

money was placed in the hands of the drawees expressly to provide for the checks. They were not legally bound to receive the funds for that purpose, or to accept or pay the drafts unless they chose to do so. *Williams v. Everett*, 14 East, 582. They did not, however, refuse to receive the funds for that purpose, as the defendants in *Williams v. Everett* did, but received them with full knowledge of the purpose, and without objection or protest. This sum was set apart and appropriated by the bankrupts, before bankruptcy, for the holders of the checks, and was in the hands of the Basler Bank Varein for that purpose, and was claimed by the holders of the check while it was there for that purpose, and while they had the right to it, and before bankruptcy proceedings were commenced.

This case is like *De Bernales v. Fuller*, 14 East. 590, note c, where it was ruled, at the trial before *Lord Ellenborough*, C. J., that money paid into the defendants to take up a particular bill could not be recovered by the holder for want of privity; but afterwards a rule for a new trial was made absolute, after much discussion by the court, because it appeared that the money was paid into the defendants' house for the specific purpose declared at the time of taking up that bill, which purpose was not directly repudiated till afterwards, and the plaintiff finally recovered. *De Bernales v. Fuller*, 2 Camp. 426.

That case is not contrary to *Williams v. Everett*, or *Bank of Republic v. Millard*, or cases elsewhere holding that drawing and delivering a check is no assignment of the fund. And, on principle, it would seem that when Kaufman & Co. directed the Basler Bank Varein to pay money to the orators, which would include a direction to the orators to receive it, and had been paid by the orators for the right to receive it, and then sent the money to be paid, and it was received for the purpose of making the payment, the orators would have a right to the money on calling for it while it was there.

As the orators are entitled to the money in the hands of the bank they have the right to follow it into the hands of

the defendants, who, in receiving it, acquired no greater right than the bank had.

It is ordered that a decree be entered for the payment by the defendants to the orators of the sum of \$4,360.19, gold, received by the defendants from the Basler Bank Varenin, with costs.

PAGE, Adm'r, and another, *v.* THE HOLMES BURGLAR ALARM TELEGRAPH COMPANY.

(*Circuit Court, S. D. New York.* February 17, 1880.)

PATENT—EMPLOYE IN PATENT OFFICE—INVENTION PRIOR AND PATENT SUBSEQUENT TO EMPLOYMENT—ACT OF JULY 4, 1836.—The second section of the act of July 4, 1836, (5 U. S. Stat. at Large, § 118,) disqualifying an employe in the patent office from acquiring an interest in a patent, does not disqualify such employe from obtaining a patent, after such employment has ceased, for an invention made prior to the commencement of such employment.

SAME—ABANDONMENT—PROPERTY OF GENERAL PUBLIC IN THE INVENTION—PATENT SUBSEQUENTLY ALLOWED BY ACT OF CONGRESS.—The consent of the inventor to the public use of his invention, or the withdrawal of his application for a patent, does not vest any right of property in the general public, in the sense of the fifth amendment to the constitution of the United States, so as to prevent the subsequent allowance of a patent for such invention, by act of congress, unless there was, in a particular case, a reduction of the invention to use and practice, by its embodiment in some apparatus prior to the issue of such patent.

Infringement of patent.

BLATCHFORD, J. This suit is founded on reissued letters patent granted October 10, 1871, to Priscilla W. Page, administratrix, etc., of Charles G. Page, deceased, and the Western Union Telegraph Company, for improvements in induction coil apparatus and circuit-breakers, the original patent having been granted to said Page April 14, 1868. It was granted under an act of congress approved March 19, 1868, (15 U. S. Stat. at Large, 356,) which provides as follows: "The commissioner of patents is hereby authorized to receive and entertain a renewal of the application of Charles Grafton Page, for letters patent for his induction apparatus and cir-

circuit-breakers, now on file in the United States patent office, including therewith his circuit-breakers described by him prior to said application, and that if the commissioner shall adjudge the said Page to have been the first inventor thereof, he shall issue to him a patent, which patent shall be valid, notwithstanding said Page's invention may have been described or in use prior to said application, and notwithstanding the fact that said Page is now an examiner in the United States patent office: *Provided*, that any person in possession of said apparatus prior to the date of said patent shall possess the right to use, and vend to others to use, the said specific apparatus in his possession, without liability to the inventor, patentee, or any other person interested in said invention or patent, therefor."

There are 15 claims in the reissue. It is insisted that claims 11, 12 and 13 have been infringed by the defendant. They are as follows: "11. The adjustment of the retractile force of an automatic circuit-breaker, substantially as set forth. 12. The combination of an electro-magnet, armature and adjustable retractor. 13. Adjusting or regulating the length of vibration of the armature of an electro-magnet by means of a set-screw, or any mechanical equivalent for substantially the same purpose, substantially as herein set forth."

Portions only of the specification are necessary to be considered. After describing the arrangement of a revolving armature for an automatic circuit-breaker, the specification says:

"Instead of a revolving armature for a circuit-breaker, a vibrating armature may be substituted, and the latter will be found more convenient for several reasons. One especially is, that it can be readily adjusted so as to increase or diminish the rate of interruption of the circuit and the force to be overcome in working it. A vibrating automatic circuit-breaker, consisting of a very small electro-magnetic bar, vibrating between the arms of a permanent magnet, the magnet changing its poles at each vibration, the length of vibration