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Johnson Vs. Sheen and anr.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1880)ILR2All384

Judge : Robert Stuart, C.J. and ;Spankie, J.

Appellant : Johnson

Respondent : Sheen and anr.

Judgement :

Robert Stuart, C.J.

1. In this case the plaintiff, Percy Bilton Johnson of Allahabad, the assignee of Eichard Johnson's patent for making thermantidotes taken out in 1870 under Act XV of 1859, instituted a suit in the Court of the District Judge of Allahabad in which he alleged that the defendants, Bradley and Sheen, had at divers times since the 1st September 1875 infringed his patent, and that they, or one of them, had, without plaintiff's license, at Allahabad and elsewhere, publicly advertised for sale under the name of 'Sheen's new improved self-working patent thermantidotes' which, it was complained, were dishonest infringements of the plaintiff's patent rights, and he claimed Rs. 1,000 as compensation for such infringement with interest to date of decree. The plaintiff further prayed for an injunction to restrain the defendants or either of them from thereafter making, selling, or advertising, under any name whatever, thermantidotes of the kind described and known as '

Johnson's patent thermantidotes,' and from otherwise infringing the plaintiff's exclusive rights and privileges under his patent.

2. The peculiarity of the thermantidote covered by the patent was shown chiefly by the manner in which the frame-work of the machine and the wheel used in its operation were made. There were other peculiarities, one a telescopic slide for, if necessary, diverting the breeze, and there was also attached to the machine a self-watering apparatus. The defendants, in their written statement, denied the alleged infringement of the plaintiff's patent, and 'they pleaded that the parts of the patented machine in respect of which infringement by them was alleged were not new, inasmuch as the defendant Sheen had actually used in India a thermantidote with the same frame-work and driving (or wheel) arrangement as that for which Richard Johnson had obtained his patent, 'before the said Richard Johnson filed his petition for leave to file a specification thereof,' i.e., before 1870, In 1875, shortly before the infringement of the plaintiff's patent, which was alleged to have commenced in September of that year, the defendant Sheen had filed a specification for an 'improved method of wetting and working khas tatties on thermantidotes and other apparatus for cooling houses, dwellings, offices, &c;, and he obtained a patent for this invention. The plaintiff's case suggests that the defendants took advantage of their bringing out Sheen's patent, which related solely to a watering apparatus, by connecting it with their construction of the thermantidotes which they then began to make, and which in all other respects were alleged by the plaintiff to have been infringements of his patent; and this appears to me to be fairly shown by the evidence. The plea or excuse that the defendants had previous to 1870 constructed and sold thermantidotes identical in form and contrivance with that for which the plaintiff had obtained his patent in the same year is wholly unsupported, if not disproved, by the evidence on the record. It appears to rest entirely upon the statement that in 1869 the defendants had supplied the Masonic Lodge in Allahabad with a thermantidote, but which evidently had been of a totally different kind from that made under the plaintiff's patent, for it was evidently of an old-fashioned and very clumsy pattern. One of the carpenters who assisted in making it in 1869, by name Sukhdan, states that he had never made one before nor since, and that it was of mango wood, and another witness, Mr. R.F. Castellari, describes it as a common bazaar one. He says: 'When the

