

mentioned in the decree, and not in the bill, and the decree were erroneous, therefore, in so far as it included that patent, it could not be attacked collaterally in this or any other court, the Wayne county circuit court having had jurisdiction of the subject-matter and of the person. I do not deem it necessary to consider the questions arising upon the transfer by Jonathan Mills to the Cummer Engine Company, deeming the decree of the Wayne county circuit court and the assignment made thereunder a sufficient and complete defense to the bill. The petition for rehearing is sustained, and the bill will be dismissed at the costs of the complainant.

ECONOMY FEED WATER-HEATER CO. v. LAMPREY BOILER FURNACE-MOUTH PROTECTOR CO.

(Circuit Court of Appeals, First Circuit, February 1, 1895.)

No. 112.

PATENTS—TIME FOR PAYMENT OF FINAL FEE TO PATENT OFFICE.

Under Rev. St. § 4897, requiring payment of final fee to the patent office within six months from notice of the allowance of the patent, such fee may be paid within six calendar months from the date of the notice.

Appeal from the Circuit Court of the United States for the District of New Hampshire.

This was a suit by the Lamprey Boiler Furnace-Mouth Protector Company against the Economy Feed Water-Heater Company for infringement of a patent. There was a decree for complainant, and for an accounting (62 Fed. 590), from which defendant appeals.

In respect to the payment of the necessary fees to the United States patent office, the records of the office show that letters patent No. 421,588 were passed and allowed August 1, 1889, and that notice was sent on that day to the applicants and to their attorneys. The final fee of \$20 was paid January 29, 1890.

Rev. St. § 4897, requires payment of final fee to the patent office within six months from notice of the allowance of the patent. *Id.* § 4885, provides that "every patent shall bear date as of a day not later than six months after the time it was passed and allowed and notice thereof sent to the applicant or his agent; if the final fee is not paid within that period, the patent shall be withheld."

H. W. Boardman, for appellant.

The common-law or lunar month, of 28 days, is the month by which the six months named in Rev. St. § 4885, must be computed, and not a calendar month. *Walk. Pat.* § 125; *Rob. Pat.* § 585; 2 *Bouv. Law Dict.* 187, § 7.

John J. Jennings and Stephen S. Jewett, for appellee.

Before COLT and PUTNAM, Circuit Judges, and NELSON, District Judge.

PER CURIAM. We agree in this case with the conclusions reached by the court below, and we can add nothing to the full and

clear opinion of the presiding judge. As, in our opinion, the fee was paid within the six months required by statute (Guaranty Trust Co. v. Green Cove R. Co., 139 U. S. 137, 145, 11 Sup. Ct. 512), we do not think it necessary to pass upon the question whether the non-payment of the fee within the statutory period can be set up as a defense to a suit upon the patent. The decree of the circuit court is affirmed.

NOTE. In the case of Guaranty Trust Co. v. Green Cove R. Co., 139 U. S. 137, 11 Sup. Ct. 512, cited above, it was held that where a statute requires notice of publication "for four months," and there is no legislative definition, it will be taken to mean calendar months.

NATIONAL FOLDING-BOX & PAPER CO. v. ELSAS et al.

(Circuit Court, S. D. New York. December 6, 1894.)

1. PATENTS—ACTIONS FOR INFRINGEMENT—PRIOR DECISIONS.

The validity of a patent which has been a frequent subject of litigation, and invariably has been sustained, is not open to controversy in a circuit court.

2. SAME.

On the question of infringement, where it appears that devices very similar to defendants' have been held to infringe in several cases, the decision granting a preliminary injunction in the case, directly on the point involved, and made after careful examination of defendants' device, should be followed on final hearing, especially where no injunction can issue, and a speedy review can be had.

3. SAME.

The Ritter patent, No. 171,866, for an improvement in paper boxes, held valid, and infringed.

This was a suit by the National Folding-Box & Paper Company against Herman Elsas and David Keller for infringement of letters patent No. 171,866, granted to Reuben Ritter, January 4, 1876, for an improvement in paper boxes.

On motion by complainant for a preliminary injunction, the following opinion was rendered by Lacombe, Circuit Judge:

"A careful examination of the exhibits introduced by the defendants, as samples of the locking device in the boxes sold by them, leads me to the conclusion that the projection does not accomplish its purpose by hooking over the material at the end of the slot, but engages with the edge of the slot itself. The illustrative model, in which the slot is prolonged, makes this quite clear; and the slot is narrow enough to act substantially as a slit in bending the projection so as to give a straight edge engagement. I am unable to differentiate it, in action, from the device which was before the court in *National Folding-Box & Paper Co. v. American Paper Pail & Box Co.*, nor do I think defendants have shown such laches on the part of complainant or its predecessors as should defeat this application for a preliminary injunction. Motion granted."

Walter D. Edmonds, for complainant.

Arthur v. Briesen (E. E. Wood and Edward Boyd, on the brief), for defendants.

COXE, District Judge. The validity of the complainant's patent is no longer open to controversy in this court. It has been the fre-

quent subject of litigation and has, invariably, been sustained. *Box Co. v. Nugent*, 41 Fed. 139; *National Folding-Box & Paper Co. v. American Paper Pail & Box Co.* (on preliminary injunction) 48 Fed. 913, affirmed 51 Fed. 229, 2 C. C. A. 165; same, on final hearing, 55 Fed. 488; *National Folding-Box & Paper Co. v. Phoenix Paper Co.*, 57 Fed. 223.

Upon the question of infringement also the defendants are confronted by four circuit court decisions and one decision of the circuit court of appeals, holding that devices very similar in construction infringe the second claim of the Ritter patent. There is also the decision of this court directly upon the point involved. It is true that this decision was not made at final hearing, but upon a motion for a preliminary injunction; but it is also true that it was made by the judge who decided the original case, after "a careful examination of the exhibits introduced by the defendants as samples of the locking device in the boxes sold by them." He was clearly of the opinion that the defendants' flap did not hook into the angle of the slot and engage at a single point, but that there was a straight-edge engagement. In such circumstances the decorous and orderly administration of justice requires that the prior decision should be followed, and especially so in a case where no injunction can issue and a speedy review can be had.

The court has examined the complainant's title, in the light of the defendants' accusations, and is of the opinion that it is sufficiently established.

The patent having expired pendente lite the complainant is entitled to a decree for an accounting, with costs.

DE LEON v. LEITCH et al.

(District Court, E. D. Louisiana. February 11, 1895.)

No. 13,006.

1. ADMIRALTY—JURISDICTION—BOND FOR SALVAGE.

Where salvaged property is delivered by the salvors to the owners, upon their promise to execute a bond for salvage when requested, and such a bond is afterwards given, and dated back to a day before the delivery of the property, a court of admiralty has jurisdiction to entertain a libel in personam on the bond.

2. SALVAGE—AMOUNT OF ALLOWANCE.

The steamship M., on a voyage from New Orleans to Honduras, struck a reef off the coast of Mexico, and, being in great danger of going to pieces, was abandoned by the crew. On the following day, N. and D. went on board, brought ashore a quantity of specie, guarded it for three days, and then took it on a schooner to meet a steamer bound to Belize, put it on board such steamer, and brought it safely to Belize, incurring in these services considerable expense and considerable hardship and danger. *Held*, that an allowance to N. and D., as salvage, of one-third of the value of the specie, was proper.

This was a libel in personam by A. C. De Leon, executor of R. S. De Leon, against James Leitch and the firm of Lefebvre, Krug & Oswald, upon a bond given to secure payment of salvage. The bond in question is as follows: