

judgment the decided preponderance of proof is on the side of the plaintiff in this matter.

Having regard, then, to the adjudication by Judge Townsend, a presumption in favor of the validity of this patent should prevail. I think, at this stage of the present case. It is true that this particular defense was not raised in the Winchester Avenue Railway Case. The very omission, however, is significant. That was a warmly-contested case, and it is improbable that this defense would have been overlooked, had the fact been that an openly used, anticipatory construction was in operation at the Daft works, in Greenville, in 1881 and 1882. It is noteworthy that Leo Daft was a witness for the defense in the Winchester Avenue Railway Case.

Infringement by some of the defendants seems to be clear. I do not understand that this is denied as respects the Steel Motor Company. The moving papers justify the conclusion, I think, that the Johnson Company, of Pennsylvania, is involved in the infringement, and also R. T. Lane, by reason of his official connection with these companies. A preliminary injunction will therefore be granted against these three defendants. Let such a decree be drawn.

THOMSON-HOUSTON ELECTRIC CO. v. UNION RY. CO. et al.

SAME v. NEW YORK, E. & W. P. RY. CO. et al.

(Circuit Court, S. D. New York. May 30, 1896.)

PATENTS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Preliminary injunction granted, on the strength of prior decisions, against the infringement of the Van Depoele patent, No. 495,443, for traveling contacts for electric railways.

These were two suits in equity, brought by the Thomson-Houston Electric Company against the Union Railway Company and others, and the New York, Elmsford & White Plains Railway Company and others, respectively, to restrain the alleged infringement of the Van Depoele patent, No. 495,443, for traveling contacts for electric railways. The cause was heard on motion for a preliminary injunction.

Frederic H. Betts, for complainant.

William C. Witter and George H. Lothrop, for defendants.

LACOMBE, Circuit Judge. The patent has been adjudicated in this circuit, and the claims declared on have been sustained. The defendant in that suit has acquiesced in the validity of the patent, and taken licenses. The validity of the patent is not assailed here, and the manufacturer of the very trolleys operated by defendants in both these suits, the Nuttall Company, has itself conceded validity, and taken licenses. The situation, therefore, is closely analogous to that in Campbell Printing-Press & Manuf'g Co. v. Manhattan Ry. Co., 49 Fed. 930. Ten cars now in use on the Union Railway and four cars on the White Plains road have, or had, the

Nuttall trolley, and, as it is not entirely clear upon the papers but what defendants may be able to show that these particular trolleys are within the provisions of the license given by complainant to the Nuttall Company, it seems unnecessary at this stage of the case to interfere with these fourteen cars. Complainant, however, may take an injunction forbidding the defendant railways from hereafter using any infringing combination covered by the claims specified (except such as may now be in use on the fourteen cars), unless they show that such infringing combinations have been manufactured and sold under license from the owner of the patent.

THOMSON-HOUSTON ELECTRIC CO. v. H. W. JOHNS MANUF'G CO.
et al.

(Circuit Court, S. D. New York. June 8, 1896.)

PATENTS—INFRINGEMENT—PRELIMINARY INJUNCTION.

Preliminary injunction granted, on the strength of prior decisions, against the infringement of the Van Depoele patent, No. 424,695, for a trolley frog or switch.

This was a suit in equity by the Thomson-Houston Electric Company against the H. W. Johns Manufacturing Company and H. W. Johns, R. H. Martin, and Charles H. Patrick, individually and as officers of the H. W. Johns Company. The cause was heard on motion for preliminary injunction.

Frederic H. Betts, for complainant.

Edmund Wetmore, for defendants.

LACOMBE, Circuit Judge. The complainant may take injunction restraining the making or sale of any trolley frog or switch devised or intended to be used in infringement of such claims of the patent sued upon as were sustained by the court of appeals. It is not intended, however, to enjoin against the sale of trolley frogs or switches by way of replacement of broken frogs or switches, or such as are worn out by use, or of substitution for trolley frogs or switches previously sold by the owner of the patent to purchasers from it. Defendants, however, must determine, at their peril, whether the purchaser buys to use for infringement, or only for legitimate repair; but this permission to repair does not give authority to reconstruct or rebuild a combination which has been sold by the owner of the patent. Injunction may run against the officers as well as the corporation defendant. Possibly, under the stimulus of an apprehended prosecution for contempt, they may familiarize themselves with the kind of goods their company is publicly advertising for sale, and thus infringement may be more satisfactorily checked than it would otherwise be.