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obtain the relief asked, will be required to show to the satisfaction of the court, that the judgment below was in fact executed after they had become entitled to a stay of proceedings. *Motion denied.*

*Mr. Henry E. Prickett* for plaintiffs in error. No appearance for defendant in error.

Notice of the motion was given in accordance with the suggestion of the court. The opinion of the court on this motion will be found in 19 Wall. 661.

## DANE v. CHICAGO MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 76. October Term, 1874. — Decided January 11, 1875.

All the combinations and all their separate elements patented to William Westlake, April 6, 1864, for an improvement in lanterns, for which re-issued letters were obtained December 23, 1869, were anticipated by inventions referred to in the opinion of the court.

BILL IN EQUITY for the infringement of letters patent. Decree dismissing the bill. Complainants appealed. The case is stated in the opinion.

MR. JUSTICE BRADLEY delivered the opinion of the court.

This case comes before us under peculiar circumstances. The appellants were complainants below, and filed a bill as assignees of William Westlake, of certain letters patent granted to him April 26, 1864, for an improvement in lanterns, for which they obtained a re-issued patent November 23, 1869. The bill was dismissed, on what ground does not appear. The defendants have not appeared to contest this appeal. We are left to ascertain as best we can, with such aid as the appellant's counsel have given us, the real merits of the controversy.

The nature and objects of the alleged invention are described by the patentee as follows:

“ The nature and objects of my invention consist in the construction of lantern guards without hooks, projections or catches, sticking out and interfering with the safe and convenient use of the lanterns, and so that the same can be readily attached or detached; in the employment of a band or disc to fill or cover the space between the enlarged band or ring at the upper end of the guard and the top of the globe, and in the application of suitable fastenings to

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secure the dome to the guard." In other words the improvement claimed is the adaptation to a globe lantern, of a wire guard, removable at pleasure, the top of which is a band or ring sufficiently large for the globe to be passed through it, and which is separated from the top of the globe by a disc to which it is connected by fastenings that allow the said parts (the disc and guard) to be detached at pleasure, so as to permit the removal of the globe. The object of the disc is said to be to cover the space between the top of the guard and the top of the globe, and to hold the latter, which it is important should be contracted at the top. It is stated that the fastenings referred to may be any suitable fastenings to secure the dome or disc to the guard; spring catches being specifically described for the purpose, but any proper fastenings being admissible. The reissued patent originally contained three claims as follows:

"1. The lantern guard *a*, constructed entire, without hinge or joint, so that, as a whole, it can be readily attached to or removed from the lantern, as set forth."

"2. The disc *g*, in combination with the ring or band *b*, of the guard and fastenings *e*, substantially as and for the purposes specified.

"3. The guard *a*, in combination with the disc *g*, fastenings *e*, and removable globe *d*, substantially as specified."

The letters in these claims refer to the drawings, but the parts designated will be readily understood from the foregoing description.

The first claim, which was for the removable guard alone, was afterwards surrendered by a formal disclaimer filed in the Patent Office April 12, 1871.

The other two claims are for combinations; but the disc designated in the drawings by the letter *g*, and being the disc before mentioned, as being used to fill or cover the space between the circular top of the guard and the contracted top of the globe, and to hold the latter in place, is the central and important element in each combination. In the second claim it is combined with the top ring or band of the guard and the fastenings that connect them; in the third, it is combined with the guard, the fastenings and the removable globe. But in both, all these elements are pre-supposed and implied. The idea of the guard is never disengaged from the circular ring or band which forms its top, and the guard and disc are never dissociated from the globe with its contracted top and capacity of removal. It is a globe lantern with the globe removable and con-

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tracted at top, to which the improved guard, with its enlarged and circular top and the attendant intervening disc are adapted, and for which they are constructed. This is what the patentee in substance says, and what, indeed, is essential to make his claim to invention even plausible.

From the evidence before us, it appears that when Westlake applied for his patent in March, 1864, all the elements of his improvement were well known. Butterfield's lantern, patented in 1855, and Lampert's, presented to the Patent Office for a patent in 1858, both had removable guards with bands at the top, and contracted topped globes, the guards being so constructed, however, as to open like a jacket, and thus to be removed from the lantern. But the top of the guard, when in place, fitted closely around the top of the globe; and, therefore, there was no place or occasion for a disc between the guard and the globe, as in Westlake's lantern.

In Canning's lantern, and in Max Miller's, both presented for patents, and the latter patented in 1858, there was a nearer approach to Westlake's. They had a guard with an enlarged top, consisting of a circular ring, large enough to allow the globe to be removed through the same, and this top was connected by fastenings, (bayonet fastenings are exhibited,) with the dome, the bottom of which was spread out like a broad flat bell, and might have served the purpose of a disc in Westlake's lantern had it been admissible or required. But in these lanterns, the top of the globe not being contracted, as in Westlake's, it filled the top of the guard, and left no intervening space for a disc between them. With this exception, namely: that the top of the globe was not contracted, the difference between the lanterns of Canning and Max Miller and that of Westlake was very slight. And as globes with contracted tops were not new, it may be deemed somewhat doubtful whether the application of such globe to these lanterns (Westlake's being little more than this) was entitled to the merit of invention, and therefore patentable.

In Water's lantern, patented in 1855, there was a globe with a contracted top, such as is employed by Westlake, and said top was inserted for support in the lower part of the dome, around which a narrow flange spread outwardly, (somewhat like Westlake's disc,) far enough to receive, in small apertures, the wires of the guard, the tops of which, (not being connected by a ring or band,) were inserted therein directly. But although the dome could be detached from the wires by pressing them inwardly, and lifting the dome off

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from them, and thus give room for removing the globe, yet, as the parts were arranged, this could not be done conveniently; and, in fact, the globe was not removed from the top of the guard, but the latter was detached at the bottom, and lifted off from the globe, when it was desired to have access to the latter.

