IN PREPARATION

PARTIALLY COMPLETED AND TO BE PUBLISHED SHORTLY

A CONTINUATION OF THE PRESENT VOLUME

EMBRACING

THE DECISIONS

IN

PATENT,

TRADE-MARK AND COPYRIGHT CASES

FROM 1862

TO THE PRESENT TIME.

DIGEST

OF

AMERICAN CASES

RELATING TO

PATENTS FOR INVENTIONS

AND

COPYRIGHTS

FROM

1789 TO 1862

INCLUDING NUMEROUS MANUSCRIPT CASES

DECISIONS ON APPEALS FROM THE COMMISSIONERS OF PATENTS AND THE OPINIONS OF THE ATTORNEYS GENERAL OF THE UNITED STATES UNDER THE PATENT AND COPYRIGHT LAWS

AND EMBRACING ALSO THE AMERICAN CASES IN RESPECT TO

TRADE-MARKS

ARRANGED IN CHRONOLOGICAL ORDER

WITH THE YEAR IN WHICH AND THE NAME OF THE JUDGE BY WHOM DECIDED

FIFTH AND REVISED EDITION

WITH A SUPPLEMENT

CONTAINING THE EXISTING

PATENT AND COPYRIGHT LAWS OF THE UNITED STATES AND CANADA

AND ALL THE EXPIRED

UNITED STATES PATENT AND COPYRIGHT LAWS

BY STEPHEN D. LAW

AUTHOR OF "LAW'S UNITED STATES COURTS" ETC

NEW YORK
PUBLISHED BY THE AUTHOR
AND BY
FREDERICK D. LINN, JERSEY CITY.
1877.

TO THE MEMORY OF

MY WIFE

THIS VOLUME IS

AFFECTIONATELY DEDICATED.

Her intereſt in this work encouraged me in undertaking it, and has been a conſtant incentive to my exertions in its preparation. Her cheerful ſociety made light and pleaſant my earlier labors upon it; and had her life been ſpared, to no one could this volume have been dedicated more appropriately, or with more ſincere pleaſure, than to her. Her early death, which made ſad and lonely the hours ſpent in its completion, and which has ſhadowed my life with ſorrow, has left me only the melancholy ſatisfaction of inſcribing it to her Memory.

PREFACE

TO THE REVISED EDITION OF 1870.

When, some eight years since, this work was originally published, it was submitted by the author to his professional brethren with not a little doubt and hesitation, lest it should be found, on careful and critical examinatiou, of but doubtful value or assistance in the investigation of the subjects of which it professed to treat; and such doubt and hesitation was not diminished by the fact that Law Publishers declined to assume the cost of its publication, arguing that the demand for such a work must necessarily be small, and its sale, therefore, very limited. Encouraged, however, by the favorable opinion of those who had to some extent examined and made use of the work in manuscript, the author became his own publisher, and sent forth his volume with his sincere hope and wish that it might "be found convenient as a Reference, and reliable as an Authority."

To those who took an interest in its preparation, and encouraged its publication, it may be a pleasure to know that its sale was, at the first, highly satisfactory and flattering, and that from that time to the present the demand for the work has continued, and has been increasing. To the author it has been a much higher gratification, and a source of honest pride, that his work has been so favorably received by his profession and the public, and has been deemed worthy to fill, in some degree at least, the place he desired for it as a Reference and an Authority.

PREFACE TO THE REVISED EDITION.

Since the first publication of this volume very many of the Cases digested therein, and cited as "Manuscript Cases," have been published in the later volumes of "Blatchford's Reports," in "Clifford's Reports," and in "Fisher's Patent Cases." In the present Revised Edition of the DIGEST the references to those cases have been corrected, and made to conform to the pages of such volumes. The author believes he has thereby materially increased its convenience and value.

The author has also in course of preparation, as a supplement to, or continuation of the present volume, a Digest of Patent, Copyright, and Trade-mark Cases decided since 1862, which will be published as soon as completed.

THE AUTHOR.

NEW YORK, June, 1870.

EXPLANATORY PREFACE.

This volume is a Digest, or rather a Digested Abstract, of all the American Cases, so far as they could be obtained, relating to Patents for Inventions, Copyright, and Trade-Marks.

It owes its origin to a want experienced by the Author, of some work which should contain a general summary of the Statute Law and of the Decisions of the Courts in respect to Patents for Inventions, and was commenced for the purpose of supplying such deficiency.

To render the work more complete, the decisions relating to the kindred subjects of Copyright and Trade-Marks are included in it.

The whole number of cases digested is eight hundred and thirty-four, of which seven hundred and thirty-four have reference to Patents for Inventions, and the remaining cases, in about equal proportion, relate to Copyright and Trade-Marks.

Of such cases, about four hundred are to be found in the Reports of the Supreme and Circuit Courts of the United States, which now number over one hundred volumes; over fifty cases have been obtained from the various Law Periodicals which have from time to time been published, and which exceed eighty volumes; and some eighty are Manuscript Cases, or cases which have been determined in the Federal Courts but which are not to be found in any of the Reports or Law Periodicals. The opinions of the Attorneys-General of the United States have also been examined, and some thirty cases, having reference to the Patent and Copyright Laws, have been taken therefrom; and about one

hundred and fifty decisions of the Justices of the Circuit Court of the District of Columbia, on appeals from the decisions of the Commissioner of Patents, have also been digested. In addition to all these, about one hundred and thirty cases, relating to Trade-Marks, or deciding questions incidentally connected with, or growing out of contracts respecting Patents, have been gathered from the voluminous mass of State Reports, and incorporated into the volume.

From this statement as to the several sources from which the Cases Digested have been collected, it will be at once apparent that such cases are very widely scattered, and that quite a considerable number of them are not within reach of the profession at large, except at considerable difficulty and expense: and the general nature and scope of the work will also be best understood.

The plan or method of arrangement adopted by the Author in the Digest, and the manner of citing, and referring to, the Cases Digested are somewhat peculiar, but it is believed that they will be found convenient and useful.

The digested notes are arranged, under the several titles and sub divisions, in Chronological order, and, in addition to the title of the case, there is also given the name of the Judge by whom, and the place where, and the year in which the case was decided. By this arrangement, it is easy to trace the course of Judicial decision, in respect to any question, and learn whether there has been any conflict or diversity in respect to it, and also readily determine the character and bearing of the latest decisions. The digested note also carries with it the weight of authority due to the Judge who decided the case, and the date of decision is a guide to determine under what law any particular case arose, and was decided.

In digesting the cases, the Author has not confined himself to the Head Notes of Reporters and others, but has carefully read and studied the cases for himself, and his digested notes have been prepared from the opinions of, and as far as possible they appear in the very language used by, the Court. It has not, however, been the intention

of the Author to digest only such points as might more strictly be called the leading or turning points of the case, but it has been his aim to digest all such points as the Court may have deemed it proper to decide; or, in other words, whatever the Court, in any case, deemed it necessary and proper to declare and decide to be the law, as applicable to the questions arising in such case, that the Author has considered it to be his duty to digest and arrange under its appropriate heading. Nor has the Author limited himself to digesting merely those parts of the decisions which have more exclusive reference to, or are declaratory of, the law of Patents, Copyright, &c., but points of practice, such as questions relating to evidence, new trials, &c., which have arisen and been decided in any such cases, have also been digested—not because any different rule or principle governs in such cases in the decision of questions of such character, but because such decisions furnish authority and precedent, should like questions arise in other cases.

In short, it has been the design of the Author to digest all the points, whether of law or practice, decided in the cases embraced within the scope of his work, and thus make it an Abstract of the whole of such cases, and not merely of portions of them.

In respect, also, to such cases as have not been reported, and such as are not generally accessible, the digested notes are somewhat more full and comprehensive than they would otherwise have been.

In the preparation of this volume, it has been the constant aim and endeavor of the author to make it as correct as possible. For that purpose, he restudied the cases digested, correcting the digested notes, when necessary, from the original authorities; and, to guard as effectually as possible against error, the proof-sheets, while the work was in the hands of the printer, were compared with the original decisions, and not alone with the manuscript. Absolute correctness, however, is not claimed; but the Author can honestly affirm, that he has not knowingly or intentionally spared or omitted any labor or care which would be likely to render his volume what it should be both as a Reference and an Authority.

The Author returns his acknowledgments to the several Judges of the United States Courts, and particularly to Judges NELSON and BETTS of New York, SPRAGUE of Massachusetts, and SHIPMAN of Connecticut, for the assistance they have so kindly afforded him; and to SAMUEL BLATCHFORD, ESQ., of New York, and JOHN WILLIAM WALLACE, ESQ., of Philadelphia, the Reporters of the United States Circuit Courts for the Second and Third Circuits, for the privilege of examining the cases contained in the Third volumes of their Reports, not yet published; and, also, to all his professional brethren and others, who have assisted him in the collection of cases, and otherwise.

That the volume may be found of real practical value, and convenient as a Reference and reliable as an Authority, is the sincere wish and hope of

THE AUTHOR.

NEW YORK, *September*, 1862.

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ABBREVIATIONS USED IN THIS WORK.

Abb. Pr.,	Abbott's Practice Reports,	New York.
Ala.,	Alabama Reports, and	Alabama.
Amer. Law Reg., or A. L. Reg.,	American Law Register,	Philadelphia.
Anon.,	Anonymous.	
App. Cas.,	Cases decided by the Justices of the Cir. Court, Dist. Col., on appeals from the decisions of the Commissioner of Patents,	Dist. Columbia.
Ark.,	Arkansas Reports, and	Arkansas.
Atty. Gen.,	Attorney General of United States.	
Bald.,	Baldwin's Reports U. S. Circuit Court,	3d Circuit.
Barb. S. C.,	Barbour's Supreme Court Reports,	New York.
" Ch.,	" Chancery, "	New York.
B. Monr.,	B. Monroe's Reports,	Kentucky.
Blackf.,	Blackford's Reports,	Indiana.
Blatchf.,	Blatchford's Reports U. S. Circuit Court,	2d Circuit.
Bosw.,	Bosworth Reports,	New York.
Bright.,	Brightly's Reports,	Pennsylvania.
Brock.,	Brockenbrough's Reports U. S. Cir. Ct.,	4th Circuit.
Cal.,	California.	
Chan.,	Chancellor.	
Comst.,	Comstock's Reports,	New York.
Conn.,	Connecticut Reports,	Connecticut.
Cra.,	Cranch's Reports U. S. Supreme Court.	
Cra. C. C.,	" Reports U. S. Circuit Court,	Dist. Columbia.
Ct.,	Connecticut.	
Curt.,	Curtis' Reports U. S. Circuit Court,	1st Circuit.
Cush.,	Cushing's Reports,	Massachusetts.
D. C.,	District Columbia.	
Day,	Day's Reports,	Connecticut.
Deve.,	Devereaux's Reports,	Court of Claims.
Dev. & Bat.,	Devereaux & Battle's Reports,	North Carolina

Denio,	Denio's Reports,	New York.
Duer,	Duer's Reports,	New York.
E. D. Smith,	E. D. Smith's Reports,	New York.
Edw. Ch.,	Edwards' Chancery Reports,	New York.
Fes. on Pat.,	Fessenden on Patents, 2d dition,	Boston.
Gall.,	Gallison's Reports U. S. Circuit Court,	1st Circuit.
Geo.,	Georgia Reports, and	Georgia.
Gilp.,	Gilpin's Reports U. S. District Court,	Pennsylvania.
Gray,	Gray's Reports,	Massachusetts.
Greenlf.,	Greenleaf's Reports,	Maine.
Halst. Ch.,	Halsted's Chancery Reports,	New Jersey.
Harring.,	Harrington's Reports,	Delaware.
Hilton,	Hilton's Reports,	New York.
Hoff. Ch.,	Hoffman's Chancery Reports,	New York.
How.,	Howard's Reports U. S. Supreme Court.	
How. App. Cas.,	" Court of Appeal Cases,	New York.
How. Pr.,	" Practice Reports,	New York.
Ill.,	Illinois Reports, and	Illinois.
Ind.,	Indiana Reports, and	Indiana.
John.,	Johnson's Reports,	New York.
Jones Eq.,	Jones' Equity Reports,	North Carolina.
Jour. Fr. Inst.,	Journal Franklin Institute,	Philadelphia.
La.,	Louisiana.	
Law Int. & Rev.,	Law Intelligencer and Review.	
Law Rep. or L. Rep.,	Law Reporter, 1st Series,	Boston.
Mart.,	Martin's Reports,	Louisiana.
Mass.,	Massachusetts Reports, and	Massachusetts.
Mas.,	Mason's Reports U. S. Circuit Court,	1st Circuit.
McAllis.,	McAllister's Reports U. S. Circuit Court,	California.
Metc.,	Metcalf's Reports,	Massachusetts.
McLean,	McLean's Reports U. S. Circuit Court,	7th Circuit.
Mich.,	Michigan Reports, and	Michigan.
Mir. Pat. Off.,	Mirror of the Patent Office,	Washington.
Mo.,	Missouri Reports, and	Missouri.
Mo. Law Rep., or Mo. L. Rep.,	Monthly Law Reporter, 2d Series,	Boston.
MS.,	Manuscript Cases.	

