answer, as if the answer was void; nor except to the answer for insufficiency,—by replying to it he admitted it to be sufficient, however imperfect it might be. Story, Eq. Pl. § 877. The issue joined upon the answer by the traverse was upon its allegations and denials as they were, and the orator, by joining that issue, placed himself where he must overcome the denials and maintain his bill. *Young* v. *Grundy*, 6 Cranch, 51. The reissue of the patent ran directly to the orator, and was founded upon assignments entitling him to it, and the production of it would show *prima facie* that all the preliminary steps had been taken. The law would presume damage and deprivation of profits from infringement, but there must be at least proof of that to make out either by it. The proof is wholly as to use. It comes from a reluctant witness so situated that full force should be given to what he does say, but beyond what he says and what may fairly be inferred from that there is no proof. Without going beyond that, and into suspicion and conjecture, the fact of the use by the defendants of the device patented by this patent does not appear. The orator may have a good case, but the defendants have not admitted it; neither has he proved it.

Let there be a decree dismissing the bill, with costs.

WERNER *v.* REINHARDT and others.

(Circuit Court, S. D. New York. May 1, 1884.)

EQUITY—DECREE OF COURT—INTEREST OF COMPLAINANT IN.

The successful complainant is not properly concerned in the interests of any one, under the decree, but himself.

In Equity.

Briesen & Steele, for complainant.

Jacob L. Hanes, for defendants.

WHEELER, J. The orator is entitled only to a decree settling his own rights. The master is entitled to have the amount of his fees fixed, and to an order for their payment, and, if necessary, to an attachment to make the order effectual. Equity rule 82. The proposed addition to this decree does not at all fix the amount of the fees, but is a mere general direction to the defendant to pay them, whatever the amount may be. This is not sufficient. As this might as well, and, perhaps, more properly, be by separate order, the decree is signed without it. *Myers* v. *Dunbar*, 12 Blatchf. 380.

LOCKWOOD *v.* CLEVELAND and others.

(Circuit Court, D. New Jersey. March 25, 1884.)

REOPENING A FINAL DECREE.

Efforts to reopen a final decree should be discouraged, no matter how meritorious the grounds. The party has his remedy by offering a fresh grievance, and upon suit therefor introducing the new defense.

On motion for Rehearing. See 18 FED. REP. 37.

Bedle, Muirheid & McGee, for the motion.

Browne & Witter, contra.

NIXON, J. This is a motion to allow one of the defendants to open a decree entered in the above case, to amend the answer, and to take new proofs. The original bill was filed under the provisions of section 4918 of the Revised Statutes. The only question involved was the one of priority of invention between two patentees. An interference had been declared in the patent-office, and after many conflicting opinions, in the progress of the case, an ultimate decision had been reached adverse to Lockwood and in favor of Horton. Not satisfied with the result, the complainant came into this court, praying for a decree declaring the Horton patent void. The defendants answered, denying priority of invention in Lockwood, and claiming it for Horton; and, under the peculiar provisions of that section, asking for a decree that complainant's patent be declared void. There was, however, no suggestion that it was void for any other reason except that the patented invention had been anticipated by Horton. Upon this issue and the proofs, the court held that while both were original inventions, Lockwood was the first, and that, as between them, his patent should stand and the defendants' should be vacated. One of the defendants now files a petition for a rehearing. He practically admits that the decree, as far as it goes, is correct; for he alleges in his petition that he has now discovered that the invention claimed in the two interfering patents has been known and in public use for fifteen years. He complains that the decree does not go far enough. He wants to add something to it, to-wit, that complainant's patent is also void,—not, as was claimed in the answer, because it was anticipated by the invention of Horton, but for want of novelty generally. In order to introduce such a defense, he asks leave to amend by including such an allegation in the answer.

The learned counsel of the complainant, at the hearing, happily characterized the proceeding as a change of base by defendants after defeat. We do not say that circumstances may not arise which would justify the court in opening a final decree, allowing new defenses to be added, new proofs to be taken, and another hearing to be had. But such a course is unusual, and, if easily obtained, it would render a final decree in equity of little practical value. Courts