

true in Ohio. But plaintiff has not attempted to controvert these returns of the sheriff, or the answers of the garnishees. The case has been pending in this court quite long enough for the plaintiff to begin his proceedings to show that some property or credits have been attached or garnished.

As the case now stands on the evidence and returns, the motion to dismiss should be allowed, but as counsel for the plaintiff claim they have learned of evidence which will enable them to impeach the truthfulness of the answers of the garnishees, and be able to show that when served with process they had in fact property and credits due the defendants, I will continue the motion to dismiss for 20 days, to enable them to offer such evidence.

HEATON PENINSULAR BUTTON-FASTENER CO. v. DICK *et al.*

(Circuit Court, N. D. Illinois, N. D. July, 1892.)

No. 870.

INJUNCTION—PROCUREMENT OF BREACH OF CONTRACT—CONTRIBUTORY INFRINGEMENT OF PATENT.

A bill alleged that complainant, owning patents for button-fastening machines, had sold the patented machines upon condition that they should be used only with fasteners made by complainant from the sale of which a profit was derived, and that defendants were manufacturing similar button fasteners, capable of and intended by them for use in complainant's machines, and were inducing purchasers of those machines to use such fasteners therein, to the exclusion of complainant's fasteners; and it prayed that defendants be restrained from making for sale, selling, or offering or advertising for sale, any fasteners, intended for use or capable of being used in the machines sold by complainant under such condition, and from persuading or inducing vendees of such machines to purchase or use in such machines any fasteners other than those made and sold by complainants. *Held*, that the bill should be sustained, on general demurrer, and a preliminary injunction should be granted on the bill and affidavits substantiating the charges therein.

In Equity. Suit by the Heaton Peninsular Button-Fastener Company against Joseph C. F. Dick and others to restrain defendants from procuring or inducing purchasers of button-fastening machines from complainant to violate their contracts with complainant entered into on the purchase of such machines. Heard on general demurrer to the bill and on motion for preliminary injunction. Demurrer overruled, and injunction granted.

The facts alleged in the bill were in general purport and substance as follows: Complainant is the owner of several letters patent granted for improvements in button-setting machines, the validity of which has been sustained twice in the United States courts, and under these patents manufactures and sells button-fastening machines called "Peninsular" machines. These machines are sold outright to the users thereof, with the condition that the machines shall be used only with button fasteners made and sold by the complainant, and known as "Peninsu-

lar" fasteners. This condition is expressed on the bills of sale on tags attached to each machine, and also by a caution plate attached to each machine, which reads: "This machine is sold and purchased for use only with fasteners made by the Heaton Peninsular Button-Fastener Company, to whom the title to said machine immediately reverts upon violation of this condition of sale." The price asked and received for each Peninsular machine is an amount barely covering the cost of manufacture and transportation. The complainant seeks its royalty in the profit derived from the sale of Peninsular fasteners, and derives benefit from the patented inventions embodied in the Peninsular machines in this and no other way. The Peninsular machine was and is the only efficient machine in use capable of setting the Peninsular fastener. In 1890 the defendants entered into the manufacture of a metallic button fastener, called by them the "Shoe Dealers' Staple," identical in all essential respects with the Peninsular fastener, capable of use in Peninsular machines, and intended by the defendants for such use. The defendants, from the beginning of the manufacture of Shoe Dealers' Staples, by solicitation and advertisement, procured and persuaded large numbers of users of Peninsular machines to use in those machines the Shoe Dealers' Staple, to the exclusion of the Peninsular fastener, which by their agreement and acquiescence in the condition appended to the sale of Peninsular machines they were under obligation to use. Thus the complainant, since 1890, was deprived of the benefits accruing to it from the sale of Peninsular fasteners, and ceased to obtain the income which it should have received from the use of many Peninsular machines, while the defendants diverted to themselves the profits arising out of the use of their Shoe Dealers' Staples, which never were capable of any use except in Peninsular machines.

The bill prayed, among other things:

"That the defendants may be perpetually enjoined and restrained from directly or indirectly procuring or attempting to procure, inducing or attempting to induce, or causing, any breach or violation of the contracts, or of either or any of the contracts, now or hereafter existing or subsisting between your orator and the vendees, or either or any of the vendees of button-setting machines sold by your orator, or to be sold by your orator, under condition that such vendees shall use in the button-setting machines so sold no other button fasteners than those made and furnished by your orator; and especially from directly or indirectly making or causing to be made for sale, selling or causing to be sold, or offering or causing to be offered for sale, to any person or persons, firm or firms, corporation or corporations whatsoever, any button fasteners intended or adapted for use, or capable of being used, in button-setting machines manufactured by your orator and sold by your orator under the conditions aforesaid; from directly or indirectly persuading or inducing the vendees, or either or any of the vendees of button-setting machines, sold by your orator and held by such vendee or vendees under the conditions aforesaid, to purchase any button fasteners designed or adapted for use in such machines, other than the button fasteners made and sold by your orator for use in such machines by the possessors thereof in conformity to the conditions aforesaid under which said machines are held; and from advertising or causing to be advertised for sale any button fasteners intended or adapted for use in button-setting machines manufactured and sold by your orator, and

held by purchasers under the conditions aforesaid, other than the button fasteners made and sold by your orator to be used in such machines by the possessors thereof in conformity to the conditions aforesaid, under which such machines are held; and from publishing or causing to be published any offer, promise, or inducement, designed or intended to procure the vendees, or either or any of them, of button-setting machines manufactured and sold by your orator, and held and used subject to the conditions of sale aforesaid, to use or to purchase for use in such button-setting machines, in violation of the contracts, or either or any of them, wherein such vendees have been and are bound to your orator as aforesaid, any button fasteners other than those made and furnished by your orator for use in the said button-setting machines."