N. Car.,	North Carolina.	
N. H.,	New Hampshire.	
N. Hamp.,	New Hampshire Reports,	New Hampshire.
N. Y. Leg. Obs.,	New York Legal Observer,	New York.
Niles' Reg.,	Niles' Register,	Washington.
Opin.,	Opinions of the Attorneys General U. S.,	Washington.
Ohio,	Ohio Reports, and	Ohio.
Paige,	Paige's Chancery Reports,	New York.
Paine,	Paine's Reports U. S. Circuit Court,	2d Circuit.
Pa.,	Pennsylvania.	
Penn.,	Pennsylvania Reports,	Pennsylvania.
Penn. Law Jour. or P. L. Jour.,	Pennsylvania Law Journal,	Philadelphia.
Pet.,	Peters' Reports U. S. Supreme Court.	
Pet. C. C.,	Peters' Reports U. S. Circuit Court,	3d Circuit.
Pick.,	Pickering's Reports,	Massachusetts.
Rich. Law,	Richardson's Law Reports,	South Carolina
S. Car.,	South Carolina.	
Sand. Ch.,	Sandford's Chancery Reports,	New York.
Sand. C. C.,	Sandford's Superior Court Reports,	New York.
Serg. & R.,	Sergeant & Rawle,	Pennsylvania.
Story,	Story's Report U. S. Circuit Court,	1st Circuit.
Sumn.,	Sumner's Reports U. S. Circuit Court,	1st Circuit.
Sup. Ct.,	Supreme Court U. S.	
Upt. on Tr. Mk.,	Upton on Trade-Marks,	New York.
U. S. Law Jour., or U. S. L. Jour.,	U. S. Law Journal,	Connecticut.
Verm.,	Vermont Reports,	Vermont.
Vt.,	Vermont.	
Wall., Jr.,	Wallace, Jr.'s, Reports U. S. Circuit Court,	3d Circuit.
Wash.,	Washington's Reports U. S. Circuit Court,	3d Circuit.
Wend.,	Wendell's Reports,	New York.
West. Law Jour., or W. L. Jour.,	Western Law Journal,	Cleveland.
Whart.,	Wharton's Reports,	Pennsylvania.
Whart. Dig.,	Wharton's Digest.	
Wheat.,	Wheaton's Reports U. S. Supreme Court.	
Wood. & Min.,	Woodbury & Minot's Reports U. S. Cir. Ct..	1st Circuit.
Wright,	Wright's Reports,	Ohio.

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Gunn's Domes. Medicine,	Cooper *v.* Gunn,	4 B. Mon., 594,	Ky., 1844.
History of the World,	Struve *v.* Schwelder,	4 Blatchf., 23.	N. Y., 1857.
Homeop. Dom. Physician,	Pulte *v.* Derby,	5 McLean, 328,	Ohio, 1852.
Japan Expedition,	Heine *v.* Appletons,	4 Blatchf., 125,	N. Y., 1857.
Johnson's Reports,	Gould *v.* Banks,	8 Wend., 562,	N. Y., 1832.
Letters, private,	Denis *v.* Le Clerk,	1 Martin, 297,	La., 1811.
" "	Hoyt *v.* McKenzie,	3 Barb. Ch., 320,	N. Y., 1848
" "	Wetmore *v.* Scoville,	3 Edw. Ch., 515,	" 1842.
" "	Woolsey *v.* Judd,	4 Duer, 379,	" 1855.
" "	Eyre *v.* Higbee,	22 How. Pr., 205,	" 1861.
Life of Hicks,	De Witt *v.* Brooks,	MS.,	" 1861.
" of Washington,	Folsom *v.* Marsh,	2 Story, 100,	Mass., 1841.
Maps and Charts—			
Straits. Mackinaw,	Siebert's Case,	7 Opin. Atty. Gen., 656,	1856.
New York,	Smith *v.* Johnson,	4 Blatchf., 252,	N. Y., 1858.
Map, Rhode Island,	Stevens *v.* Cady,	14 How., 528,	Sup. Ct., 1852
" "	" *v.* "	2 Curt., 200,	R. I., 1854.
" "	" *v.* Gladding,	17 How., 447,	Sup. Ct., 1854.
" "	" *v.* "	2 Curt., 608,	R. I., 1856.
Nantucket Shoal,	Blunt *v.* Patten,	2 Paine. 393,	N. Y., 1828.
Maryatt's Novels,	Carey *v.* Collier,	56 Niles Reg., 262,	N. Y., 1839.
Maria Monk,	Monk *v.* Harper,	3 Edw. Ch., 109,	" 1837.
Music—			
Alethia Waltz,	Ferrett *v.* Atwill,	1 Blatchf, 151,	N. Y., 1846.
Bohemian Girl,	Atwill *v.* Ferrett,	2 " 39,	" "
Cot Beneath the Hill,	Millett *v.* Snowden,	1 West. Law Jour., 240,	N.Y., 1843.
Old Arm Chair,	Reed *v.* Carusi,	8 Law Rep., 410,	Md., 1845.
Serious Family Polka,	Jollie *v.* Jaques,	1 Blatchf., 618,	N. Y., 1850.
New Era,	Bell *v.* Locke,	8 Paige, 75,	" 1840.
Newspaper,	Snowden *v.* Noah,	1 Hopk. Ch., 347,	" 1825.
Presby. Church Case,	Miller *v.* McElroy,	1 Amer. Law Reg., 198,	Pa., 1839.
Sacred Mountains,	Baker *v.* Taylor,	2 Blatchf., 82.	N. Y., 1848.
Story's Equity Juris.,	Story's Exrs. *v.* Derby,	4 McLean, 160,	Ohio, 1846.
" " "	" " Holcombe,	" 306,	" 1847.
Uncle Tom's Cabin,	Stowe *v.* Thomas,	2 Amer. Law Reg., 210,	Pa., 1853.
Wendell's Reports,	Backus *v.* Gould,	7 How., 798,	Sup. Ct., 1848
Wheaton's Reports,	Wheaton *v.* Peters,	8 Pet., 591,	" 1834.
Webster's Eng. Gram.,	Hudson *v.* Patten,	1 Root, 133,	Ct., 1789.
Corn Sheller,	McDowall *v.* Meredith,	4 Whart. Dig., 311,	Pa., 1839.
Cotton, carding,	See *Burring Machines.*		
Cotton, cleaning,	Nesmith *v.* Calvert,	1 W. & M., 34,	Mass., 1845.
" spinning,	Rouse, Ex parte,	MS. (App. Cas.),	D. C, 1854.
" Gin,	Carver *v.* Hyde,	16 Pet., 573,	Sup. Ct., 1842
" "	" *v.* Braint. Manuf. Co.,	2 Story, 432,	Mass., 1843.
" "	Fultz, Ex parte,	MS. (App.Cas.),	D. C., 1853.
" Press,	Tyler *v.* Deval,	1 Code Rep., 30,	La., 1848.
" Wadding,	Anon.,	3 West. Law Jour., 144,	N. Y., 1845.
Cracker Machine,	Nevins *v.* Johnson,	3 Blatchf., 80,	N. Y., 1853.
" "	Treadwell *v.* Bladen,	4 Wash, 703,	Pa., 1827.
" "	Watson *v.* "	4 " 580,	" 1826.
Cultivators,	Chamberlain *v.* Ganson,	2 Blatchf., 279,	N. Y., 1851.
"	Tracey *v.* Torrey,	2 " 275,	"
" Teeth of,	Sanders *v.* Parsons,	MS. (App. Cas.),	D. C., 1859

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Curry-combs,	Beach *v.* Wheeler,	24 Penn., 212,	Pa., 1855.
Cutlery, cleaning,	Armstrong *v.* Hanlenbeck,	3 N. Y. Leg. Obs., 43,	N. Y., 1844.

D.

Door Fastening,	Kittle *v.* Merriam,	2 Curt., 475,	Mass., 1855.
" Plates,	Loudon *v.* Birt,	4 Ind., 566,	Ind., 1853.
Dyeing Parti-Colored Yarn,	Smith *v.* Higgins,	MS.,	N. Y., 1856.
" " "	" *v.* "	"	" 1857.
" " "	" *v.* "	1 Fisher, 537,	" 1859.
" " "	" *v.* "	2 " 97,	" 1860.
" Silk and other Goods,	Barrett *v.* Hall,	1 Mason, 447,	Mass., 1818.
" " " "	Stearns *v.* Barrett,	1 " 153,	" 1816.
" " " "	" *v.* "	1 Pick., 443,	" 1823.

E.

Edged Tools, casting,	Collins *v.* White,	MS. (App. Cas.),	D. C., 1860.
Electric Telegraph,	Bain *v.* Morse,	" "	" 1849.
" "	Clum *v.* Brewer,	2 Curt., 506,	Mass., 1855.
" "	" *v.* "	11 Mo. Law Rep., 390,	" 1856.
" "	French *v.* Rogers,	1 Fisher, 133,	Pa., 1851.
" "	Morse *v.* O'Reilly,	MS.,	D. C., 1849.
" "	" *v.* "	MS.,	Ky., 1848.
" "	O'Reilly *v.* Morse,	15 How., 62,	Sup. Ct., 1853.
" "	Saddler *v.* Hudson,	2 Curt., 6,	Me., 1854.
" "	Smith *v.* Ely,	5 McLean, 76,	Ohio, 1849,
" "	" *v.* "	15 How., 137,	Sup. Ct., 1853.
" "	" *v.* Downing,	1 Fisher, 64,	Mass., 1850.
" "	" *v.* Selden,	1 Blatchf., 475,	N. Y., 1849.
Envelopes,	Arnold *v.* Potter,	MS. (App. Cas.),	D. C., 1860.
"	Orr, Ex parte,	" "	" 1859.
Eraser,	Hicks *v.* Shaver,	" "	" 1861.
Exhaust, variable,	Winans *v.* Danforth,	MS.,	N. Y., 1860.

F.

Feathers, renovating,	Mulliken *v.* Latchem,	7 Blackf., 136,	Ind., 1844.
Files, cutting,	Morrill *v.* Worthington,	14 Mass., 389,	Mass., 1817.
Fire-Arms,	Colt *v.* Young,	2 Blatchf., 471,	N. Y., 1852.
" "	Shaw *v.* Cooper,	7 Pet., 292,	Sup. Ct., 1833.
" "	Young *v.* Colt,	2 Blatchf., 373,	N. Y., 1852.
" "	Allen *v.* Blunt,	3 Story, 742,	Mass., 1845.
" "	" "	2 Wood. & Min., 121,	Mass., 1846.
" " Rifled Cannon,	Laidley *v.* James,	MS. (App. Cas.),	D. C., 1860.
" " Locksfor,	See *Locks.*		
Fire Engines,	Park *v.* Little,	3 Wash., 196,	Pa., 1813.
" "	Mayor, &c., *v.* Ransom,	23 How., 487,	Sup. Ct., 1860
" "	Ransom *v.* Mayor, &c.,	1 Fisher, 252.	N. Y., 1856.
Fire Escape,	Dederick, Ex parte,	MS. (App. Cas.),	D. C., 1860.
Flour, Machinery,	Evans *v.* Chambers,	2 Wash., 125,	Pa., 1807.
" "	" *v.* Eaton,	Pet., C. C., 322,	" 1816.
" "	" *v.* "	3 Wheat., 454,	Sup. Ct., 1818.
" "	" *v.* "	3 Wash., 443,	Pa., 1818
" "	" *v.* "	7 Wheat., 356,	Sup. Ct., 1822.
" "	" *v.* Hettick,	3 Wash., 408,	Pa., 1818.
" "	" *v.* "	7 Wheat., 453,	Sup. Ct., 1822.
" "	" *v.* Jordan,	1 Brock., 248,	Va., 1813.
" "	" *v.* "	9 Cra., 199,	Sup. Ct., 1815.
" "	" *v.* Kremer,	Pet., C. C., 215,	Pa., 1816.
" "	" *v.* Weiss,	2 Wash., 342,	" 1809.
Fluids, evaporating,	Hopkins *v.* Lewis,	MS. (App. Cas.),	D. C., 1859.
Forks, Sluice,	Teese *v.* Phelps,	1 McAllis., 17, 48,	Cal., 1855.
" "	" *v.* Huntington,	23 How., 2,	Sup. Ct., 1859
Furnaces, Blast of,	Bell *v.* Daniels,	MS.,	Ohio, 1858.
" "	" *v.* McCullogh,	MS.,	" 1858.
" "	Detmold *v.* Reeves,	4 Am. L. Jour., N. S., 188,	Pa., 1851.
" Iron,	Whipple *v.* Renton,	MS. (App. Cas.),	D. C., 1854.
Furnaces, Reverberating,	Geiger *v.* Cook,	3 W. & Serg., 266,	Pa., 1842.

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Fusible Alloy,	Evans' Case,	7 Opin. Atty. Gen., 133,	1855.
" "	Everson & Ricard, Ex parte,	MS. (App. Cas.),	D. C., 1855.

G.

Gas,	McDougall *v.* Fogg,	2 Bosw., 387,	N. Y., 1858.
" Burner,	Walch, Ex parte,	MS. (App. Cas.),	D. C., 1857.
" Regulator,	Herring *v.* Leffingwell,	" "	" 1861.
" Stoves,	Spear *v.* Abbott,	" "	" 1859.
Glass Furniture for Beer Pumps,	Seely's Case,	2 Opin. Atty. Gen., 52,	" 1827.
Glass Knobs,	Whitney *v.* Emmett,	Bald., 303,	Pa., 1831.
" Plate,	Greenough *v.* Clark,	MS. (App. Cas.),	D. C., 1853.
Grain-Cleaning Machine,	Pottle *v.* Thomas,	12 Conn., 565,	Ct., 1838.
" "	Sanders *v.* Logan,	3 Wall., Jr.,	Pa., 1861.
" " "	Smith *v.* Flickenger,	MS. (App. Cas.),	D. C., 1843.
" Bins,	Marsh, Ex parte,	" "	" 1860.
Grist Mills,	Kernodle *v.* Grant,	4 Blackf., 57,	Ind., 1835.
Guage, Steam,	Farley *v.* Nat. Stm. Gag. Co.,	MS. (App. Cas.),	D. C., 1859.
Guns, Auger to bore,	Pettibone *v.* Derringer,	4 Wash., 215,	Pa., 1818.
" Cartridge, metallic,	Maynard, Ex parte,	MS. (App. Cas.),	D. C., 1857.
" Primers, "	Smith *v.* Sharp, Rifle Co.,	3 Blatchf., 545,	Ct., "
See also *Fire-Arms.*			
Gutta Percha Plates, for printing,	Kingsley *v.* Herriet,	MS. (App. Cas.),	D. C., 1854.

H.