Lodge was moved in 1874, there were two thermantidotes, one a common bazaar one of mango wood, and the other one of Johnson's patent thermantidotes: the bazaar one was of the old pattern in which the frame and wheel were separate from the body of the thermantidote': and he goes on to describe it as 'very old, in fact it was nearly in pieces * * * had been thrown aside as useless.' It is clear that there is no evidence of user by the defendants other than their making or getting made for them this clumsy and old-fashioned thermantidote which they supplied to the Masonic Lodge in 1869. The transaction, or gift, or whatever it was, was in truth a merely isolated affair, being in fact neither preceded nor followed by anything of a similar kind. The attempt, therefore, to show any user by it on the part of the defendant is simply absurd. Of the fact of the infringement by the defendants of the plaintiff's patent rights there can be no doubt whatever, in fact it is not seriously disputed. Mr. Johnson, the original patentee, appears to have acted in a very straightforward manner towards the defendants, after having satisfied himself that they were manufacturing machines covered by the patent which he had obtained in 1870, and with much consideration for them, as the following letter addressed by him to Mr. Sheen on the 16th March 1877 shows: 'I must ask you to make such arrangements in your thermantidote this year as do not infringe on my patent, same as the ones you manufactured last year do: should you desire to use any portion of my patent in your machine, I shall be glad to arrange with you for the royalty to be paid for its use: you will see by reference to my specification and drawings in the patent office, or with me any time you may call, when I shall be glad to see you, that your's of last year infringes upon my patent rights: it is not only the watering apparatus, but the general arrangement of the framework and fly-wheel, with other improvements, that are included: if you call in for a few minutes some morning, I am sure we can amicably arrange all.' In reply he received the following most evasive letter from Sheen: 'I beg to acknowledge receipt of your letter of the 16th ultimo, and in reply can only refer you to the provisions of Act XV of 1859, under which my patent was registered, entitled. An Act for granting exclusive privileges to inventors,' which you appear to have overlooked in addressing me on the subject of my thermantidotes: I should have sent you a reply earlier, but domestic and other matters fully occupied my time.' It will be remembered that Sheen's patent related exclusively to the watering

apparatus and had nothing whatever to do with his thermantidotes in any particular. Indeed, I consider it my duty to state that in my judgment the defendants' conduct throughout has been most disingenuous and fully deserves the consequences they must now face. There is on the facts no escape from the conclusion that they have deliberately infringed the plaintiff's patent, and the plaintiff is entitled to a decree accordingly, and so far I approve the Judge's order. The plaintiff is also entitled to damages and to the injunction he seeks against the defendants.

3. In regard to damages we do not understand what the Judge means when he says that the amount of damages will be more conveniently ascertained at the time of the execution of the decree. The Judge held, and we agree with him, that the plaintiff was entitled to damages. These must be in the first instance assessed, and when so determined they will form part of the decree and will be recoverable in course of execution, if not otherwise and previously settled. The damages might be assessed in this Court, but we think it more convenient that this should be done by the Judge, and we therefore remand the case to him for that purpose, with directions that he will make an immediate and peremptory appointment for hearing the parties and for his finding on that question, and that he will return the record to this Court with such finding within a week from the date of this order. In assessing the damages the Judge will be guided by the royalty which the plaintiff has been accustomed to be allowed on sales of his patent thermantidotes; and in order to ascertain that, he should examine the plaintiff and any other witnesses who may be named to the Judge as having knowledge on the subject. On receipt of the Judge's findings assessing the damages three days will be allowed for objections.

Spankie, J.

4. P.B. Johnson, the plaintiff, respondent, as assignee of a patent granted to Richard Johnson under Section 4* of Act XV of 1859, whereby he acquired the sole and exclusive privileges of making and using and selling an invention for the improvement of thermantidotes for a period of fourteen years, sues the defendants, Sheen and Bradley, for damages to the amount of Rs. 1,000, as compensation for an infringement of the patent so granted to Richard Johnson, in

making and selling thermantidotes constructed with the same framework and driving arrangement as that for which the patent was given to the said Richard Johnson. The plaintiff also prayed that defendants might be restrained in future from making, selling, or advertising, under any name whatever thermantidotes of the kind described and known as Johnson's patent thermantidotes, and from all infringement of the patent of any kind whatsoever.

5. The defendants contended that Richard Johnson's invention was not a new one, the improvements patented having been in use in different parts of the country, and having been used by Sheen himself, who made in 1869, prior to the filing of any specification, a thermantidote on the same principle as that patented by Richard Johnson, and presented the same to the Masonic Brother-hood of the Lodge of Independence and Philanthropy, No. 391, in Allahabad. The defendants, Bradley and Sheen, were in partnership together in 1875, and it is not denied that they made thermantidotes, whilst the partnership lasted, on the same principle with regard to frame-work and driving arrangement as that which Sheen says that he used in 1869. Bradley contends that when the partnership was dissolved in August 1877, he had the right to make such thermantidotes, because Sheen had transferred to him all his (Sheen's) rights and interests in the manufacture of thermantidotes. The Judge has held that there cannot be any doubt that defendant Sheen had made a thermantidote on the plaintiff's patented principle in April or May, 1869, which thermantidote he (defendant) presented to the Free Masons' Lodge. 'It is impossible.' the lower Court observes, 'to reject the testimony of such a witness as Mr. Shircore on this point: he swears that he distinctly recollects a vote of thanks having been accorded on the occasion to Sheen at a banquet held in the Lodge: I attach little weight to the fact of presentation by Sheen not being found recorded in the proceedings of the Lodge: the evidence shows that if it was presented to the banquet-room the fact could' (or would) 'not be recorded: Mr. Shircore says that the thermantidote was presented immediately after Sheen had been made a member of the Lodge, and this is proved to have been in March 1869: there is no reason, moreover, for rejecting the evidence of the witnesses who swear that they made the thermantidote and took it to the Lodge.' But the real point in the case, as it occurred to the Judge, was whether the making of the thermantidote and its presentation to the Lodge amounted to a 'public or actual'

user such as that contemplated by Section 23 of Act XV of 1859, so as to entitle the defendants to plead that the invention was not a new one. Citing the case noted Plimpton v. Malcolmson L.R. 3 Ch. 531, he (the Judge) had to determine whether the user was of a kind which made the invention known to the public at large, the word 'known' being used in that particular sense as being part of what is called the common or public knowledge of the country. If the user has not been of that kind, the person using, although in reality he may have been the actual inventor, will not be the legal inventor as against the patentee. With this principle before his mind the Judge came to the conclusion that the presentation of the thermantidote on a certain improved principle to a private body of people like the Free Masons' Lodge for private uses did not constitute a 'public or actual' user of the kind the law contemplates. The lower Court remarks that with the verandah of the Free Masons' Lodge the invention stopped, probably nobody but Sheen himself knew of the existence of the invention. The public had no opportunity afforded them of knowing that there was a useful invention in the thermantidote in the Free Masons' Lodge of which they could avail themselves if they liked. This point the Judge proceeds to insist on with various arguments, which it is unnecessary to reproduce here, coming to the conclusion that Sheen adopted a new invention and then kept it to himself. He did not even impart the invention to the persons to whom he presented the thermantidote, and as far as the public were concerned they were kept in profound ignorance of the invention. Such a party, remarks the Judge, has no right to plead to an action for infringement of patent that the invention of the patentee was not a new invention. As far as the party pleading to the action is concerned, the patantee is the real and actual inventor, for the party pleading does not say that he himself was the inventor. With this view of the case the lower Court decreed the claim, but reserved the amount of damages to be ascertained at the time of execution of the decree.

6. The defendants appeal the whole case, and plaintiff objects that the judgment is silent regarding costs, and he is also entitled to the costs of the injunction proceedings. The defendants urge (i) that on the evidence on the record the Judge should have found that C.J. Sheen had 'publicly used' in India, in Allahabad, the invention which plaintiff claims to have been his assignor's, and, therefore, plaintiff was not entitled to a decree; (ii) that on the evidence on the record the lower Court

should have found that defendant C.J. Sheen had 'actually used' in India, in Allahabad, the same invention; (iii) that the mode and the manner in which C.J. Sheen had used the thermantidote proved to have been made and constructed by him in March 1869, i.e., previous to the date of plaintiff's assignor's petition for leave to file the specification, was such as is contemplated by Act XV of 1859, and the Court below has erred in its interpretation of the words 'publicly or actually used' mentioned in the Act.

