

citation of the debate in the senate only proves that the senators—that is, the majority who passed the bill—did not deem it ambiguous or incapable of application.

The issue is found for the defendant.

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VERMONT FARM MACHINE Co. and others v. MARBLE, Com'r, etc.

(Circuit Court, D. Vermont. January 28, 1884.)

PATENT—PREVIOUS DESCRIPTION.

An inventor is not barred from obtaining a patent because his invention has been described, though not claimed, in a prior patent to the same inventor.

In Equity.

*William E. Simonds and Kittredge Haskins, for orators.*

WHEELER, J. The orators, on the thirtieth of March, 1880, filed an application for a patent for improvements in milk-setting apparatus, consisting, as finally amended, of nine claims, the last five of which have been allowed; the first four have been refused, because described, although not claimed, in a prior patent to the same inventors, No. 207,738, dated September 3, 1878. Prior public use to bar the patent is denied on oath by the applicants, and is not shown. The refusal rests solely, apparently, on the prior description, and *Campbell v. James*, 104 U. S. 356. What is said in that case, taken at large, would seem to show that a patent could not be granted for an invention described in a former patent to the same inventor. What was so spoken of there had been not only described but patented in the former patent. What was said is to be understood by reference to what it was spoken of. That part of that case relied upon in this rejection is where it is said:

“It is hardly necessary to remark that the patentee could not include in a subsequent patent any invention embraced or described in a prior one granted to himself, any more than he could an invention embraced or described in a prior patent granted to a third person. Indeed, not so well; because he might get a patent for an invention before patented to a third person in this country, if he could show that he was the first and original inventor, and if he should prove an interference declared.” Page 382.

The latter part of this extract relates to the same subject as the former part. It expressly refers to patented inventions by others; and serves to show that patented inventions by the same inventor were intended where inventions embraced or discovered in his prior patent were referred to. The statute does not make prior description in a patent a bar, but being patented. Sections 4886, 4887, 4920. The court appears to have merely referred to the plain effect of these statute provisions. In *Battin v. Taggart*, 17 How. 74, it appears to have been expressly adjudged upon the same statute provisions as are in

force now, that an inventor might have a patent for an invention described in a prior patent to himself. The same seems to have been decided in *Graham v. McCormick*, 11 FED. REP. 859, on full argument and much consideration. According to the terms of the statutes the orators seem to be entitled to the patent for these claims. There does not appear to be any settled construction to control otherwise.

Let there be a decree for the applicant adjudging that he is entitled to receive a patent for the invention covered by these first four claims of his application.

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REAY, Ex'x v. RAYNOR and others.

(Circuit Court, S. D. New York. January 23, 1884.)

PATENTS FOR INVENTIONS.

Amended bill to cover reissue of patent allowed, though the patent alleged to be infringed by the first bill had expired before the amended bill was filed. Reissued letters patent No. 2,529, granted March 26, 1867, for improvements in envelope machines, held to have been infringed by the defendants as to the first, second, and tenth claims, and an injunction and accounting ordered.

In Equity.

*Arthur v. Briesen*, for oratrix.

*Stephen D. Law and John Van Santvoord*, for defendants.

WHEELER, J. The testator of the oratrix was the owner of reissued letters patent No. 2,529, granted March 26, 1867, upon the surrender of original letters patent No. 39,702, granted to him August 25, 1863, for improvements in envelope machines, which would expire August 25, 1880. The bill was brought June 12, 1880, upon the original patent, without referring to the reissue, to restrain the use of machines alleged to be infringements, and for an account. No motion was made for a preliminary injunction. An answer was filed setting forth the reissue August 16, 1880; the oratrix moved to amend the bill, and September 22, 1880, it was by stipulation amended to cover the reissue in place of the original. The defendants now move, on the authority of *Root v. Railway*, 105 U. S. 189, that the bill be dismissed for want of jurisdiction in equity, because the patent had expired before the amended bill was filed, upon which only the oratrix could have any equitable relief. *Dowell v. Mitchell*, 105 U. S. 430. The infringement is solely by the use of machines made before the bill was brought and continued ever since, and would be covered by the general allegation of infringement made in both the original and amended bills, if filed during the term of the patent, but the continued use after the expiration of the term would not be so covered by that general allegation in a bill filed after the expiration; special