

6 Phil. 143

[ G.R. No. 1816. April 17, 1906 ]

**CARLOS GSELL, PLAINTIFF AND APPELLEE, VS. VALERIANO VELOSO YAP-JUE,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JOHNSON, J.:**

This was an action by the plaintiff to recover of the defendant damages for the infringement of a certain patent issued by the Spanish Government to the assignor of the plaintiff.

An examination of the evidence adduced during the trial shows that upon the 17th day of June, 1896, Henry Alfred Gsell presented a petition to the Spanish Government to be granted a patent for manufacturing umbrella and cane handles, which patent was as follows:

*“Descriptive statement which accompanies the application for patent of invention for the industrial product ‘handles for canes and umbrellas, curved by means of a small lamp my blowvpipe, fed by petroleum or mineral fuel.’*

“After the canes have been cut for cane or umbrella handles, the outsides are thoroughly cleaned. This operation having been performed, they are then trimmed and the interior cleaned by means of a gimlet of about fifteen centimeters in length operated by a wheel, by means of which the knots inside are broken. There is then introduced to a depth of about fifteen centimeters a piece of very clean bamboo, which completely fills the hole made by the gimlet, thereby giving to the, cane the necessary strength to resist the heat of the lamp or blowpipe without breaking or cracking.

“This operation having been performed, the cane, the end of which is attached to a fixed point, is given the shape of a hook or some other form by means of fire

and pressure. Once the cane has been shaped as desired, it is allowed to cool, and is then cleaned, varnished, and ornamented at will.

“This industry requires skillful handiwork, owing to the great risk engendered by the treatment of such fragile material as a light cane. On the other hand, however, it affords large profits to the workman.

“Note.—The patent applied for shall be for the industrial product ‘cane handles for walking sticks and umbrellas, curved by means of a small lamp or blowpipe, fed by petroleum or mineral fuel.’

“Madrid, June 17, 1896.”

Which petition was granted in the following decree:

“Whereas Mr. Henry Alfred Gsell, of....., has filed under date of the 17th of June, 1896, in the civil government of Madrid, an application for a patent of an invention, consisting of a process for curving handles for canes and umbrellas by means of a lamp or blowpipe fed by petroleum or mineral fuel.

“He having complied with the provisions of the law of July 30, 1878, the undersigned, by virtue of the power conferred upon him by article 4 of the royal decree of July 30, 1887, issues by order of his excellency the minister of the interior, in favor of said party, the present patent of invention which guarantees to him the Peninsula and adjacent islands, for the term of *vein*.....from the date of the present title, the exclusive right to the exploitation of the said industry, in the form described in the statement attached to..... He may extend it to the colonies, provided he complies with the provisions of article of the royal decree of May 14, 1880.

“Of this patent the division of industry and registration of industrial property ..... shall make a record to be forwarded to the minister of the interior and it is provided that the same shall expire and shall be null and void if the interested party, should fail to pay to the said division, and in ;.....section 14 of the law, the annual fees prescribed in article 13, and fails to show to the chief of the same division within the fixed time of ..... from this date, which has been put in practice in Spain, the object of the patent, establishing a new

industry in the country. Madrid, 28....., 1896.

(Signed) "FEDERICO COBO DE GUZMAN.

"Seal of division of industry and registration of industrial and commercial property.

"Recorded in book 25, page 111, under No. 19228.

"OFFICE OF THE COLONIES.

"Article 2 of the royal decree of May 14,1880, complied with.

"Madrid, October 31,1896.

"The chief of the division:

(Signed) "TOMAS LUCEÑO.

"[SEAL.]"

By virtue of this patent Henry Alfred Gsell was granted the exclusive right to use the same in the Philippine Islands for a period of twenty years. On May 1,1899, Henry Alfred Gsell transferred the said patent and the exclusive right to use the same to the plaintiff herein.

The evidence clearly shows that the defendant was manufacturing umbrella and cane handles by the same method as that used by the plaintiff, under and by virtue of his said patent.

Under the treaty of Paris the United States Government undertook to protect citizens of the Philippine Islands in their rights secured by copyrights, patents, etc., from the Spanish Government, in the following language;

"ART. 13. The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines, and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary, and artistic works not subversive of public order in the territories in question shall continue to be admitted free of duty into such territories, for a period of ten years, to be

reckoned from the date of the exchange of the ratifications of this treaty.”

By virtue of the foregoing provisions of said treaty, Circular No. 12, Division of Customs and Insular Affairs, dated Washington, D. C, April 11, 1899, was issued by the Assistant Secretary of War and is as follows:

“In territory subject to military government by the military forces of the United States, owners of patents, including design patents, which have been issued or which may hereafter be issued, and owners of trade-marks, prints, and labels, duly registered in the United States Patent Office, under the laws of the United States relating to the grant of patents and the registration of trade-marks, prints, and labels, shall receive the protection accorded them in the United States under said laws; and an infringement of the rights secured by lawful issue of a patent or by registration of a trade-mark, print, or label shall subject the person or party guilty of such infringement to the liability created and imposed by the laws of the United States relating to said matters: *Provided*, That a duly certified copy of the patents or of the certificate of registration of the trade-mark, print, or label shall be filed in the office of the Governor-General of the island wherein such protection is desired: *And provided further*, That the rights of property in patents and trade-marks secured in the Islands of Cuba, Porto Rico, the Philippines, and other ceded territory to persons under the Spanish laws shall be respected in said territory the same as if such laws were in full force and effect.