Hair Oil,	Barry *v.* Clirhugh,	12 Law Rep., 367,	N. Y., 1849.
Harness for Looms,	Kendall *v.* Winsor,	21 How., 322,	Sup. Ct., 1858
" Saddles,	North *v.* Jones,	4 Blatchf., 70,	N. Y., 1857
Harrows,	Woodruff, Ex parte,	MS. (App. Cas.),	D. C., 1859.
Harvesters,	Ball, Ex parte,	" "	" 1860
"	Com. Ins. Co. *v.* Sennett,	37 Penn., 205,	Pa., 1860.
"	Davis, Ex parte,	MS. (App. Cas.),	D. C., 1859.
"	Emery, "	" "	" "
"	Hussey *v.* McCormick,	1 Fisher, 509,	Ill., 1859.
"	McCormick *v.* Jerome,	3 Blatchf., 486,	N. Y., 1856.
"	" *v.* Ketchum,	MS. (App Cas.),	D. C., 1853.
"	" *v.* Many,	6 McLean, 539,	Ill., 1855.
"	" *v.* Seymour,	MS.,	N. Y., 1850.
"	" *v.* "	2 Blatchf., 240,	" 1851.
"	" *v.* "	MS.,	" "
"	" *v.* "	3 Blatchf., 209,	" 1854.
"	" *v.* Talcott,	20 How., 402,	Sup. Ct., 1857.
"	Nourse *v.* Allen,	4 Blatchf., 376,	N. Y., 1858.
"	Rugg *v.* Haines,	MS. (App. Cas.),	D. C., 1855.
"	Selden, Ex parte,	" "	" 1861.
"	Seymour *v.* McCormick,	16 How., 480,	Sup. Ct., 1853.
"	" *v.* "	19 " 96,	" 1856.
Hats,	Burr *v.* Cowperthwaite,	4 Blatchf., 163,	Ct., 1858.
"	Cowperthwaite *v.* Gill,	MS. (App. Cas.),	D. C., 1859.
"	Gorham *v.* Mixter,	1 Am. L. Jour., N. S., 543,	Mass., 1849.
"	Grant *v.* Mason,	1 Law Int. & Rev., 22,	N. Y., 1828.
"	" *v.* Raymond,	6 Pet., 218,	Sup. Ct., 1832
"	Hopkins *v.* Barnum,	MS. (App. Cas.),	D. C., 1854.
"	O'Hara, Ex parte,	" "	" 1860.
"	St. John *v.* Prentiss,	MS.,	N. Y., 1853.
" Mirrors for,	Wheeler, Ex parte,	MS. (App. Cas.),	D. C., 1860.
Hay Rake,	Jolliffe *v.* Collins,	21 Mo., 338,	Mo., 1855.
Heating Water for Boilers,	Snowden *v.* Pierce,	MS. (App. Cas.),	D. C., 1861.
Hemp, dressing,	Dickinson *v.* Hall,	14 Pick., 217,	Mass., 1833
Honey, Artificial,	Corbin & Martlett, Ex parte,	MS. (App. Cas.),	D. C., 1857
Horizontal Water-Wheel,	Isaacs *v.* Cooper,	4 Wash., 259,	Pa., 1821.
Horological Cradle,	Edmunds *v.* Hildreath,	16 Ill., 215,	Ill., 1854

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Horological Cradle,	Edmunds *v.* Meyers,	16 Ill., 207,	Ill., 1854.
" "	Hildreath *v.* Turner,	17 " 784,	" 1855.
" "	Meyers *v.* Turner,	17 " 179,	" 1855.
Hose, Leather,	Mackay, Ex parte,	MS. (App. Cas.),	D. C., 1860.
" "	Pennock *v.* Dialogue,	4 Wash., 538,	Pa., 1825.
" "	" *v.* "	2 Pet., 1,	Sup. Ct., 1829
Horse-Power,	Pitts *v.* Hall,	2 Blatchf., 229,	N. Y., 1851.
" "	" *v.* "	3 Blatchf., 201,	" 1854.
" Shoe,	Foss *v.* Richardson,	11 Mo. Law Rep., 670,	Mass., 1859.
Hotel Annunciator,	Crehore *v.* Norton,	MS.,	N. Y., 1853.
" "	U. S. Bell Tel. Co. *v.* Sanderson,	3 Blatchf., 184,	" 1854.
Hydraulic Power,	Phelps *v.* Mayer,	15 How., 160,	Sup. Ct., 1852.
Hydrometers,	Adams, Ex parte,	MS. (App. Cas.),	D. C., 1860.

I.

Ice, cutting,	Wyeth *v.* Stone,	1 Story, 273,	Mass., 1840.
" stowing,	Kemper, Ex parte,	MS. (App. Cas.),	D. C., 1841.
" Pitchers,	Stimpson *v.* Rogers,	4 Blatchf., 333,	Ct., 1859.
India-rubber,	Bev. Rub. Co. *v.* Wing,	MS. (App. Cas.),	D. C., 1860.
"	Chaffee *v.* Bost. Belt. Co.,	22 How., 217,	Sup. Ct., 1859.
"	" *v.* Hayward,	20 " 208,	" 1857.
"	" *v.* N. E. Car-Spg. Co.,	MS.,	N. Y., 1854.
"	Cong. Rub. Co. *v.* Am. Elas. Cloth Co.,	MS.,	Pa., 1857.
"	Day *v.* Bost Belt. Co.,	MS.,	N. Y., 1853.
"	" *v.* "	MS.,	" 1854.
"	" *v.* "	6 Mo. Law Rep., 329,	" 1853.
"	" *v.* Cary,	4 Blatchf., 271,	" 1859.
"	" *v.* Hayward,	20 How., 208,	Sup. Ct., 1857.
"	" *v.* Goodyear,	3 Fisher, 32,	N. J., 1850.
"	" *v.* Hartshorn,	MS.,	R. I., 1853.
"	" *v.* "	MS.,	" 1854.
"	" *v.* "	MS.,	" 1855.
"	" *v.* Lyons,	MS.,	La., 1860.
"	" *v.* N. E. Car-Spring Co.,	3 Blatchf., 154, 179,	N. Y., 1854.
"	" *v.* Newark I. R. Co.,	1 " 628,	" 1850.
"	" *v.* Poppenheusen,	MS.,	" 1854.
"	" *v.* Stellman,	1 Fisher, 487,	Md., 1859.
"	" *v.* Union Rub. Co.,	3 Blatchf., 488,	N. Y., 1856.
"	" *v.* " "	20 How., 216,	Sup. Ct., 1857.
"	" & Judson *v.* "	4 Blatchf., 63,	N. Y., 1857.
"	Goodyear *v.* Bishop,	4 " 438,	" 1860.
"	" *v.* Bourne,	3 " 266,	" 1855.
"	" *v.* Chaffee,	3 " 268,	" 1855.
"	" *v.* Day,	1 " 565,	" 1850.
"	" *v.* "	MS.,	N. J., 1850.
"	" *v.* "	MS.,	" 1852.
"	" *v.* "	2 Wall., Jr., 283,	" 1852.
"	" *v.* " & Cong. R. Co.,	3 Blatchf., 449,	N. Y., 1856
"	" *v.* Dunbar,	1 Fisher, 472,	N. J., 1861.
"	" *v.* McBurney,	3 Blatchf., 32,	N. Y., 1853
"	" *v.* Phelps,	3 " 91.	" 1853
"	" *v.* Railroads,	2 Wall., Jr., 356,	N. J., 1852.
"	" *v.* Union Rub. Co.,	MS.,	N. Y. 1857.
"	Hartshorn *v.* Day,	19 How., 211,	Sup. Ct., 1856.
"	Judson *v.* Day,	MS.,	N. Y., 1851.
"	Marcy *v.* Trotter,	MS. (App. Cas.),	D. C., 1860.
"	McBurney *v.* Goodyear,	11 Cush., 569,	Mass., 1853.
"	Poppenheusen *v.* N. Y. G. P. Comb Co.,	2 Fisher, 62,	N. Y., 1858.
"	" *v.* "	MS.,	" 1858.
"	" *v.* "	1 Blatchf., 253,	" 1859.
"	Suydam *v.* Day,	2 " 20,	" 1846.
"	Warner *v.* Goodyear,	MS. (App. Cas.),	D. C., 1846.

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Locomotives, removing Wheels of,	Simpson *v.* Mad Riv. R. R.,	6 McLean, 603,	Ohio, 1855.
Locomotives, variable exhaust of,	Winans *v.* Danforth,	MS.,	N. Y., 1860.
Looms,	Dyer *v.* Rich,	1 Metc., 180,	Mass., 1840.
"	Forbush *v.* Bradford,	11 Mo. Law Rep., 471,	" 1856.
"	" *v.* Cook,	10 " " 664,	" 1857.
"	Stone *v.* Sprague,	1 Story, 270,	R. I., 1840.
"	Wright *v.* Wilson,	11 Rich. Law, 144,	S. Car., 1857
Lotteries, drawing,	Vannani *v.* Paine,	1 Harrington, 65,	Del., 1832.

M.

Machine Cards,	Wellman *v.* Blood,	MS. (App. Cas.),	D. C., 1856.
Machinery, driving,	Thomas, Ex parte,	" "	" 1860.
Marine Camels,	Winslow, "	" "	" 1850.
Matches, friction,	Brooks *v.* Byam,	1 Story, 300,	Mass., 1840.
" "	" *v.* "	2 Story, 525, 553,	" 1843.
" "	Byam *v.* Bullard,	1 Curt., 100,	" 1852.
" "	" *v.* Eddy,	2 Blatchf., 521,	Vt., 1853.
" "	" *v.* Farr,	1 Curt., 260,	Mass., 1852.
" "	Ryan *v.* Goodwin,	3 Sumn., 514,	" 1839.
Medicines,	Bacon Case,	2 Opin. Atty. Gen., 109,	1828.
"	Brown *v.* Wright,	17 Ark., 9,	Ark., 1856.
"	Comstock *v.* Moore,	18 How. Pr., 421,	N. Y., 1860.
"	Davis *v.* Kendall,	2 R. I., 566,	R. I., 1850.
"	Jordan *v.* Overseers of Poor,	4 Hamm., 294,	Ohio, 1831.
"	Perkins' Case,	1 Opin. Atty. Gen., 64,	1796.
"	Thomson *v.* Staats,	15 Wend., 395,	N. Y., 1836.
"	" *v.* Winchester,	19 Pick., 214,	Mass., 1837.
Mercantile Accounts,	Dixon, Ex parte,	MS. (App. Cas.),	D. C., 1860.
Millstones, holding,	Hoyt, Ex parte,	" "	" 1860.
" "	Smith *v.* Pearce,	2 McLean, 176,	Ohio, 1840.
Moss, treating as Hair,	Mus. Hair Co. *v* Amer. Hair Co.	4 Blatchf., 174,	N. Y., 1858.
Mouldings, planing,	Serrell *v.* Collins,	4 " 61,	" 1857.
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Muskets, Auger to bore,	Pettibone *v.* Derringer,	4 Wash., 215,	Pa., 1818.

N.

Nails, Brad, cutting,	Sawin *v.* Guild,	1 Gall., 485,	Mass., 1813.
" cutting and heading,	Gray *v.* James,	Pet., C. C., 394,	Pa., 1817.
" " "	" *v.* "	" " 476,	" 1817.
" " "	Odiorne *v.* Ames. Nail Fac.,	2 Mason, 28,	Mass., 1819.
" " "	" *v.* Winkley,	2 Gall., 51,	" 1814.
Nuts, Metallic,	Cole, Ex parte,	MS. (App. Cas.),	D. C., 1857.

O.

Oil Can,	Arthur, Ex parte,	MS. (App. Cas.),	D. C., 1860.
" Cloth,	Sparkman *v.* Higgins,	1 Blatchf., 205,	N. Y., 1846
" "	" *v.* "	2 " 29,	" "
" Patent Sperm,	Thomas *v.* Quintard,	5 Duer, 80,	" 1855.
Omnibus Step,	Stephenson *v.* Hoyt,	MS. (App. Cas.),	D. C., 1854.

P.

