the other to Mr. Young, at Lerdo, in Kern county, both of said places being in the southern district of California. The time when these machines were sent out or used does not affirmatively appear. Mr. Burge testified that the machines were not their property. "When we settled with the Moline Plow Company, some three weeks ago, those machines were transferred and billed back to them, and we hold them subject to their order." The only testimony as to the use of these machines is given by Mr. Burge, as follows:

Question. To whom did you send the first machine from your place? *Answer.* Donahoo, Emmons & Co., at Fresno. *Q.* What did you send it to them for? *A.* Mr. Donahoo is a partner in that house as well as in ours, too, and we had had those machines on hand so long, without any success, that he suggested the sending of one out on trial. *Q.* And so you sent it down there? *A.* Yes, sir; he took it out himself. *Q.* And you say it wouldn't operate successfully? *A.* No, sir; it wouldn't operate, and it is still at the place of the party who tried to operate it. *Q.* It was given a fair trial, was it? Do you know how long it was operated? *A.* No, sir; I don't know whether they worked it an hour, or five hours; but it was tried."

The testimony fails to show, to my satisfaction, that respondent sold or used any of the machines in this district. I cannot presume, against the direct testimony of Mr. Burge, that the sending out of the machine was a sale. It is unnecessary to consider any of the other points presented by the testimony. The bill is dismissed, on the ground that the evidence is insufficient to establish any infringement, sale, or use of the machines by respondent before the filing of the bill.

KNOEDLER *et al.* v. BOUSSOD *et al.*

(Circuit Court, S. D. New York. September 23, 1891.)

SALE OF GOOD-WILL—RIGHT OF PURCHASER TO USE SELLER'S NAME.

G. & Co., a Paris firm, sold out to plaintiffs their business and good-will in New York, where they had a branch, and authorized plaintiffs to style themselves "G. & Co., K. & Co., successors." *Held*, that the successors of G. & Co. in Paris had the right to establish a branch in New York, and advertise as "G. & Co., of Paris, B., V. & Co., successors," though they could not hold themselves out as the successors of the business bought by plaintiffs.

In Equity.

F. R. Coudert and Edw. K. Jones, for plaintiffs.

E. H. Lewis, for defendants.

WALLACE, J. The plaintiffs have brought this suit to restrain the defendants from using in New York city, or elsewhere in this country, the trade name of "Goupil & Co.," or any words indicating that they are successors in trade of Goupil & Co. The facts are these: Several years prior to 1857, Messrs. Goupil & Co., of Paris, dealers there in prints, pictures, etc., had established a branch house in New York city, and carried on the business under the management of M. Knoedler. In 1857 they sold the New York concern to M. Knoedler, reserving the "ownership" of certain designated prints and pictures, the outstanding accounts, and the money on hand. The contract of sale contained, among others, these recitals:

"The said business is composed of its furniture and fixtures, its supplies, the continuation of the lease of the house where the business is carried on, and the good-will attached to it. M. Knoedler accepts this sale, declaring that he knows perfectly the business which is its object, and which for several years he has been managing. He acknowledges that he is at this moment in full possession of the said business and its belongings. The title of the house now transferred will in future be 'Former house, Goupil & Co., M. Knoedler, successor.'"

A further condition of the contract was that Messrs. Goupil & Co. should supply M. Knoedler for the term of six years with an assortment of prints published by them, and such pictures as they might deem suitable. Thenceforth M. Knoedler carried on the business thus purchased, using the name "Goupil & Co., M. Knoedler, successor," or, as his sons and others became his partners, "Goupil & Co., M. Knoedler & Co., successors;" and frequently, with the knowledge and acquiescence of the Paris firm, using the name "Goupil & Co." only. In the mean time the Paris firm and the New York firm dealt largely with one another, and the business relations between them were intimate. In 1884, M. Goupil, who was the founder of the Paris concern, and from whom it took its name, retired from business. The defendants were his partners, and, conformably to the law of France, became entitled to carry on the business there by the name of "Goupil & Co., Boussod, Valadon & Co., successors," and have done so ever since. In 1887 they established at New