

the ends of the prong, but the entire slender prong is intentionally bent. The die has no system of similarly arranged planes. The defendant construes the patent to be for a set of radially placed inclines, having their faces in opposite directions; the inclines being arranged either in two equal sets, bending the prongs away from each other in each set, or in pairs which bend the adjoining prongs towards each other. If a die contained, in connection with non-radially placed inclines, a single pair of radially placed inclines, which in fact performed the office which the Richardson die performs, I should be disposed to regard such a die as an infringer, although it did not have a complete set of Richardson inclines. But if a die, having irregularly placed inclines, contains also two radially placed inclines, which are or are not isolated from each other, but which do not perform the office which the Richardson die was designated to perform and does perform, I do not think that such a die, although containing radially placed planes, is an infringing die. These inclines cannot do the work of the Richardson die upon the Richardson plate or upon the Richards plate, because they bend the entire shank. If the shank or plug of the Richardson prong should be bent, the heel-plate would be injured or destroyed. The Richards die is designed to bend the entire prong, and is therefore a different thing from the Richardson die. The bill is dismissed.

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UPTON *et al.* v. WAYLAND *et al.*

(Circuit Court, S. D. New York. November 8, 1888.)

**1. PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.**

The validity of letters patent No. 348,969, for a lamp-wick raiser, issued September 14, 1886, to Leonard Henkle, not having been adjudicated or recognized by the public, a preliminary injunction to restrain their infringement will not be granted in a suit in which the patentable novelty of the invention is fairly contested.

**2. SAME—PUBLIC ACQUIESCENCE.**

The subject of said patent being one of nine patented improvements embodied in the "Rochester lamp," the use of such lamps by the public, with acquiescence in the exclusive right of the owners of the patents, is not a recognition of the validity of this particular patent.

In Equity. On motion for an injunction.

This is an action by Charles Upton and Edward Miller & Co. against Chandler N. Wayland and Thomas B. Kent for alleged infringement of letters patent No. 348,969, for a lamp-wick raiser, issued September 14, 1886, to Leonard Henkle, and reissue No. 17,090, dated February 8, 1887.

*C. E. Mitchell* and *H. M. Brigham*, for complainants.

*Edwin H. Brown* and *Joshua Pusey*, for defendants.

WALLACE, J. An examination of the deposition and exhibits used upon the motion for a preliminary injunction does not disclose anything

in the facts of the case to except it from the application of the ordinary rule by which such an injunction is not granted upon a patent of recent date, which has not been adjudicated when the patentable novelty of the improvement described in it is fairly contested, and there has been no well-defined or significant recognition of the validity of the patent by the public. The "wick-raiser" which is the subject of the patent is one of nine patented improvements embodied in the "Rochester lamp." These lamps have been extensively dealt in by jobbers, and used by the public with acquiescence in the exclusive right of the owners of the patents, but this is not cogent evidence of recognition of the novelty, or value of the wick-raiser, or the validity of the patent therefor. *Non constat* that recognition is not due to the other patented improvements. The motion is denied.

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**CLOW v. BAKER et al.**

(Circuit Court, S. D. Iowa. November 13, 1888.)

**1. PATENTS FOR INVENTIONS—ACTION FOR INFRINGEMENT—DEPOSITIONS IN INTERFERENCE PROCEEDING.**

Depositions taken for the applicant for a patent in interference proceedings pending in the patent-office may, upon a proper showing of inability to retake them, be read upon the hearing of a bill by the successful applicant to declare invalid a patent issued to the contestant, though one of the defendants, assignee of part of contestant's rights, received his assignment before the interference proceedings were had, and was not a party thereto.

**2. SAME.**

But where the only reasons urged in support of the motion to allow such depositions to be so read are an indefinite allegation of complainant's poverty, and that the witnesses are so scattered that to retake their depositions will be expensive, and from an inspection of the depositions it appears that a large part of the testimony was complainant's own, and that the greater number of the witnesses resided in the district in which the bill is pending when their depositions were taken before, and their present residence is not shown, the motion will be denied.

*In Equity.* On motion to use depositions.

Bill by H. A. Clow against George C. Baker, the Baker Wire Company, and others, to declare invalid a patent issued to defendant Baker.

*Cole, McVey & Clark*, for complainant.

*Cummins & Wright*, for defendants.

**SIRAS, J.** The bill in the present cause is filed for the purpose of procuring a decree declaring invalid a patent issued to George C. Baker for a wire-barbing machine, on the ground that the complainant is the prior inventor of the same, and entitled to the benefits thereof, under letters patent issued to complainant. It appears that in March, 1885, when the application of complainant for a patent was pending before the patent-office, an interference was declared with patent No. 295,513, issued to George C. Baker, and a hearing thereof in the usual form was had be-