In none of the lanterns thus far adverted to, was there fully exhibited and applied the disc described in Westlake's patent, used for the same purpose as in his, although the germ of it was seen in Water's lantern, and an adaptable equivalent for it in Canning's and Max Miller's. But Westlake in his testimony admits that the disc was old at the time he made his invention, when used as a reflector in a conductor's lantern; and two English patents were put into the case, which exhibit it as used substantially in the same manner, and for the same purpose, that it is used in Westlake's lantern. The first was a patent granted to Graham Chappell in 1812, and the other to Isaac Evans in 1861. The use of the disc was somewhat similar in both of the lamps or lanterns described in these patents. That of Evans will be more particularly adverted to.

Evans's lantern had an inner chimney, contracted at the top, an outer globe, and a guard having a circular rim or band at the top. The disc was called in the patent a *crown plate*, and filled and covered the space between the contracted top of the inner chimney and the outer globe, and between the latter and the top rim of the guard. It has some perforations to allow the air to pass upward between the chimney and the globe. The specification says: "Above the top of the outer glass cylinder, *a* (the globe), and inside the upper ring, is placed a crown plate, *l*, provided with a number of projecting flanges, which serve to keep the upper part of the outer and inner glass cylinders, *a* and *b*, in their places." As this lantern was intended to be used in mines, the crown plate was fastened to the top or rim of the guard by a screw, so as to obviate the danger of its being accidentally detached, but when it was detached and removed, the globe and cylinder could also be removed through the top of the guard, or the latter could be removed from the lamp by detaching it from below. This crown plate, therefore, seems to have served the precise office of Westlake's disc. Stetson, the complainant's expert, testifies as follows: "In Evans's patent, Exhibit No. 1, the equivalency of the guard is somewhat doubtful; but I think it is substantially the same as the guard claimed in the first claim (of Westlake's patent). It has a glass chimney, contracted

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at the top, within the globe, which is held in place by a disc supporting it at the top, and extending out to the ring at the top of the guard." This is a precise description of Westlake's disc. It is true, the witness adds: "But the disc has holes for the circulation of air; the disc, practically, only fills the space between the small top of the lamp chimney and the globe." But the fact that the disc had holes in it does not deteriorate from its importance as a disc to fill and cover the space between the chimney and the guard, and to hold the former as well as the globe in place. The witness admits that, "If the small holes were made in the defendant's disc, their lanterns would still infringe the second claim of the patent," thus implying that the holes do not destroy the identity of the disc.

Smith, the defendant's expert, says: "This lantern, Exhibit 1, representing Evans's patent, has a guard so made that it may be separated from the top and from the base of the lantern, all in one piece. The parts are screwed together, instead of being held by catches; but it admits the entire removal of the dome from the guard just the same. There is a plate inside the upper band of the guard, which has flanges upon it to maintain the top of the globe and the chimney, and this plate fills the entire space, except so far as it is perforated. The globe can be raised through the top band of the guard. The guard, in this Exhibit 1, is whole, and can be removed, not from the entire lantern, any more than the guard in Exhibit B (Westlake's), but from the other parts of the lantern, the same as the guard of Exhibit B. It cannot be removed from the other parts of the lantern as readily as the guard of Exhibit B, because it is screwed to the other part, and cannot be unscrewed as readily as spring catches can be worked.

"The lantern, Exhibit 1, comes as completely within the first claim of the complainant's patent, No. 3747, marked Complainant's Exhibit A, as the defendant's lanterns do.

"The disc *g* is stated in the patent to be for filling and covering the space between the band and the top of the globe. There is such a disc in Exhibit 1, and it is the equivalent of disc *g*. The fastenings in the lantern, Exhibit 1, for securing the disc to the guard, or the guard to the disc, are not like the fastenings *e*, shown in the patent No. 3747, but they are equivalents for each other, because both specifications say that other fastenings may be used, and they both produce the same result and admit of the complete separation of the guard and discs, and in Evans's Exhibit 1, the globe can be removed.

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"The combination claimed in the second claim of the patent No. 3747, Exhibit A, is substantially embodied in the lantern, Exhibit 1, unless the claim embraces the guard *a*, removable, leaving an entire lantern.

"There is a loose globe in Exhibit 1, and it therefore substantially embodies the third claim; but there is a difference in construction between the lantern guards."

This testimony seems to us to be corroborated by the patents and other exhibits; and from this it sufficiently appears that both the second and the third claims of Westlake's patent are exemplified in Evans's lantern. It has the combination of the disc, the band and the fastenings specified in the second claim, and that of the guard, the disc, the fastenings and the globe, specified in the third claim. Whilst, therefore, it may be true that none of the lanterns referred to are equal to Westlake's in beauty of form or convenience of adaptation to the purpose for which it is intended, yet every part has been anticipated and used in some form or other for the very purposes and uses to which it is applied in Westlake's; and in Evans's lantern all the essential parts are brought together and used in the combinations claimed by the patentee. Of course the combination might be new; and if productive of new and useful results, and not a mere aggregation of results, might be the subject of a patent, though all the parts were used before. But here, the combinations patented, as well as their separate elements, had been anticipated. The decree is, therefore,

*Affirmed.*

*Mr. L. L. Bond* for appellants. No appearance at the argument, and no brief, for appellee.

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MONGER *v.* SHIRLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

No. 129. October Term, 1874. — Decided January 18, 1875.

On the facts reviewed in the opinion, *Held*, that the title of the appellant to the premises in dispute whether derived through the sale on execution, or acquired under the confiscation act, is void for fraud.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This is an appeal in equity from the Circuit Court of the United States for the Eastern District of Tennessee.