

The proof leaves little room for doubt that the removal to Center street did not take place until November, 1877. In addition to complainant's letter pointing to this date, bills emanating from his establishment are produced, dated from Walker street as late as October 13, 1877, and from Center street November 10, 1877. There is certainly a strong presumption, in the absence of direct proof, that in October the complainant was at Walker street and in November at Center street.

These circumstances, taken in connection with the testimony that the invention was conceived just before removing, and that the patented pin was first manufactured after the removal, furnish very persuasive evidence that the invention was in the fall of 1877 instead of the fall of 1876. The witnesses were testifying to events which took place six and seven years before. They certainly are mistaken as to some of them. Why may they not, without any wrongful intent, have mistaken the year also?

It is not thought necessary to enter upon a more extended review of the evidence, which is very voluminous and is discussed with great care and elaboration upon the briefs presented. It is enough to say that no one of the principal circumstances relied on by the complainant is free from perplexity; either its own date is uncertain or there is difficulty in connecting it with the invention. It would be idle to assert that all this does not create the doubt which the authorities hold must be absent from the mind of the court.

The result has been reached without reference to the declarations or admissions of the joint inventor Albert M. Smith, either in writing or otherwise.

It follows that the bill must be dismissed, with costs.

---

### HART, Jr., and others v. THAYER.

*Circuit Court, S. D. New York. June, 1884.*

Points in dispute decided in preceding case of *Thayer v. Hart*.

In Equity.

*Frederic H. Betts and C. Wyllys Betts*, for complainants.

*Josiah P. Fitch*, for defendant.

COXE, J. This action involves the same patents examined in *Thayer v. Hart*, ante, 693. Infringement is admitted, and the question of prior invention alone is involved. The result reached in that action disposes of this also.

There should be a decree for an injunction and an account, with costs.

RUMSEY and others v. BUCK.<sup>1</sup>

(Circuit Court, E. D. Missouri. May 30, 1884.)

## 1. PATENTS—ASSIGNORS ESTOPPED FROM DISPUTING VALIDITY.

A., B., and C., who were tenants in common of an interest in a patent on drilling clamps, obtained another patent for an improvement in such clamps. Thereafter C. transferred his interest in the former patent to A. and B., and they transferred their interest in the latter patent to him, and his heirs and assigns, to hold and enjoy the benefit thereof during the period for which the letters had been granted. And they agreed with C. upon the price which each of the parties was to charge for the clamps to be manufactured under their respective patents. In a suit subsequently brought by A., B., and another to enjoin the manufacture and sale of clamps under C.'s patent, *held*, that A. and B. are estopped from claiming that their patent is infringed by clamps manufactured under C.'s patent.

## 2. SAME—IMPROVEMENT IN CLAMPS FOR HOLDING RATCHET-DRILLS FOR DRILLING RAILROAD RAILS.

Letters patent granted Louis Beland, January 16, 1877, No. 186,225, for an improvement in clamps for holding ratchet-drills for drilling railroad rails, *held*, not infringed by clamps manufactured under letters patent granted Flavius J. Underwood, Andrew Warren, and Perrin G. March, July 9, 1878, No. 205,927, for an improvement in railroad track-drills.

In Equity. Suit for the infringement of a patent for an improvement in drilling clamps for drilling railroad rails.

*Parkinson & Parkinson*, for complainants.

*George M. Stewart and Britton A. Hill*, for defendants.

TREAT, J., (*orally*.) It appears from the bill that complainants Warren and March derive title to the patent, which it is alleged has been infringed, through Flavius J. Underwood, and the complainant Rumsey derives his title direct from the patentee, Beland. From the averments of the bill and answer, which were supported by the evidence, it appears that in September, 1877, Beland, the patentee, under whom complainants claim title, leased or assigned his patent to Flavius J. Underwood, for a period of 17 years from its date, subject to a royalty of two dollars for each track-drill manufactured by Underwood. Subsequently, Underwood assigned to Perrin G. March, one of the complainants, one-third of the interest he had thus acquired, and to Andrew Warren another third, and the three added to this tenancy in common of the patent a copartnership to operate under it. During the existence of this copartnership, Underwood invented another track-drill, and, by agreement with his copartners, secured a patent on the same on the twentieth of April, 1878, which is numbered 205,927, and is the one under which the defendant in this case is operating. This patent was issued to Perrin G. March, Andrew Warren, and Flavius J. Underwood. In November, 1878, the copartnership between Underwood, March, and Warren was dissolved by mutual consent, and the agreement of dissolution was such that Underwood transferred to them jointly the remaining interest which he held in

<sup>1</sup> Reported by Benj. F. Rex, Esq., of the St. Louis bar.