

months after the patent was issued. On receiving notice of the complainant's claims, he acquiesced in them. All substantial controversy is ended. Even if equity can enforce the penalties, it would not be within its policy to permit amendments at this late stage for that purpose. Therefore we will dispose of the case as presented to us at the final hearing.

Let there be a decree for an injunction, with costs for the complainant.

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COVERT v. TRAVERS BROS. CO.

(Circuit Court, S. D. New York. December 9, 1895.)

1. PATENTS—EFFECT OF PRIOR DECISION—EX PARTE INJUNCTION.

A decision granting a preliminary injunction, where no counsel appeared for defendant, though some affidavits were submitted in his behalf, does not preclude the court, in a subsequent suit against a different defendant, from considering anew the question of the validity of the patent.

2. SAME—PLEADING—DEMURRER TO BILL.

A patent manifestly invalid upon its face may be so declared on demurrer to the bill, but this power should be exercised with the utmost caution and only in the plainest cases. All doubts should be resolved in favor of the patent. *Button-Fastener Co. v. Schlochtmeyer*, 69 Fed. 592, followed.

3. SAME—INVENTION—ROPE CLAMPS.

There is no invention in simply clamping an open ring of metal around a braided or twisted rope to prevent unbraiding or untwisting.

4. SAME.

The Covert patent, No. 208,157, for an improvement in rope clamps, is void on its face as to the second claim for want of invention. The first claim, which is for a described method of connecting two parts of a rope, or two ropes, by clamping the same with one or more open metallic rings under pressure, discloses sufficient evidence of novelty and invention to prevent the same being declared invalid upon demurrer to the bill.

This was a bill in equity by James C. Covert against Travers Bros. Company for alleged infringement of letters patent No. 208,157, granted to complainant September 17, 1878, for an improvement in rope clamps.

Charles G. Coe, for complainant.

Arthur v. Briesen, for defendant.

COXE, District Judge. The patent in suit, No. 208,157, was, in 1885, before the court on a motion for a preliminary injunction. 25 Fed. 43. As the facts are now recalled the proceedings on that motion were *ex parte* in character. No one represented the defendant at the argument although some affidavits on his behalf were submitted. That decision does not preclude the court from considering the arguments which are now presented. That a patent, manifestly invalid upon its face, may be so declared on demurrer is now settled beyond dispute. The authorities bearing upon this proposition will be found collated in the recent case of *Button-Fastener Co. v. Schlochtmeyer*, 69 Fed. 592. It is also true that this power should be exercised with the utmost caution and only in the plainest cases.

If there is doubt it should be resolved in favor of the patent. *New York Belting & Packing Co. v. New Jersey Car Spring & Rubber Co.*, 137 U. S. 445, 11 Sup. Ct. 193; *Blessing v. Copper Works*, 34 Fed. 753; *Eclipse Co. v. Adkins*, 36 Fed. 554; *Manufacturing Co. v. Mosheim*, 48 Fed. 452; *Standard Oil Co. v. Southern Pac. Co.*, 42 Fed. 295; *Hanlon v. Primrose*, 56 Fed. 600; *Drainage Construction Co. v. Englewood Sewer Co.*, 67 Fed. 141; *Goebel v. Supply Co.*, 55 Fed. 825; *Failey v. Talbee*, 55 Fed. 892.

The patent, granted in 1878, contains two claims, as follows:

"(1) The herein described method of connecting one part of a rope adjacent to another part, or the ends of two ropes, by clamping the same with one or more open rings of metal under extreme pressure, as set forth.

"(2) One or more open rings clamped around a braided or twisted rope under pressure, to prevent unbraiding or untwisting, as set forth."

The second claim is for a metallic open ring clamped around a rope to prevent untwisting. In short, for a ring clamped around a rope. It is difficult to perceive how invention can reside in this claim. The patent itself recognizes the "well-known idea of twisting a wire around a rope" and many devices, such as corset-lacings, shoe-strings and whip-stalks naturally occur to the court where similar means have been used to produce similar results. The only object sought to be obtained by the use of the ring of this claim is to prevent untwisting or unbraiding. The split tube of the old corset-lace does that. There is nothing in the patent limiting the claim to ropes of large diameter. In fact the untwisting or unraveling feature is made to apply to "the ends of single cords." One who should cut off a section of the old split tube so that it would be a ring rather than a tube and clamp it around a corset-lace to perform precisely the same office as the tube, though less effectually, would have every element of the second claim. Untwisting was prevented in the old devices by clamping a split tube around the end of the cord or by winding it with wire or twine. The patentee accomplished the same result—untwisting—by substituting an open ring for the tube or wire of the old devices. It was a mere workshop expedient that might have occurred to anyone. It did not involve invention.

An entirely different proposition is, however, presented by the first claim. It is for the described method of connecting two parts of a rope, or two ropes, by clamping the same with one or more open metallic rings under extreme pressure. There is nothing suggested in the prior art that anticipates this claim. Certainly the court cannot say that it was not new in 1878. The court may take judicial notice of the old methods of looping and splicing ropes by winding and interweaving the strands and if the statement of the patent be true that the parts when clamped as described "cannot separate or have any endwise draw" it is manifest that the patented method is an improvement upon the old methods.

It is argued that the claim is void as covering merely the function of a clamping machine, but this proposition is not so obvious as to induce the court to hold the claim bad on demurrer. The court cannot say that anything existed prior to July, 1878, which would anticipate or defeat this claim. The proof may show that ropes

looped or spliced by the rings of the patent possess elements of strength and durability unknown before. It is enough that the trial may result in a decree for the complainant.

As the bill states a cause of action it follows that the demurrer must be overruled, with leave to the defendant to answer within 20 days.

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ELECTRIC GAS-LIGHTING CO. v. WOLLENSAK.

(Circuit Court, N. D. Illinois. July 1, 1895.)

PATENTS FOR INVENTIONS—DAMAGES.

In a suit for the infringement of a patent a judgment was entered by consent for \$1 damages and \$350 costs, the taxable costs being only \$88. *Held*, that payment of this judgment did not release the defendant from liability for future infringement, since that did not amount to payment of actual damages, the expenses of suit being always more than the taxable costs.

In Equity. Suit by the Electric Gas-Lighting Company against John F. Wollensak.

James H. Raymond and Edward P. Payson, for complainant.  
Banning, Banning & Sheridan, for defendant.

GROSSCUP, District Judge (orally). The bill in this case charges the defendant with infringement of letters patent No. 225,071, issued to Henry F. Packard, March 2, 1880, for an "improvement in electric gas-lighting devices." The defendant was a user of the devices as vendee of Henry A. Cleverly, or the Cleverly Electric Works of Philadelphia. The defendant alleges that, after the sale of the devices to him, he fully settled with the complainant the matter of infringement, whereby the defendant has been released from any obligation to further answer the complainant's claims. It appears that, in January, 1888, a bill was filed against Cleverly, by the complainant, in the circuit court for the Eastern district of Pennsylvania, charging him with the infringement of the patents in suit, upon which a preliminary injunction was granted, and other proceedings had, and in which a final decree was entered on the 19th of April, 1892, by consent of the parties. The decree in question was meant to establish the validity of complainant's patents, all question there-to being waived by the defendant, and concluded as follows:

"That the complainants recover of defendant nominal damages, in the sum of \$1, without reference to a master, and that the defendant pay all costs, to be taxed by the clerk, in the sum of \$350."

It is admitted that this sum has been paid by Cleverly, a receipt having been given to him by the complainant, which provides, however, that this payment does not discharge said Cleverly, or any other person, from any further liability arising from infringement of the letters patent in question, but that the complainant agrees not to further prosecute Cleverly for any infringement to the date thereof.

The supreme court, in *Birdsell v. Shaliol*, 112 U. S. 485, 5 Sup. Ct. 244, have held that a satisfaction of judgment, by the maker or ven-