(Signed) “G. D. MEIKLEJOHN,

“*Assistant Secretary of War.*”

Circular No. 21, Division of Customs and Insular Affairs, dated Washington, D. C, June 1, 1899, as amended by Circular No. 34 of the same Department, dated September 25, 1899, required the holder of patents in the insular possessions of the United States to file with the proper authorities a certified copy of a patent or a certificate of registration, etc.

In a letter dated Manila, P. I., August 12, 1899, George P. Ahern, captain, Ninth Infantry, United States Army, who was then in charge of the Office of Patents, Copyrights, and Trade-

Marks, which letter was directed to the plaintiff herein, said:

“I have the honor to hand you herewith nine patents, namely (among others was mentioned the patent here in question), now legally held by you, which have been granted under the Spanish law.

“Said patent rights will be protected by the United States authorities in these Islands, pursuant to Circular No. 12, Division of Customs and Insular Affairs, War Department, Washington, D. C, April 11, 1899.

” *‘Provided further, That the rights of property in patents and trade-marks secured in the Islands of Cuba, Porto Rico, the Philippines, and other ceded territory to persons under the Spanish laws shall be respected in said territory the same as if such laws were in full force and . effect.’* “

On the 29th of January, 1900, Capt. George P. Ahern, who was then in charge of the Office of Patents, Copyrights, and Trade-Marks, addressed the following letter to the plaintiff herein:

“MANILA, P. I.

“SIR : This is to certify, in reply to your request of December 20,1899, and pursuant to the provisions of Spanish law, and by virtue of the duties as prescribed for the undersigned in General Orders, No. 24, office of the United States military governor in the Philippine Islands, Manila, P. I., June 26, 1899, an inspection was made of your factory in Calle San Pedro, Manila, by the undersigned officer on the 26th day of January, 1900, patent number 19228, granted H. A. Gsell, Madrid, Spain, September 28, 1896, transferred to Carlos Gsell, May 1, 1899, for an exclusive privilege for twenty years of a process for curving sticks and umbrella handles.

“A careful inspection was made of the process as per the specifications accompanying said patent, and all of said specifications and process were found to be in operation as required by law.

(Signed) “GEORGE P. AHERN,

*“Captain, Ninth United States Infantry,  
“In Charge of Office”*

At the close of the trial, and after the evidence had all been introduced, the lower court gave the plaintiff permission to amend his complaint, and also gave the defendant an opportunity to file an amended answer. The court granted this permission to amend the original complaint under and by virtue of the provisions of section 110 of the Code of Procedure in Civil Actions. This order of the court was excepted to on the part of the defendant. Said section 110 provides that—

“The court shall, in furtherance of justice, and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action, in either the Court of First Instance or the Supreme Court, by adding or striking out the name of any party, either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner. The court may also, upon like terms, allow an answer or other pleading to be made after the time limited by the rules of the court for filing the same. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.”

We are of the opinion that this section justified the court in allowing the amendment.

The appellant assigned several other errors alleged to have been committed by the inferior court, some of which we deem unnecessary to be considered here in the decision of this cause. The trial court, in his decision, stated that there were but two questions at issue: First, Did the Government issue to plaintiff’s assignor the patent which covers the process in question? And second, Did the defendant infringe upon that process?

An examination of the evidence adduced during the trial shows clearly that the Government of Spain did, upon the 28th day of September, 1896, grant to the plaintiff’s assignor the patent in question, giving to him the exclusive right to use the same for a period of twenty years from that date. The evidence also shows clearly that the defendant used, and had been

using, the same process for the manufacture of walking sticks and umbrella handles, the exclusive right to which had been granted to the plaintiff's assignor. The evidence also shows that the original grantee of the patent, Henry Alfred Gsell, had duly transferred to the plaintiff herein, and that the plaintiff herein thereby succeeded to all of the rights granted in said letter patent.

The lower court made no finding as to the damages suffered by the plaintiff by reason of the unlawful use by the defendant of the said patent.

From all of the evidence adduced during the trial of said cause, we are convinced that the judgment of the inferior court should be affirmed with costs. After the expiration of twenty days let a judgment be entered perpetually enjoining the defendant, his attorneys, agents, and representatives of whatever character, from the use of the process for the manufacture of walking sticks and umbrella handles, the exclusive right to the manufacture of which was granted to plaintiff's assignor on the 28th day of September, 1896. So ordered.

*Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.*

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