

FRAIM v. KEEN.¹

(Circuit Court, E. D. Pennsylvania. November 2, 1885.)

1. PATENTS FOR INVENTIONS—IMPROVEMENTS IN SCANDINAVIAN PADLOCKS—INVENTION.

Reissued letters patent No. 10,272, granted to Edward T. Fraim (inventor) jointly with Miller W. Fraim, (assignee,) January 16, 1883, for an improvement in Scandinavian padlocks, *held* not void for want of novelty and invention.

2. SAME—INFRINGEMENT.

Where one party stands by and permits another to take out a patent, and then takes out a patent for a different invention, he cannot set up that he is the inventor of the first improvement.

3. SAME—NOVELTY.

Although the question of patentable invention may be open to doubt, the court will not reverse the decision of the patent-office except upon clear evidence,

In Equity.

The facts are as follows: Both parties claimed priority of invention. Complainant obtained a patent January 16, 1883. Defendant claimed that he made the invention at a time when he was employed by complainant in his shop, and it appears that he stood by while complainant made application for a patent without making any claim, and subsequently took out letters himself for another and a different invention.

Joseph C. Fraley, for complainant.

Grady & Gendell, for defendant.

BUTLER, J. While the question of patentable invention, respecting complainant's improved lock, may be open to debate and doubt, we do not feel justified in reversing the decision of the patent-office, by anything appearing in the case.

Nor do we think the evidence would justify a conclusion that Fraim was not the first inventor. While the direct evidence in favor of Shallass' claim is not satisfactory, the inferences arising from his conduct are strongly against him. He not only stood by and saw Fraim assert his right to the patent, without objection, but directly after took out letters for a different improvement.

The infringement of the second claim is clearly proved; and the infringement of the third is virtually admitted.

The bill is sustained, and a decree must be entered accordingly, and for costs.

¹Reported by C. B. Taylor, Esq., of the Philadelphia bar.

YODER v. MILLS.¹

(Circuit Court, E. D. Pennsylvania. October 28, 1885.)

PATENTS FOR INVENTIONS—PRIORITY—INFRINGEMENT—COMBINATION PATENT.

The employment of mechanical skill to construct a machine in accordance with ideas furnished by another gives no right to the invention. The entire merit is in him whose inventive suggestiveness conceived the invention.

In Equity.

William A. Redding, for complainant.

M. Daniel Connolly, for respondents.

MCKENNAN, J. The object of this suit is a patent to Lorenzo T. Yoder for an invention relating to the manufacture of candy, dated December 4, 1883, and numbered 289,488. The patent contains four claims, but no evidence is produced to show any infringement of the first two. The third and fourth claims are the only ones touching which there is any contest. They are both for combinations of mechanical devices, and differ only in that, to the elements specified in the third claim, is added a "cover, A," of peculiar construction, and thus the fourth claim is constituted.

Nor is there any substantial controversy between the parties upon the question of infringement. It is clear that the machine made by the defendants is, in every essential feature, identical with that described in the patent.

The only contested inquiry in the case involves the right to the invention itself. All the evidence exhibited relates to it. Both parties claim the merit which the patent apparently accords to the complainant, and, without discussing the evidence, it is enough for us to say that, in view of the decided preponderance of the proofs, it is justly devolved upon him. The conception of the invention belongs to him, and all that the defendants contributed was the necessary mechanical skill, furnished at his request, to embody it in an operative form. He did not lose the merit which is due to inventive suggestiveness, and devolve it upon the mechanic whose only function was to materialize it. *Watson v. Bladen*, 4 Wash. C. C. 582; *Blandy v. Griffith*, 3 Fisher, 609.

But some doubt may be entertained as to the right of the complainant to appropriate the combination covered by the fourth claim of the patent, treating it as an entirety. The cover, A, which is an indispensable constituent of the combination, was not devised by him, but was suggested and constructed solely by one of the defendants. Whether that claim, then, is enforceable against the defendants we do not deem it imperative on us to decide. We will, therefore, adjudge that the patent is valid in so far as the *third* claim is involved, that an injunction issue against the infringement of that claim, and that

¹ Reported by C. B. Taylor, Esq., of the Philadelphia bar.