

as to dispense with the incorporation of the words and figures in this indictment." The court held that the identification of the obscene paper was insufficient and sustained a demurrer to the indictment. In passing upon the question the court says:

"The accused are entitled to be informed of the specific charge made against them, and it must be sufficiently explicit and definite to enable them to prepare their defense and present their evidence, and, further, to enable them, in any future prosecution for the same offense, to make the plea of *autrefois acquit* or *autrefois convict*. * * * It is not sufficient for the grand jury to allege that the contents of the paper are too obscene to be spread upon the records, and omit every means of identification. Surely, the objectionable matter can be described or identified in some way without giving offense to the court, or defiling its records with scandalous and indecent matter. The date of the paper, the title of the article, or its general tenor and purport, couched in decent language, would serve to make the charge definite and certain."

In *U. S. v. Clarke*, 40 Fed. 325, an indictment under this statute was held sufficient upon motion in arrest of judgment. But, in addition to the fact that the objection was made after judgment, it appeared that the defendant craved oyer of the paper before trial, and the court compelled the district attorney to produce and file the same for the defendant's inspection some days before the trial. Moreover, there was not an entire failure in that case, as in this, to describe the obscene writing in question. The paper was described as "a publication of an indecent character, beginning with the words following, to wit: 'As long as there is life, there is hope.'" In that case the court said:

"An allegation that a publication complained of is too indecent to be spread on the record merely obviates the necessity of setting out the contents of the publication in full, as would otherwise be required. It does not excuse the pleader for wholly omitting to describe it, or for describing it in language too general to advise the accused what particular publication or paper is intended."

These views are sustained in *Com. v. Wright*, 139 Mass. 382, 1 N. E. 411, and in *People v. Hallenbeck*, 52 How. Prac. 502, where statutes in terms like the one in question were under consideration.

In this case there is no attempt to describe the letter or writing upon which the charge is founded. It does not appear that this paper was without an address or signature or date. These are all means of identification. Even the absence of such features from the writing might aid in distinguishing it from other writings. The purport or meaning of a writing, however obscene, is capable of explanation in decent language, or at least of some explanation that will suffice to establish its identity. The demurrer is sustained.

ALLINGTON & CURTIS MANUF'G CO. v. BOOTH.

(Circuit Court, D. Vermont. March 4, 1896.)

1. PATENTS—PRELIMINARY INJUNCTION AGAINST USER.

The prosecution of a suit against the manufacturer to an opportunity of appeal by the defendant, which is declined, is sufficient diligence to warrant the granting of a preliminary injunction in a suit against a user, especially where the patent has been sustained in other suits on final hearing.

2. SAME.

The fact that defendant is only a user is not sufficient to defeat a motion for a preliminary injunction, for infringement by a user may be as irreparable as any. *Birdsell v. Shaliol*, 5 Sup. Ct. 244, 112 U. S. 485, followed.

This was a suit in equity by the Allington & Curtis Manufacturing Company against J. R. Booth for alleged infringement of a patent. Plaintiff has moved for a preliminary injunction.

Albert H. Walker and C. K. Offield, for plaintiff.
Geo. B. Parkinson, for defendant.

WHEELER, District Judge. This cause has been heard on a motion for a preliminary injunction against infringement of several patents for improvements in dust collectors. They have been sustained on final hearing in the circuit court for the Northern district of Illinois by Judge Grosscup (*Knickerbocker Co. v. Rogers*, 61 Fed. 297), and in the circuit court for the district of Connecticut by Judge Townsend (*Manufacturing Co. v. Lynch*, 71 Fed. 409); and no appeal has been taken, as there might have been.

The principal objections to the motion are that the defendant is a user, and a suit against the manufacturer is not diligently prosecuted, and that the plaintiffs are not in danger of irreparable injury. The prosecution of a suit to an opportunity of appeal by the defendant, which is declined, seems to be sufficient diligence towards those defending that suit, as here; and infringement by a user may be as irreparable as any. *Birdsell v. Shaliol*, 112 U. S. 485, 5 Sup. Ct. 244. The defendant should be as diligent in taking an appeal as the plaintiff should be in prosecution, to have an injunction stayed for ultimate decision; and compensation in damages may fall far short of equaling preventative relief.

The plaintiff has offered to replace the collectors used by the defendant for \$1,600, deposited in court to abide the event of the suit, or to license the use of them for \$1,200. In view of these offers, the deposit of \$1,200 as a license fee, to abide such event, would seem equitable in place of an injunction. Unless \$1,200 is deposited in court within 10 days, to abide the event of the suit, as a license fee, let an injunction then issue, as prayed.

WILGUS v. GERMAIN et al.

(Circuit Court of Appeals, Ninth Circuit. February 10, 1896.)

No. 223.

1. ESTOPPEL BY RECORD—STOCKHOLDER OF CORPORATION.

Upon the trial of an action against G., N., and M., as copartners, for damages for the infringement of a patent,—one of the defenses being anticipation by a prior patent to one C., the plaintiff offered in evidence the records of two actions brought by him against two several corporations, in one of which the defendant G., and in the other the defendant N., was a stockholder. It appeared that G. and N. were present, testified, and took leading parts in the trials of such actions; that the actions were brought against the corporations for infringement of the plaintiff's patent