7. Under Section 19* of Act XV of 1859, an Act for granting exclusive privileges to inventors, an invention shall be deemed a new invention, within the meaning of the Act, if it shall not before the time of applying for leave to file the specification have been publicly used in India, or in any part of the United Kingdom of Great Britain and Ireland, or been made publicly known in any part of India, or in any part of the United Kingdom, by means of a publication, either printed or written, or partly printed or partly written. It is not necessary to quote the remaining portion of the section. All that is required for the purpose of this case has been cited.

8. The lower Court appears to have somewhat misapprehended the bearing of the precedent quoted by him Plimpton v. Malcolmson L.R. 3 Ch. 531. In that case the Master of the Bolls pointed out the legal sense and meaning of a first and last inventor, if the invention being in other respects novel and useful was not previously known in the United Kingdom, 'known' being used in that particular sense as being part of what had been called the common or public knowledge of the country, and by this common knowledge it was not meant that every individual member of the public knew of the invention. What is meant is that if it is a manufacture connected with a particular trade, the people in the trade shall know something about it: if it is a thing connected with a chemical invention, people conversant with chemistry shall know something about it, and he (the M.R.) adds that it need not go so far. It needed not to show that the bulk or even a large number of those people knew it. If a sufficient number knew it, or if the communication is such that a sufficient number may be presumed, or assumed to know it, that will do. It may be shown that the trade had commonly used it. That is the best evidence. It may be shown that it was published and made known to the public. It had been held in a modern specification which had been enrolled in the

Patent Office and not published besides, that will do. It had also been held that, as a common rule, if the description has been printed in England and published in England in a book which circulates in England, that will do. But after all it is a question of fact. The Judge must decide from the evidence brought before him whether it has, in fact, been sufficiently published to come within the definition of being made known within the realm.

9. We, however, are bound by the terms of our Act, and an invention by that Act is new, as we have seen, if it shall not before the time of applying for leave to file the specification have been 'publicly used' in India, &c.;, or 'been made publicly known' by means of a publication either printed or written, or partly printed and partly written, &c.; This definition answers the question how the invention is 'to be made publicly known' to people, and on this point no question arises here, and, therefore, the authority quoted has no bearing upon this case. Under Section 23 of the Act no action shall be defended upon the ground of any defect or insufficiency of the specification of the invention, nor upon the ground that the original or any subsequent petition relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, nor upon the ground that the invention is not useful, nor shall any such action be defended upon the ground that the plaintiff was not the inventor, unless the defendant shall show that he is the inventor or has obtained a right from him to use the invention, either wholly or in part. Any such action may be defended upon the ground that the invention was not new, if the person making the defence, or some person through whom he claims, shall before the date of the petition have publicly or actually used in India, or in some part of the United Kingdom, the invention or that part of it of which the infringement shall be proved, but not otherwise. This action has been defended under the last part of the section.

10. Now, the meaning of 'public use' is that a man shall not by his own private invention, which lie keeps locked up in his own breast, or in his own desk, and never communicates, take away the right that another man has to a patent for the same invention. The prior use of an invention need not be general. It has been held that a single instance of use would be sufficient, but it must be public. In the case of Carpenter v. Smith 9 M. and W. 300 Baron Alderson said that 'public use'

means a use in public, so as to come to the knowledge of others than the inventor, as contradistinguished from the use of it by himself in his chamber, and Lord Abinger said the public use and exercise of an invention means a use and invention in public, not by the public. Thus the Judge appears to have taken an erroneous view of the words 'publicly used' as applied to an invention. It does not at all follow that because the thermantidote was presented to the Free Masons' Lodge there was no public use of it. The Masonic brethren are alleged to have used it, and even on the assumption that the lower Court's interpretation of the words could be correct, inasmuch as the public had no opportunity of knowing that there was a useful invention in thermantidotes in the Free Masons' Lodge, of which they could avail themselves if they liked, the assumption itself is hardly borne out. There is certainly no evidence in favour of it, and I am unaware that the brethren of a Masonic Lodge are bound by any rule to be silent as to benefits they may have derived from a new and useful thermantidote, or that they could not, if they pleased, freely communicate to their neighbours, friends, and families a new invention that was entirely unconnected with the secrets and mysteries of Masonry. But the Judge has misconceived the meaning of use in public as distinct from use by a roan of his own invention in private.

