face or otherwise, nor does it appear by any testimony, written or oral, with what object or for what purpose they were made, whether with a view to the issuing of a warrant, or in reference to any antecedent warrant or legal proceedings; they are not certified or referred to by the Trial Justice who issued the warrant, or the Justice of the Peace before whom they were made. For all that appears, these statements may have been made for some other purpose quite distinct from any criminal charge against the prisoner. It is to me quite clear, under the 2nd section of the Act, that the depositions that may be received as evidence of the criminality of the prisoner, are depositions upon which an original warrant was granted in the United States, certified under the hand of the person issuing it. Now the statements or depositions in question are certainly not depositions upon which the original warrant was granted, for they were, as I have stated, made several months after, and are not in any way connected with the warrant; and in my opinion, they were clearly not receivable as evidence touching the truth of the charge, or the criminality of the prisoner; and as without them there was no evidence to justify the committal of the prisoner for extradition, he is entitled to be discharged Such being the decision I have arrived at, it is quite unnecessary for me to consider or decide the other points raised, some of which it appears to me, upon consideration, would entitle the prisoner to be discharged.

The prisoner will be discharged out of custody upon this warrant.

Bonathan v. Bowmanville Furniture Manufacturing Company.

Patent—Injunction.

In an action for an infringement of a patent, an application under the C. L. P. Act for an injunction to restrain the defendant was refused, the patent having been very recently granted, and their being conflicting affidavits as to the rights of the plaintiff to the patent, and *held* that the plaintiff must establish his title at law before he would be entitled to an injunction.

Semble 1.—That the application would also have been refused under the Patent Act of 1869, sec. 24.

2.—That to entitle a plaintiff to an interim injunction or account he must waive all claim to more than nominal damages at the trial. [Chambers, Feb. 11, 1870.]

This was an application made after appearance and before declaration, for an injunction to restrain the defendants from infringing a patent granted to the plaintiff on the 15th October, 1869, in pursuance of the Acts of that year. The patent was for an invention called the "Economical Bending Apparatus," to be used in furniture making, and was stated in the plaintiff's affidavit to be an improvement on machines in ordinary use for bending wood for making chairs and other purposes.

Mr. Green, (Patterson & Beatty), on behalf of the plaintiff contended that the letters patent themselves being granted under the seal of the Commissioner of Patents, obtained after compliance with the formalities required by the Act, afforded a strong presumption in favour of the plaintiff's right to the invention patented: that no case was made out by defendant's affidavit throwing any real doubt on the plaintiff's titles, and that at all events, if the plaintiff was not entitled to an injunction the defendants should be ordered to keep an account until the trial of the action. 1 Maddock's Ch. Prac. 191, 192; *Bacon* v. *Jones* 4 Mylne & Craig 433: Patent Act 1869, ss. 24, 25.

Elmes Henderson for the defendants filed several affidavits made by the manager and workmen of the defendants to the effect that this process of bending wood was originally introduced from the United States (it was not sworn to be patented there), into this country, and that the only differences between the process so originally introduced and that patented were a few immaterial improvements in the latter, consisting of a screw being used instead of a wedge, and a few others of a like nature: that these improvements were the result of frequent experiments made during working hours and on defendants' materials by the manager along with the plaintiff and the other workmen of the defendants, when each suggested any improvement that occurred to him; and, it was sworn in all these affidavits, that in the opinion of the deponents, any one of them would have been as much entitled to the patent as the plaintiff was; and the manager further swore, that the improvement in the use of the screw before alluded to, which was stated to be the most material improvement introduced by the patent, had been suggested to the plaintiff by the manager himself. He cited *Cosyton* on Patents, 321.

Gwynne, J.—The law of the Court of Chancery as stated by Sir W. Page Wood, V. C., in *Betts* v. *Menzie*, 3 Jur. N. S. 358, is, that where the patentee has had long enjoyment then he shall have an injunction to protect his right until trial, even though his right under his patent be doubtful. Here the patent is not only very recently granted, but there are several affidavits filed by defendants not only to shew that the patented article was in use by the defendants when the patent was granted to the plaintiff, but that the plaintiff acquired his knowledge of the article when hired as a servant of the defendant, employed by them in the course of their business in the use of the article patented, and in experimenting for improvements, which experiments resulted in the very improvements which have been patented. Under these circumstances, upon the authority of *Gardner* v. *Broadbent*, 2 Jur. N. S., 1041, I refuse to grant any injunction, and consequently any interim account. The summons will be discharged with costs to be costs in the cause to the defendants.

I have regarded the application as made under the Common Law Procedure Act, but assuming that a judge in Chambers can act under the Patent Law Amendment Act during Term, and that any judge, other than a judge of the court in which the action is pending, can make an order under that Act, my decision would be the same in this case.

To entitle a plaintiff to an interim injunction or order for an account under that Act, it would seem that the plaintiff must accept the condition of waiving all claim to recover more than nominal damages at the trial of the action, *Vidi* v. *Smith*, 3 El. & Bl. 976. In this case I think the plaintiff must establish his title at law before he can obtain the aid of the court by way of injunction or account, the latter being only granted in substitution for the former.

Summons discharged.