

ant's traps, it follows that defendant's infringe the fourth claim of the Ligowski patent. The fifth claim, having been found invalid, requires no further consideration. The defendant's also infringe the Bloom patent. The traps constructed as shown by exhibits, "American Field," and "Portion of Defendant's New Trap," have every element of every claim of the Bloom trap, combined and operated substantially as specified in the Bloom patent. The trap designated "Exhibit Defendant's Trap," has not "a trip-latch to which the lever may be connected at varying distances from its position of rest," and it is not, therefore, an infringement of the fourth claim, but it does infringe all the remaining claims. The trap constructed as shown by "Exhibit American Clay-Bird Co. Trap, No. 4," omits the recoil spring described and claimed by Bloom, but it embodies every other element of his patent, and is an infringement of the fourth and seventh claims.

A decree against the defendant for an injunction and account will be entered, but without costs as to the Ligowski patent, by reason of the invalidity of the fifth claim thereof.

---

CONSOLIDATED ELECTRIC LIGHT CO. v. M'KEESPORT LIGHT CO.

(Circuit Court, W. D. Pennsylvania. March 17, 1888.)

PATENTS FOR INVENTIONS—SEVERAL ASSIGNMENTS BEFORE ISSUE.

Letters patent issued to the assignee of the inventor are not void because prior to the issuance thereof such assignee had made an assignment of the invention to a third person, who had assigned the same to still another person, all the assignments being recorded in the patent-office; but by operation of law the legal title to the patent, upon the issuance thereof, *eo instanti* vested in the ultimate assignee. Following *Light Co. v. Light Co.*, 25 Fed. Rep. 719.

In Equity.

*Sur* demurrer to bill of complaint.

*W. Bakewell*, for complainant.

*John C. Tomlinson*, for respondent.

ACHESON, J. The precise question here presented was raised in the case of *Light Co. v. Light Co.*, 25 Fed. Rep. 719, and was decided favorably to the plaintiff. I have carefully read the opinion of Judge WALLACE, and perceive no reason for doubting the correctness of his conclusion. How can it be said that the patent was issued without authority of law, and therefore is void, when in fact it was issued to the very person designated by section 4895, Rev. St., viz., "the assignee of the inventor"? There was, indeed, a literal compliance with the provisions of the statute. But as by operation of law the legal title to the patent, upon the issuance thereof, *eo instanti* vested in the plaintiff as the ultimate assignee, the substantial result was the same as if it had formally issued to the plaintiff. *Gayler v. Wilder*, 10 How. 477. While this

view saves the patent, and subserves the justice of this case, it neither runs counter to sound public policy, nor tends to any evil consequences, so far as I can see. And now, March 17, 1888, the demurrer is overruled, with leave to the defendant to answer the bill within 30 days.

PALMER v. JOHNSTON.

(Circuit Court, N. D. New York. March 19, 1888.)

1. PATENTS FOR INVENTIONS—SASH BALANCES—PATENTABILITY—INVENTION.

The invention covered by letters patent No. 126,031, of April 23, 1872, to John J. Cowell, for an "improvement in sash balances," relates to a cast metal pulley-box, and consists, in the second claim, in forming the box with two or more semi-tubular swellings, one at each end of the box, adapted to fit auger-holes bored in the frame for inserting the box. *Held*, that the improvement, though a very simple one, involved something more than ordinary mechanical skill, and that it showed inventive novelty in the saving of time and attention to details called for in the use of prior devices.

2. SAME—EVIDENCE OF INVENTIVE NOVELTY.

The fact that as soon as a patented improvement was made and introduced, its advantages over devices which had preceded it became manifest at once, and it commended itself to the public as a practical and desirable improvement, affords a safer criterion of inventive novelty than any subsequent opinion of an expert or intuition of a judge.

3. SAME—ANTICIPATION—BY PRIOR PATENTS.

In letters patent No. 64,957, of May 21, 1867, to Simon Drum, the method of inserting pulley-boxes in the window frame by making an auger-hole at each end of the proposed recess, and cutting away the intermediate wood, is described, and the specifications set out an oblong pulley-box with rounded ends, the arch of which would correspond with the arch of the auger-holes. *Held* not an anticipation of letters patent No. 126,031, of April 23, 1872, to John J. Cowell, for an "improvement in sash balances," the essential feature of the Cowell device, viz., the semi-tubular swellings, being wanting.

4. SAME—INFRINGEMENT.

The invention covered by the second claim of letters patent No. 126,031, of April 23, 1872, to John J. Cowell, for an "improvement in sash balances," relates to a cast metal pulley-box, and consists in forming the box with two or more semi-tubular swellings, one at each end of the box, adapted to fit auger-holes bored in the frame for inserting the box. The device covered by letters patent No. 185,369, of December 12, 1876, to John Vetterlein, is provided with semi-tubular swellings, not only at each end, like the Cowell box, but also with intermediate semi-tubular swellings which practically connect with each other. *Held* an infringement.

In Equity.

*Nelson Davenport*, for complainant.

*Esek Cowen*, for respondent.

WALLACE, J. The second claim of letters patent<sup>1</sup> granted to John J. Cowell, April 23, 1872, for an "improvement in sash balances," is in controversy in this suit. The invention in question relates to a cast metal pulley-box, and consists in forming the box with two or more

<sup>1</sup>No. 126,031.