
The Troy Iron and Nail Factory v. George Odiorne et al.

I admit that, after the completion of her first voyage, and after the arrival of the vessel at San Francisco, and she had then entered upon the coasting trade between ports on the Pacific, cases may be put where a cargo might not be subject to a lien; and others, where the libellant would find embarrassment in enforcing one. But this case involves no difficulty. And to allow the lien, will be, in my opinion, a consistent application of familiar and well-settled principles of commercial law.

I am authorized to say, Mr. Justice GRIER concurs in this opinion.

Order.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court, affirming the decree of the district court in this cause, be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said circuit court, with directions to dismiss the libel filed in this cause in the said district court, with costs.

*72] *THE TROY IRON AND NAIL FACTORY, APPELLANT,
v. GEORGE ODIORNE, JR., AND FRANCIS ODI-
ORNE.*

A machine for making hook-headed spikes was constructed in Boston, prior to the 18th of April, 1839, and therefore not within a patent for a machine for a similar purpose which Burden applied for on that day.

THIS was an appeal from the circuit court of the United States for the district of Massachusetts, sitting as a court of equity.

It was a bill filed by the Troy Iron and Nail Factory, a manufacturing corporation established in the state of New York, to restrain the Odiornes from infringing certain letters-patent granted to Henry Burden, on the 2d of September, 1840, and by him assigned to the complainant.

The respondents filed an answer, taking various grounds of

* Mr. JUSTICE CURTIS, having been of counsel, did not sit in this cause.

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defense, which it is not necessary, under the circumstances of the case, to particularize. At October term, 1851, the following stipulation was signed by the parties, and filed in the cause:—

The defendants agree not to deny the validity of the complainants' patent, provided they make out their title to the said letters-patent to be good.

They also agree not to deny that the machine complained of in the complainants' bill, is an infringement on the patent granted to H. Burden, on August 4, 1840. [Sept. 2.]

If the complainants shall establish their title to the letters-patent aforesaid, the proper decree may be entered for the complainants, unless the defendants shall prove that the spike machine used by them, and complained of in the bill aforesaid, was constructed prior to the alleged application of H. Burden, made April 18, 1839, for letters-patent therefor, according to the provisions of the statute of the United States, 1839, ch. 88, sec. 7; or was the result of an independent, original invention, prior in time to the invention of the said Burden; in either of which cases the proper decree shall be entered for defendants.

C. P. CURTIS, JR., *Plaintiff's Attorney.*

J. A. ANDREW, *for Defendants.*

Much testimony was taken upon the subjects involved, and in December, 1852, the circuit court dismissed the bill.

From this decree, the complainant appealed to this court.

The case was argued by *Mr. George T. Curtis*, for the appellants; no counsel appearing for the appellee.

The argument upon the point upon which the court rested its decision, consisted of an examination of the evidence bearing upon it, which it is not necessary to state.

*Mr. Justice CATRON delivered the opinion of the court. [*73]

Henry Burden obtained a patent, in 1840, for a machine to make hook-headed spikes. He applied for the patent on the 18th of April, 1839. It was assigned to the Troy Iron and Nail Company, who filed a bill against the Odiornes, to enjoin them, and for an account for using a machine to make similar spikes; and which machine, it is alleged, infringed the monopoly secured to Burden, by his patent of 1840. The case was brought to a hearing on the following stipulation:—

“The defendants agree not to deny the validity of the com-

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plainant's patent, provided they make out their title to the said letters-patent to be good.

"They also agree not to deny that the machine complained of in the complainant's bill, is an infringement on the patent granted to H. Burden, on August 4, 1840.

"If the complainants shall establish their title to the letters-patent aforesaid, the proper decree may be entered for the complainants, unless the defendants shall prove that the spike machine used by them, and complained of in the bill aforesaid, was constructed prior to the alleged application of H. Burden, made April 18, 1839, for letters-patent therefor, according to the provisions of the statute of the United States, 1839, ch. 88, sec. 7; or was the result of an independent, original invention, prior in time to the invention of the said Burden; in either of which cases the proper decree shall be entered for defendants."

The only question presented for our consideration on the stipulation, is, whether the machine employed by the appellees was constructed prior to the 18th of April, 1839, when Burden made application at the patent office, for his patent.

The machine complained of was built by Richard Savary, for the Boston Iron Company, in the spring of 1839, and obtained, by the appellees, by assignment. Savary was the patentee of a machine to make ship and boat-spikes, and, at the suggestion of the agents of the Boston Iron Company, added an attachment of an apparatus to make a hook-head to spikes; the process for making which, Savary deposes, he discovered in August, 1838. The time at which this apparatus was attached to the machine (substantially complete in its operative parts), is the time when the machine complained of was "constructed," in the sense of the stipulation; it not being necessary that the machine should be geared and doing work. We are satisfied that it was set up, and substantially finished, before the 18th of April, 1839, and, therefore, order the decree below to be affirmed.

*74]

** Order.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the district of Massachusetts, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.