

## BROWNSON v. DODSON-FISHER-BROCKMANN CO.

(Circuit Court, D. Minnesota, Fourth Division. December 24, 1895.)

## PATENTS—INVENTION—HORSE COLLARS.

The Brownson patent, No. 507,209, for an improvement in seams for horse collars, consisting of a welt bridging the joint, and a line of staples straddling the joint and passing through both welts, held valid, in view of the fact that it has gone into such extensive use as to practically revolutionize the trade.

This was a bill in equity by Ralph Brownson against the Dodson-Fisher-Brockmann Company for infringement of a patent relating to horse collars.

T. D. Merwin, for complainant.

Paul & Hawley (A. C. Paul, of counsel), for defendant.

NELSON, District Judge. This suit is brought for infringement of complainant's patent for an improvement in seams for horse collars, No. 507,209, dated October 24, 1893, the claim whereof is as follows:

"The herein-described leather article, provided with a seam, consisting of the two abutting edges to be united, a welt bridging the joint between the abutting edges on each side, and a line of staples straddling the joint, passing through both welts and clinched, substantially as described."

Defendant admits it is manufacturing horse collars identical with those made by complainant under his patent. Hence, the only question involved is the validity of the patent itself, which is very doubtful, if the joints or seams used in the manufacture of boots and shoes and paper barrels are considered. The purpose in all those patents is to strengthen and reinforce, so as to resist strain and prevent wear; but by the complainant's method he secures, not only a strong and durable, but a smooth and flexible seam, which he claims is very desirable in a horse collar. The elements of his patent are very close to a mere aggregation, and I should hesitate about finding invention involved, if the fact did not appear that these metal-seamed collars are demanded by the trade, and by it recognized as a substantial improvement over those made with the old-style seams; so much so that some makers of the latter, unable to compete, have abandoned their manufacture, obtained machinery, and are making collars with metal seams, under license from complainant; in fact, the defendant itself has adopted the very method of manufacture employed by complainant. In fact, the testimony of complainant and his witnesses shows that his collars have revolutionized the trade. This success, and acceptance by the public, with the extent of the revolution made in that department of art, induce me to hold that complainant has invented a new and useful improvement, and is entitled to protection against defendant as an infringer. A decree will be entered for complainant.

**MATTHEWS & WILLARD MANUF'G CO. v. NATIONAL BRASS & IRON WORKS.**

(Circuit Court, E. D. Pennsylvania. December 23, 1895.)

No. 20.

**1. DESIGN PATENTS—MARKING "PATENTED"—EVIDENCE.**

To recover damages for infringement of a design patent, plaintiff must show that all the articles sold by him were marked "patented." It is not sufficient to show that they were so marked "as a rule."

**2. SAME—INJUNCTION.**

An injunction will not be denied merely because it is shown that defendant did not intentionally violate the plaintiff's right, and that he does not propose to continue doing so, or that it is not probable that the infringement will be repeated.

This was a suit in equity by the Matthews & Willard Manufacturing Company against the National Brass & Iron Works for alleged infringement of a design patent.

Chas. L. Burdett, for complainant.  
Hector T. Fenton, for defendant.

DALLAS, Circuit Judge. This is a suit upon letters patent No. 23,318, dated May 29, 1894, to John C. Miller, for a design for a slab for table tops. Their validity is not attacked. The bill alleges that "all said slabs for table tops made and sold" by, for, or under the owner of the patent, were marked as required by law. The answer denies this, and the affirmative of the issue thus raised has not been maintained. The complainant relies upon the testimony of John C. Miller, but it falls short of sustaining the averment of the bill, or proving compliance with the statute. The necessary averment is that the articles made under the patent were properly marked, but the only evidence is of marking "as a rule." This is not merely insufficient to establish the plaintiff's allegation. It impliedly refutes it, for the inference naturally deducible from testimony that a particular course has been pursued, as a rule, is that such course has not been uniform and persistent. The burden of proof was upon the plaintiff, and I am constrained to hold that he has failed to discharge it. There is nothing in the record to warrant belief that the defendant infringed after particular notice had been given to it, and complainant's counsel has not very seriously contended that it did. The consequence is that there can be no recovery of damages, for "one of these two things—marking the articles, or notice to the infringers—is made by the statute a prerequisite to the patentee's right to recover damages against them." *Dunlap v. Schofield*, 152 U. S. 248, 14 Sup. Ct. 576; *Coupe v. Royer*, 155 U. S. 584, 15 Sup. Ct. 199; *Monroe v. Anderson*, 7 C. C. A. 272, 58 Fed. 401; *Traver v. Brown*, 62 Fed. 935; *Manufacturing Co. v. Bardsley*, 66 Fed. 765.