Upon the bill, and upon affidavits stating facts substantiating its allegations of fact and charges in detail, complainant moved for a preliminary injunction. Defendants demurred to the bill generally, and the cause was contested both on the demurrer and on the motion for injunction.

Hamlin, Holland & Boyden, (James H. Lange and Odin B. Roberts, of counsel,) for complainant.

(1) Action lies for maliciously procuring a breach of contract, whereby a contracting party is injured. Any one who interferes with a contractual relation, to benefit himself at the expense of the contracting party, does so maliciously, within the intent and meaning of the law. *Lumley v. Gye*, 2 El. & Bl. 216; *Bowen v. Hall*, 6 Q. B. Div. 333; *Haskins v. Royster*, 16 Amer. Rep. 780; *Biaby v. Dunlap*, 22 Amer. Rep. 475; *Walker v. Cronin*, 107 Mass. 555; *Gunter v. Astor*, 4 Moore, C. P. 12; *Sheperd v. Wakeman*, Sid. 79; *Keeble v. Hickeringill*, Holt, 14, 17, 19; *Carrington v. Taylor*, 11 East, 571; *Tarleton v. McGawley*, Peake, 270; *Green v. Button*, 2 Crompt. M. & R. 707; *Hart v. Aldridge*, Cowp. 54; *Dudley v. Briggs*, 141 Mass. 582, 6 N. E. Rep. 717; *De Fransesco v. Barnum*, 39 Wkly. Rep. 5; *Benton v. Pratt*, 2 Wend. 385. The only case not in harmony with the doctrine as expressed is *Chambers v. Baldwin*, (Ky.) 15 S. W. Rep. 57.

(2) A patentee may parcel his monopoly in any way he sees fit according to the natural subdivision of his monopoly into the three exclusive rights to make, to sell, and to use. It rests with the patentee to define the limitations under which he allows others to enjoy his invention. *Dorsey, etc., Rake Co. v. Bradley Manuf'g Co.*, 12 Blatchf. 202; *Adams v. Burke*, 17 Wall. 453.

(3) When a patented article is sold subject to an express restriction as to its use, disregard of such limitation is an infringement of the patent, and all assignees or vendees of the article are charged with constructive notice of the restriction. *Hawley v. Mitchell*, 4 Fish. Pat. Cas. 388, affirmed 16 Wall. 544; *Burr v. Duryee*, 2 Fish. Pat. Cas. 275.

(4) The circumstance that the structure embodying the patented invention is sold absolutely by the patentee is not inconsistent with a continuing control over the use of the structure, to be exercised by the patentee. *Tie Co. v. Simmons*, 3 Ban. & A. 320; *Tie Supply Co. v. Bullard*, 4 Ban. & A. 520; *Cotton-Tie Co. v. Simmons*, 106 U. S. 89, 1 Sup. Ct. Rep. 52; *Morgan Envelope Co. v. Albany Perforated Wrapping Paper Co.*, 40 Fed. Rep. 577.

(5) It is generally true that if by contract or covenant a condition or servitude is attached to the ownership of property which is the subject-matter of the covenant, and which is of such peculiar value that the covenantee can invoke the aid of a court of equity to enforce the contract or covenant specifically as against the obligor or covenantor, then to that property in the hands of a purchaser from the obligor or covenantor, with notice of the condition or servitude, the equity raised in favor of the covenantee by the cove-

nant adheres, and prevails against such a purchaser. *Talk v. Moxhay*, 2 Phils. Ch. 774; *Western v. MacDermott*, L. R. 2 Ch. App. 72; *Whitney v. Railway Co.*, 11 Gray, 359; *Clements v. Welles*, L. R. 1 Eq. 200; *De Mattos v. Gibson*, 4 De Gex & J. 276; *Clark v. Flint*, 22 Pick. 281.

(6) The complainant's licensees, the users of Peninsular machines, by dealing with those patented machines in a manner contrary to the conditions and limitations of the license, infringe the patents for the inventions embodied in the machines. *Cohn v. Rubber Co.*, 3 Ban. & A. 568; *Starling v. Plow Works*, 32 Fed. Rep. 290; *Fetter v. Newhall*, 17 Fed. Rep. 841; *Willis v. McCullen*, 29 Fed. Rep. 641.

(7) One who assists in an infringement of patent rights by designedly furnishing to the actual infringer the means by which his infringement is effected, and for the intended purpose of promoting such infringement, is a contributory infringer, and is liable to the extent of his contribution to the infringement. *Morgan Envelope Co. v. Albany Perforated Wrapping Paper Co.*, 40 Fed. Rep. 577.

