

defendant in the suit at bar manufactured the types of controller designated "B 1" and "B 2" in the original suit against the West Hartford Railroad, decided by Judge Townsend, and which types were both held to be infringements of the claims specified. *Electric Car Co. v. Hartford & West Hartford R. Co.*, 87 Fed. 733. It appears that defendant has equipped 10 cars of the Union Railway in this district with controllers of the type "B 2," and it concedes that, as to those, it is to be expected that this court, following Judge Townsend, will grant preliminary injunction. Forty other cars of the same road, however, have been equipped with a modified type of controller, designated "S," and as to these defendant contends that it does not infringe. In this suit, as in the others, there have been prepared diagrammatic representations of the interrelations of motors, coils, and resistances in the several types of controller. Comparing the "S" type with the "B 2" type already held to be an infringement, it will be seen that in the combination of motors and dead resistances they are substantially alike. Indeed, the "S" type more nearly approaches the description of the patent than do some of the types shown in the Nassau Case, for resistances are cut in before the beginning of change from series to multiple, remain in until that change is completed, and are then gradually cut out.

As will appear from the opinion in the West Hartford Case, the original invention of the patent in suit was supplemented in practice by a magnetic blow-out to prevent sparking, using the original device to regulate the current. Defendant in that suit used a non-infringing "arc-spanner" to prevent sparking, but nevertheless was held to infringe, since it still used the device of the patent in suit to regulate the current. The "S" type seems to use this device for the same purpose, and I am unable to perceive that defendant escapes infringement by supplementing it with a solenoid instead of an arc-spanner. Taking the opinion in the West Hartford Case as a correct construction of the patent, the "S" type would seem to be more clearly an infringement than are some of the types in the Nassau Case. Injunction may issue. Inasmuch, however, as in the Nassau Case its operation was suspended until one month after the opening of the next session of the court of appeals, in order to give defendant an opportunity to secure a review of Judge Townsend's opinion in the West Hartford suit, if so advised, a like suspension will be accorded here.

UNITED STATES MITIS CO. v. CARNEGIE STEEL CO., Limited.

(Circuit Court, W. D. Pennsylvania. July 30, 1898.)

1. PATENTS—INFRINGEMENT—LIABILITY FOR DAMAGES AND PROFITS.

Rev. St. § 4900, does not apply to the case of a patent exclusively for a process, nor in any case unless the plaintiff has made or sold the article patented.

2. SAME—SUFFICIENCY OF NOTICE.

An allegation in a bill that defendant infringed a patent after "full notice" of plaintiff's exclusive rights thereunder, if not denied, is sufficient to entitle plaintiff, on recovery, to damages and profits.

Sur Objection by Defendant to the Form of Proposed Decree.

The decree is for infringement of letters patent No. 333,373, to Carl G. Wittenstrom, for improvements in the process of manufacturing castings from wrought iron and steel, by adding aluminum. The averment of infringement in the bill is as follows: "Yet the defendant, well knowing the premises, and after full notice of your orator's exclusive rights under said letters patent, has, within said district, and elsewhere within the United States and territories, and since the said 25th day of May, 1886, without the license of your orator, and to its great damage and injury, unlawfully used the improvements patented in said letters patent, and has thereby infringed upon your orator's exclusive rights in the premises." The answer denies infringement, but does not deny the notice, or in any way meet that portion of the averment of the bill. Objections to decree by defendant: "That plaintiff is not entitled to recover damages or profits, for the reason that said plaintiff has not set forth in its bill of complaint, nor does it allege, that it gave notice to said defendant, before bringing suit, of the issue and date of said patent, and of the fact that they were infringing the same, and that the defendant continued such infringement after such notice, in pursuance of the provisions of section 4900 of the Revised Statutes of the United States."

Jos. C. Fraley, for complainant.

Bakewell & Bakewell, for defendant.

ACHESON, Circuit Judge. Section 4900 of the Revised Statutes is not applicable here. The patent in suit is exclusively for a process, and therefore the case is not within either the letter or the spirit of section 4900. Even in a case where the patent is within the purview of section 4900, its provisions apply, as against the plaintiff, only "if he makes or sells the article patented." *Dunlap v. Schofield*, 152 U. S. 244, 247, 14 Sup. Ct. 576; *Campbell v. Mayor, etc.*, 81 Fed. 182, 184. Moreover, the bill here alleges that the defendant acted "after notice of your orator's exclusive rights under said letters patent," and this is not denied in the answer. Finally, upon any view, this defendant would be answerable for damages and profits for infringements persisted in after suit brought. The objection to form of decree is overruled.

THE THREE FRIENDS.

(Circuit Court of Appeals, Fifth Circuit. May 10, 1898.)

No. 616.

ADMIRALTY PLEADING—LIBEL OF FORFEITURE.

An answer to a libel of forfeiture for violation of the neutrality laws construed, and held not to contain an admission that the vessel was fitted out and armed within the jurisdiction of the United States, as averred in the libel.

Appeal from the District Court of the United States for the Southern District of Florida.

This was a libel of forfeiture filed by the United States against the steamer *Three Friends* for alleged violation of the neutrality laws. The cause was heard in the district court on a motion by the claimants for permission to give a release bond, and on exceptions to the libel. 78 Fed. 173, 175. Thereafter a hearing was had upon the testimony, and the court (LOCKE, District Judge) rendered the following decision: