

WHEELER, J. This suit is brought upon a copyright of a photograph of Josie Sadler and her child, with the child's finger in her mouth, taken by the plaintiff after arranging them in good positions according to his judgment, and after the child had put its finger in her mouth, which he thought improved the position, and took advantage of, as photographers usually take photographs. The defendant in the first case had copied the position, features, and most of the photograph by reversing it, and changing some minor details, into advertising lithographs for the defendants in the other case. The principal defenses to both are that the plaintiff is not sufficiently shown to have been the author of the photograph, and that the defendants have not infringed.

That a photograph may be the subject of a valid copyright for the photographer as the author of it is well shown and seems to be settled in *Lithographic Co. v. Sarony*, 111 U. S. 53, 4 Sup. Ct. Rep. 279. The chief difference between that case and this as to this point is that the artist did not do so much in preparing the subjects here as was done there. But enough was done here by placing the persons in position, and using the position assumed by the child at the proper time to produce this photograph, and the plaintiff thereby produced it. Other photographs may have been or may be taken of some other woman and child, or of this woman and her child in similar positions, or the same as near as may be, but none of them will be exactly like this. He is, and no one else can be, the author of this. The amount of labor or skill in the production does not seem to be material if the proper subject of a copyright is produced, and the producer copyrights it. The defendants have not merely copied the woman and child, as they might have done with their consent, but they have used the plaintiff's production as a guide for making others, and have thereby substantially copied it as he produced it, and infringed upon his exclusive right of copying it. So the validity of the copyright and infringement of it seem to be sufficiently made out. Let decrees continuing the injunctions and for an account be entered.

---

### HAUGHEY v. MEYER.

(Circuit Court, E. D. Missouri, E. D. December 28, 1891.)

#### 1. PATENTS FOR INVENTIONS—NOVELTY—UTILITY.

Letters patent No. 379,644, issued March 20, 1888, to Michael Haughey, for an improved device to prevent interfering by horses, and consisting of a boot buckled around the leg just above the pastern joint, and having attached to it short pendant straps on which are strung small rubber balls, covers a new and useful invention.

#### 2. SAME—PRIOR USE—EVIDENCE.

Although the defendant in a suit for infringement adduced considerable evidence of prior use, the fact that he was unable to produce a single device antedating the patent deprived his evidence of the certainty required to overthrow a patent.

In Equity. Suit by Michael Haughey against Leopold Meyer for infringement of a patent. Decree for complainant.

The letters patent in controversy in this case are No. 379,644, dated March 20, 1888, and were granted and issued to the complainant, Michael Haughey, for a new, improved, interfering device for horses. The claim of this patent broadly covers the use of a dangle or pendant, attached to an interfering boot, and is as follows, viz.:

"The interfering device consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth."

The infringement complained of in this case consisted in the sale and use of an interfering boot—which was shown in evidence to have been made by a manufacturer in Newark, N. J.—provided with a pendant, whereby it infringed the broad claim of the patent.

*Edward J. O'Brien*, for complainant.

*T. C. Woodward*, for defendant.

THAYER, J., (*orally*.) This is a suit to restrain the infringement of a patent covering a device to prevent horses from interfering. The device consists of a strap, or, rather, a boot, so made as to be buckled around the limb of a horse, just over or above the pastern joint, and to this boot is attached a short pendant consisting of a leather string, on which are strung several small rubber balls. It is claimed that, by the use of this device on a horse that has contracted the habit of interfering, the habit may be cured. The patent creates the presumption of novelty and utility, and there is considerable testimony in the case strengthening the presumption. Several horsemen testify from experience as to the usefulness of the invention in correcting the habit of interfering.

The defense made by the defendant, that is to say, the only defense relied upon, is that of prior use, and want of novelty. It is claimed that a device similar to the patented device, and embodying the same principles, had been in use for 20 or 30 years before the date of the alleged invention. The defense has not been made out to my satisfaction. It seems to me that, if a similar device had been in use before the date of the invention, (as witnesses claim,) it would have been quite possible for the defendant to have produced a sample of the device, which, as he claims, antedated the complainant's patent. Although the defendant took a great deal of testimony to establish prior use, yet he did not succeed in producing a single sample boot that antedated the complainant's letters. Therefore the defense of prior use and want of novelty has not been established by that kind of evidence and with that certainty which the law requires, and complainant is accordingly entitled to a decree.

## WILSON v. ANSONIA BRASS &amp; COPPER CO.

(Circuit Court, S. D. New York. December 23, 1891.)

## 1. PATENTS FOR INVENTIONS—PATENTABILITY—LAMP-BURNERS.

Letters patent No. 316,422, issued April 21, 1885, to George H. Wilson, for an improvement in lamp-burners, consisting of a wick-carrier, with inwardly projecting teeth at the top and bottom for holding the wick and giving it a positive movement as desired, and having slots in the sides for admitting air to the interior for an argand burner, show an essential and useful improvement over all other burners, and are therefore valid.

## 2. SAME—INFRINGEMENT—EQUIVALENTS.

A burner having a wick-carrier like that of the patent, except that the wick is held by stitches at the lower end, constitutes an infringement, as the stitches are merely the mechanical equivalent of the teeth.

**In Equity.** Suit by George H. Wilson against the Ansonia Brass & Copper Company for infringement of a patent. Decree for complainant.

*E. H. Bullard*, for orator.

*Edwin H. Brown*, for defendant.

WHEELER, J. This suit is brought upon letters patent No. 316,422, dated April 21, 1885, and granted to the orator for an improvement in lamp-burners. The patented improvement consists principally in a wick-carrier, with inwardly projecting teeth at the top and bottom ends for holding the wick and giving it a positive movement as desired, and slots in the sides for admitting air to the interior, for an argand burner. The defenses are want of novelty and non-infringement. The proofs show styles of burners, some having one thing, and others another, similar to the plaintiff's, but none having a wick-carrier holding the wick firmly at each end for moving it up and down evenly all round, to properly adjust the flame, and also admitting air to the interior, as his does. The difference between his and all others is small, but it seems to be essential and useful, and therefore patentable. The defendant's burner has a wick-carrier like the plaintiff's in all respects, except that the wick is held by stitches at the lower end instead of by teeth. The stitches appear to be an equivalent there of the teeth, and the carrier appears to be an infringement. Let a decree be entered for the orator.