

invention for a period of more than two years prior to October 14, 1882, and that it did so not as an experiment, but for the purpose of realizing a profit.

The closing of the head of the spiral springs by passing the top wire around the second before extending it to form a hook cannot be regarded, under the specifications, as a material feature of the invention. That is merely a preferable mode of construction. The patentee would be entitled to claim (and no doubt would claim if there was occasion to do so) that the use of a spring with an open head was an infringement of his patent as well as the use of a spring with a closed head. Bed bottoms embracing all of the material elements of the invention having been in public use and on sale for more than two years prior to the application, the patent is void, and the bill must be dismissed.

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LORING *v.* BOOTH *et al.*

(Circuit Court, N. D. New York. October 11, 1892.)

No. 6,001.

1. PATENTS FOR INVENTIONS—ASSIGNMENT—INFRINGEMENT BY PATENTEE.

A patentee assigned all his interest in a patent, agreeing not to manufacture or sell the patented machine or make any improvement thereon which would adapt it to any other kind of work. Subsequently the assignee sued him for infringement in making an improvement on the machine. *Held*, on motion for preliminary injunction, that in the light of the above contract, although the suit was not based thereon, the patentee was not in so favorable a position before a court of equity as one who infringes ignorantly or inadvertently, and that the patent should be construed liberally as against him.

2. SAME—INFRINGEMENT—NOTICE TO DESIST—LACHES.

The defendants were notified to desist from infringement about eight months after knowledge thereof came to the plaintiff, and suit was begun within four months thereafter. *Held*, that under the circumstances the delay did not constitute laches.

In Equity. Bill by Charles M. Loring against Quentin W. Booth and Irving E. Booth for infringement of patent. On motion for preliminary injunction. Order for injunction unless defendants give bond.

*George B. Selden*, for complainant.

*Howard L. Osgood*, for defendants.

COXE, District Judge. The bill is in the usual form, alleging infringement of two letters patent, numbered respectively 318,731 and 344,485, for improvements in shoe-upper machines. The validity of both patents is undisputed. The defendants oppose the motion upon two principal grounds—noninfringement and laches. The question of infringement of the third claim of the patent granted to Charles B. Hatfield, No. 318,731, was decided at the argument. The device which the complainant produces as a sample of the defendants' manufacture certainly infringes when the irons are stationary, but it is thought this condi-

tion was produced rather by accident than design. The device which the defendants produce as a sample of their present manufacture does not infringe; and, when operated as defendants insist it always should be operated, cannot be made to infringe. The defendants should not be permitted to sell devices like the former or prevented from selling devices like the latter.

The other patent, No. 344,435, was granted to Quentin W. Booth, one of the defendants, on the 29th of June, 1886. The patent was duly assigned to the complainant. It is intended to cover improvements upon the machine described in No. 318,731, the other patent in suit. The only claim in issue is as follows:

"In a machine for beading shoe uppers, the combination of the arm, the stationary jaw secured to the end of the arm, the movable jaw, the rod connected with the movable jaw, and the eccentric for giving motion to the rod, as set forth."

The machine made by the defendants has all these elements in combination substantially like the combination of the claim, but it is said that an examination of the prior art renders a narrow construction necessary, and, if so construed, the defendants do not infringe the claim.

At the time the patents were assigned the defendants also transferred by a written agreement—

"All of their right, title and interest in the automatic shoe beader, *i. e.*, patent, beader mdse. on hand and beader special tools belonging thereto, as shown in inventory and ledger of the company. The parties of the first part further agree not to manufacture, sell or handle or cause to be manufactured, sold or handled any of said shoe beadings or make any improvement on the same that would adapt it to any other kind of work than that for which it is now intended, without the consent of the party of the second part."

It is true that this action is not based on the contract, but the language quoted, if it has no other signification, certainly throws some light upon the interpretation and scope of the claim as understood by the defendants at the time they sold the patents, the machines and the tools for making them, to the complainant's predecessors. They appear to have thought at that time that the purchasers of the patents were invested with a broad monopoly of the business in question. If their present contention is correct the complainant obtained nothing of real value. Parties situated as the defendants are do not occupy as favorable a position in a court of equity as those who infringe ignorantly or inadvertently. As against the defendants the patents must be liberally construed. Further discussion of this question should be reserved until the final hearing, when it can be determined more satisfactorily than upon the comparatively crude presentation of a motion of this character. At present it is sufficient to say that I am inclined to think the claim in question has been infringed.

The bill was filed July 15, 1892. Several affidavits tending to show that the existence of the defendants' machine was known to Charles B. Hatfield during the summer of 1891 have been read. Assuming these statements to be true, and assuming also that the knowledge

of Hatfield, who assigned his patent in May, 1885, can be imputed to the complainant, still the proof is insufficient. The time which elapsed before the defendants were notified to desist from infringing was only about eight months, and the suit was commenced within four months thereafter. In the circumstances of this cause the delay was too short to constitute laches. *Collignon v. Hayes*, 8 Fed. Rep. 912, 916; *Kilbourn v. Sunderland*, 130 U. S. 505, 518, 9 Sup. Ct. Rep. 594. The testimony seeking to fasten knowledge upon the complainant himself as early as the autumn of 1889 is too vague and uncertain to prevail against his positive denial. For the reasons stated at the argument the defendants should have an opportunity to give a bond if they so desire.

An injunction may issue, unless within 10 days from the date of the service of a copy of the order entered upon this decision, the defendants shall give a bond in the sum of \$6,000, conditioned, substantially, as in *Swift v. Jenks*, 19 Fed. Rep. 641. If a bond is given the complainant can at any time move to increase the amount upon sufficient proof that it is inadequate.

#### UNION INS. CO. OF SAN FRANCISCO v. DEXTER.

(District Court, S. D. New York. July 13, 1892.)

##### SHIPPING—MASTER—NEGLIGENCE—APPROACHING DANGEROUS COAST.

When a vessel is approaching a dangerous coast at night, amid uncertain currents and in a deceptive atmosphere, it is the master's duty to make use at the first opportunity of all his available means provided for correcting by observation the errors of dead reckoning; and for losses either to ship or cargo, resulting from his neglect to do so, the master is directly responsible to the persons injured. In this case the master was held negligent (1) for not making such change of course as the chart showed was necessary upon his own estimate of his position; (2) not using the alidade in order to correct his erroneous estimate of position.

In Admiralty. Libel against the master of the City of Para for damages caused by the stranding of the vessel. Decree for libellant.

*George A. Black*, for libellant.

*Hoadley, Lauterbach & Johnson*, for respondent.

BROWN, District Judge. The above libel was filed by the insurers of a part of the cargo on board the steamship City of Para, which stranded on a reef about 1½ miles off the southwesterly point of Old Providence island, at 10:24 P. M. of May 17, 1888, while on a voyage from Aspinwall to New York. Having paid the loss, the libellant sued the respondent, as master of the steamship, on the ground that the stranding was caused by the master's neglect to take proper precautions to keep away from that dangerous coast. The question of negligence in navigation was among the issues presented to this court upon the trial of the petition of the Pacific Mail Steamship Company, as owners of the steamer, for a limitation of their liability to cargo owners in respect to this stranding. On that trial the present defendant was a witness for the petitioners to