

present suit. But he sold the patent to King, the defendant in the former action, *pendente lite*, who kept it until after the termination of the litigation, and then transferred the title to Hunt, who was his principal witness in the suit, and had at least sufficient knowledge of the controversy to put him upon inquiry. Hunt's title, then, is subject to the limitations which affected the title of his assignor, King. If the latter is estopped by the decree, the former is. Greenleaf, in his first volume of the Law of Evidence, § 523, says:

"But to give full effect to the principle by which parties are held bound by a judgment, all persons who are represented by the parties and claim under them, or in privity with them, are equally concluded by the same proceedings. We have already seen that the term 'privity' denotes mutual or successive relationship to the same rights of property. The ground, therefore, upon which persons standing in this relation to the litigating party are bound by the proceedings to which he was a party, is that they are identified with him in interest, and wherever this identity is found to exist, all are alike concluded."

The complainant stands before the court as King would have stood if he had commenced the action.

We think the plea in bar must be sustained; and it is so ordered.

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SIMON v. NEUMANN and others.

(Circuit Court, S. D. New York. May 10, 1884.)

PATENT—ADOPTION OF OLD PORTION OF IMPROVED DEVICE NO INFRINGEMENT.

A certain patent being found to be an infringement upon an old invention, it is no infringement to imitate the old portion of it, so long as there is no interference with the new.

In Equity.

*Frederic H. Betts and J. S. Hindon Hyde*, for orator.

*W. C. Hauff and John Van Santvoord*, for defendant.

WHEELER, J. This suit rests upon reissued letters patent No. 9,772, dated June 21, 1881, the original of which was No. 177,020, dated May 2, 1876, and granted to the orator for an improvement in traveling-bags. The improvement consisted in making the lock-plate long enough to support not only the lock itself and its fastenings, but also ring-loops for the handle attached to raised portions of the plate, and having creases under the ends of the plate for rings or other devices for a carrying-strap, so that attaching the plate to the frame would attach all these parts to the bag. There were three claims in the original patent,—one for the lock-plate having secured to it the lock, fastening, and ring-loops; one for the lock-plate having the recesses

formed by the raised portions for receiving the ring-loops; and one for the combination of the plate, the lock, and the fastening device, secured together and adapted to be fastened to the frame. The ring-loops, and the mode of attaching them to an extended plate, and the creases under the ends of the plate for the rings of a carrying-strap, appear to have been new. A lock and fastening secured to a plate, adapted to be attached to a bag-frame, appear to have been old. The first two claims would therefore be valid, but the defendants do not have the ring-loops, nor their mode of attachment to the plate, and do not infringe those claims. The third claim, not calling for anything peculiar about the plate more than it should be combined with the lock and fastening device, and adapted to be attached to the frame, by its terms covered nothing that was new, and appears to be invalid. Nothing in respect to the creases under the ends of the plate was claimed. The reissue has two new and additional claims,—one for a lock provided with means whereby the rings of the carrying-strap can be attached directly thereto, substantially as specified; and one for a lock having its bottom plate provided with creases for the rings for the handles. These claims have reference to the creases for the rings of the carrying-strap or handle under the ends of the extended lock-plate. They are extended to cover this feature. The defendants have the extended plate and this feature. There is no claim anywhere for the extended plate by itself, and none that is infringed except these expanded claims made to cover the infringement by the expansion. The expansion was nearly five years after the original, and does not seem to be warranted, according to the recent decision upon this subject. Therefore the defendants do not infringe any valid claim, and the bill must be dismissed.

Let a decree be entered accordingly, with costs.

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ROEMER v. SIMON and others.

(Circuit Court, S. D. New York. May 10, 1884.)

PATENT—ADOPTION OF INVENTION FOR PURPOSE OF ADDING TO IT, AN INFRINGEMENT.

The taking of an invention for the purpose of adding to it is as much an infringement as would be the taking and using it without the addition.

In Equity.

*A. v. Briesen*, for orator.

*Frederic H. Betts*, for defendant.

WHEELER, J. This suit is brought upon letters patent No. 195, 233, dated September 18, 1877, and granted to the orator for an im-

provement in combined lock and handle for traveling-bags. The improvement consists in having the case for the lock long enough to fasten the handle to at each end by rings through the upright walls of the case. The handle is thus attached to the lock and by that to the bag; and the extended perpendicular walls of the case stiffen and strengthen the whole. If the invention had been of an attachment of the lock directly to the handles only, or of the extension of the top plate of the lock-case along the frame to receive the handle-rings, it would have been anticipated; but the substance of it is understood to be the single attachment of the lock and handle to the frame, and taking advantage of the walls of the case to strengthen the frame at the handles. None of the devices relied upon by the defense meet these qualities. The patent, therefore, seems to be valid.

The structure shown for an infringement appears to have all the elements of the patented invention, with the addition of a bottom plate to the lock extending beyond and fitting over the handle-rings. This adds to, but does not take the place of, the orator's arrangement. The attachment of the handles to the lock-case, and the support of the whole by the walls of the case, are retained. This taking of the invention for the purpose of adding to it is as much an infringement as if taken and used without the addition. The orator, therefore, seems to be entitled to a decree.

Let a decree be entered for the orator for an injunction and an account, with costs.

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### THE GOLDEN RULE.<sup>1</sup>

(*Circuit Court, E. D. Louisiana. March 29, 1884.*)

#### 1. COLLISION.

Although the evidence shows that there was no actual collision, there is no doubt that the Golden Rule fouled in the hawser of the Arthur and broke it, and probably, in doing so, broke the ship's martingale. It was an accident likely to occur in a crowded port, and the offending vessel was liable for the damages.

#### 2. SURVEY.

The costs of a survey held on the injured vessel, without order of court, or by contract between the parties, in the absence of any proof that it was a necessary result of the collision, cannot be charged as part of the damages.

Admiralty Appeal.

*James McConnell* and *Horace E. Upton*, for libelants.

*H. H. Walsh*, for claimants.

<sup>1</sup> Reported by Joseph P. Hornor, Esq., of the New Orleans bar.