SESSIONS v. GOULD et al.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

PATENTS—INFRINGEMENT—TRUNK FASTENERS.

The Taylor patent, No. 203,860, for trunk fasteners, construed as to the second claim, which is *held* to be valid, and to have been infringed by defendants. Sessions v. Gould, 49 Fed. 855, 60 Fed. 753, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a bill by John H. Sessions against William B. Gould and others for infringement of letters patent No. 203,860, issued May 21, 1878, to Charles A. Taylor, for an "improvement in trunk fixtures," assigned to complainant June 1, 1878; and letters patent No. 255,122, issued March 1, 1882, to John H. Sessions, Jr., "for trunk fasteners," assigned to complainant July 1, 1888. The case was heard on motion for a preliminary injunction before Judge Lacombe, who granted an injunction under claim 2 of the Taylor patent of 1878, and the Sessions patent of 1882. 49 Fed. 855. On final hearing, the case was heard before Judge Coxe, who found the Sessions patent of 1882 invalid, and sustained the Taylor patent, allowing a decree on claim 2. 60 Fed. 753. From the interlocutory decree granting a permanent injunction under claim 2 of the Taylor patent, defendants appealed to this court.

Arthur v. Briesen, for appellants.

Charles E. Mitchell (John P. Bartlett, of counsel), for appellee.

Before BROWN, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

PER CURIAM. We fully agree with the opinion of Judge Lacombe upon the motion for a preliminary injunction in the circuit court in regard to the construction of the second claim of the Taylor patent, and deem it unnecessary to add anything to his observations. As, under that construction, the defendants' trunk fasteners concededly infringe the claim, and the only errors assigned by the appellants are in respect to the questions of construction and infringement, the interlocutory decree appealed from should be affirmed, with costs.

SESSIONS v. GOULD et al.

(Circuit Court of Appeals, Second Circuit. October 16, 1894.)

APPEAL—JUDGMENT IN CONTEMPT PROCEEDINGS.

An appeal from an order compelling defendants to pay a fine made upon motion to have defendants punished for contempt for violating an interlocutory injunction must be dismissed; for, if the order is to be treated as part of what was done in the original suit, it is interlocutory, and can only be corrected upon an appeal from the final decree, or, if such order is to be treated as an independent proceeding, it is, in effect, a judgment in a criminal case, reviewable only upon writ of error.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was a bill by John H. Sessions against William B. Gould and others for infringement of letters patent. A preliminary injunction was obtained (49 Fed. 855), and, on motion to have defendants punished for contempt for violating the same, defendants were ordered to pay a fine of $500. From such order defendants appealed to this court.

Arthur v. Briesen, for appellants.

Charles E. Mitchell (John P. Bartlett, of counsel), for appellee.

Before BROWN, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The complainants in an equity suit in the circuit court to restrain an infringement of a patent obtained an interlocutory injunction, and subsequently, insisting that the defendants had violated the injunction, proceeded by a motion in the cause to have the defendants punished for contempt. The circuit court, after hearing the parties, made an order, entitled in the cause, that the defendants pay a fine of $500. The defendants, by an appeal from that order, seek to review and reverse it, upon the ground that the court erred in finding them guilty of disobeying the injunction.

If the order complained of is to be treated as part of what was done in the original suit, it is interlocutory in the cause, and can only be corrected in this court upon an appeal from the final decree. Hayes v. Fischer, 102 U. S. 121; Worden v. Searls, 121 U. S. 14, 7 Sup. Ct. 814. If the order is to be treated as an independent proceeding, it is, in effect, a judgment in a criminal case. New Orleans v. New York Mail S. S. Co., 20 Wall. 387; Ex parte Kearney, 7 Wheat. 39. While there is no doubt of the jurisdiction of this court, under section 6 of the act to establish circuit courts of appeals (26 Stat. 826), to review a criminal judgment, not a conviction of a capital or otherwise infamous crime, it can only do so upon a writ of error. A judgment in a common-law proceeding is not removed by an appeal, and a bill of exceptions is necessary to procure a review on a writ of error of any errors which do not appear on the face of the record. Saltmarsh v. Tuthill, 12 How. 387; Kearney v. Denn, 15 Wall. 51; Knapp v. Railroad Co., 20 Wall. 117; Kerr v. Clampitt, 95 U. S. 188. As there is no writ of error or bill of exceptions in the record, we are not called upon to decide whether the order is a criminal judgment.

We are without jurisdiction to entertain the appeal, and it must accordingly be dismissed.

CUERVO v. LANDAUER et al.

(Circuit Court, S. D. New York. September 7, 1894.)

1. TRADE-MARK—INJUNCTION AGAINST INFRINGEMENT—INNOCENT INFRINGER.
   Injunction will not be refused because defendants bought boxes with infringing labels on them without knowing of the infringement.
2. SAME—DEFENSES.
   Injunction will not be refused because defendants have made no sales, where it appears that they bought for the purpose of selling, and would have done so but for complainant's suit.
3. SAME—ORIGIN OF COMPLAINANT'S OWNERSHIP.
   Injunction will not be refused because complainant was not the original designer or owner of the trade-mark, but succeeded to the rights of a firm which owned it.

This was a suit by G. Garcia Cuervo against Julius Landauer and others to enjoin the infringement of a trade-mark in certain cigar-box labels. Heard on motion for preliminary injunction.

Jones & Govin, for complainant.
Weed, Henry & Meyers, for defendants.

LACOMBE, Circuit Judge. This is an application to enjoin violation of complainant's trade-mark in certain labels for cigar boxes. That the alleged infringing labels are imitations of complainant's is self-evident upon inspection. In fact, so close is the resemblance that, in the absence of any affidavit by the designer of the labels found in defendants' possession, it may fairly be assumed that they were intentionally devised to simulate the complainant's labels, and thus confuse the identity of the goods sold under their cover. That defendants did not know that the labels, which they bought, as they aver, from a cigar-box maker, were infringements, is no reason for refusing the relief prayed for. The owner of a trade-mark is entitled to protection against ignorant as well as against malicious infringers. Nor is the fact that no actual sale is shown material. It is manifest on the papers that defendants bought the boxes thus labeled to sell with their cigars, and that, but for complainant's appeal to the courts, they would have offered them for sale. Nor is there any force in the defendants' contention that complainant is not the original designer and owner of the trade-mark. The cases cited, viz. Stachelberg v. Ponce, 23 Fed. 430; Medicine Co. v. Wood, 108 U. S. 218, 2 Sup. Ct. 436,—do not apply. In the case at bar, complainant, at the time of the adoption of the trade-mark, was the manager of the business, and continued in that position until 1872, when he became a partner in the firm, and continued as such partner with the original Manuel Garcia until 1878, when the latter retired from business, leaving complainant as sole proprietor thereof. Why these circumstances should deprive him of the protection of the courts when the trade-mark, which is a part of the assets of the business to which he succeeded, is infringed, it is difficult to perceive. See Fulton v. Sellers, 4 Brewst. 42. Preliminary injunction is continued until trial.