

that to relegate these complainants to the condition of mere skilled workmen would be to do them a grave injustice.

In the light of the present, the idea of substituting hard rubber for other material, as a plate for holding artificial teeth, or of providing tubular kerosene lanterns with an irreversible current of air by means of deflectors, seems simple enough, and yet the men who *thought* of these things conferred lasting benefits upon the world, and received the rewards of inventors. *Lantern Co. v. Miller*, 21 Fed. Rep. 514; *Smith v. Goodier*, 93 U. S. 486.

In *Crandal v. Watters*, 20 Blatchf. 97, S. C. 9 Fed. Rep. 659, the patent was for a box loop for carriage tops, made of thin metal, from which the loop was struck up. It was used as a substitute for the old leather housing. In sustaining the patent, the remarks of Judge BLATCHFORD are so applicable to the case at bar that I quote briefly from the opinion. At page 102 he says:

"Various old devices are introduced. * * * But no article like the plaintiff's, capable of being taken and used for the purposes for which the plaintiff's can be used, without alteration and adaptation, requiring invention, existed before. Almost all inventions, at this day, that become the subject of patents, are the embodiment and adaptation of mechanical appliances that are old. In that consists the invention. When the thing appears it is new and useful. No one saw it before; no one produced it before. It supplies a need. It is at once adopted. All in the trade desire to make and use it, yet it is said to have been perfectly obvious, and not to have been patentable. Where an article exists in a given form, and applied to a given use, and is taken in substantially the same form, and applied to an analogous use, so as to make a case of merely double use, there is no invention. But it is very rarely that a thing of that kind secures a patent."

There should be a decree for the complainants for an injunction and an account, with costs.

MACHESNEY v. BROWN and others.

(Circuit Court, N. D. New York. November 26, 1886.)

PATENTS FOR INVENTIONS—ASSIGNMENT—ATTORNEY IN FACT—INSTRUMENT UNDER SEAL.

The assignment of a patent for an invention when executed by one acting as attorney, by an instrument under seal, must be executed in the name of the principal, and purport to be sealed with his seal, in order to bind the principal.

In Equity. Bill to restrain the infringement of letters patent for an invention. Plea allowed, with costs, and leave granted to complainant to move to amend his bill. The facts are sufficiently stated in the opinion.

Silas J. Douglass, for complainant.

William H. Bright, for defendants.

WALLACE, J. The bill in this case is to restrain the infringement of letters patent for an invention, granted to one Sweet, and the plea, which has been set down for argument, avers that the only title of the complainant to the invention is one derived by an instrument executed and delivered to the complainant by one Smith, which is set out in full in the plea. This instrument in its first clause describes Ira E. Smith as party of the first part. The second clause recites that Smith, by power of attorney from Sweet, became the attorney of Sweet for the purpose of selling and assigning the patent. The third clause recites that Machesney desires to purchase, and has paid a consideration to Smith, and that Smith does thereby assign and set over all the right, title, and interest he has in and to the said invention, and all the right, title, and interest that said Sweet has. Then follows an attestation clause, reciting that Smith has set his hand and seal to the instrument. The instrument is signed, "I. E. SMITH," and has a seal.

The assignment must be held to be inoperative to pass the title of Smith, upon the well-settled rule that a sealed instrument when executed by one acting as attorney, must be executed in the name of the principal, and purport to be sealed with his seal, in order to bind the principal. It is true that an assignment of a patent for an invention is valid without a seal. This is so because the statute which creates the property in inventions, and regulates the manner of transferring the title, only requires an assignment to be in writing. But such an assignment is a muniment of title to incorporeal property, and, whether under seal or not, the question whether, when executed by an attorney, it is in form to bind the principal, is to be determined by the rule applicable to deeds and formal instruments under seal. See Whart. Ag. § 285. As to the general proposition that a contract under seal, by an agent for a principal, is not binding on the principal, unless it profess to bind him, and be executed in his name, as his contract, it is sufficient to cite *Elwell v. Shaw*, 16 Mass. 42; *Fullam v. Inhabitants of West Brookfield*, 91 Mass. 1; *Townsend v. Hubbard*, 4 Hill, 351; *Kiersted v. Orange & A. R. Co.*, 69 N. Y. 343.

Although the assignment recites that Smith has a power of attorney from Sweet to convey the title, and purports to convey that title as well as his own title, Smith assumes to transfer as vendor himself, and not as the attorney for Sweet. The remarks of STORV, J., in *Clarke v. Courtney*, 5 Pet. 350, are apposite:

"The act does not purport to be the act of the principals, but of the attorney. It is his deed and his seal, and not theirs. This may savor of refinement, since it is apparent that the party intended to pass the interest and title of his principal. But the law looks not to the intent alone, but to the fact whether that intent has been executed in such a manner as to possess a legal validity."

If, as it was stated on the argument, the defendants claim under a title transferred to them directly by Sweet, and the real controversy

is as to which title should prevail, the bill should make Sweet a party, and should contain appropriate allegations to show complainant's equitable title prior in point of time to the title of the defendants, and notice to defendants of the complainant's rights.

The plea is allowed, with costs. Leave is granted to the complainant to move to amend his bill.

NATIONAL HAT-POUNCING MACHINE CO. v. HEDDEN and others.

SAME v. BROWN.

(Circuit Court, D. New Jersey. December 3, 1886.)

1. PATENTS FOR INVENTIONS—SUIT FOR INFRINGEMENT—DECREE NOT CONCLUSIVE AGAINST ANOTHER DEFENDANT MAKING A NEW CLAIM.

After the validity of a patent has been established in a suit, it may always be shown, in another suit on the patent against another defendant, and even in answer to an application for a preliminary injunction, that the right claimed by the plaintiff in the new suit was not fairly in controversy in the former suit.

2. SAME—PRELIMINARY INJUNCTION NOT GRANTED.

In an action for an infringement of a patent, where there is doubt as to the priority of the invention, if the defendants are amply responsible, and the plaintiff sells licenses for a royalty, so that there will be no difficulty in ascertaining the damage, a preliminary injunction will be denied.

In Equity. Motion for preliminary injunction.

Eugene Tredwell, for the motion.

A. Z. Keasbey, contra.

WALSH, J. Motion is made in each of these cases for a preliminary injunction on letters patent granted to Rudolf Eickemeyer, November 23, 1869, No. 97,178; also on letters patent granted to Edmund B. Taylor, October 21, 1879, No. 220,889,—both patents being for improvements in machines for pouncing hats. Complainant is owner by assignment of these patents, and sues for their infringement by defendants. The second claim of the Eickemeyer patent, and the fifth claim of the Taylor patent, are the only claims relied on in these motions. The second claim of the first patent is for "the arrangement and combination of a rotating pouncing cylinder with a vertical supporting horn, substantially as described, whereby the supporting horn may be used to support the tip, side, crown, or brim during the operation of pouncing the hat." The fifth claim of the second patent is for "the combination of the support for the hat and the self-feeding pouncing cylinder, whereby the hat is drawn over the support, B, in the direction of the motion of the pouncing cylinder."