

imitation sheepskin pad, in which the wool of the sheep, or it might be other animal, is incorporated with a fabric backing or holder in place of the skin." The object of Mr. Naramore's invention is said to be "to provide an improvement in the harness pad shown and described in United States letters patent No. 302,548, granted to Dorr & Tamplin July 29, 1884;" and in reference to the invention itself the patentee says: "By my improvement objections met with in the use of the aforesaid harness pad are overcome, said improvement consisting of a pad comprising a backing or ground fabric, preferably of coarsely woven cloth, having tufts of unspun wool or hair secured to it in the form of doubled uncut loops." The claims infringed are said to be the first of the Dorr & Tamplin patent, and the second of the Naramore patent. They are as follows:

(1) Dorr & Tamplin Patent: "In a harness pad, the combination, with a piece of woven fabric, A, forming a backing or holder, of the double tufts, B, incorporated as shown with said holder, and essentially as described."

(2) Naramore Patent: "The leathern or other harness support, in combination with a harness pad, consisting of the backing or ground fabrics secured to said support, the ground fabrics having tufts of unspun wool or hair secured thereto in the form of doubled uncut loops, as set forth."

Upon comparison of these claims it appears that they are practically identical, except that in the Naramore patent the claim is limited to a specific form of "tufts," which must be of "doubled uncut loops," and to a special character of material to be used, to wit, "unspun wool or hair." Upon the argument it was forcibly contended that both of these patents were invalid, because they disclosed neither invention nor patentable novelty. Without expressing any opinion as to this defense, it is sufficient to say that, in view of the state of the art, either admitted or clearly and satisfactorily proved, the claims of the letters patent in controversy must be strictly construed; and, when so construed, the "harness pad" manufactured by the defendants under the Cahoon patent, No. 402,719, cannot be held to be an infringement. Clearly it exhibits nothing which can properly be described as "tufts," but rather, in its completed form, presents a surface composed of a broad skein or web of material made flat, and joined to a woven fabric as a backing by rows of stitching; while the material itself used is "spun" wool, a very different article from the "unspun wool or hair" of the complainant's pads. These differences are essential in character, and carry the pad of the defendant beyond the region covered and appropriated by the letters patent in controversy.

The bill of complaint in each case must be dismissed.

STOKES BROS. MANUF'G CO. v. HELLER et al.

(Circuit Court, D. New Jersey. May 16, 1893.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INSPECTION OF WORKS.

In a suit to restrain alleged infringement of patents for rasps and files, and the process and machinery for making the same, plaintiffs failed, for more than six months after the answer was filed, to take any evidence, and then applied for an order that they be allowed to inspect fully defendants' factory. Defendants denied infringement, and alleged that for

years before the patents were granted they made files under a secret process, not patented, which they still use. They also produced files made by such process before the date of the patent, which were apparently the same as plaintiffs' files. *Held*, that the order for the examination would not be granted.

In Equity. Suit by the Stokes Bros. Manufacturing Company against Heller Bros. and others for the alleged infringement of the following patents: No. 376,400, granted to James and George Stokes January 10, 1888, for a rasp-cutting machine; No. 383,999, granted to Philip S. Stokes June 5, 1888, for rasps; No. 397,254, granted to Philip S. Stokes February 5, 1889, for a rasp-cutting machine; No. 408,936, granted to Philip S. Stokes August 13, 1889, for a method of forming teeth of rasps. Heard on complainant's motion for an order that defendants permit an inspection of their factory. Denied.

W. H. Doolittle, for complainant.
John Dane, Jr., for defendants.

GREEN, District Judge. This bill is filed to restrain the defendants from infringing certain letters patent granted on various dates to the complainants for rasps or files. The patents cover as well the process of manufacture, the machines used, and the manufactured article. The bill contained numerous interrogatories to be answered by the defendants, and also called for an answer from each of the defendants under oath. Such answers have been duly made, and were filed September 16, 1892. Since that time the complainants have taken no step forward in the litigation. Not a particle of evidence to sustain the issues on their part has been taken. They now move the court to order that the defendants do permit a full and thorough inspection of their manufactory, situate in Newark, N. J., and of all their machinery, and of all their processes for the manufacture of the rasps or files made by them, and which files and rasps, and processes and machines, the complainants allege, infringe their letters patent. The defendants, in their answer, deny infringement, and furthermore assert, under oath, that rasps have been manufactured by them, by a peculiar process, not patented, but kept as a secret in their business, since 1836; and they produce files and rasps before the court, which, as shown by affidavits uncontradicted, were made many years before the letters patent in question were issued, and which to the eye, at least, seem to be entirely similar to those now made by the complainants. Under these circumstances, to compel the defendants to open their manufactory to hostile inspection of rivals in business, and to disclose the character of the machines and the process by which for so many years they have made a successful article of merchandise, would be unjust and inequitable. The motion is too obviously the excuse for a "fishing excursion," and does not, under the circumstances of this case, commend itself to the court. It is therefore denied.

FALK v. HEFFRON et al.

(Circuit Court, E. D. New York. May 17, 1893.)

COPYRIGHT—VIOLATION—FORFEITURE—SHEETS OF COPIES.

Under Rev. St. § 4965, which provides that any one who shall violate the copyright of a photograph *inter alia* by making copies thereof without the owner's consent shall forfeit "one dollar for every sheet of the same found in his possession." etc., the amount of the forfeiture is determined solely by the number of sheets, without regard to the number of the copies of the photograph that may be printed on each sheet.

At Law. Action by Benjamin J. Falk against Thomas H. Heffron and others to recover a penalty for the violation of a copyright belonging to the plaintiff. There was a verdict for plaintiff, and he moves for a new trial. Motion overruled, and judgment on the verdict.

Isaac N. Falk, (P. Wilcox, of counsel,) for plaintiff.

Allen Lee Smidt, (Frank H. Angell, of counsel,) for defendants.

WHEELER, District Judge. The plaintiff has a copyright of a photograph of Lillian Russell. The defendants printed 2,400 lithographic copies of it, 21 or 22 on each of 115 or 116 sheets. This suit is brought to recover "one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale." Rev. St. U. S. § 4965. The evidence showed that the defendants sent these copies on an order for that number, but not whether they were in whole sheets, or cut up, when sent. The number of sheets was left to the jury, and was found at 115, with a verdict for the plaintiff for \$115. He has moved for a new trial, because the jury were not charged to find \$1 for each copy, without regard to the number of sheets on which they were printed.

The original act of May 31, 1790, provided for copyrights of maps, charts, and books; prohibited printing, publishing, or importing copies; forfeited "all and every copy or copies of such map, chart, book, or books, and all and every sheet and sheets being part of the same, or either of them, to the author or proprietor;" and further provided that every offender and offenders should "forfeit and pay the sum of fifty cents for every sheet" which should "be found in his or their possession, either printed or printing, published, imported, or exposed to sale." 1 Stat. 124. Under this statute the unit of forfeiture as to either a book, map, or chart would be a sheet; one ordinary definition of which is "a broad piece of paper." In the printer's art it is what is used for one impression, and is distinguished by a signature for the binder. In a suit for this money forfeiture the question would always be, whether with reference to a book, map, or chart, what number of these sheets was found in the possession of the defendant who had printed, published, or imported them. The statute was penal, and could not be extended by construction beyond its plain terms, which gave the penalty only once for each such sheet, whatever might be printed upon it. *Backus v. Gold*, 7 How. 798. If more than one copy of a page