trunk. The lower end of the strap rides over the dovetailed lugs of the catch till the cover is closed, when the inclines of the straps and the lugs coincide. While this device is a fastener, it bears no substantial resemblance to the rigid keeper of the Taylor invention, which slides into a socket, and engages with a non-elastic hinged latch, actuated by a spring to hold it either open or shut, the latch snapping into firm engagement with the keeper. Each reissue was a similar futile attempt to expand a narrow patent into a comprehensive one, and was intended to cover subsequent inventions which neither Semple nor Locke made or conceived. Unless construed in strict conformity to the actual inventions as described in the specifications, the Semple reissue, and the first and second claims of the Locke reissue, are void, because they are undue expansions of the respective originals, but not by reason of any laches in obtaining a reissue.

Exhibit O was made under the Taylor patent of September 21, 1880, and is upon a different principle from that of the Taylor inventions of 1872 and 1878. It has no spring latch or hinged latch. It consists of two rigid parts—one to be attached firmly to and above the valance of the trunk, the lower end of the piece being in the shape of a flatted dowel pin with a square opening. Quoting now from the description given by Mr. Shepard, the defendants' expert:

"The part to be applied to the body of the trunk consists of two pieces; one piece is a sort of frame, having holes for attaching it to the trunk's body, and in the middle, on the front of its upper end, there is a stud, or projection, beveled on its upper side, which stud is for engaging the hole in the part which is applied to the trunk-cover. By the sides of this stud there are two flanges for engaging the edges of the rigid piece on the trunk-cover and causing it to come into proper position for engagement with the beveled lug. * * * When the cover comes down, the rounded end of the dowel strikes the flanges on the lower member of the fastener, and thereby brings the cover into the proper position laterally, and as the cover comes down, the dowel rides over the beveled face of the lug, and as soon as the opening in the dowel is directly in front of the lug, it snaps into engagement. * * * In order to disengage the fastener, the lever (a lever mounted on a vertical axis and pivoted within the frame) is swung forward to pry the piece which is hung to the cover of the trunk forward, far enough to disengage it."

This fastener was not a success, because there was no spring; and as the keeper or dowel depended upon its position upon the valance, if the valance was out of position, the keeper failed to spring over the face of the lug. It is manifestly unlike the Semple invention, and is, in its construction, upon a different principle from that of the spring dovetailed strap of Locke, which rides into engagement with the wedging faces of the lugs upon the catch.

The Rice invention, the patentee says in his specification, consisted "of a trunk-catch made of three castings, provided with a spring, and capable of being put together without special fitting. It is so constructed that two dowels cast on the portion attached to the cover enter sockets formed in the part attached to the body of the trunk."

In view of the Taylor patent of 1872, and the John Arnold patent of July 1, 1873, it is a narrow patent, and consists in the fact that the parts are assembled without special fitting or riveting, but by sliding the spring into place. It has a spring and hinged latch, and is therefore unlike Exhibit O. The other exhibits which are said to infringe have four castings and a spring, and are not so arranged that they can be held in place without riveting. In the Rice fastener, the latch is so held in place by the spring that, if it was broken, the latch would be liable to drop out of its bearings. This is not true of the defendants' fasteners. In the Rice patent, both fasteners must be held out of engagement by the hand when the lid is lifted. Under the Taylor patent of 1872, and in the defendants' fasteners, the spring holds the latch out of engagement when the lid is to be lifted. There is no infringement of the Rice patent.

The bill is dismissed.

SLESSINGER *v.* BUCKINGHAM and others.[1]

(*Circuit Court, D. California.* January 29, 1883.)

1. PROOF OF INFRINGEMENT BEFORE BILL FILED.
   An infringement must be shown to have taken place either by making, selling, or using the article patented, before the filing of the bill, or there can be no recovery.
2. ANSWER TO BILL UNDER OATH.
   Where the complainant does not waive an answer to the bill under oath, the answer, distinctly denying the material matters alleged, not only makes an issue, but proves it; so that it will require the evidence of two witnesses, or of one witness, and other circumstances equivalent to a second, to overthrow the answer.
3. WAIVING ANSWER UNDER OATH.
   The great advantage to complainant, in many cases under the present rules relating to the competency of witnesses of waiving an answer under oath, pointed out.

In Equity.

John L. Boone, for complainant.

M. A. Wheaton, for defendants.

SAWYER, J., (*orally.*) In this case I am compelled to decide that the evidence is insufficient to show an infringement before the filing of this bill; or, indeed, an infringement at any time. The evidence is very slight upon those points. There are two points made by defendants, both of which, I think, are well taken. One is that if it is conceded that the articles charged to have been made are an infringement of the patent, it does not appear that those articles were sold or made prior to the filing of the bill. The defendants make that point and rely upon it. The only testimony is, taking it in its aspect

[1] From 8th Sawyer.