Paint, metallic,	Maule, Ex parte,	MS. (App. Cas.),	D. C., 1853.
Palm-leaf, for Beds,	Howe *v.* Abbott,	2 Story, 199,	Mass., 1842.
Paper, making,	Ames *v.* Howard,	1 Sumn., 482,	" 1833
" "	Knight *v.* Gavit,	Mir. Pat. Office, 94, 131,	Pa., 1846.
" folding,	Appletons *v.* Chambers,	MS. (App. Cas.),	D. C., 1860.
Pattern Rollers,	Hutchinson *v.* Meyers,	" "	" 1861.
Pavements	Smith, B. C., Ex parte,	" "	1860

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Pavements,	Tillman, Ex parte,	MS. (App. Cas.),	D. C., 1860.
Pegging Machine,	Sturtevant *v.* Greenough,	" "	" 1860.
Pen and Pencil Case,	Hawley *v.* Bagley,	MS.,	N. Y., 1855.
" " "	Richardson *v.* Hicks,	MS. (App. Cas.),	D. C., 1854.
Pendulum, Level,	Chandler *v.* Ladd,	" "	" 1857.
Perforating Paper,	Toppan *v.* Nat. Bk. Note Co.,	4 Blatchf., 509,	N. Y., 1861.
Photographs,	Fry & Seely, Ex parte,	MS. (App. Cas.),	D. C., 1859.
Pins, papering,	Amer. Pin Co. *v.* Oak'vl. Pin Co.,	3 Blatchf., 190,	Ct., 1854.
Pistol, Self-cocking,	Allen *v.* Blunt,	2 Wood. & Min., 121,	Mass., 1846.
Pitchers,	Hebbard, Ex parte,	MS. (App. Cas.),	D. C., 1857.
Planing Machines,	Barnard *v.* Gibson,	7 How., 650,	Sup. Ct., 1848.
" "	Bicknell *v.* Todd,	5 McLean, 236,	Ohio, 1851.
" "	Bloomer *v.* McQuewan,	14 How., 539,	Sup. Ct., 1852.
" "	" *v.* Stolley,	5 McLean, 158,	Ohio, 1850.
" "	" *v.* Vaught,	1 Blatchf., 529,	La., 1850.
" "	Brooks *v.* Bicknell,	3 McLean, 250,	Ohio, 1843.
" "	" *v.* "	3 " 432,	" 1844.
" "	" *v.* "	4 " 64,	" 1845.
" "	" *v.* "	4 " 70,	" 1845.
" "	" *v.* Fiske,	MS.,	Mass., 1851.
" "	" *v.* "	15 How., 212,	Sup. Ct., 1853.
" "	" *v.* Stolley,	3 McLean, 523,	Ohio, 1845.
" "	Brown *v.* Shannon,	20 How., 55,	Sup. Ct., 1857
" "	Dean *v.* Mason,	20 " 198.	" 1857
" "	Gibson *v.* Barnard,	1 Blatchf., 388,	N. Y., 1848.
" "	" *v.* Betts,	1 " 163,	" 1846.
" "	" *v.* Cook,	2 " 144,	" 1850.
" "	" *v.* Gifford,	1 " 529,	" 1850.
" "	" *v.* Harris,	1 " 167,	" 1846.
" "	" *v.* Richards,	Pat. Off. Dig., No. 376,	" 1845.
" "	" *v.* Van Dressar,	1 Blatchf., 532,	" 1850.
" "	" *v.* Woodworth,	8 Paige, 132,	" 1840.
" "	Lippincott *v.* Kelly,	1 West. Law Jour., 513,	Pa., 1844.
" "	Livingston *v.* Woodworth,	15 How., 546,	Sup. Ct., 1853.
" "	Mason *v.* Tallman,	1 Blatchf., 529,	R. I., 1850.
" "	Olcott *v.* Hawkins,	2 Am. L. Jour., N. S., 319,	Wis., 1849.
" "	Rich *v.* Hotchkiss,	16 Conn., 409,	Ct., 1844.
" "	Ritter *v.* Serrell,	2 Blatchf., 379,	N. Y., 1852.
" "	Simpson *v.* Wilson,	4 How., 709,	Sup. Ct., 1845.
" "	Sloat *v.* Patten,	4 West. Law Jour., 49,	Pa., 1846.
" "	" *v.* "	24 Jour. Fr. Inst., 25, 3d Ser.,	" 1852.
" "	" *v.* Plympton,	4 West. Law Jour., 49,	" 1846.
" "	Smith *v.* Mercer,	4 " " 49,	" 1846.
" "	Van Hook *v.* Pendleton,	1 Blatchf., 187,	N. Y., 1846.
" "	" *v.* "	2 " 85,	" 1848.
" "	" *v.* Scudder,	Cited, 3 McLean, 438; 3 Story, 132,	" 1843.
" "	Washburn *v.* Gould,	2 Story, 122,	Mass., 1844.
" "	Wilson *v.* Barnum,	1 Wall., Jr., 342,	Pa., 1849.
" "	" *v.* "	1 " 347,	" 1849.
" "	" *v.* "	8 How., 258,	Sup. Ct., 1849.
" "	" *v.* Curtius,	2 West. Law Jour., 511,	La., 1845.
" "	" *v.* Rosseau,	1 Blatchf., 3,	N. Y., 1845.
" "	" *v.* "	4 How., 646,	Sup. Ct., 1845.
" "	" *v.* Sandford,	10 " 99,	" 1850.
" "	" *v.* Sherman,	1 Blatchf., 536,	N. Y., 1850.
" "	" *v.* Simpson,	9 How., 109.	Sup. Ct., 1849.
" "	" *v.* Stolley,	4 McLean, 272,	Ohio, 1847.
" "	" *v.* "	4 " 275,	" 1847.
" "	" *v.* "	5 " 1,	" 1849.
" "	" *v.* Turner,	7 Law Rep., 529,	Md., 1845.
" "	" *v.* "	4 How., 712,	Sup. Ct., 1845
" "	Woodworth *v.* Barber,	1 Blatchf., 529 (cited),	Me., 1850.
" "	" *v.* Cheever,	3 Story, 171,	Mass., 1844.
" "	" *v.* Cook,	2 Blatchf., 151,	N. Y., 1851.

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" "	" *v.* "	1 Blatchf., 529 (cited),	" 1850.
" "	" *v.* Edwards,	3 W. & M., 120,	" 1847.
" "	" *v.* Hall,	1 " 248, 389,	" 1846.
" "	" *v.* Rogers,	3 " 135,	" 1847.
" "	" *v.* Sherman,	3 Story, 171,	" 1844.
" "	" *v.* Stone,	3 " 749,	" 1845.
" "	" *v.* "	1 Wood. & Min., 389,	" 1846.
" "	" *v.* Weed,	1 Blatchf., 165,	N. Y., 1846.
" "	" *v.* Wilson,	4 How., 712,	Sup. Ct. 1845
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"	Davis *v.* Palmer,	2 Brock., 298,	Va., 1827.
"	" *v.* McCormick,	2 " 298,	" 1827.
"	Ogle *v.* Ege,	4 Wash., 584,	Pa., 1826.
"	Prouty *v.* Ruggles,	1 Story, 568,	Mass., 1841.
"	" *v.* "	2 " 199,	" 1842.
"	" *v.* "	16 Pet., 336,	Sup. Ct.. 1842.
Pottery, Manuir. of,	Linton, Ex parte,	MS. (App. Cas.),	D. C., 1860.
Powder Mills,	Sanders, "	" "	" 1861.
Printing Press,	Babcock *v.* Degener,	" "	" 1859.
" "	Beach *v.* Tucker,	" "	" 1860.
" "	Ruggles *v.* Young,	MS., " "	" 1853.
" from Gutta-percha,	Kingsley *v.* Herriet,	MS., " "	" 1854.
Propellers,	Aiken, Ex parte,	" "	" 1850.
"	Crooker, "	" "	" 1850.
"	Emerson *v.* Hogg,	2 Blatchf., 1,	N. Y., 1845.
"	Hogg *v.* Emerson,	6 How., 437,	Sup. Ct., 1847.
"	" *v.* "	11 " 587,	" 1850.
"	Tyson *v.* Rankin,	MS. (App. Cas.),	D. C., 1853.
Puddle Balls, rolling,	Corning *v.* Burden,	MS.,	N. Y., 1850.
" "	" *v.* "	15 How., 451,	Sup. Ct., 1853.
Pumps,	Atkinson *v.* Boardman,	MS. (App. Cas.),	D. C, 1847.
"	" *v.* "	MS.,	N. Y., 1851.
"	Chatfield & Dutcher, Ex parte,	MS. (App. Cas.),	D. C., 1859.
"	Lowell *v.* Lewis,	1 Mason, 182,	Mass., 1817.
"	McClure *v.* Jeffrey,	8 Ind., 79,	Ind., 1856.
"	Mowry *v.* Barber,	MS. (App. Cas.),	D. C., 1858.
"	Reed *v.* Cutter,	1 Story, 590,	Mass., 1841

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" "	O'Reilly *v.* Smith,	" "	" 1853.
" "	Stimpson *v.* Bal. & Sus., R. R.,	10 How., 329,	Sup. Ct., 1850.
Railroads, turning Curves on,	Phil. & Tr. R. R. *v.* Stimpson,	14 Pet.. 448,	" 1840.
" "	Stimpson *v.* West Ches. R. R.,	4 How., 380,	" 1845.
" "	" *v.* Railroads,	1 Wall, Jr., 164,	Pa, 1847.
" Cars & Carriages,	Cooper *v.* Matthews,	8 Law Rep., 413,	" 1842.
" "	York & Md. R. R. *v.* Winans,	17 How., 30,	Sup. Ct., 1854.
" " 8 Wheels,	Winans *v.* New Cas. & Fr. Town R. R.,	2 Blatchf., 294 (cited),	Md., 1850.
" " "	Winans *v.* Sch. & Troy R. R.,	2 " 279,	N. Y., 1851.
" " "	" *v.* N. Y. & Har. R. R.,	31 Jour. Fr. Inst., 3d Ser., 320,	" 1855.
" " "	" *v.* N. Y. & E. R. R.,	21 How., 88,	Sup. Ct., 1858
" " for Coal,	" *v.* Denmead,	15 " 330,	" 1853
" " supporting,	Imlay *v.* Nor. & Wor. R. R.,	4 Blatchf., 227,	Ct., 1858.
" " Axles of,	Winans *v.* Bos & Prov. R. R,	2 Story, 412,	Mass., 1843.
" " Dust from,	Stephens, *v.* Salisbury,	MS. (App. Cas.),	D. C., 1855.
" Car Roofs,	Allen, Ex parte,	" "	" 1860.
" " Seats,	Woodruff, Ex parte,	" "	" 1860.
" " Wheels,	Aiken, Ex parte,	" "	" 1850.
" " "	Many *v.* Jagger,	1 Blatchf., 372,	N. Y., 1848.
" " "	" *v.* Sizer,	1 Fisher, 17,	Mass., 1849.
" " "	Sizer *v.* Many,	16 How., 98,	Sup. Ct., 1853.

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Rocking Chairs,	Bean *v.* Smallwood,	2 Story, 408,	Mass., 1843.

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"	Thistle *v.* U. States,	Dev. Rep.,	Ct. Clms., 1856.
"	Williams *v.* Hicks,	2 Verm., 36,	Vt., 1829.
Salt, manufacture of,	Anon.,	5 Opin. Atty. Gen., 701,	1814.
Safes, Iron,	Delano *v.* Scott,	Gilpin, 489,	Pa., 1834.
" "	Gayler *v.* Wilder,	10 How., 477,	Sup. Ct., 1850
" "	Rich *v.* Lippincott,	2 Fisher, 1,	Pa., 1853.
" "	Wilder *v.* Adams,	2 W. & M., 329,	Mass., 1846.
" "	" *v.* Gayler,	1 Blatchf., 511,	N. Y., 1849.
" "	" *v.* "	1 " 597,	" 1850.
" "	" *v.* McCormick,	2 " 31,	" 1846.
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" and Blind Fastener,	Elmer *v.* Pennel,	4 Maine, 430,	Me., 1855.
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" "	Orr *v.* Burrall,	15 Ala., 378,	Ala., 1849.
" Mills,	Nye *v.* Raymond,	16 Ill., 153,	Ill., 1854.
" " Circular,	Page *v.* Ferry,	1 Fisher, 298,	Mich., 1857.
" " "	Phillips *v.* Page,	24 How., 159,	Sup. Ct., 1860.
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Screws,	N. E. Screw Co. *v.* Sloan,	MS. (App. Cas.),	D. C., 1853.
"	Pierson *v.* Eagle Screw Co.,	3 Story, 402,	R. I., 1844.
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" "	Barstow *v.* Swan,	" "	" 1860.
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" "	" *v.* "	4 Blatchf., 307,	N. Y., 1859.
" "	Gibbs *v.* Ellithorpe,	MS. (App. Cas.),	D. C., 1859.
" "	" *v.* Johnson,	" "	" 1860.
" "	Grover & Baker Sew. Mac. Co. *v.* Sloat,	2 Fisher, 112,	N. Y., 1860.
" "	Howe *v.* Morton,	13 Mo. Law Rep., 70,	Mass., 1860.
" "	" *v.* Williams,	MS.,	" 1860.
" "	" *v.* Underwood,	1 Fisher, 160,	" 1854.
" "	Hunt *v.* Howe,	MS. (App. Cas.),	D. C., 1855.
" "	Johnson *v.* Root,	1 Fisher, 351,	Mass., 1858.
" "	Munson, Ex parte,	MS. (App. Cas.),	D. C., 1859.
" "	Potter *v.* Holland,	4 Blatchf., 206, 238,	Ct., 1858.
" "	" *v.* Stedman,	MS.,	" 1858.
" "	" *v.* Wilson,	2 Fisher, 102,	N. Y., 1860.
" "	Raymond, C. H., Ex parte,	MS. (App. Cas.),	D. C., 1861.
" "	Singer *v.* Walmsley,	1 Fisher, 558,	Md., 1859.
" "	" *v.* Wilson,	MS.,	N. Y., 1858.
" "	" *v.* Wooster,	MS.,	" 1857.
" "	Wickersham *v.* Singer,	MS. (App. Cas.),	D. C., 1859.
" "	Wilson *v.* Singer,	" "	" 1860.
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" "	Lillie *v.* Kelsey,	" "	" 1858.
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" "	" *v.* Sawyer,	4 Mason, 1,	Mass., 1825.
" "	Judkins *v.* Earle,	7 Greenl., 9,	Me., 1830.
" "	Peck *v.* Bacon,	18 Conn., 377,	Ct., 1847.
" "	" *v.* Farrington,	9 Wend., 44,	N. Y., 1832.
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" Soles of,	Eames *v.* Richards,	" " " 1859.
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Skirts,	Chambers, Ex parte,	MS. (App. Cas.), D. C., 1859.
"	Mann, "	" " " 1860.
"	Newman, "	" " " 1859.
"	Sherwood *v.* Sherman,	" " " 1860.
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" "	" *v.* "	1 W. & M., 53, " 1845.
" "	Moody *v.* Fiske,	2 Mason, 112, " 1820.
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" "	Troy Iron & Nail Fac. *v.* Corning,	1 Blatchf., 467, N. Y., 1849.
" "	" *v.* "	14 How., 193, Sup. Ct., 1852.
" "	" *v.* Odiorne,	17 " 72, " 1854.
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" " fusible Alloy,	Evans' Case,	7 Opin. Atty. Gen., 133, 1855.
" " "	Everson & Ricard, Ex parte,	MS. (App. Cas.), D. C., 1855.
" Generator,	Latta *v.* Shawk,	1 Fisher, 465, Ohio, 1859.
" Gauges,	Farley *v.* Nat. Stm. Gauge Co.,	MS. (App. Cas.), D. C., 1859.
" Boats,	Cutting *v.* Meyers,	4 Wash., 220, Pa., 1818.
" Engines,	Blandy, Ex parte,	MS (App. Cas.), D. C., 1858.
" "	Fallis *v.* Griffith,	Wright, 303, Ohio, 1833.
" " Cut-off,	Sherman *v.* Cham. Trans. Co.,	31 Verm., 162, Vt., 1858.
" " "	Judson *v.* Cope,	MS., Ohio, 1860.
" " "	" *v.* Moore,	MS., " 1860.
" " Valves,	Sickles *v.* Borden,	3 Blatchf., 535. N. Y., 1856.
" " "	" *v.* Glou. Manuf. Co.,	1 Fisher, 222, N. J., 1856.
" " "	" *v.* Borden,	4 Blatchf., 14, N. Y., 1857.
" " "	" *v.* Mitchell,	3 " 548, " 1857.
" " "	" *v.* Pac. Mail S. S. Co.,	MS., " 1857
" " "	" *v.* The Falls Co.,	4 Blatchf., 508, Ct., 1861.
" " "	" *v.* Tilleson,	4 Blatchf., 109, N. Y., 1857.
" " "	" *v.* Young,	3 Blatchf., 293, " 1855.
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"	Buck *v.* Gill,	4 McLean. 174, Ohio, 1846.
"	" *v.* Cobb & Hermance,	9 Law Rep., 545, N. Y., 1846.
"	" *v.* "	1 Blatchf., 322, " 1848.
"	" *v.* "	1 " 398, " 1849.
"	Dudley *v.* Mayhew,	3 Coms., 9, " 1849.
"	Hathaway *v.* Roach,	2 W. & M., 63, Mass., 1846.
"	Jewett & Root, Ex parte,	MS. (App. Cas.), D. C., 1853.
"	Orr *v.* Badger,	7 Law Rep., 465, Mass., 1844.
"	" *v.* Littlefield,	1 W & M, 13, N. H., 1845.
"	" *v.* Merrill,	1 " 376, Me., 1846.
"	Peterson *v.* Wooden,	3 McLean, 248, Ohio, 1843.
"	Rathbone *v.* Orr,	5 " 131, Mich., 1850.
"	Stanley *v.* Whipple,	2 " 35, Ohio, 1839.
"	Vance *v.* Campbell,	1 Fisher, 483, " 1859.
"	Root *v.* Ball.	4 McLean, 177, " 1846.
" Designs,	Foote *v.* Silsby,	1 Blatchf., 445, N. Y., 1849.
" regulating Draft of,	" *v.* "	1 " 542, " 1850.
" " "	" *v.* "	1 " 545, " 1850.
" " "	" *v.* "	2 " 260, " 1851.
" " "	" *v.* "	3 Blatchf., 507, " 1856.
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" " "	" *v.* "	20 How., 290, 378, " 1857

