

of glass, and conductors passing through the glass, and from which receiver the air is exhausted." It also enjoined the use of "any incandescent electric lamps like those [theretofore] used * * * in infringement of claim 2 of said letters patent." It is not disputed that the lamps complained of fall within the first of these two classes; and the use of the lamps since injunction was served is admitted. That being so, the complainants have sufficiently proved a violation of the injunction, unless defendants are able to show that, nevertheless, they have the right to use these lamps. They seek to justify under the principles of law laid down in *Adams v. Burke*, 17 Wall. 453, and *Hobbie v. Jennison*, 149 U. S. 355, 13 Sup. Ct. 879, contending that "the sale by a person who has the full right to make, sell, and use a patented [article] carries with it the right to the use of that [article] to the full extent to which it can be used in point of time." The difficulty with such defense in this case, however, is that it is not proved. There is no evidence that these particular lamps ever passed out from under the monopoly by reason of a sale of them by a person who has the right to sell and use anywhere. On the contrary, the defendants most carefully, and evidently of intention, refrain from telling even of whom they bought, and make no effort to show that their vendor had any right to sell.

As indicated upon the oral argument, defendants may have 10 days' further time in which to file additional affidavits tending to show a sale such as would take these lamps out of the monopoly. Failing that, complainants may take an order.

EDISON ELECTRIC LIGHT CO. et al. v. GOELET et al.

(Circuit Court, S. D. New York. March 5, 1894.)

PATENTS FOR INVENTIONS — RIGHT TO USE PATENTED ARTICLES BOUGHT FROM LICENSEES.

The E. Co. sold its patented electric lamps to three several companies, upon agreements by them to sell only to users of the lamps within certain limited territory. Each of such three companies sold lamps, without restriction, to defendants, who were outside the territory of all the companies. *Held*, following *Adams v. Burke*, 17 Wall. 453, and *Hobbie v. Jennison*, 149 U. S. 355, 13 Sup. Ct. 879, that defendants had the right to use the lamps, so sold to them, anywhere in the United States.

This was a suit by the Edison Electric Light Company and the General Electric Company against Robert Goelet, Robert Stafford, and others to restrain the infringement of a patent. An injunction having been granted, plaintiffs moved to punish defendants for contempt. Upon the first hearing, defendants were given leave, within 10 days, to submit affidavits showing from whom they purchased the devices complained of. 65 Fed. 612. Such affidavits having been filed, the motion is now renewed.

Dyer & Seely and Eugene H. Lewis, for complainants.
Hobbs & Gifford, for defendants.

LACOMBE, Circuit Judge. The additional affidavits show that the lamps of the Edison pattern used by defendants have been

obtained by them by purchase from three sources: (1) McLeod, Ward & Co., dealers in electrical supplies in this city; (2) the Jaynes Electric Company, a copartnership in Buffalo, dealing in such supplies; (3) the F. P. Little Electric Construction & Supply Company, also in Buffalo.

1. The first-named firm bought the lamps from the Edison General Electric Company, and its successor, the General Electric Company, exclusive licensees to manufacture under the patent. McLeod, prior to such purchase, had signed an agreement binding his firm not to sell any of the lamps so bought in violation of the various obligations which existed between the company and its licensees, and further agreed to keep himself informed of such obligations. The lamps in question were bought from the Edison Company upon an order of the firm, stating that they were "for use above 70th street." They were sold to defendants by McLeod without restriction.

2. The Jaynes Electric Company bought the lamps it sold to defendants from the Buffalo General Electric Company. This corporation obtained them from the General Electric Company, under a contract which authorized it to sell such lamps only to users of lamps within the county of Erie, except Tonawanda. The Jaynes Company bought the lamps from the Buffalo Company without restrictions, and sold them to defendants in like manner.

3. The F. P. Little Company bought the lamps it sold to defendants from the General Electric Company through its Syracuse agent. It had previously signed an agreement similar to that executed by McLeod, but, in making the sale to the defendants, imposed no restrictions.

