

end of a tube leading from the fluid upward, out into a larger descending nozzle, making an apparatus in the nature of a siphon operated by steam, were well known. Gresham contrived means for throwing a jet of steam past the end of the passage for water from the reservoir to the overflow opening of a Gifford, or other injector, at that opening, into such a nozzle arranged there, so as to draw water from the reservoir to the overflow and prime the injector, ready for starting, to raise water and force it into the boiler.

His patent is, and purports to be, for the mechanical devices by which this is accomplished, and does not rest at all upon the discovery of any of the principles of philosophy employed in its accomplishment. Neither Gifford, nor Barclay and Morton, nor Barclay, described in their patents any such devices; nor does it appear that they, or any one else, ever knew of or used any such before Gresham's invention. Barclay and Morton suggested in their patent, in the part quoted, that one lifting apparatus might be combined with a Gifford injector, and by that means supply water to steam boilers from depths where lift pumps were required; but they did not suggest, in that immediate connection, what sort of a lifting apparatus. Probably they meant, and are to be understood as having meant, such lifting apparatus as they had before described in other parts of their patent. Such apparatus would not be at all like Gresham's, nor could it be employed for the same purpose as Gresham's, namely, to raise water, before starting the injector, to prime it.

All injectors will, in starting, draw water upwards to some extent, but not much when they have the injector apparatus only. Whatever they do draw they draw upon a similar principle to that upon which Gresham's lifting apparatus works. They to that extent lift water, and his lifts water; still, they cannot lift to the extent his does. They do not do it by the same mechanical means that his does, nor do they employ all the philosophical principles that his does. His jet of steam works in a nozzle which is the reverse of theirs; his projecting into a nozzle increasing in size, which increases

the vacuum and power of suction, and theirs into one decreasing in size, which increases the power of projection.

If Barclay and Morton's patent could be said to suggest the combination of any lifting apparatus other than that mentioned in other parts of their patent with a Gifford injector, it does not show any such, nor any mode of combining them.

A patent or printed publication must, in order to defeat a patent for an invention subsequently obtained, describe the invention so as to enable those skilled in the art to which it belongs or most nearly appertains to construct and use it. This patent gives no information as to how a lifting apparatus can be combined with a Gifford injector. It merely says that this may be done, but leaves others to invent the mode of doing it. Gresham invented a mode which their suggestion in no way anticipates or defeats.

The defendant uses injectors constructed according to the specification of letters patent No. 138,198, dated April 22, 1873, and granted to Samuel Rue, Jr., for an improvement in injectors for steam generators. There is no fair question upon the evidence, and it is not claimed by counsel in argument, but that these injectors contain substantially the same devices, operating in substantially the same manner, as Gresham's. They contain additional devices, and are perhaps improvements upon his; but that does not carry with it any right to make use of his devices, and it is not claimed that it does. Both Gresham and Rue have made improvements upon injectors, and each became entitled to the improvements he made, and to his own form of machine, so far as it should not include parts belonging to others. But Gresham preceded Rue, and the latter could acquire no rights to the devices of the former, which he included in his form of machine. *Railway Co. v. Sayles*, 97 U. S. 354.

The case shows that letters patent of Great Britain, No. 410, dated February 14, 1865, were issued to Gresham for the same invention. Whether there was any other date of issue to that patent does not appear. As the case stands now that must be taken to be the date of issue; and accord-

ing to *De Florez v. Reynolds*, S. D. N. Y. February, 1880, this patent will run 17 years from that date only. An injunction issued in pursuance of a final decree should, by its terms, be limited to the time it may properly remain in force; and an injunction to restrain infringement of a patent can, of course, properly continue only during the term of the patent. No question as to this has been made by counsel, and it is not intended to conclude any question that might be made by what is here said. It seems most proper now that the injunction should issue for the remainder of the term as it now appears, which is for 17 years from February 14, 1865, leaving the parties to move further in respect to it as they may be advised.

Let there be a decree for an injunction, and an account accordingly, with costs.

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ZANE and another v. LOFFE.

(Circuit Court, S. D. New York. March 9, 1880.)

**PATENT—EVIDENCE OF USE OF SIMILAR ARTICLES AT TIME OF PATENT.—**

Evidence of the manufacture and use of an article similar to that covered by the patent, at the time of its issuance, *held* proper, as tending to show what was in existence at the time, though knowledge had not been pleaded.

**SAME—SELF-CLOSING FAUCET.—**Defendant's patent for self-closing faucet, where the valve is lifted against a spring by a stem, with projections near the valve working against inclines under the shell, *held*, not an infringement upon one where the valve is pushed downwards from its seat against a spring by a screw turned by hand, with a swivel to prevent turning the valve with the screw, which lets the valve back when the screw is released.

In Equity.

*George Wm. Clarke*, for complainants.

*Duell, Wells & Duell*, for defendant

**WHEELER, J.** This suit is brought upon letters patent No. 48,407, dated June 27, 1865, and issued to Nathaniel Jen-