11. I do not, however, think it necessary to dwell further on this point. The particulars of grounds on which defendants contended that plaintiff was not entitled to exclusive privileges, which they were bound to put in, are in effect that Sheen had himself manufactured and actually used in Allahabad in March and April 1869, a thermantidote with the same frame-work and driving arrangement, for which a patent was given to Bichard Johnson, before the specification was filed for the purpose of obtaining the patent; and further, that the principle on which the driving wheel was attached to the body was commonly known throughout the country. The terms of the Act (Section 23) are 'shall have publicly or actually used' the invention. If, therefore, it can be established that Sheen made and presented the thermantidote of the kind and with the arrangements described in the defence, he may be said both by himself and by the Masonic body to have actually used that thermantidote. When, however, we come to analyze the evidence, there does not appear sufficient proof of this defence. (After commenting on the evidence the learned Judge proceeded:) I hold, therefore, that it is very doubtful whether any

thermantidote was presented to the lodge by Sheen in 1869, and that, if any thermantidote was sent there by him, it was probably an old one which he had repaired, and further that there is no reliable evidence to show that when repaired it worked on the principle of Johnson's patent, or that if it did, it was ever used or at work in the banquet room of the Lodge, or anywhere else.

12. There is ample evidence to show, and, indeed, it is not denied, that defendants have since the 1st September 1875, and at the time of instituting the action, made and sold thermantidotes made on Johnson's patent in regard to their frame-work and driving arrangement, and that they have thereby infringed the exclusive privileges granted by the patent. I might, perhaps, close the case here as against the defendants. But it is right to mention that the defendants had desired to take the evidence of Ram Tahal, a blacksmith of Benares, of Shib Cham of Benares, of Mr. Smyth of Benares, and of Madho, a carpenter of Agra. The plaintiffs counsel objected to the record of this evidence because its admission was opposed to Sections 34 and 23 of the Patent Act. Section 34 requires that plaintiff shall deliver with his plaint particulars of the breaches complained of in his action, and the defendant shall deliver a written statement of the particulars of the grounds (if any) upon which he means to contend that the plaintiff is not entitled to any exclusive privilege on the invention. At the trial of any such action no evidence shall be allowed to be given in support of any alleged infringement, or of any objection impeaching the validity of such exclusive privilege, which shall not be contained in the particulars delivered as aforesaid. It is also specifically declared that 'if it be alleged that the invention was publicly known or used prior to the date of the petition for leave to file such specification, the place where and manner in which the invention was so publicly known or used shall be stated in such particulars : provided always that it shall be lawful for any Court in which the action or proceeding is pending, or in which the issue is tried, to allow the plaintiff or defendant respectively to amend the particulars delivered as aforesaid upon such terms as shall seem fit.' The Judge took the depositions of these witnesses, though at first he was disposed to reject them, as is clear from his rough notes of the proceedings. But he does not refer to the evidence in his judgment. Nor do I think that we should use it. The terms of the section are peremptory. Instances were cited to us showing from English cases that the plaintiff before trial should

have called upon defendants to supply the particulars required as to those places and the manner in which the invention was publicly known or used. But the act, though founded on the English statute, is accompanied by a different procedure; and though I do not mean to say that an application might not, perhaps, have been made on the subject to the Judge below, by what is called a miscellaneous application before the trial came on before him, I cannot say that it was incumbent on the plaintiff to make the application. The defendants might have done so, and, perhaps, ought to have done so, as in the particulars filed by them they simply say that at the time the thermantidote was manufactured, the principle on which the driving wheel was attached to the body was commonly known throughout the country, which was a very vague statement, and it does not in any way indicate that they relied on evidence in any particular place for corroboration of such a vague statement. Moreover, the defendants should have applied to the Judge at the trial if they wished to amend the particulars. This would have allowed the Judge to adjourn the case, and to enable the plaintiff to rebut the proposed evidence. Under the proviso the Judge certainly could have acted, but he was not asked to do so. I would not, therefore, interfere; nor do I think it necessary. The main defence is that Sheen himself made the thermantidote and used the same principles as Johnson did in 1869, and then presented the machine to the Lodge, which points he has failed to establish. Had the fact been so well known, and the use of the same principles so common throughout the country, the circumstances would have been stated in Sheen's letter and in the proceedings before Mr. Quinton, or surely in the grounds set out on the 10th June 1878.

