

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.

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-

kings, for an improvement in self-closing faucets, which is now owned by the orators. The validity of the patent and infringement of it, if valid, are both denied. The patent had been tried in *Zane et al. v. D'Este et al.*, in the district of Massachusetts, and in *Zane et al. v. Peck et al.*, in the district of Connecticut, and sustained in both cases. There is evidence in this case of self-closing faucets made and sold by Frederick H. Bartholomew, at New York, before the patent, and, so far as appears, before the invention, which were not shown in either of these cases, and knowledge of which has not been pleaded in the case. The evidence as to those most material has been taken without objection; and the counsel for the defendants argued that, being so taken, it should be considered as if the knowledge it shows had been pleaded. If showing that knowledge as an anticipation was the only purpose for which the evidence could be received, there would be force to that argument; but the evidence was clearly admissible for the purpose of showing what there was in existence at the time of the invention and patent, in the light of which to construe the patent, and as it could not be excluded if objected to, there was no waiver of the right to have its use restricted to the purpose for which it was admissible, by not objecting to it.

There is nothing in the case proper to be considered for the purpose of showing want of novelty that can defeat the patent for what it properly covers, in view of these pre-existing things.

The evidence shows, and so far it is not seriously questioned, that faucets with valves which were opened by being pulled away from their seats against springs, and which would be closed by the springs when the force used to open them was withdrawn, are well known. Sometimes the valves were lifted from their seats by stems, having projections on the upper ends working against steep inclines, as canes. In the orators' faucet the valve is pushed downward from its seat against a spring by a steep, quick-threaded 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. The patent is, in one claim, for the screw as a follower, in combination with the valve; in the other, for the combination of the screw follower, swivel, valve and spring. The patent is good for a faucet in which the valve is opened and closed in that manner. In the faucet of the defendants the valve is lifted against a spring by a stem, with projections near the valve working against inclines inside the shell of the faucet.

The counsel for the orators argues that these projections and inclines are the equivalent of a screw, and that the arrangement infringes the first claim of their patent. The screw would work both ways—pull and push—or either. The projections and inclines will only pull, as arranged by the defendants. They are not the equivalent of the screw for pushing the valves open, as the orators make use of it, and as their patent covers it. The defendants do not use a swivel at all. They do not make use of the combination of parts mentioned in either claim, nor of what is the equivalent of the parts, for the same purposes. The same thing that distinguishes the orators' faucet from some of the prior devices of Bartholomew distinguishes the defendant's faucet from theirs. No question of infringement was made in *Zane et al. v. Peck et al.*, so far as appears from the opinion of the court by *Shipman, J.*, and, from what is said there about *Zane et al. v. D'Este et al.*, it is probable that none was made there. Those cases, therefore, furnish no guide as to the question of infringement here. The patent is apparently valid for the particular improvement which Jenkins invented, but the defendants do not infringe it.

Let there be a decree dismissing the orators' bill of complaint, with costs.

MATTHEWS v. THE LALANCE & GROSJEAN MANUFACTURING Co.

(Circuit Court, S. D. New York. April 28, 1880.)

PATENT—BILL FOR INFRINGEMENT OF SEVERAL PATENTS—PLEA TO WHOLE BILL—PRACTICE.—Where a bill was filed for the infringement of several patents, to which a plea that said patents were not connected in one mechanism, or conjointly used, was interposed, general replication made, and proofs thereon taken, *held*, that as the plea did nothing but deny an averment in the bill, the complainant was entitled to recover, if it appeared that the defendant's structure embodied in it an invention covered by only one of said patents.

EQUITY PLEADING—PLEA—BAD IN SUBSTANCE.—Plea to the whole bill in this case averring that the several patents set forth in the bill are for separate and distinct inventions, not in point of fact connected together in use or occupation, and not in fact conjointly embodied in any mechanism manufactured by defendant, *held*, bad in substance.

A. V. Boresen, for plaintiff.

B. F. Lee, for defendant.

BLATCHFORD, C. J. This bill is brought for the infringement of five several letters patent. The bill alleges that the defendant made, used, and vended to others to be used, "soda water and other fountains, each made according to, and employing and containing, the inventions described and claimed in each of the above-named letters patent and re-issued letters patent." The defendant put in a plea to the bill. The plea sets forth that the bill is brought for the infringement of five separate letters patent, (designating and identifying them as the same which are set up in the bill,) "all of which said letters patent are for separate and distinct alleged inventions," (a fact which the bill shows,) "which several alleged inventions are not, in point of fact, connected together in use or operation, and are not, in point of fact, conjointly embodied in any of the soda water and other fountains manufactured, used or sold by this defendant; so that the said plaintiff, by his single bill of complaint aforesaid, seeks to compel this defendant to unite five separate and distinct defences, depending severally upon distinct and different proofs, so as to complicate the defence, and embarrass this defendant in its answer to the said bill of complaint; and that it is not true, as alleged in said bill, that the said defendant