No doubt, the defendants were advised in a general way that the complainant the illuminating company claimed that it had the sole right to use, and sell for use, lamps of the patent within the city of New York; but there is no reason for discrediting their statements that, as to these particular lamps, they had no notice or knowledge of any restrictions placed upon those who sold them. Under these circumstances, I am of the opinion that under the principles laid down in *Adams v. Burke*, 17 Wall. 453, and *Hobbie v. Jennison*, 149 U. S. 355, 13 Sup. Ct. 879, the defendants have the right to use the lamps they bought anywhere in the United States. Concededly, they were made by the General Electric Company, the exclusive licensee under the patent, and were sold by it to persons to whom it had the right to sell. The last-cited case reiterates the proposition that the "sale of a patented article by an assignee within his territory carried the right to use it everywhere. * * * Once lawfully made and sold, there was no restriction on the use to be implied, for the benefit of the patentee or his assignees or licensees." The dissentients in *Adams v. Burke*, and many circuit judges in subsequent decisions, clearly and forcibly pointed out the result of such a construction of the patent laws as would leave a patentee, who wishes to divide his rights territorially, dependent upon the good faith of those to whom he sells. But the supreme court has so held, and there is nothing for this court to do but to conform to

such decision. The patentee's remedy is against those who, after binding themselves to conform to his restrictions, have violated their agreements. He may protect himself either by selling his lamps only to persons on whose honesty and responsibility he can rely, or by requiring from them sufficient security that they will respond for any damages he may sustain by their failure to keep faith with him. The purchaser of lamps once sold by the patentee, or by the person whom he authorizes to make and sell them, cannot, under the decisions *supra*, be charged with knowledge of the restrictions upon resale, which are matter of agreement between the patentee or the licensed manufacturer and the first purchaser. Motion to punish for contempt is denied.

EDISON ELECTRIC LIGHT CO. et al. v. BLOOMINGDALE et al.

(Circuit Court, S. D. New York. December 27, 1894.)

Eaton & Lewis, for complainants.
Cravath & Houston, for defendants.

LACOMBE, Circuit Judge. I am still of the opinion expressed on the original argument (65 Fed. 212), viz. that, by the stipulation in the Southern district suit, complainants have practically assented, for the time being, to the sale of Buckeye lamps there. When they shall have changed the situation there by getting rid of their stipulation, or by obtaining an injunction against the defendants in that suit, the situation here will be different. But, while it is as it is, defendants' use of lamps, which apparently they may buy in the Northern district, will not be enjoined. As the conclusion now arrived at is adverse to complainants, it is unnecessary to await the decision in the Bate Case. Ordered accordingly.

THOMSON-HOUSTON ELECTRIC CO. v. WESTERN ELECTRIC CO.

(Circuit Court, N. D. Illinois. January 14, 1895.)

PATENTS—REGULATOR FOR DYNAMO—ANTICIPATION.

Letters patent No. 238,315, issued March 1, 1881, to Elihu Thomson and Edwin J. Houston, for a current regulator for dynamo-electrical machines, consisting of a device whereby the brushes on the commutator are automatically shifted so as to change the output of the machine to meet the change of conditions presented by variations in the number of burning lamps dependent thereon, are void for want of invention, being anticipated by letters patent No. 223,659, issued January 20, 1880, to the same parties, for a device whereby the same result in a less degree was obtained by a similar device for the purpose of preventing the production of sparks, which injured the machine.

Suit by the Thomson-Houston Electric Company against the Western Electric Company for injunction and accounting.

Offield, Towle & Linthicum, for complainant.
Barton & Brown, for defendant.

GROSSCUP, District Judge. This is a suit for infringement of patent No. 238,315, granted to Elihu Thomson and Edwin J. Houston March 1, 1881, for "current regulator for dynamo-electric machines." The object of the invention is to control the operation of a dynamo-electric machine in such manner that the constant and unvarying