13. I may, however, remark that I do not admit that there is anything in Section 23 which would forbid the record of, the desired evidence. The defendant, by that section must show that he himself had used the invention, but there is nothing which stays him, after that, from proving that it was in common use in particular places. There is one other point. The Judge refused to take Mr. Bradley's evidence, though he was present in Court. He ought to have taken it, if the defendants wished it. But their case was in no way prejudiced by his not having done so, and they do not refer to the matter in their memorandum of appeal.

14. As to damages, the Judge should not have left the amount to be determined at the time of execution of the decree. The defendants did not contend that plaintiff had not suffered damages, if there had been an infringement of his rights. They simply denied that there had been any such infringement as that complained of, nor did they question the amount of damages sought to be recovered.

15. It appears from the proceeding in the Court of Mr. Quinton, late Officiating Judge, dated 8th May 1878, that Johnson applied under Section 493* of the Civil Prooedure Code for a temporary injunction to restrain defendants from manufacturing, selling, or advertising thermantidotes, which he asserted were built in such a way as to infringe his patent. At this time the present suit had been tiled. But the Court refused to issue the injunction, because so far back as March 1877, Johnson was aware that defendants had infringed his patent, and correspondence had ensued, which closed abruptly in May with a curt letter from Sheen, and Johnson had taken no legal steps to vindicate his alleged rights. He lay back until the 24th April 1878, and then brings his suit, and filed an application for an injunction. The Judge accepting the rule laid down in the case of Bovill v. Crate L.R. 1 Eq. 388, held that a patentee, who lies by and allows a person to continue doing what he says is an infringement of his patent, cannot claim an interlocutory injunction to restrain this person. Mr. Colvin for the defendants had then stated that the defendants were quite ready to keep an account, and, therefore, the Judge issued an injunction to the defendants, ordering them to prepare an account of the manufacture and sale of the thermantidotes, which are said to infringe the patent, from the date of the institution of the suit. Plaintiff was directed to pay the costs of the application. The order was appealable under Section 588 of the Code, but Johnson did not appeal it. Ordinarily, the rule in Courts of Equity, as now in those of Common Law, is, when no interlocutory order has been given, to order, as part of the final judgment, an account of all the profits made by defendants since the commencement of the action, and after notice that an account would be required. Mr. Quinton appears to have given such a notice. If here damages are assessed the plaintiff would not be entitled to an account prior to the suit, for the damages would be compensation for his loss of profits up to the date of suit. The plaintiff has not asked in this suit, nor did he ask in his petition, dated the 24th April, for an injunction that an account should be taken. He has simply sought to

recover Rs. 1,000 damages. Under these circumstances, he may not be entitled to profits. The plaintiff is assignee to a manufacturer himself, and if he has been in the habit of licensing other persons to use his patent at a fixed royalty, then it may be that the loss of that royalty would be the proper measure of the damages sustained by him from the 18th September 1875 to date of decree Pernn v. Jack L.R. 5 Eq. 81; Galloway's Patent 7 Jur. 453. It does not appear what fixed royalty Johnson has charged, but he says in his letter of the 16th March 18W, to Sheen, that he would be glad to arrange with him for the royalty to be paid for the use of his invention. Perhaps the best course to adopt would be to remand the case to the lower Court for further inquiry, and to ascertain what sum Johnson or his father have been in the habit of taking as a royalty, and whether this royalty has been taken on each machine made, or a lump sum has been paid for the use of the patent. Having ascertained this point, the lower Court should take an account of the machines made by defendants between the 1st September 1875, and the date of the institution of the suit. If many machines have been made since, they should be taken into account, and the damages should be assessed according as it may be found what has been the royalty charged. On a return of the lower Court's finding on these points, we can dispose of the appeal and the objections of the plaintiff under Section 561. One week might be allowed for objections to the finding of the lower Court from the date of its return of the record. Or if the parties prefer it, we might ourselves make the inquiry suggested, and determine the point, though it would be more convenient for the Judge to do it.

