

Case No. 17,870.

WING v. SCHOONMAKER.

{3 Fish. Pat. Cas. 607.}<sup>1</sup>

Circuit Court, N. D. New York.

July, 1869.

PATENTS FOR INVENTIONS—PLATEHOLDER FOR CAMERAS—INVENTION.

The plate holder for cameras patented by Albert L. Southworth, April 10, 1855, existed, and was carried into practical operation by working machines, and was in use by practical photographers seven or eight years before the date of his patent, and before he had perfected his machine. The patent is therefore void.

This was a bill in equity filed to restrain the defendant [Christopher C Schoonmaker] from infringing letters patent for a “plate holder for cameras,” granted to Albert S. Southworth, April 10, 1855, reissued September 25, 1860, and assigned to complainant [Simon Wing]. The nature of the invention and the claims are stated in the report of the case of *Wing v. Richardson* [Case No. 17,869].

E. Cowen, for complainant.

Townsend & Browne and Henry Baldwin, Jr., for defendant.

NELSON, Circuit Justice. The bill is filed in this case, founded on a patent to A. S. Southworth, April 10, 1855, for a new and useful plate holder for cameras, and reissued September 25, 1860. The claim in the reissued patent is, “bringing the different portions of a single plate, or several plates, successively into the field of the lens of the camera, substantially in the manner and for the purpose specified.”

The patentee states in his specification that it had been customary to use a separate plate for each impression, the plate being removed from the camera and replaced by another, when several impressions of the same object were to be taken, as in multiplying copies. This caused delay and trouble, to obviate which was the object of this invention, and which consisted in bringing successively different portions of the same plate or several smaller plates, secured by one plate holder, into the field of the lens of the camera; and in carrying out the invention, the patentee has made use of a peculiarly arranged frame, in which the plate holder is permitted to slide, and in which the position of the plate holder is definitely indicated to the operator, etc.

The only real question in the case is, whether or not the patentee was the first and original inventor of the above improvement. The burden of the proofs, both on the part of the complainant and defendant, bears upon this point. It is insisted on the part of the complainant, that the improvement was conceived and put into practical use as early as 1846, and, if not, as early as the winter of 1847-8. The patent was not issued till 1855. I have looked, with some care, into the proofs, which are quite-voluminous, and am satisfied this position is-not sustained.

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On the contrary, the better opinion is, the improvement was not perfected by the patentee till the year 1854. He went, according to his own account, to California, in the winter of 1848-9, and remained there two years; and on his return, he took up the subject of the stereoscope, and was engaged in considering new plans and new ideas on this subject, and taking out patents thereon, until he was taken sick and shut up in his room, when he applied himself to finish the idea of taking pictures rapidly in the center of the lens, by adapting the movement in a frame which would fit any ordinary camera. Again, he says on his cross-examination, that it was three years after his return from California that he was sick, and which was in November, in the fall of 1854. He says, also, on his examination-in-chief, that he had not perfected the mechanical parts of his-machine, so as to carry out his idea readily, when the California excitement led him to go there.

He further says, that the instrument made by Coburn in the fall of 1846 was abandoned, and that he then contemplated a different improvement. This was by moving the lens over the plate. This idea was not in the first patent at all, and is only alluded to in the reissue. Now the proofs are full that this idea of making the same impression on different parts of the same plate, by the use of a sliding plate holder, existed and was carried into practical operation by working machines as early as 1847-48, and was in use by several practical photographers some seven or eight years before the date of the patent of Southworth, and before he had perfected his machine.

Entertaining these views, it follows that a decree must be entered for the defendant.

{For other cases involving this patent, see note to *Ormsbee v. Wood*, Case No. 10,579.}

<sup>1</sup> {Reported by Samuel S. Fisher, Esq., and here reprinted by permission.}