

due and procured an assignment and transfer of the goods to himself subject to the plaintiff's right. In November, 1902, the defendant went to the plaintiff's house and seized the goods. The plaintiff was not then in default under the agreement for extension of August, 1902.

*Held*, 1, the seizure was wrongful and the defendant liable to damages, because an implied contract arose between the plaintiff and the vendors from the delivery of the goods to the plaintiff on the terms of the receipts, that the right of resumption by the vendors should not be exercised—should not arise—while the goods remained in the plaintiff's possession until default had been made for one month of any of the payments provided for by the agreements "or of any extended payment," by which was plainly intended a default after an extension of time for payment

2. The fact that under the agreement of August interest was to be paid upon interest then in arrear as well as upon principal, was sufficient consideration for that new agreement.

3. The lowest measure of damages was the sum which the plaintiff had paid to the vendors on account of the price, inasmuch as this was the value of his interest in the goods which had been wrongfully taken out of his possession.

*Tremear*, for defendant, appellant. *Denton*, K. C., for plaintiff, respondent.

From McMahon, J.]

[April 18.

VICTOR SPORTING GOODS CO. v. HAROLD A. WILSON CO

*Patents—Construction and sale of articles previous to patent—Right of continuing to sell after patent—Consent of inventor—A.S.C. c. 61, s. 46.*

On March 7, 1901, the plaintiffs being manufacturers of sporting goods in the United States, lodged at Ottawa an application for a patent for a punching bag. On April 3, 1901, the defendants saw a description of it in a catalogue issued by the plaintiffs, and ordered and obtained from the plaintiffs a sample on which were the words "pat. applied for" and the plaintiffs' trade mark.

In May, 1901, the defendants had 100 punching bags manufactured in accordance with the sample, and inserted mention of the same under the name of the Wilson New Era Punching Bag, and illustrations thereof, in their annual catalogue issued in September, 1901, which illustrations were exact copies of the plaintiffs': and took no notice of a remonstrance from the plaintiffs in November, 1901, wherein the plaintiffs contended that their rights were protected by their pending application for a patent at Ottawa. In January, 1902, a patent was issued to the plaintiffs, but notwithstanding the patent the defendants insisted on their right to dispose of the remainder of the articles which they had manufactured in the previous May.

*Held*, that the defendants' contention must be sustained by virtue of s. 46 of the Patent Act, R.S.C. c. 61, whereby every person who before the