Infringement is sufficiently established. It is admitted that the articles introduced to establish infringement were made by the defendant. The process used by the defendant is the same as that described in the patent, with one step added which is not described. After the vessel to be enameled has been dipped in the glaze the operator shakes it, and by this means produces the desired result quicker than when the shaking is omitted. That the process can be practiced without this additional step is sufficiently demonstrated. It was a well-known fact among enamelers that this manipulation would save time, and it is thought that one who applies it to the process in question does not thereby escape infringement. He does not use the process any the less because he uses something in addition to the process. Even if it be assumed that the defendant has introduced an improvement, it is an improvement upon the Kegreisz process, and so long as the defendant uses that process it must be treated as an infringer.

The complainant is entitled to the usual decree.

LALANCE & GROSJEAN MANUF'G CO. v. MOSHEIM.

(Circuit Court, S. D. New York. December 22, 1892.)

In Equity. Bill by the Lalance & Grosjean Manufacturing Company for infringement of a patent. Decree for complainant.

COXE, District Judge. The decision in the preceding cause (53 Fed. Rep. 375) disposes of this cause also. It is conceded that the defendant sold the articles in proof made by the Habermann Company. The second claim is intended to cover the product of the process described in the first claim, and, thus limited, I think it is valid and that the defendant has infringed.

The complainant is entitled to the usual decree upon the second claim

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DE LAMATER et al. v. DEELEY et al.

(Circuit Court, S. D. New York. December 17, 1892.)

PATENTS FOR INVENTIONS—VALIDITY—PRIOR USE AND SALE—AIR ENGINES.

Reissued patent No. 9,414, granted October 12, 1880, upon original patent No. 226,052, issued March 30, 1880, to John Ericsson for an air engine, is invalid because the assignees of the inventor made and sold several machines substantially the same as that of the patent more than two years prior to the application.

In Equity. Suit by William de Lamater and others against Robert Deeley and others for infringement of a patent. Bill dismissed.

W. C. Witter and R. N. Kenyon, for orators.

Chas. G. Coe, for defendants.

WHEELER, District Judge. This bill is brought upon letters patent No. 9,414, reissued October 12, 1880, for original patent No. 226,052, dated March 30, 1880, and granted to John Ericsson, assignor, on an application filed February 19, 1880, for an air engine. The principal defense is that the machine had been in public use and on

sale for more than two years prior to the application. The proofs clearly show that C. H. de Lamater & Co., assignees of the invention, made several of these engines, and set up one for Jonathan Thorne, charged it to him, and sent a bill of it, which he paid by check October 6, 1875; that they sold another to Russell H. Hoadley in the summer of 1877, for which he paid $250; and that they sold some others; but these sales are the most significant. The plaintiffs claim that these engines were sold among friends for experimental use; but they were sold without reservation, and the experiment seems to have been more to see if unskilled persons could operate them than for the improvement of the machines. In Egbert v. Lippmann, 104 U. S. 333, the use of a pair of corset steels presented by the inventor to a friend was held to be sufficient to avoid the patent. The case at bar differs from Manufacturing Co. v. Sprague, 123 U. S. 249, 8 Sup. Ct. Rep. 122, where the sale was of the product of the machine itself. The court there said:

"A single sale to another of such a machine as that shown to have been in use by the complainant more than two years prior to the date of his application would certainly have defeated his right to a patent."

The engines sold were like those of the patent in all respects, except that in those a walking beam moved by the working piston was crooked, and at its end worked a pump at the side of the cylinder, while in those of the patent the walking beam is straight, and works the pump at the side of the cylinder opposite to the pivot of the walking beam; and in those the rod of the exchange piston was connected with the ends of a forked lever by a straight crosshead on the piston rod, and straight rods from the ends of the crosshead to the ends of the forked lever, while in those of the patent this connection is made by arched rods between the ends of the forked lever and the head of the piston rod. The walking beam was made straight in one of the first engines; the arched rods first appear in the application for the patent. The arched rods are better than the crosshead and straight rods were, and the straight walking beam is better where there is room for it than the crooked one was, but they do the same things in the same way. All the claims are for combinations of parts in such an engine; and the crosshead and straight rods were equivalents for the arched rods, and the crooked walking beam for the straight one, wherever found in these combinations. Those engines sold would have been full infringements of the patent. These absolute sales of these engines by those acting under the inventor, without reserve, more than two years before the application, appear to be a full answer to the patent.