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" " grind'g Knives,	" *v.* Stevens,	1 W. & M., 290,	" 1846.
" " "	" *v.* "	3 " 17,	" 1846.
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" "	Culver *v.* Webb.	12 Conn., 441,	Ct., 1838.
" "	Goddard *v.* Lyman,	14 Pick., 268,	Mass., 1833.
" "	Harmon *v.* Bird,	22 Wend., 113,	N. Y., 1839.
" "	Moffitt *v.* Garr,	1 Fisher, 610,	Ohio, 1860.
" "	Pitts *v.* Jameson,	15 Barb., S. C., 310,	N. Y., 1853
" "	" *v.* Wemple,	6 McLean, 558,	Ill., 1855.
" "	" *v* Whitman,	2 Story, 609,	Mass., 1843.
" "	Smith *v.* Flickenger,	MS. (App. Cas.),	D. C., 1843.
" "	Van Nostrand *v.* Reed,	1 Wend., 424,	N. Y., 1828.
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" "	" *v.* "	3 " 17,	" 1846.
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" " "	" *v.* Wells,	4 " 144,	" 1857.
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"	" *v.* "	{11 Abb. Pr., 157; 19 How. Pr., 530,}	" 1860.
"	" *v.* "	{12 Abb. Pr., 186; 21 How. Pr., 100,}	" 1861.
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Eye Water,	Rudderow *v.* Huntington,	3 Sand. S. C., 252,	N. Y., 1849.
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Good-will,	Williams *v.* Wilson,	4 Sand. Ch., 379,	" 1846.
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Indian Root Pills,	Comstock *v.* Moore,	18 " 421,	" 1860.
Irving House,	Howard *v.* Henriques,	3 Sand. S. C., 725,	" 1851.
" "	Stone *v.* Carlan,	3 Mo. Law Rep., 360,	Mass., 1850.
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" "	" *v.* "	2 Barb. Ch., 101,	" 1847.
" "	" *v.* "	How. App. Cas., 547,	" 1848.
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" Persian,	Taylor *v.* Carpenter,	11 Page, 293,	" 1844.
" "	" *v.* "	3 Story, 458,	Mass., 1844.
" "	" *v.* "	2 W. & M., 1,	" 1846.
" "	" *v.* "	2 Sand. Ch., 603,	N. Y., 1846.

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" "	Corwin *v.* Daly,	Upton on Trade-mks, 187,	" 1860.
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"	Higgins *v.* Strong,	4 Blackf., 182,	Ind., 1836.
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" " "	Blanchard *v.* Beers,	2 Blatchf., 411,	Ct., 1852.
" " "	" *v.* Eldridge,	1 Wall., Jr., 337,	Pa. 1849.
" " "	" *v.* Haynes,	6 West. Law Jour., 82,	N. H., 1848.
" " "	" *v.* Sprague,	3 Sumn., 279,	Mass., 1838.
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" " "	" *v.* Whitney,	3 Blatchf., 307,	N. Y., 1855.
" " "	Blan. Gun-St'ck Turning Fac. *v.* Jacobs,	2 Blatchf., 69,	" 1847.
" " "	Blan. Gun-St'ck Turning Fac. *v.* Warner,	1 " 258,	Ct., 1846.

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" "	Hotchkiss *v.* Oliver,	5 Denio, 314,	N. Y., 1848.
" "	Parker *v.* Banker,	6 McLean, 631,	Ohio, 1855.
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" "	" *v.* Perkins,	MS.,	" 1848.

ARRANGED AS TO SUBJECT MATTER.

TABLE OF CASES

AFFIRMED, APPROVED, CRITICISED, DISAPPROVED, EXAMINED, EXPLAINED, OVERRULED, QUESTIONED, REVERSED, &c.

ALLEN *v.* BLUNT, 3 Story, 742.—Mass., 1845. Approved, that a former verdict upon a feigned issue, ordered by the court, is in no just sense final upon the facts found by it, nor binding upon the court, and in no case, unless sanctioned by a subsequent hearing on the merits of the case. *Allen* v. *Blunt*, 2 Wood. & Min., 132.—Mass., 1846. Criticised, as to the conclusiveness of the decision of the Commissioner of Patents in respect to a reissue. *Ibid.*, 139. Approved, as to the conclusiveness of the decision of the Commissioner in such case. *Brooks* v. *Fiske*, 15 How., 228.—Sup. Ct., 1853.

AMES *v.* HOWARD, 1 Sumn., 482.—Mass., 1833. Approved, as to doctrine that patents and specifications should be construed liberally. *Davis* v. *Palmer*, 2 Brock, 309. —Va., 1827. *Davoll* v. *Brown*, 1 Wood. & Min., 57.—Mass., 1845.

AMOSKEAG MANUFAC. CO. *v.* SPEAR, 2 Sand. S. C., 599.—N. Y., 1849. Approved, as to the nature of the wrong in violating a trade-mark. *Samuel* v. *Berger*, 24 Barb. S. C., 164.—N. Y., 1856. That where the exclusive right in a trade-mark is denied, an injunction will not generally issue in the first instance. *Ibid.*, 165. *Fetridge* v. *Merchant*, 4 Abb. Pr., 161.—N. Y., 1857. Approved, as to the exclusive right to sell an article by its descriptive name. *Fetridge* v. *Wells*, 13 How. Pr., 388.—N. Y., 1857. Approved, that an exclusive right cannot be had in words or signs indicating only the origin of the article, its appropriate name, or the mode or process of its manufacture. *Wolfe* v. *Goulard*, 18 How. Pr., 67.—N. Y., 1859. *Corwin* v. *Daly*, Upton on Trade-Marks, 198.—N. Y., 1860.

ATWILL *v.* FERRETT, 2 Blatchf., 39.—N. Y., 1846. Approved, that a person employing another to compile a work is not entitled to take a copyright for such work. *Pierpont* v. *Fowle*, 2 Wood. & Min., 46.—Mass., 1846.

BARRETT *v.* HALL, 1 Mason, 447.—Mass., 1818. Approved, that parties having obtained a joint patent, neither can set up a separate patent granted to himself for the same thing. *Stearns* v. *Barrett*, 1 Pick., 447.—Mass., 1823. Examined, as to doctrine that a patent cannot embrace distinct inventions; and restricted to such inventions as are not contemplated to be used in connection. *Wyeth* v. *Stone*, 1 Story, 288, 290.—Mass., 1840. This case attempts a generalization of the doctrines of the patent law, as to the question whether the same patent can be at once for a combination, and for each of the improved machines, but the definition adopted had no necessary connection with the case.

Emerson v. *Hogg*, 2 Blatchf., 7.—N. Y., 1845. Approved, that a specification must state in what an improvement consists and be limited to it. *Tyler* v. *Deval*, 1 Code Rep., 30 (La.)—1848.

Bartholomew *v.* Sawyer, MS.—N. Y., 1859. Approved, that the patenting of an invention abroad to defeat a patent granted here, must have been before the invention here, and not merely before the application. *Howe* v. *Morton*, 13 Mo. Law Rep., 70.—Mass., 1860.

Battin *v.* Taggert, 2 Wall., Jr., 101.—Pa., 1851. Reversed, that a description, in a specification, of a part of a machine, without making a claim for it, is a dedication of such part, and that it cannot afterward be recalled by a reissue. *Battin*, v. *Taggert*, 17 How., 83.—Sup. Ct., 1854. Examined and considered, that his case does not decide, that the question whether a reissued patent is for the same invention as the original, is one exclusively for the jury. *Poppenheusen* v. *Fulke*, MS.—N. Y., 1861.

Battin *v.* Taggert, 17 How., 73.—Sup. Ct., 1854. Approved, that differences in the claims of an original and reissued patent are consistent with identity of invention. *Hussey* v. *McCormick*, MS.—Ill., 1859.

Bean *v.* Smallwood, 2 Story, 408.—Mass., 1843. Approved, that a machine, &c., to be patentable, must be substantially new—an application to a new purpose is not sufficient. *Tyler* v. *Deval*, 1 Code Rep.; 31.—La., 1848. *Le Roy* v. *Tatham*, 14 How., 177.—Sup. Ct., 1852.

Bedford *v.* Hunt, 1 Mason, 302.—Mass., 1817. *Whitney* v. *Emmett*, Bald., 309.—Pa., 1831. Approved, that an invention is useful if it is not frivolous or injurious. Examined, as to what constitutes the *use* of an invention within the meaning of the act of 1793. *Watson* v. *Bladen*, 4 Wash., 583.—Pa., 1826. Commented on, as to the doctrine that "the first inventor who has reduced his invention to practice, and he only, is entitled to a patent." *Hildreath*, v. *Heath*, MS.—D. C., 1841. Approved, that a patent may be defeated by showing that the thing patented had been before used, however limited the use or knowledge of the prior discovery. *Rich* v. *Lippincott*, 26 Jour. Fr. Inst., 3d Ser., 15.—Pa., 1853.

Bell *v.* Locke, 8 Paige, 75.—N. Y., 1840. Approved, that an injunction will issue for the fraudulent assumption of the name of a newspaper. *Taylor v. Carpenter*, 11 Paige, 297.—N. Y., 1844. Or for the fraudulent use of another's trade-mark. *Coffeen* v. *Brunton*, 4 McLean, 519.—Ind., 1849.

Binns *v.* Woodruff, 4 Wash., 48.—Pa., 1821. Approved, that the person employing others to execute a literary work is not entitled to a copyright. *Pierpont* v. *Fowle*, 2 Wood. & Min., 46.—Mass., 1846.

Blanchard *v.* Eldridge, 1 Wall., Jr., 337.—Pa., 1849. Approved, that in case of a license, the legal right of the monopoly remains in the patentee, who can alone maintain an action for infringement of the right of the licensee. *Gayler* v. *Wilder*, 10 How., 495.—Sup. Ct., 1850.

Bliss *v.* Negus, 8 Mass., 46.—Mass., 1811. Questioned, as to the position that the title to a patent will fail because assignment from original patentee is not recorded. *Holden* v. *Curtis*, 2 N. Hamp., 63.—N. H., 1819. Approved, that state courts may exercise jurisdiction of suits where patents come in question collaterally. *Rich* v. *Hotchkiss*, 16 Conn., 414—Ct., 1844. Approved, that the fraudulent obtaining of a patent is a good defence to a note given for it. *Wilder* v. *Adams*, 2 Wood. & Min., 332.—Mass., 1846.

CASES AFFIRMED, CRITICISED, ETC.

BLOOMER *v.* MCQUEWAN, 14 How., 539.—Sup. Ct., 1852. Examined, as to the position that in an extension under § 18 of the act of 1836, the right of assignees is limited to the use of the particular machines used by them at the time of the extension, and held that such precise question did not arise and was not necessarily decided in it. *Day* v. *Union Rub. Co.*, 3 Blatchf., 488.—N. Y., 1856.

BOSTON MANUF. CO. *v.* FISKE, 2 Mason, 119.—Mass., 1820. Disapproved, as to including as a part of damages for infringement of a patent, counsel fees and other like charges. *Stimpson* v. *The Railroads*, 1 Wall., Jr., 164.—Pa., 1847.

