QUIROLO *v.* ARDITO AND ANOTHER.

Circuit Court, S.D. New York. January 20, 1880.

PATENT—WANT OF NOVELTY—BILL DISMISSED WITHOUT REGARD TO ANSWER.—In a suit for an infringement, the bill will be dismissed, without regard to the answer, the where the patent is void on its face for want of novelty.

Infringement of Patent.

WHEELER, J. This suit is brought for relief against an infringement of re-issued letters patent No. 6,557, dated July 27, 1875, granted to the orator for an improvement in stereoscopes, consisting of a combination of legs, with the standard for the stereoscopes to stand upon. The answer denies the novelty of the invention. It is not very clear upon the evidence whether stereoscopes were made to stand upon legs before they were so made by the orator; but, whether they had been or not such stands had long been in use for surveyor's compasses, theodolites, cameras, telescopes, and other mathematical and optical instruments, as is well and generally known. Stereoscopes had been placed upon stands for a long time.

This part of the patented invention does not relate to the stereoscopes themselves at all, but only to the mode of mounting them. There could be no invention in putting a stereoscope upon one kind of well known stands instead of another. It was merely putting the old stand to a new use. So, whether the invention was known or used or described in the exact manner, or by the persons, set up in the answer, or not, the patent, in this respect, which is the only one in controversy, is void on its face for want of novelty, within common knowledge, which is sufficient for dismissing the bill

without regard to the answer. *Brown* v. *Piper*, 91 U. S. 537; *Terhune* v. *Phillips*, 99 U. S. 592.

Let a decree be entered dismissing the bill of complaint, with costs.

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