

arm, and feeding screw. Such pipe cutters were well known before this patent. A patent for one like this, except that it had two rotary cutters in place of the antifriction rollers, and the other cutter was held in a frame in the stock, instead of a pivoted arm, against which the screw worked, was granted February 20, 1866, to William S. Howarth, and numbered 52,715; another, for one like this, except that the pivoted arm was a cutting knife, was granted to Theodore S. Foster, dated May 28, 1867, and numbered 65,066; and another, for one like this, except that the cutter was in the jaw, and angular, to cut in two places, and the antifriction rollers were in a frame in the stock against which the screw worked, was granted August 6, 1867, to Henry Getty, and numbered 67,530. Thus rotary cutters were well-known substitutes for knife cutters; and every element in the combination of this claim had been patented in the same place, for the same purpose, as in this patent. The inventor merely substituted the rotary cutter for the cutting edge of the pivoted arm of Foster, or for the angular cutter of Getty, and changed the place of the latter with the rollers, which did not vary the operation of either, nor the result of all. Whether a rotary cutter would be better than a knife cutter would be a question of judgment, and any good workman could change one for the other. Such substitution would not seem to amount to a patentable invention. *Clothing Co. v. Glover*, 141 U. S. 560, 12 Sup. Ct. Rep. 79; *Ryan v. Hard*, 145 U. S. 241, 12 Sup. Ct. Rep. 919. The tool of the plaintiffs' patent would probably have infringed Foster's or Getty's patent.

The answer does not set forth that this invention was patented to Foster or Getty, or any one, but only that it was fully described and publicly made known in several patents, and among them those of Foster and Getty; and their names and the dates were stated. The statutory defense required to be set forth is that the invention had been before patented, giving the name and date. It might be described and publicly made known by a patent, and not be patented; and this part of the answer does not appear to set out sufficiently this defense. But the patents were received in evidence without objection, and no motion has been made to suppress them. They are in the case, to be considered. All that is required to be given by the statute to make them admissible is stated in the answer, except their effect in patenting the invention. The right to object to consideration of them according to their legal effect seems to be well waived.

Let a decree dismissing the bill be entered.

FEATHERSTONE v. ORMONDE CYCLE CO. et al.

(Circuit Court, S. D. New York. November 16, 1892.)

1. PATENTS FOR INVENTIONS—VALIDITY.

Reissued patent No. 11,153, granted March 24, 1891, to John B. Duflop, for wheel tires for cycles, is valid. *Featherstone v. Cycle Co.*, 53 Fed. Rep. 113, followed.

2. SAME—INFRINGEMENT BY AN EMPLOYEE.

A person who is employed as manager of a partnership, and who in that capacity sells an article which infringes a patent, is guilty of infringement.

and may be enjoined, but he will not be compelled to account if it fails to appear that he had any interest in the sale.

2. SAME—FOREIGN PATENT—LICENSE—IMPORTATION AND SALE.

An inventor obtained a patent on cycle tires in Great Britain, and subsequently in the United States, and then assigned to complainants the American patent. The owner of the British patent licensed defendants to apply the tires to a bicycle in Great Britain. This bicycle was then imported into the United States, and sold by defendants. *Held*, that defendants were guilty of infringement.

In Equity. Bill by Alfred Featherstone against the Ormonde Cycle Company, George S. McDonald, and E. J. Willis, for infringement of a patent. Decree for complainant.

Duncan & Page, for complainant.

Potter & Potter, for defendants.

TOWNSEND, District Judge. This is a suit for the alleged infringement of reissued letters patent No. 11,153, granted to John B. Dunlop, March 24, 1891, for wheel tires for cycles. The defenses are invalidity of patent and noninfringement. The question of validity has already been decided in favor of the patent in *Featherstone v. Cycle Co.*, 53 Fed. Rep. 113.

Under the defense of noninfringement the defendants claim first, that the Ormonde Cycle Company is a partnership, and not a corporation. There is nothing in the proofs to support the allegation of the complaint that the defendant the Ormonde Cycle Company is a corporation, and the allegation is denied by the answer.

