A. B. DICK CO. v. HENRY.

(Circuit Court, S. D. New York. July 5, 1898.)

INJUNCTIONS IN PATENT CASES—VIOLATION—PUNISHMENT.

A defendant knowingly violating an injunction is not to be excused from punishment on the ground that the few dollars to be earned by selling the infringing article constituted too strong a temptation to be resisted; his circumstances being such that he finds it difficult to make a living.

This was a suit in equity by the A. B. Dick Company against Sidney Henry for infringement of a patent. The cause was heard on motion to punish the defendant for contempt in disobeying a decree for perpetual injunction.

Richard N. Dyer, for complainant.
Sidney Henry, per se.

LACOMBE, Circuit Judge. This is a peculiarly disagreeable motion to deal with, as, indeed, are all such where defendants do not appear by counsel, and appeal to the mercy of the court with some pitiable story of necessity. It seems necessary, however, to vindicate the process of the court, since violation of its injunction seems to be growing more frequent. The defendant once before violated this same injunction, and, upon being brought up upon proceedings to punish for contempt, appeared without counsel, and represented that he supposed some decision in another cause concerning the same patent left him free to infringe. His ignorance of the law was taken as an excuse. He was cautioned, and sentence suspended. Now it appears that he has again, and this time knowingly, infringed. His only excuse is that the few dollars to be earned by selling the infringing article were too strong a temptation to be resisted; his circumstances being such that he finds it difficult to make a living. Of course, this is no excuse; and, unless the obligation of its decrees is enforced, the court itself will soon be in contempt. Complainants are as much entitled to consideration as are defendants, even though the complainant be—as defendant here urges in excuse for his conduct—a corporation. Consideration, however, will be given to the defendant's distressful condition in this particular case,—a measure of consideration which is not to be taken as a precedent. Indeed, where a copy of this opinion is served with the writ of injunction in future cases, complainant, in the event of subsequent violation, will be in a position to urge that individuals thus disobeying be fined and imprisoned to the full extent allowed. Let a warrant issue committing defendant for two days.

THOMPSON et al. v. N. T. BUSHNELL CO.

(Circuit Court, D. Connecticut. June 23, 1898.)

PATENTS—PRELIMINARY INJUNCTION—SAWS.

The Fowler patent, No. 328,019, for a saw to cut metal, with a tough pliable steel blade, highly tempered as to its teeth only, *held* valid and infringed.

This was a suit in equity by Henry G. Thompson and others against the N. T. Bushnell Company for alleged infringement of letters patent No. 328,019, issued October 13, 1885, to complainants as assignees of the inventor, Thaddeus Fowler.

John K. Beach, for complainant.
Phillipp, Phelps & Sawyer, for defendant.

TOWNSEND, District Judge. The parties herein are practically the same as in Thompson v. Jennings, 21 C. C. A. 486, 75 Fed. 572. In said action the decision of the circuit court which dismissed the bill was affirmed by the circuit court of appeals. The circuit court in its opinion held that the patent was valid, but that the defendant did not infringe. The circuit court of appeals held that, "unless the patent in suit can be limited so as to cover only a band saw or a hack saw, there appears to be no escape from the conclusions expressed in the opinion of Judge Lacombe in the court below. It cannot be thus limited, in view of its unequivocal language." In accordance with this suggestion, complainant filed a disclaimer so as "to include only hack saws and band saws." The issues herein relate to certain hack saws sold by defendant. I am satisfied, from the expert testimony and from demonstrations at the hearing and upon practical tests with said exhibits, that many of these saws unquestionably infringe the patent as construed by Judge Lacombe. "They are either hardened to the base line of the teeth, or so near it that the variance from the distinctive fractional tempering of the patent was trivial." It is immaterial that defendant claims said infringement is accidental. If, as it now contends, the saw of the patent in suit is impracticable, and the flexibility which results from the invention of the patent in suit is a disadvantage, the defendant will not suffer from the effect of an injunction which will operate to prevent its making such defective saws in the future, accidentally or otherwise. It is unnecessary now to discuss the elaborate and ingenious arguments of counsel as to the effect of the former judgment or of said disclaimer. The new evidence of alleged prior use is not only discredited by the failure to produce exhibits and by its antiquity and indefiniteness, but because it fails to show that by these uses the new results of the new invention of the patent in suit were produced. Let a decree be entered for an injunction and an accounting.