

not claimed. It is a declaration that that which is not claimed is either not the patentee's invention or, if his, he dedicates it to the public."

It is argued for the complainant that the patent in suit is not for a particular device but for a combination, and that, construed most favorably for the defendants, the March patent discloses but one element of that combination. This contention presents for consideration a number of questions not argued upon the motion, but which may perhaps be sufficiently suggested by an examination of *Slawson v. Grand St. R. R.* 107 U. S. 649; S. C. 2 Sup. Ct. Rep. 663, and other like authorities.

Although the papers presented on this motion have been carefully examined it is not the purpose of the court to discuss the defenses referred to at this time or express an opinion regarding them; they should be disposed of only after careful consideration on final hearing. They are mentioned here simply to show that the defendants have succeeded in raising a sufficient doubt as to the validity of the complainant's patent to induce the court to withhold the writ asked for provided the complainant's right can be fully protected without resort to so positive a remedy. Where an injunction will work great injury to one party without corresponding benefit to the other it should not ordinarily issue, especially where adequate protection can be had without it.

An injunction should issue unless the defendants within 15 days after service of a certified copy of the order entered upon this decision shall give a bond with two or more sureties to be approved by a commissioner of this court, conditioned to keep an account of all the lubricators manufactured and sold by them and to file such account duly verified once a month in the office of the clerk of this court, and to pay the amount of any final decree which may be awarded against them; the penalty of the bond to be in such sum as may be agreed on by the parties, or if they are unable to agree, as may be fixed by the court upon proof by affidavit or otherwise of the extent of the defendants' business.

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### THE FISH-WHEEL CASE.

WILLIAMS *v.* McCORD and others.

(Circuit Court, D. Oregon. March 26, 1884.)

#### PATENT FOR "REVOLVING DIP-NET."

The patent issued to Thornton F. Williams on August 2, 1881, and numbered 245,251, for an "improvement in revolving dip-nets," declared void for want of both invention and novelty, the same having been invented and put into operation by Samuel Wilson at the Cascades of the Columbia in the spring of 1879, from which machine the said Williams, in the fall of that year and the spring of 1880, constructed his "revolving dip-net."

Suit for Infringement of Patent, and for an account and injunction.  
*D. P. Kennedy and William B. Gilbert*, for plaintiff.  
*H. B. Nicholas*, for defendant.

DEADY, J. This suit was commenced on January 12, 1883, and is brought against the defendants for an account, and to recover damages for the wrongful use, by them, of a certain "revolving dip-net," alleged to have been invented by the plaintiff, and for an injunction to restrain them from the further use thereof. The bill alleged that the plaintiff, being the first and original inventor of such dip-net, on November 4, 1880, applied for letters patent thereon, which were duly issued to him on August 2, 1881, and numbered 245,251; that the defendants, on March 1, 1882, without the consent of the plaintiff, constructed "a revolving dip-net on the south side of Bradford's island, in the Columbia river, \* \* \* embracing the improvement and invention described in said letters patent," and maintained the same "in operation during the fishing season of 1882,"—that is, from April 1st to August 1st,—to the damage of the plaintiff, \$100; and still continues to operate the same.

The defendants, answering the complaint, deny that the plaintiff is the original inventor of the net in question, and that the same was not in public use when the plaintiff applied for his letters patent, and allege that said dip-net was fully described in Harper's *Monthly Magazine* for May, 1880; that Samuel Wilson, of Dallas, Iowa, invented and put in operation, on the Columbia river, the dip-net described in the bill, in April, 1879, long before the alleged invention of the plaintiff, and that the plaintiff surreptitiously availed himself of said Wilson's idea and invention, and obtained a patent for the same while the latter was engaged in perfecting it; but that neither said Wilson nor the plaintiff were the first inventors of said dip-net, and that the same had been in use in other places, by other persons, for the purpose of catching fish, for many years before, specifying, among others, sundry places and persons on the Catawba and Pee Dee rivers, in North Carolina, where it had been in use, in some instances, for more than 50 years; that on January 4, 1882, the defendant McCord, being the first and original inventor of certain improvements in a fish wheel, made application for letters patent thereon, which, on May 16th of the same year, were duly issued to him and other defendants, as the assignees of said McCord, and numbered 251,960, for an invention entitled a "fish wheel;" that afterwards, in 1882, the defendants licensed the "Snail Wheel Fishing Company," a corporation duly formed under the laws of Oregon, the defendants being the officers and stockholders thereof, to conduct such a fish wheel on the south side of Bradford's island, and that said corporation did construct and operate such wheel at said place during the fishing season of 1882, which is the same machine referred to and mentioned in the bill as being an infringement on the plaintiff's dip-net.

It appears from the evidence that fish wheels or dipping wheels