It is further claimed that the defendant McDonald is only the employe of said partnership. The evidence shows that McDonald sold a bicycle, fitted with the alleged infringing tires, as manager of said partnership, doing business under the name of the Ormonde Cycle Company, and under the direction of E. J. Willis, another of the defendants. If, therefore, the acts complained of constitute infringement, these defendants are joint tort feorsors and are both liable. *Estes v. Worthington*, 30 Fed. Rep. 465; *Maltby v. Bobo*, 14 Blatchf. 53.

The defendants further deny infringement upon the following ground: The original inventor obtained patents for his invention in Great Britain, and subsequently in the United States. He assigned to complainant all his interest in the American patent. Afterwards the owner of the British patent licensed the defendants to apply to a bicycle in Great Britain the tires covered by said patent. This bicycle was then imported into the United States, and sold by defendants. The defendants claim that such importation and sale do not constitute infringement. It is well settled that the unrestricted sale of a patented article by the owner of the patent conveys to the purchaser the right of unrestricted ownership as against the vendor. *Holiday v. Mattheson*, 24 Fed. Rep. 185. But the purchaser does not acquire any rights greater than those possessed by the owner of the patent. The owner of the British patent could not authorize either the vendee or his vendor to sell the articles in the United States, so as to conflict with the rights of the owners of the American patent. This claim of defendants seems to be disposed of by the case of *Boesch*

v. Graff, 133 U. S. 702, 10 Sup. Ct. Rep. 378, where the supreme court says: "A prior foreign patent operates under our law to limit the duration of a subsequent patent here, but that is all. The sale of articles in the United States under a United States patent cannot be controlled by foreign laws." The motion for an injunction against the defendants McDonald and E. J. Willis is granted. Inasmuch as it does not appear that they had any interest in the sale of the infringing machine, they are not liable to account.

TARR et al. v. ROSENSTEIN et al.

(Circuit Court of Appeals, First Circuit. October 19, 1892.)

No. 34.

1. SUPERSEDEAS BOND—LIABILITY ON.

A supersedeas bond, conditioned according to the statute for prosecuting an appeal with effect and answering all damages and costs, covers, not merely compensation for the delay arising from the appeal, but also the amount of the decree appealed from, so far as the latter directs the payment of money by appellant to appellee. 51 Fed. Rep. 368, affirmed.

2. SAME—INTEREST—MONEY DEPOSITED IN COURT.

But in an action on the bond neither the principal nor sureties can be mulcted beyond what was adjudged as the result of the appeal; and where a sum deposited in court by a receiver was there retained pending an appeal, and no provision was made for interest thereon in the mandate or the decree entered in pursuance thereof, no such interest could be recovered in an action on the supersedeas bond. 51 Fed. Rep. 368, affirmed.

3. SAME—LIABILITY OF SURETIES—EFFECT OF TRUSTEE PROCESS.

A decree for the payment of money by defendant to complainant was affirmed on appeal, and the decree entered in pursuance of the mandate allowed interest from the date of the appeal. Notice was at once given to the sureties on the supersedeas bond that plaintiff looked to them for payment of the decree. Two days later the sureties were summoned as trustees in a suit against the plaintiff, but gave no attention to the same, and were defaulted therein. *Held* that, as they were in actual personal default to plaintiff from the date of receiving the notice, they could not escape payment of interest to him because of the trustee process, especially as they did not set aside and cause to remain idle any fund to meet the decree or the judgment in the trustee action. 51 Fed. Rep. 368, affirmed.

4. SAME—FEDERAL AND STATE COURTS.

No restraint or embarrassment can lawfully be put on the enforcement of judgments or decrees of the federal courts by means of trustee process issued by a state court; and, as execution could have issued against the principal debtor upon the decree entered in pursuance of the mandate, the enforcement of such decree against his sureties could not be prevented by the trustee suit, for, while execution could not have gone against them, they were so intimately connected with him as to stand in the same position. 51 Fed. Rep. 368, affirmed.

In Error to the Circuit Court of the United States for the District of Massachusetts.

Action by Julius W. Rosenstein and others against Robert Tarr, principal, and William C. Dolliver and John S. Dolliver, sureties, on a supersedeas bond. Judgment for plaintiffs. See 51 Fed. Rep. 368, where a full statement of the facts will be found. Defendants bring error. Affirmed.

Benjamin F. Butler and Eugene J. Hadley, (Eugene J. Hadley, of counsel,) for plaintiffs in error.

William F. Slocum and Winfield S. Slocum, for defendants in error.