

McCLOSKEY v. HAMILL.

Circuit Court, S. D. New York. February 19, 1883.

PATENT LAW—DISMISSAL OF BILL.

Where the subject of the patent in controversy in this case has been decided by the circuit court for this district not to be patentable, such decision is conclusive on this court, and the bill will be dismissed.

James C. Cloy A and Wm. J. Underwood, Jr., for plaintiff.

Howard A. Sperry, for defendant.

SHIPMAN, J. This is a bill in equity to restrain the alleged infringement of letters patent No. 220,767, which were issued to John McCloskey on October 21, 1879, for an improved plumbers' trap of soft metal. This patent has been twice the subject of examination by Judge WHEELER, in the circuit court for this district. *McCloskey v. Du Bois*, 8 FED. REP. 710, and 9 FED. REP. 38. The facts which the plaintiff proved upon the second hearing are the same which he relied upon in this case. Judge WHEELER'S opinion was that the alleged invention, which is the subject of this patent, is not patentable. That must be taken to be the law of this circuit until either a state of facts is proved which shall present a different case, or until the conclusion of law upon the facts, as now shown shall be overruled by the supreme court. My own examination of the case leads me to concur in the result which Judge WHEELER reached. The intention of the plaintiff in bringing this bill was probably to present the case in such a clear and accurate manner that the conclusion of Judge WHEELER might be properly examined by the supreme court.

The plea is sustained and the bill is dismissed.

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