BROOKLYN WHITE LEAD CO. *v.* MASURY, 25 Barb. S. C., 416.—N. Y., 1857. Approved, that no exclusive right of trade-mark can exist, in the use of words indicating merely the nature of the article sold. *Wolfe* v. *Goulard*, 18 How. Pr., 69. —N. Y., 1859.

BROOKS *v.* BICKNELL, 3 McLean, 250.—Ohio, 1843. Approved, that an administrator can apply for and take an extension of a patent. *Woodworth* v. *Sherman*, 3 Story, 172.—Mass., 1844.

BROWN *v.* DUCHESNE, 2 Curt., 371.—Mass., 1855. Affirmed, that the right of property vested in a patentee by his patent does not extend to the use of the thing patented upon a foreign vessel lawfully entering our ports, if such thing was put upon her in a foreign country, and authorized by the laws of such country. *Brown* v. *Duchesne*, 19 How., 198. —Sup. Ct., 1856.

BURRALL *v.* JEWETT, 2 Paige, 134.—N. Y., 1830. Approved, as to doctrine that the jurisdiction of the Federal courts under the act of 1819 was not exclusive in all cases in equity under the patent laws; but *Held*, that the decision was under the act of 1819, which was superseded by the act of 1836. *Gibson* v. *Woodworth*, 8 Paige, 133.—N. Y., 1840.

CARVER *v.* HYDE, 16 Pet., 213.—Sup. Ct., 1842. Approved, that the use of part of a combination is no infringement. *Stimpson* v. *Bal. & Sus. R. R. Co.*, 10 How, 345.—Sup. Ct., 1850.

CLARK *v.* CLARK, 25 Barb. S. C., 75.—N. Y., 1857. Approved, that one manufacturer may use the same word to designate his manufacture as another, provided he does not use it so as to imitate an article before sold by the other. *Wolfe* v. *Goulard*, 18 How. Pr., 68, 69.—N. Y., 1859.

COATES *v.* HOLBROOK, 2 Sand. Ch., 586. —N. Y., 1845. Approved, that the imitation of a trade-mark, though without fraudulent representations, is a fraud which may be restrained. *Amoskeag Manuf. Co.* v. *Spear*, 2 Sand. S. C., 613. —N. Y., 1849.

CROSS *v.* HUNTLEY, 13 Wend., 385.—N. Y., 1835. Approved, that the invalidity of a patent is a good defence to an action on a note given for the purchase thereof. *McDougall* v. *Fogg*, 2 Bosw., 391.—N. Y., 1858.

DAVIS *v.* PALMER, 2 Brock., 298.—Va., 1827. Criticised, as to whether it does not present a too rigid adherence to *form* to be a guide for the present. *Many* v. *Sizer*, MS., Mass., 1849. Referred to, as a case in which the patent is limited to a particular form, as described. *Winans* v. *Denmead*, 15 How., 343.—Sup. Ct., 1853.

DAVOLL *v.* BROWN, 1 Wood. & Min., 53.—Mass., 1845. Approved, that in constructing the claim of a patent, resort may be had to the introduction of the specification as well as the summing up. *Hovey* v. *Stevens*, 1 Wood. & Min., 294.—Mass., 1846; S. C., 3 Wood. & Min., 21.—Mass., 1846.

DAY *v.* CARY, MS.—N. Y., 1859. Criticised and disapproved, that the term

"shirred goods," in the Goodyear-Day contracts of 1846, is limited to goods made under the shirred patent of March 9th, 1844. *Day* v. *Lyons*, MS.—La., 1860.

DAY *v.* HAYWARD, 20 How., 208.—Sup. Ct., 1857. Examined and considered, that the question whether the license of Goodyear to the Naugatuck Rubber Co., of July, 1844, carried the extended term of the patent of June 15th, 1844, was not decided in this case, as it was not before the court. *Day* v. *Stellman*, MS.—Md., 1859.

DAY *v.* UNION RUBBER CO., 20 How., 216.—Sup. Ct., 1857. Approved, as to construction of the agreement of September 5th, 1850, between Judson and Chaffee; but held, that the case did not turn upon the construction of the licenses referred to in that case. *Day* v. *Stellman*, MS.—Md., 1859.

DEAN *v.* MASON, 20 How., 203.—Sup. Ct., 1857. Examined and held, that the question whether a court of equity would punish an infringement, by assuming the functions of a court of law, and whether the remedies given by a Court of Chancery, should not be such as are peculiar to that jurisdiction, did not arise in the case. *Livingston* v. *Jones*, 3 Wall., Jr.—Pa., 1861.

DEDERICK, EX PARTE, MS.—D. C., 1860. Approved, as to abandonment, arising from neglect to prosecute an application for a patent. *Raymond, L., Ex parte*, MS.—D. C., 1861.

DICKINSON *v.* HALL, 14 Pick., 217.—Mass., 1833. Approved, that a note given for a patent which is void, is without consideration. *Jolliffe* v. *Collins*, 21 Mo., 343.—Mo., 1855. *Foss* v. *Richardson*, 11 Mo. Law Rep., 675.—Mass., 1859.

DOBSON *v.* CAMPBELL, 1 Sumn., 319.—Me., 1833. Approved, that under the act of 1793, the recording of an assignment of a patent is indispensable. *Boyd* v. *McAlpine*, 3 McLean, 428.—Ohio, 1844.

DOLLAND'S CASE, 2 H. Bl., 478 (Eng. Rep.) Not a just exposition of the patent law of the United States. *Reed* v. *Cutter*, 1 Story, 598.—Mass., 1841.

DOUGHERTY *v.* VAN NOSTRAND, 1 Hoff. Ch., 68.—N. Y., 1839. A leading authority, that the good-will of a business does not survive to a continuing partner. *Williams* v. *Wilson*, 4 Sand. Ch., 380.—N. Y., 1846. *Howe* v. *Searing*, 19 How. Pr., 17.—N. Y., 1860.

DUDLEY *v.* MAYHEW, 3 Com., 9.—N.Y., 1849. Approved, that state courts have no jurisdiction of cases respecting the validity of patents. *Judson & Goodyear* v. *Union Rub. Co.*, 4 Blatchf.—N. Y., 1857. *Tomlinson* v. *Battel*, MS. DUER, J.—N. Y., 1857.

EARLE *v.* SAWYER, 4 Mason, 1.—Mass., 1825. Examined and held, that the decision in this case, that the patent act of 1793 required the specification to contain written *references* to the drawings, was not called for by the case. *Emerson* v. *Hogg*, 2 Blatchf., 9, 10.—N. Y., 1845.

ELLITHORPE *v.* ROBERTSON, MS.—D. C., 1858. Approved, as to what constitutes a forfeiture of a patent. *Berg* v. *Thistle*, MS.—D. C., 1860.

EMERSON *v.* DAVIES, 3 Story, 768.—Mass., 1845. Approved, that to constitute an infringement of a copyright, it is not necessary there should be a complete copy or imitation throughout; but only such an important and valuable portion used as would operate injuriously to the copyright. *Story's Exrs.* v. *Holcombe*, 4 McLean, 313.—Ohio, 1847.

EVANS *v.* EATON, Pet. C. C., 323.—Pa., 1816. Reversed, that Evans' patent was only for the general result produced by the combination of all his machinery, and not for the several machines as well as the general result. *Evans* v. *Eaton*, 3 Wheat., 505, 517.—Sup. Ct., 1818. Affirmed, that

under the act of 1790, under a notice served with the general issue, that an invention had been used, evidence could be given of a use in other places than those named in such notice. *Ibid.*, 503, 504. Approved, that it is no infringement of a patent for a combination to use less than the whole. *Barrett* v. *Hall*, 1 Mas., 474.—Mass., 1818. Approved, that prior use or knowledge of an invention will invalidate a patent. *Brooks* v. *Bicknell*, 3 McLean, 263.—Ohio, 1843.

Evans *v.* Eaton, 3 Wheat., 454.—Sup. Ct., 1818. Examined and explained. *Evans* v. *Eaton*, 3 Wash., 450.—Pa., 1818. *Pettibone* v. *Derringer*, 4 Wash., 217.—Pa., 1818. *Evans* v. *Hettick*, 3 Wash., 429.—Pa., 1818. Approved, that the terms "an improved machine" and "an improvement on a machine," are substantially the same. *Whitney* v. *Emmett*, Bald., 314.—Pa., 1831. Approved, that an act of Congress is not unconstitutional because it grants a patent for what was in public use. *Blanchard* v. *Sprague*, 3 Sumn., 541.—Mass., 1839. Examined, as to point that a patent cannot include more than one invention. *Wyeth* v. *Stone*, 1 Story, 288.—Mass., 1840. Questioned, as to doctrine intimated that the same patent cannot give a right to the use of several machines separately and for them in combination. *Emerson* v. *Hogg*, 2 Blatchf., 7.—N. Y., 1845. Approved, that a special act of Congress as to a patent is to be regarded as engrafted on the general acts. *Bloomer* v. *McQuewan*, 14 How., 548.—Sup. Ct., 1852. Approved, that a defendant is not limited to the plea of the general issue, with notice, but may plead specially. *Day* v. *N. E. Car-Spring Co.*, 3 Blatchf., 181.—N. Y., 1854.

Evans *v.* Eaton, 3 Wash., 443.—Pa., 1818. Affirmed, that Evans' patent issued under a special act was not an exception to the general provisions of the patent laws; being for an improvement, it should have set out what his improvement was. *Evans* v. *Eaton*, 7 Wheat., 356.—Sup. Ct., 1822.

Evans *v.* Eaton, 7 Wheat., 356.—Sup. Ct., 1822. Approved, that if a patent does not describe the new from the old, it will be void. *Brooks* v. *Bicknell*, 3 McLean, 444.—Ohio, 1844. Approved, that a patentee must state distinctly what he claims. *Brooks* v. *Fiske*, 15 How., 215.—Sup. Ct., 1853.

Evans *v.* Hettick, 3 Wash., 408.—Pa., 1818. Affirmed. *Evans* v. *Hettick*, 7 Wheat., 453.—Sup. Ct., 1822.

Evans *v.* Jordan, 1 Brock., 248.—Va., 1813. Decided on certificate of division, that under the act of 1808 for relief of O. Evans, those who had erected his machinery between the expiration of his old patent and the grant of the new, had no right to continue its use. *Evans* v. *Jordan*, 9 Cra., 204.—Sup. Ct., 1815.

Ewer *v.* Coxe, 4 Wash., 487.—Pa., 1824. Approved, that under the copyright act of 1790 the publication of the record of copyright and the deposit of a book with the Secretary of State are not prerequisites to obtaining a copyright. *Wheaton* v. *Peters*, 8 Pet., 693.—Sup. Ct., 1834. Commented on, whether any change as to the requirements to secure a copyright were made by the act of 1802. *Ibid.*, 696.—Dis. Opin.

Fallis *v.* Griffith, Wright, 303.—Ohio, 1833. Approved, that a *useless* patent is no consideration for a promise to pay. *McDougall* v. *Fogg*, 2 Bos., 391.—N. Y., 1858.

Fetridge *v.* Wells, 13 How. Pr., 355.—N. Y., 1857. Approved, that a name cannot be protected as a trade-mark when it is used to designate the article, and has become its proper appellation, and does

not indicate its origin or ownership. *Tomlinson* v. *Battell*, MS.—N. Y. 1857. *Wolfe*, v. *Goulard*, 18 How. Pr., 38.—N. Y., 1859.

Folsom *v.* Marsh, 2 Story, 100.—Mass., 1841. Approved, as to the extent a reviewer may cite from an original work without infringing. *Story's Exrs.* v. *Holcombe*, 4 McLean, 309, 310.—Ohio, 1847. And that a *bona fide* abridgment is not an infringement. *Ibid.*, 311–315. Approved, that the right of property in private letters remains in the writer. *Bartlett* v. *Crittenden*, 5 McLean, 43.—Ohio, 1849. Approved, that all letters are literary compositions, and entitled to protection; and as to right of property therein. *Woolsey* v. *Judd*, 4 Duer, 396, 405, 406.—N. Y., 1855.

Foote *v.* Silsby, 1 Blatchf., 445.—N. Y., 1849. Affirmed, as to what is a sufficient statement of the interest, in a disclaimer of the patent, of the person making the disclaimer. *Silsby* v. *Foote*, 14 How., 221.—Sup. Ct., 1852. Affirmed, that a reference to a book, mentioned in the notice, required with the plea of the general issue, must be to page or section; a general reference not enough. *Ibid.*, 223, 224. Affirmed, that in a patent for a combination, a claim for such machinery as produces a given result is sufficiently definite. *Ibid.*, 225.

Foote *v.* Silsby, 2 Blatchf., 275.—N. Y., 1851. Affirmed, as to what is granted by Foote's patent, but reversed, as to the allowance of interest and costs. *Silsby* v. *Foote*, 20 How. 385.—Sup. Ct., 1857. Sustains, in fact, the ruling below, that a judge may disregard the finding of a jury upon a feigned issue, and give a decree in opposition thereto. *Ibid.*, 385.

Foster *v.* Moore, 1 Curt., 283.—Mass., 1852. Approved, that no fixed time of possession of patent is necessary to warrant an injunction. *Sargeant* v. *Seagrave*, 2 Curt., 557.—R. I., 1855.

Gayler *v.* Wilder, 10 How., 477.—Sup. Ct., 1850. Approved, that by an assignment before patent issued, the legal title of the patent enures to the assignee. *Sargeant* v. *Seagrave*, 2 Curt., 555, 556.—R. I., 1855. Commented on, as to when, under § 15 of the act of 1836, a prior use and knowledge abroad will invalidate a patent. *Cahoon* v. *Ring*, MS.—Me., 1859.

Geiger *v.* Cook, 3 Watts & Serg., 266.—Pa., 1842. Approved, that a party cannot recover on a note given for a purchase of a patent, if the patent was not new and useful, though both parties acted in good faith. *McClure* v. *Jeffrey*, 8 Ind., 82.—Ind., 1856.

Goodyear *v.* Day, 2 Wall., Jr., 283.—N. J., 1852. Approved, as to what constitutes such a prior invention as will defeat a subsequent patent. *Singer* v. *Walmsley*, MS.—Md., 1859.

Goodyear *v.* Matthews, 1 Paine, 302.—Ct., 1814. Examined, as to what use of an invention, before patent, will deprive a party of a right to a patent. *Shaw* v. *Cooper*, 7 Pet., 317.—Sup. Ct., 1833.

Goodyear & N. E. Car Spring Co. *v.* Phelps, 3 Blatchf., 91.—N. Y., 1853. Approved, that the directors, managers, and agents of a corporation, are liable, individually, as for an infringement of a patent, and may be enjoined. *Poppenheusen* v. *Falke*, MS.—N. Y., 1861.

Grant *v.* Raymond, 6 Pet., 218.—Sup. Ct., 1832. Approved, as to the right to surrender a patent, and obtain a reissue thereof. *Ames* v. *Howard*, 1 Sumn., 488.—Mass., 1833. *Shaw* v. *Cooper*, 7 Pet., 315.—Sup. Ct., 1833. *Brooks* v. *Bicknell*, 3 McLean, 438.—Ohio, 1844. *Battin* v. *Taggert*, 17 How., 83.—Sup. Ct., 1854. Approved, that a defendant may pleah specially, instead of the general issue, with notice. *Day* v. *N. E. Car-Spring Co.*, 3 Blatchf., 181.—N. Y., 1854.

CASES AFFIRMED, CRITICISED, ETC.

GRAY *v.* JAMES, Pet. C. C., 394.—Pa., 1817. Criticised and questioned, as to the position that the patentee of a worthless machine is entitled to damages when such machine is combined with an improvement made by another, and thereby made useful. *Whitney* v. *Emmett*, Bald., 328.—Pa., 1831.

GRAY *v.* RUSSELL, 1 Story, 11.—Mass., 1839. Approved, that the arrangement or combination of the materials of a book upon a new plan, may be subject of copyright. *Emerson* v. *Davies*, 3 Story, 781.—Mass., 1845.

HARTSHORN *v.* DAY, 19 How., 211.—Sup. Ct., 1856. Decision in this case rests upon the contract of November 12th, 1851, between Chaffee & Judson, and under it the Chaffee patent was in Judson for the benefit of Goodyear, and Day took no interest in such patent by Chaffee's assignment of July 1st, 1853. *Day* v. *Stellman*, MS.—Md., 1859. Approved, *Day* v. *Union Rub. Co.*, 20 How., 217.—Sup. Ct., 1857.

HEAD *v.* STEVENS, 19 Wend., 411.—N. Y., 1838. Approved, that the uselessness of a patent may be set up as a defence to a note given for the purchase thereof. *McDougal* v. *Fogg*, 2 Bosworth, 391.—N. Y., 1858.

HERBERT *v.* ADAMS, 4 Mas., 5.—Mass., 1825. Approved, that in case of an assignment of a patent before issue, an action for an infringement must be brought in the name of the assignee. *Gayler* v. *Wilder*, 10 How., 493.—Sup. Ct., 1850.

HIATT *v.* TWOMEY, 1 Dev. & Bat., 315.—N. Car., 1836. Criticised and explained. *Cansler* v. *Eaton*, 2 Jones, Eq., 499.—N. Car., 1856.

HIGGINS *v.* STRONG, 4 Blackf., 182.—Ind., 1836. Approved, that under act of 1793, an assignment of patent, to be valid, must be recorded. *McFall* v. *Wilson*, 6 Blackf., 26.—Ind., 1842. *Mulliken* v *Latchem*, 7 Blackf., 138.—Ind., 1844. *McKernan* v. *Hite*, 6 Ind., 429.—Ind., 1855.

HILDREATH *v.* HEATH, MS.—D. C., 1841. Approved, that the first one to conceive an invention is entitled to a patent, provided he uses reasonable diligence to perfect it. *Beverly Rub. Co.* v. *Wing*, MS.—D. C., 1860.

HILL *v.* THOMSON, 3 Meriv. R., 622, Ld. Eldon, Chan. Approved, as to rule governing allowance of injunctions. *Sullivan* v. *Redfield*, 1 Paine, 449.—N. Y., 1825. *Washburn* v. *Gould*, 3 Story, 170.—Mass., 1844.

HOGG *v.* EMERSON, 6 How., 437.—Sup Ct., 1847. Explained and affirmed. *Hogg* v. *Emerson*, 11 How., 587.—Sup. Ct., 1850.

HOTCHKISS *v.* GREENWOOD, 4 McLean, 456.—Ohio, 1844. Affirmed, that the alleged invention was but a new application, and not patentable. *Hotchkiss* v. *Greenwood*, 11 How., 248.—Sup. Ct., 1850.

HOVEY *v.* STEVENS, 1 Wood. & Min., 303.—Mass., 1846. Approved, that mere possession of a patent will not warrant an injunction. *Mitchell* v. *Barclay*, MS.—N. Y., 1860.

HOWE *v.* ABBOTT, 2 Story, 194.—Mass., 1842. Explained, as to point that a new application or purpose is not patentable. *Hotchkiss* v. *Greenwood*, 11 How., 270.—Sup. Ct., 1850. Dis. Opin.

HOYT *v.* MCKENZIE, 3 Barb. Ch., 320.—N. Y., 1848. Criticised and held, that the decision therein, that the publication of private letters will not be restrained, unless they possess the character of *literary* compositions, was a departure from established law, and not a binding authority. *Woolsey* v. *Judd*, 4 Duer, 389, 406.—N. Y., 1855.

KENDALL *v.* WINSOR, 21 How., 328.—Sup. Ct., 1858. Approved, as to forfeit-

ure of patent. *Berg* v. *Thistle*, MS.—D. C., 1860. *Marcy* v. *Trotter*, MS.—D. C., 1860. Approved, as to effect of delay in applying for a patent. *Walker* v. *Forbes*, MS. —D. C., 1861. *Loveridge* v. *Dutcher*, MS.—D. C., 1861.

KEPLINGER *v.* DE YOUNG, 10 Wheat., 358.—Sup. Ct., 1825. Approved, that it is not the product, but the thing patented which is protected, and which cannot be sold or used. *Boyd* v. *McAlpine*, 3 McLean, 430.—Ohio, 1844. Examined, as to constructive infringement. *Byam* v. *Ballard*, 1 Curt., 102.—Mass., 1852.

LAROWE, EX PARTE, MS.—D. C., 1860. Approved, that a decision of one Commissioner in respect to applications for patents, while unreversed, binds his successors. *Simpson*, *Ex parte*, MS.—D. C., 1861.

LE ROY *v.* TATHAM, 14 How., 156.—Sup. Ct., 1852. Considered, as holding that the patentee was not entitled to a patent for the newly-discovered principle of lead reuniting under pressure, but for the process or method of making lead pipe which this discovery enabled him to apply. *O'Reilly* v. *Morse*, 15 How., 117.—Sup. Ct., 1853. Examined, and commented on. *Le Roy* v. *Tatham*, 22 How., 137–139.—Sup. Ct., 1859.

LIVINGSTON *v.* VAN INGEN, 9 John., 507.—N. Y., 1812. Overruled in fact, as to the power of a state to grant privileges which should interfere with the coasting laws of the United States. *Gibbons* v. *Ogden*, 9 Wheat., 1.—Sup. Ct., 1824. The principles of this case as to injunctions do not apply to suits brought under the general patent laws, as this case arose under a state law. *Sullivan* v. *Redfield*, 1 Paine, 448.—N. Y., 1825.

LIVINGSTON *v.* WOODWORTH, 15 How. 546.—Sup. Ct., 1853. Approved, as to, rule of damages, that a party is accountable only for profits *actually made*, and not what he might have made. *Dean* v. *Mason*, 20 How., 203.—Sup. Ct., 1857.

LOVERIDGE *v.* DUTCHER, MS.—D. C., 1861. Approved, as to effect of negligence in failing to apply for a patent for an invention. *Snowden* v. *Pierce*, MS.—D. C., 1861.

LOWELL *v.* LEWI, 1 Mason, 182.—Mass., 1817. Approved, that a patent for an improvement must distinguish the new from the old. *Evans* v. *Hettick*, 3 Wash., 425.—Pa., 1818. Approved, that an invention is useful if it is not frivolous or mischievous. *Kneass* v. *Schuyl. Bank*, 4 Wash., 12.—Pa., 1820. *Whitney* v. *Emmett*, Bald., 309.—Pa., 1831.

MANY *v.* JAGGER, 1 Blatchf., 372.—N. Y., 1848. Correctness of Nelson, J.'s charge as to construction of plaintiff's patent for car-wheels questioned. *Many* v. *Sizer*, MS.—Mass., 1849.

MCCLURG *v.* KINGSLAND, 1 How., 202.—Sup. Ct., 1843. Commented on, as to prior use under § 7 of the act of 1839. *Pierson* v. *Eagle Screw Co.*, 3 Story, 405, 409.—R. I., 1844. Examined, as to provision respecting assignees, under § 18 of the act of 1836. *Wilson* v. *Rousseau*, 4 How., 683.—Sup. Ct., 1845. Considered to be a patent for the application of a known law of nature to a new purpose. *O'Reilly* v. *Morse*, Dis. Opin., 15 How., 131.—Sup. Ct., 1853. Commented on. *Day* v. *Union Rub. Co.*, 3 Blatchf., 505.—N. Y., 1856.

MCCORMICK *v.* SEYMOUR, 2 Blatchf., 240.—N. Y., 1851. Reversed, as to rule of damages laid down therein. *Seymour* v. *McCormick*, 16 How., 491.—Sup. Ct., 1853. Approved, as to construction of McCormick's patent. *McCormick* v. *Many*, 6 McLean, 556.—Ill., 1855.

MCCORMICK *v.* SEYMOUR, 3 Blatchf., 209.—N. Y., 1854. Affirmed, except as to

construction of one claim of patent, and the right of plaintiff to recover costs. *Seymour* v. *McCormick*, 19 How., 106.—Sup. Ct., 1856.

MERRIMACK MANUF. CO. *v.* GARNER, 4 E. D. Smith, 387.—N. Y., 1855. Approved, that one may imitate and sell the style of goods made by another, unless the label used by him deceives purchasers as to their true character. *Wolfe* v. *Goulard*, 18 How. Pr., 69.—N. Y., 1859.

MOODY *v.* FISKE, 2 Mason, 112.—Mass., 1820. Approved, that the claim is conclusive as to the patentee's rights. *Wyeth* v. *Stone*, 1 Story, 285.—Mass., 1840. Examined, as to doctrine that a patent cannot embrace distinct inventions, and held to apply to machines having a common object or purpose. *Ibid.*, 291, 292. Examined, as to same doctrine, and held that the facts of the case did not demand a judgment on that point. *Emerson* v. *Hogg*, 2 Blatchf., 8.—N. Y., 1845.

MORRIS *v.* HUNTINGTON, 1 Paine, 348.—N. Y., 1824. Approved, that a person cannot have two valid, subsisting patents at the same time, for the same invention. *Treadwell* v. *Bladen*, 4 Wash., 708.—Pa., 1827. Examined, as to what use of an invention will defeat a patent. *Shaw* v. *Cooper*, 317.—Sup. Ct., 1833.

NICHOLS *v.* RUGGLES, 3 Day, 145.—Ct., 1808. Approved, that under the copyright act of 1790, the publication of the title of a book, and the depositing a copy with the Secretary of State, are merely directory. *Wheaton* v. *Peters*, 8 Pet., 693.—Sup. Ct., 1834.

NYMAN'S CASE, 3 Opin. Atty. Gen., 446.—1839. Approved, as to power of an administrator to take out an extension of a patent. *Brooks* v. *Bicknell*, 3 McLean, 437, 438.—Ohio, 1844.

ODIORNE *v.* AMESBURY NAIL FAC., 2 Mason, 28.—Mass., 1849. Approved, that a person cannot have two subsisting valid patents at the same time for the same invention. *Treadwell* v. *Bladen*, 4 Wash., 708, 709.—Pa., 1827. *Ogle* v. *Eye*, 4 Wash., 585.—Pa., 1826. Approved, as to principles governing issue of injunctions. *Hussey* v. *Whiteley*, MS.—Ohio, 1861.

O'REILLY *v.* MORSE, 15 How., 62.—Sup. Ct., 1853. Considered, as having settled the question of extent of the rights secured to an inventor by his patent. *Amer. Pin Co. v. Oakville Pin Co.*, 3 Amer. Law Reg., 137.—Ct., 1854. Approved as to the question of unreasonable delay in filing a disclaimer. *Seymour* v. *McCormick*, 19 How., 106.—Sup. Ct., 1856. Approved, that a patent confers only a right to use the thing described and nothing more. *Burr* v. *Cowperthwaite*, 4 Blatchf.—Ct., 1858. *Potter* v. *Holland*, 4 Blatchf.—Ct., 1858. Approved, as to the patentability of a principle. *Singer* v. *Walmsley*, MS.—Md., 1859. Approved, that a reissued patent is presumably for same invention as the original patent. *Hussey* v. *McCormick*, MS.—Ill., 1859.

ORR *v.* LITTLEFIELD, 1 Wood. & Min., 13.—N. H., 1845. Referred to, as collecting most of the precedents as to injunctions. *Hovey* v. *Stevens*, 1 Wood. & Min., 304.—Mass., 1846. Approved, as to rules governing issuing of injunctions. *Orr* v. *Merrill*, 1 Wood. & Min., 379.—Me., 1846. Approved, that mere possession of a patent is not alone cause for injunction. *Mitchell* v. *Barclay*, MS.—N. Y., 1860. Approved, as to the principles governing allowance of injunctions. *Hussey* v. *Whiteley*, MS.—Ohio, 1861.