16. I have, since writing as above, seen the Hon'ble Chief Justice's proposed order of remand, and I quite agree in the propriety of it. It will enable us to dispose of the appeal on receipt of the Judge's finding.

17. On receipt of the Judge's finding on the issue remitted, the Court delivered the following.

18. We have now received the finding of the Judge on the remand directed to him by our order of the 26th March, and there are no objections to the finding on either side. The Judge finds that the defendants made six of the plaintiff's thermantidotes in 1876, fifteen in 1877, and five in 1878, in all twenty-six. He is also of opinion,

upon the evidence taken before him, that where the thermantidotes manufactured by defendants exceed twenty in number, a royalty of Rs. 40 on each machine would be a fair charge. It would thus appear that that royalty charged on the twenty-six thermantidotes made by the defendants would produce a sum of Rs. 1,040. But as that is larger by Rs. 40 than the amount claimed, we reduce the sum accordingly, and assess the damages to be paid by the defendants to the plaintiff at Rs. 1,000, and we decree, that amount to the plaintiff and dismiss the appeal with costs in both Courts, but excepting the costs relating to the plaintiff's petition of objection, which petition we overrule, and we order that the plaintiff shall bear the costs thereof. Under the circumstances, it is unnecessary to make any order respecting the injunction asked for in the plaint.

----------Foot Note----------

*[Petitioner entitled to exclusive privilege for 14 years from the time of filing specification.

Extension of term of exclusive privilege.

Section 4: If, within the space of six calendar months from the date of such order, the petitioner cause a specification of his invention to be filed in manner hereinafter mentioned, the petitioner, his executors, administrators, or assigns, shall be entitled to the sole and exclusive privilege of making, selling, and using the said invention in India, and of authorizing others so to do, for the term of fourteen years from the time of filing such specification, and not exceeding fourteen years, from the expiration of the first fourteen years, as the Governor-General of India in Council may think fit to direct, upon petition to be presented by such inventor, at any period not more than on year and not less than six calendar months, before the expiration of the exclusive privilege hereby granted.]

*[An invention not publicly used or known in the United Kingdom or in India before the application for leave to file his specification to be deemed a new invention within this Act.

Knowledge of invention fraudulently acquired.

Proviso

Public use by inventor.

Section 19: An invention shall be deemed a new invention within the meaning of this Act, if it shall not, before the time of applying for leave to file specification have been publicly used in India or in any part of the United Kingdom of Great Britain and Ireland or been made publicly known in any part of India or of the United Kingdom by means of a publication, either printed or written or partly printed and partly written. The public use or knowledge of an invention prior to the application for leave to ledge of an invention prior to the application for leave to file a specification, shall not be deemed a public use or knowledge within the meaning of this section, if the knowledge shall have been obtained surreptitiously or in fraud of the inventor, or shall have been communicated to the public in fraud of the inventor or in breach of confidence; provided the inventor shall, within six calendar months after commencement of such public use, apply for leave to file his specification and shall not previously have acquiesced in such public use, provided also that the use of an invention in public by the inventor thereof, or by his servants, or agents, or by any other person by his license in writing, for a period not exceeding one year prior to the date of his petition, shall not be deemed a public use thereof within the meaning of this Act.]

*[Injunction to restrain repetition or continuance of breach.

Section 498: In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms at to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or Section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit and may pay the balance', if any, to the defendant.]

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