(8) Any act, done with intent to contribute directly to an infringement of patent rights, is wrongful, and will be enjoined by a court of equity, although in itself, and considered apart from its intended purpose, such act might be lawful. *Wallace v. Holmes*, 9 Blatchf. 65; *Holly v. Machine Co.*, 18 Blatchf. 327, 4 Fed. Rep. 74; *Bowker v. Dows*, 15 O. G. 510; *Travers v. Beyer*, 26 Fed. Rep. 450; *Willis v. McCullen*, *supra*; *Celluloid Manuf'g Co. v. American Zylonite Co.*, 30 Fed. Rep. 437; *Alabastine Co. v. Payne*, 27 Fed. Rep. 559; *Tie Supply Co. v. McCready*, 4 Ban. & A. 588; *Boyd v. Cherry*, 50 Fed. Rep. 279.

Dyrenforth & Dyrenforth, for defendants.

(1) The remedy of a party to a contract, in case of breach, is against the other party thereto. The law gives this mode of redress, and, though the breach of contract may be induced by a third party, yet the act of breach is not his, and the injured party has no cause of action against such a third party.

(2) By the restriction placed upon the use of its Peninsular machines, the complainant seeks to establish a monopoly of the manufacture of unpatented articles, namely, the button fasteners. This is unconscionable, in restraint of trade, and the alleged contract is void. *Machine Co. v. Earle*, 3 Wall. Jr. 320; *Wilcox & Gibbs Sewing-Mach. Co. v. Gibbens Frame*, 17 Fed. Rep. 623; *Manufacturing Co. v. Gormully*, 12 Sup. Ct. Rep. 632.

JENKINS, District Judge, directed an interlocutory decree to be entered as follows: "An order will be entered overruling the demurrer, and requiring an answer by the first Monday of August. An order will also be entered allowing an injunction *pendente lite* to issue pursuant to the prayer of the bill." Subsequently the defendants submitted to a final decree making the injunction perpetual.

CAREY *et al.* v. HOUSTON & T. C. RY. Co. *et al.*

(Circuit Court, E. D. Texas. November 12, 1892.)

1. FEDERAL COURTS—JURISDICTION—RAILROAD FORECLOSURE—RECEIVERS.

A federal court having jurisdiction and possession, through its receiver, of all the property of a railroad company, thereby acquires jurisdiction of a subsequent suit to foreclose a mortgage on the same property, irrespective of the citizenship of the parties thereto, and may enter therein a binding decree of foreclosure and sale. *Morgan's L. & T. R. & S. S. Co. v. Texas Cent. Ry. Co.*, 11 Sup. Ct. Rep. 61, 137 U. S. 171, followed.

2. JUDGMENT—VACATING CONSENT DECREE—RAILROAD FORECLOSURE.

A decree of foreclosure and sale of a railroad, entered by consent of the creditors and the company, without fraud, in pursuance of a plan of reorganization, will not be set aside at the suit of some of the stockholders merely because the principal of one mortgage was not yet due, when it appears that the sums due for interest thereon, for floating indebtedness, and on other mortgages, then due, were so great as to render foreclosure inevitable, and in that case to deprive the stockholders of all their equity in the property; especially when complainants do not offer to do equity by paying the floating debt, and have not been diligent in opposing the plan of reorganization, or in attacking the decree complained of.

In Equity. Bill by S. W. Carey and others, stockholders in the Houston & Texas Central Railway Company, against the company and various other parties, to set aside a foreclosure decree entered by consent in pursuance of a plan to reorganize the company, and to enjoin the carrying out of the scheme of reorganization. A motion for an injunction *pendente lite* was denied. 45 Fed. Rep. 438. Bill dismissed.

R. H. Landale and *Jefferson Chandler*, for complainants.

Butler, Stillman & Hubbard, *A. H. Joline*, and *Farrar, Jonas & Kruttschnitt*, for defendants.

PARDEE, Circuit Judge. This cause was before the court in the first instance on a motion for an injunction *pendente lite*. The motion was denied for reasons given at some length. 45 Fed. Rep. 438. Both parties having taken such evidence as suited, the cause now comes on for final hearing on the proofs, which change very little the aspect of the case as presented by the pleadings. It has been most thoroughly and exhaustively argued on both sides, both orally and by brief; the discussion ranging over a wide field, covering many propositions of law and equity and of equity practice. Were it at all likely that the present decision would be taken as a finality in the case, I should be disposed to take up *seriatim* the questions as presented by counsel, and discuss them as elaborately and, perhaps, at as great length, as counsel have argued the same in their printed briefs. Under the circumstances, however, I do not deem it necessary to further incumber the record with my conclusions in the case beyond adding a little to what was said in denying the motion for a preliminary injunction.

Whether the bill of complaint herein is an original one in the nature of a bill of review attacking a former decree of the court, or is a bill of complaint in continuation of a former suit, or is an original bill to set aside a decree of foreclosure and sale and a sale thereunder, it seems to