

cannot be disputed; certainly the defendants who have appropriated it completely can hardly dispute the proposition. Everybody recognizes the advantage of having the fuel supply and the steam-pressure reciprocally regulated, so that when the pressure in the boiler reaches the designated point of safety or convenience the diminished fuel supply will relieve the pressure, and, when it falls below the proper point, the increased supply will bring it back to the required power. Dickerson devised one set of contrivances adapted to his particular form of burner to accomplish this object. Shipman devised another set adapted to the particular form of atomizer employed in his furnace to accomplish it. There was inventive thought in the idea that he could make a valve in the steam-pipe of existing atomizers to do the work of a valve in both the steam-pipe and the oil-pipe of Dickerson's apparatus. Still more was there inventive thought in the idea that he could make any form of existing regulators lend a new function to the steam-pipe of existing atomizers. It is a significant fact that Shipman's apparatus immediately commended itself to the public for its practical efficiency, and has met with an extensive and increasing patronage both in this country and abroad, while none of the devices described in the prior patents have ever gone into public use. This circumstance, while it suggests that the former devices may not have been practically operative, is persuasive that what Shipman did by way of improving them was not such an obvious thing as to deprive it of the merit of ranking as invention. A decree is ordered for the complainants.

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HUBER *et al.* v. MYERS SANITARY DEPOT.

(*Circuit Court, S. D. New York.* April 16, 1888.)

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION—PARTIES.

The sole owner of one patent and exclusive licensee of another may, in one action, joining his licensor as plaintiff, enjoin an apparatus infringing on both patents.

In Equity. Bill for infringement.

*Albert Comstock*, for complainants.

*William H. Sage*, for defendant.

LACOMBE, J. The complainant Huber is sole owner of letters patent No. 260,232. The complainant Boyle is sole owner of letters patent No. 255,485. Huber is also exclusive licensee of Boyle's patent. The defendant manufactures and sells machines which, it is alleged, infringe both patents. Defendant demurs for misjoinder of parties. The point raised is a new one, and in determining it the "court is governed by those analogies which seem best founded in general convenience, and will best promote the administration of justice, without multiplying unnecessary litigation on the one hand, or drawing suitors into unnecessary expenses

on the other." *Hayes v. Dayton*, 8 Fed. Rep. 704. The complainant Huber, if sole owner of both patents, could in a single suit enjoin an apparatus which infringed both. *Nourse v. Allen*, 4 Blatchf. 376. He is in fact the sole owner of the one, and, except for the payment of his royalties, entitled to the whole beneficial interest in the other. As exclusive licensee, however, he is required to join the owner of the legal title. *North v. Kershaw*, 4 Blatchf. 70. It would, however, unnecessarily multiply expensive litigation to hold that the invariable consequence of thus bringing in the owner must be to compel the complainant to bring two actions, instead of one, to suppress a single infringing apparatus. The demurrer is overruled.

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BLESSING *et al.* v. JOHN TRAGESER STEAM COPPER WORKS.

(*Circuit Court, S. D. New York. April 23, 1888.*)

1. PATENTS FOR INVENTIONS—ACTION FOR INFRINGEMENT—DEFENSE OF NON-PATENTABILITY.

A demurrer for non-patentability apparent upon the face of the patent should not be allowed unless the instrument is so palpably destitute of invention that the court can say that no question of fact can arise upon it.

2. SAME—COMPLAINT.

A complaint for the infringement of letters patent must state that the invention had not been in public use or on sale for more than two years prior to the application therefor. It is not sufficient to state that it was not in public use or on sale with the consent of the inventor.

At Law. Demurrer to a complaint for infringement of letters patent.

*George G. Frelinghuysen*, for plaintiff.

*Frederic H. Betts* and *J. E. Hindon Hyde*, for defendant.

SHIPMAN, J. This is a demurrer in an action at law for the infringement of letters patent No. 80,441, dated July 28, 1868, for an improvement in copper-lined bath-tubs. Two grounds of demurrer are assigned: (1) That the complaint, of which the letters patent are made a part, by profert, does not state facts sufficient to constitute a cause of action, because it is apparent on the face of the patent that it does not contain a patentable invention. (2) That the complaint does not state that the invention had not been in public use or sale in this country for more than two years before the date of the application. It avers that the invention was not, at the time of the application, in public use, or on sale with the consent or allowance of the inventor, contrary to the provisions of the statute of the United States.

The first ground of demurrer raises the question whether the described improvement is so obviously the result of a mere exercise of mechanical skill that the patent is void upon its face, and must be adjudged to be invalid. It is well settled that, in a bill in equity for the infringement