

notice that contention. The testimony contained in the present record shows, we think, without contradiction, that the plaintiff was a bona fide holder, when the suit was brought, of at least five of the bonds which are involved in the present controversy, because it holds the title of Joseph Stanley, who was himself an innocent purchaser of said bonds, before maturity, for the price of 98 cents on the dollar. The rights which Stanley acquired by virtue of such purchase inure to the plaintiff, by virtue of its purchase of the bonds from Stanley in June, 1892, and this without reference to any knowledge which the plaintiff may have had at the latter date affecting the validity of the securities. A bona fide holder of commercial paper is entitled to transfer to a third party all the rights with which he is vested, and the title so acquired by his indorsee cannot be affected by proof that the indorsee was acquainted with the defenses existing against the paper. *Commissioners v. Clark*, 94 U. S. 278, 286; *Hill v. Scotland Co.*, 34 Fed. 208; *Daniel*, Neg. Inst. § 803, and cases there cited. The rights of the plaintiff with respect to the remaining five bonds, which it also purchased from Stanley, may be different, as Stanley appears to have received the remaining five bonds direct from the county of Gunnison, in exchange for warrants which he owned and held, instead of purchasing the bonds in the open market. Whether the plaintiff acquired the last-mentioned bonds under circumstances which constitute it a bona fide holder is a question which may require the consideration of a jury, and we shall not undertake to decide it on the facts preserved in the present record. The testimony above considered appears to have been admitted by the trial court on the assumption that it was competent, even as against a bona fide purchaser of funding bonds, for the purpose of impeaching the bonds; and, as we cannot concur in that view, the judgment of the circuit court must be reversed, and the cause remanded for a new trial. It is so ordered.

WEAVER v. NORWAY TACK CO.

(Circuit Court, E. D. Pennsylvania. September 15, 1896.)

1. IMPLIED CONTRACTS—PATENTS—PURCHASER FROM LICENSEE.

Where one purchases machines from a licensee of a patent and proceeds to use the same with knowledge of the facts and after notice from the owner of the patent that if he does so he will be held liable to make compensation for such use, an action may be brought by the owner of the patent upon an implied contract to recover such compensation.

2. FEDERAL COURTS—JURISDICTIONAL AMOUNT.

Where an action is brought upon a single agreement based upon the use of three distinct patents, it is unimportant for the purpose of giving jurisdiction of the suit that the sum claimed to be due on any one of the patents does not exceed \$2,000, provided that the total sum claimed upon all three patents does.

This was an action of assumpsit in which the plaintiff's statement of claim disclosed the following state of facts:

The plaintiff being the owner of three patent rights for improvements in the manufacture and bluing of tacks entered into an agreement with the Pennsylvania Tack Works, whereby he sold to that company the right to employ

the devices and processes specified in his patents in consideration of the payment to him of a certain yearly royalty for the use of each patent. This agreement was carried out until the dissolution of the Pennsylvania Tack Works in 1886. In 1891 the defendant company came into possession of the former plant of the Pennsylvania Tack Works, which at that time contained various devices, built in accordance with the specifications of the three patents belonging to the plaintiff. The plaintiff informed the defendant of his rights concerning the same and gave the defendant notice that if it employed these devices the plaintiff would consider that it accepted the same terms as those which had existed between him and the Pennsylvania Tack Works prior to its dissolution. The defendant continued to employ the devices and processes referred to, and the plaintiff brought suit to recover \$3,218.02, being a sum equal to the amount of the royalties which the plaintiff would have been entitled to receive for the use of the three patents under the agreement previously existing between him and the Pennsylvania Tack Works.

To this statement a demurrer was taken by the defendant on the ground that:

(1) The statement did not aver that there was any contract actually entered into between the parties nor any facts from which such a contract might be implied; (2) it did not disclose any facts tending to show any liability on the part of the defendant for the alleged contract or engagement of the Pennsylvania Tack Works; and (3) since it appeared from the statement that each of the three distinct causes of action involved an amount of less than \$2,000 in value this court had no jurisdiction of the subject-matter.

Ingham & Newitt, for plaintiff.

Hector T. Fenton, for defendant.

BUTLER, District Judge. As the court understands the plaintiff's statement the demurrer cannot be sustained. The suit is founded on an alleged implied contract for the use of several machines covered by distinct patents. The defendant was not a licensee; but having purchased the machines from one who was, he proceeded to use them with knowledge of the facts and after expressed notice, that if he did so he would be held liable to make compensation for such use. The reference in the statement to contracts with the former licensee and to the notice, is made by way of inducement, and to strengthen, the implication in favor of the contract sued upon. This latter contract is similar in all respects to such as arise where one uses a patented machine without authority and with knowledge of the facts. I do not think the statement is liable to any other construction than that just stated. That the plaintiff so understands it, is made plain by the following language taken from his brief:

"The contracts between the plaintiff and the Pennsylvania Tack Works are not the foundation of the claim against the defendant but are set up as inducement only."

In the defendant's brief it is said:

"If the defendant used the machine and if the patents are valid the plaintiff may have a right of action for the infringement in which the measure of damages would perhaps be the license price paid by the Pennsylvania Tack Works or other licensees if there are any, but it is obvious on reading the statement that no facts are alleged from which a contract can be implied."

We think the cause of action set out is substantially the one just described and that all facts necessary to justify an implication of a contract to pay for the use are sufficiently averred. The claim is not