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

CONSOLIDATED PIEDMONT CABLE CO. v. PACIFIC CABLE RY. CO.

(Circuit Court of Appeals, Ninth Circuit. October 24, 1892.)

No. 55.

1. PATENTS FOR INVENTIONS—INVENTION—ANTICIPATION—CABLE RAILWAY TENSION APPARATUS.

Letters patent No. 244,147, issued July 12, 1881, to Henry Root for a tension apparatus for the cable of a cable railway, consisting of a cable wheel mounted on a car, which is actuated by a heavy weight, and the wheels of which travel upon the rails of a larger frame or car adapted to slide upon a stationary track and having pawls to engage with a holding rack thereon, together with blocks and tackle for drawing the frame backward, the same being operated by passing the rope around a gipsy keyed to the shaft of the cable wheel, possesses patentable invention over the Eppelsheimer patent, (No. 193,939, issued August 7, 1877,) wherein a single car is actuated by a weight which is raised by turning a crank attached to a drum having suitable pawls.

2. SAME—INFRINGEMENT.

The Root patent is infringed by an apparatus which differs from it mainly in having the timbers of the lower car or frame cut away to let down the car carrying the cable wheel, so that both cars travel upon the stationary track.[1]

Appeal from the Circuit Court of the United States for the Northern District of California.

In Equity. Bill by the Pacific Cable Railway Company against the Consolidated Piedmont Cable Company for infringement of letters patent No. 244,147, issued July 12, 1881, to Henry Root, for a tension apparatus designed for taking up the slack of the cable in cable railways. The circuit court entered a decree sustaining the validity of both claims of the patent, declaring infringement, awarding a perpetual injunction, and referring the cause to a master for an accounting as to profits and damages. From this decree the defendant appeals. Affirmed.

The patentee in his specifications thus describes his apparatus:

"It consists of a wheel, A, grooved to receive a cable, B, which passes around it, as shown. The wheel, A, has its shaft journaled in boxes upon the framework of a car, C, which is provided with wheels, D. These wheels are flanged and run upon rails or timbers, E, which are preferably set in line with the cable. A heavy chain or rope, F, is secured to the rear end of the car, and passes backward over a pulley, G, and thence down to a weight, H, sufficiently heavy to keep the necessary tension on the cable. The rails on timbers, E, are united to a framework, I, which rests upon long timbers, J, also set parallel with the line of the cable. Upon the upper surface of the timbers, J, are formed or secured strong racks, K, and the rear ends of the timbers, I, have powerful hook pawls, L, attached to them. These pawls engage with the teeth of the racks, and thus hold the timbers at any point where they may be placed. In order to draw the timbers, J, back, when necessary, a powerful double block, M, with suitable ropes, P, connects the rear of the timbers, I, with the solid masonry, N, at the rear of the tunnel. A gipsy, O, is keyed to the shaft of the cable wheel, A, and the end of the rope, P, is carried from the block to the gipsy, around which it may be passed with a few turns, hanging loosely, so that the gipsy turns freely within it ordinarily.

"The operation will then be as follows: When the cable is first put to work the weight, H, will be drawn up close to the framework; but, as the cable stretches, the weight, keeping up the tension, gradually descends until it is at the bottom of the pit. It is then necessary to draw it up again. This I do by drawing upon the free end of the rope, P, until it binds upon the gipsy sufficiently for the latter to wind it, and thus act upon the blocks and draw the frame, I, backward until

[1] See note to the following case.