PARKER *v.* CORBIN, 4 McLean, 462.—Ohio, 1848. Criticised, as at variance with *Parker* v. *Hulme*, 7 West. Law Jour., 417.—Pa., 1849; *Parker* v. *Ferguson*, 1 Blatchf.,

407.—N. Y., 1849. *Parker* v. *Sears*, MS. —Pa., 1850.

PARKER *v.* FERGUSON, 1 Blatchf., 407. N. Y., 1849. Criticised, as at variance with *Parker* v. *Hulme*, 7 West., Law Jour., 417.—Pa., 1849; and *Parker* v. *Corbin*, 4 McLean, 462.—Ohio, 1848. *Parker* v. *Sears*, MS.—Pa., 1850.

PARKER *v.* HULME, 7 West. Law Jour., 417.—Pa., 1847. Criticised, as at variance with *Parker* v. *Corbin*, 4 McLean, 462. —Ohio, 1848; and *Parker* v. *Ferguson*, 1 Blatchf., 407.—N. Y., 1849. *Parker* v. *Sears*, MS.—Pa., 1850.

PARKER *v.* BANKER, 6 McLean, 631.—Ohio, 1855. Approved, as to rule of damages laid down in it. *Wintermute* v. *Redington*, MS.—Ohio, 1856.

PARKHURST *v.* KINSMAN, 1 Blatchf., 488. —N. Y., 1849. Approved, that a change in the form of a machine is not invention. *Wilbur* v. *Beecher*, 2 Blatchf., 141, 142.—N. Y., 1850. Affirmed by Supreme Court. *Kinsman* v. *Parkhurst*, 18 How., 289.—Sup. Ct., 1855. Approved, that imperfect experiments will not stand in the way of a subsequent original inventor. *Potter* v. *Wilson*, MS.—N. Y., 1860.

PARSONS *v.* BARNARD, 7 John., 144.—N. Y., 1810. Approved, that the Federal courts have exclusive cognizance of suits for infringements of patents. *Livingston* v. *Van Ingen*, 9 John., 582.—N. Y., 1812. *Gibson* v. *Woodworth*, 8 Paige, 134.—N. Y., 1840. *Smith* v. *Mercer*, 4 West. Law Jour., 53.—Pa., 1846.

PARTRIDGE *v.* MENCK, 2 Sand. Ch., 622. —N. Y., 1846. Affirmed, that an injunction to restrain the use of a trade-mark will not be granted, when the imitation is not such as to deceive a purchaser using ordinary attention. *Partridge* v. *Menck*, 2 Barb. Ch., 101.—N. Y., 1847. Approved, that the question upon the violation of a trade-mark is not whether the party is the inventor of the thing sold, but depends upon the fact of appropriation and use. *Fetridge* v. *Merchant*, 4 Abb. Pr., 160.—N. Y., 1857.

PARTRIDGE *v.* MENCK, How., App. Cas., 547.—N. Y., 1848. Approved, that a party using a trade-mark, though the purchaser of it, to palm off upon the public an article made by himself as made by another, is guilty of a fraud, and cannot be protected in the use of such mark. *Fetridge* v. *Merchant*, 4 Abb. Pr., 157.—N. Y., 1857. *Fetridge* v. *Wells*, 4 Abb. Pr., 155.—N. Y., 1857. *Hobbs* v. *Francais*, 19 How. Pr., 570.—N. Y., 1860.

PENNOCK *v.* DIALOGUE, 4 Wash., 538. —Pa., 1825. Affirmed, that an inventor cannot have a valid patent, if he permits his invention to go into public use before application for a patent. *Pennock* v. *Dialogue*, 2 Pet., 19, 24.—Sup. Ct., 1829.

PENNOCK *v.* DIALOGUE 2 Pet., 1.—Sup. Ct., 1829. Approved, that the words "known and used," in the act of 1793 refer to the *application* for a patent. *Whitney* v. *Emmett*, Bald., 309.—Pa., 1831. Approved, that under the act of 1793, if an inventor makes his discovery public before application for a patent, he abandons his inchoate right to his exclusive right. *Grant* v. *Raymond*, 6 Pet., 248.—Sup. Ct., 1832. *Shaw* v. *Cooper*, 7 Pet., 318.—Sup. Ct., 1833. Approved, that the words "not known or used before the application" in § 1, act of 1793, mean not known or used by the public before the application. *Reed* v. *Cutter*, 1 Story, 598, 599.—Mass., 1841. Approved, that the use of an invention before application for a patent, with approbation of the inventor, renders void a patent. *Cooper* v. *Matthews*, 8 Law Rep., 420.—Pa., 1842, and that such use without objection is an abandonment. *McClurg* v. *Kingsland*, 1 How., 207.—Sup. Ct., 1843. Referred to as

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a leading case upon question of abrogation or relinquishment of patent privileges, resulting from avowed intention, abandonment, or use known and assented to. *Kendall* v. *Winsor*, 21 How., 329.—Sup. Ct., 1858. Approved, as to the doctrine laid down as to the prior use of an invention, before application for a patent, with the knowledge of the inventor, which will make void a patent. *Adams* v. *Jones*, MS., GRIER, J.—Pa., 1859. Approved, as to effect of negligence in obtaining a patent, upon the right to a patent. *Loveridge* v. *Dutcher*, MS.—D. C., 1861.

PHIL. & TREN. R. R. *v.* STIMPSON, 14 Pet., 448.—Sup. Ct., 1840. Approved, that a patent is sufficient evidence that all preliminary steps required to obtain it have been taken. *Emerson* v. *Hogg*, 2 Blatchf., 34.—N. Y., 1845.

POMEROY *v.* CONNISON, MS.—D. C., 1841. Affirmed, that a patentee has no right of appeal from a decision of the Commissioner of Patents, allowing a patent to an interfering applicant. *Whipple* v. *Renton*, MS.—D. C., 1854. *Hopkins* v. *Barnum.*—*Ibid.*, 1854. *Kingsley* v. *Herriet.*—*Ibid.*, 1854. *Drake* v. *Cunningham.*—*Ibid.*, 1855. CONTRA, *Babcock* v. *Degener*, —*Ibid.*, 1859. *Spear* v. *Abbott.*—*Ibid.*, 1859. *Beech* v. *Tucker.*—*Ibid.*, 1860.

PROUTY *v.* RUGGLES, 1 Story, 568.—Mass., 1841. Affirmed, that the use of a part of a combination is no infringement. *Prouty* v. *Ruggles*, 16 Pet., 341.—Sup. Ct., 1842.

PROUTY *v.* RUGGLES, 16 Pet., 336.—Sup. Ct., 1842. Examined and criticised, as to construction of patents for combinations. *Many* v. *Sizer*, MS.—Mass. 1849. Approved, that the use of part of a combination is no infringement. *Stimpson* v. *Bal. & Sus. R. R.*, 10 How., 345.—Sup. Ct., 1850. *Singer* v. *Walmsley*, MS.—Md., 1859.

RYAN *v.* GOODWIN, 3 Sumn., 514.—Mass., 1839. Approved, that patents are to be construed liberally. *Brooks* v. *Bicknell*, 3 McLean, 261.—Ohio, 1843. Approved, that the simplicity of an invention is no objection to it. *Smith*, *Ex parte*, MS.—D. C., 1860.

SANDERS *v.* LOGAN, 3 Wall., Jr., 477.—1861. Approved, that in the case of a wrongful use of a patent, the right to use which has been granted on the payment of a license fee, the proper remedy is by an action at law, and that an injunction is not required or appropriate. *Livingston* v. *Jones*, 3 Wall., Jr.—1861.

SARGEANT *v.* SEAGRAVE, 2 Curt., 553.—R. I., 1855. Approved, as to the *prima facie* right of patentee, founded on an exclusive possession of the thing patented. *Sargeant* v. *Carter*, 11 Mo. Law Rep., 651.—Mass., 1858.

SEYMOUR *v.* MCCORMICK, 16 How., 480.—1853. Commented on and explained, as to the rule of damages laid down therein, and held not to apply to an invention which was a unit in itself, and had a peculiar value in the market. *Livingston* v. *Jones*, 3 Wall., Jr.—Pa., 1861.

SHAW *v.* COOPER, 7 Pet., 292.—Sup. Ct., 1833. Approved, as to power to grant reissues. *Battin* v. *Taggert*, 17 How., 83.—Sup. Ct., 1854. Referred to, as a leading case upon the question of abrogation or relinquishment of patent privileges from abandonment or neglect, or use known or assented to. *Kendall* v. *Winsor*, 21 How., 329.—Sup. Ct., 1858.

SILSBY *v.* FOOTE, 14 How., 218.—Sup. Ct., 1852. Examined and explained, as to the extent of the decision made therein. *Silsby* v. *Foote*, 20 How., 391.—Sup. Ct., 1857.

SIMPSON *v.* WILSON, 4 How., 709.—Sup. Ct., 1845. The question whether Congress can grant, in an extension, rights to

assignees, was not directly raised, but was discussed in this case. *Blanch. Gun-Stock Turning Co.* v. *Warner*, 1 Blatchf., 276. —Ct., 1846.

SMITH *v.* ELY, 5 McLean, 76.—Ohio, 1849. Remanded, as the questions arising therein were virtually decided in *O'Reilly* v. *Morse*, 15 How., 62. *Smith* v. *Ely*, 15 How., 142.—Sup. Ct., 1853.

SPEAR *v.* STUART, MS.—D. C., 1859. Approved, as to doctrine of forfeiture. *Berg* v. *Thistle*, MS.—D. C., 1860. Approved, that the concealment of an invention for more than two years, stands on no better footing than a sale for same period. *Loveridge* v. *Dutcher*, MS.—D. C., 1861.

STIMPSON *v.* WEST CHESTER R. R., 4 How., 380.—Sup. Ct., 1845. Approved, that the action of the government, in renewing a patent, is conclusive except as to fraud. *Brooks* v. *Fiske*, 15 How., 228. —Sup. Ct., 1853. Dis. Opin. Approved, that the use of an invention, under a defective patent, does not prevent the patentee from taking out an amended patent. *Battin* v. *Taggert*, 17 How., 84.—Sup. Ct., 1854.

STOKES *v.* LANDGRAFF, 17 Barb. S. C., 608.—N. Y., 1853. Approved, that no property can be acquired in words, marks, or devices, which denote only the nature, kind, or quality of the articles to which affixed. *Wolfe* v. *Goulard*, 18 How. Pr., 68.—N. Y., 1859.

STURTEVANT *v.* GREENOUGH, MS.—D. C., 1860. Approved, as to doctrine of forfeiture. *Berg* v. *Thistle*, MS.—D. C., 1860.

SULLIVAN *v.* REDFIELD, 1 Paine, 441, —N. Y., 1825. Approved, as to rules and principles governing allowance of injunctions. *Thomas* v. *Weeks*, 2 Paine, 97. —N. Y., 1827.

TATHAM *v.* LE ROY, MS.—N. Y., 1849. Held that the claim in plaintiff's patent was for the combination of machinery described; and that the question, whether the newly discovered property of lead, of welding after being separated, was patentable, was not in this case. *Le Roy* v. *Tatham*, 14 How., 175.—Sup. Ct., 1852.

TAYLOR *v.* CARPENTER, 11 Paige, 293. —N. Y., 1844. Approved, that a Court of Equity will protect a person in the possession and use of his trade-mark. *Taylor* v. *Carpenter*, 2 Sand. Ch., 612, 613.—(Ct. Errors), N. Y., 1846. Also, that aliens are entitled to like protection in that respect, as citizens. *Ibid.*, 610.

TAYLOR *v.* CARPENTER, 3 Story, 458.—Mass., 1844. Defectively reported in 7 Mo. Law Rep., 437. *Coats* v. *Holbrook*, 2 Sand. Ch., 596.—N. Y., 1845. Approved, that aliens are entitled to protection, as to trade-marks, the same as citizens. *Taylor* v. *Carpenter*, 2 Wood. & Min., 10.—Mass., 1846. *Coffeen* v. *Brunton*, 4 McLean, 520.—Ind., 1849.

TROY IRON & NAIL FAC. *v.* CORNING, 1 Blatchf., 467.—N. Y., 1849. Reversed, on the ground of a misconstruction of the agreement, as to which the action was brought, and the nature of the rights under it. *Troy Iron & Nail Fac.* v. *Corning*, 14 How., 193.—Sup. Ct., 1852.

TYLER *v.* TUEL, 6 Cra., 324.—Sup. Ct., 1810. Criticised, as to right of assignees of a patent, to maintain an action for infringement, and distinguished from the case under consideration. *Whittemore* v. *Cutter*, 1 Gall., 431.—Mass., 1813.

VAN HOOK *v.* SCUDDER, MS.—N. Y. 1843. Approved, as to right of an administrator to take an extension of a patent *Brooks* v. *Bicknell*, 3 McLean, 438.—Ohio, 1844. Also 3 Story, 132.

VAN OSTRAND *v.* REED, 1 Wend., 424. —N. Y., 1828. Approved, that a note given for the purchase of a patent, which is useless, is without consideration. *Jolliffe* v. *Collins*, 21 Mo., 341.—Mo., 1855.

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WASHBURN *v.* GOULD, 3 Story, 122.—Mass., 1844. Approved, that a specification need not contain written references to the drawings, but it will suffice if such references are on the drawings themselves. *Emerson* v. *Hogg*, 2 Blatchf., 10.—N. Y., 1845. Rule in, as to the comity of courts in conforming to the decisions of sister tribunals, commented on, and held not to apply to proceedings for injunctions. *Many* v. *Sizer*, MS.—Mass., 1849.

WATSON *v.* BLADEN, 4 Wash., 580.—Pa., 1826. Sustained, that there can be no unauthorized use of a patent-right without damage. *Byam* v. *Bullard*, 1 Curt., 104.—Mass., 1852.

WETMORE *v.* SCOVILLE, 3 Edw. Ch., 515.—N. Y., 1842. Approved, that a court will not restrain the publication of private letters, where they possess no attribute of a literary composition. *Hoyt* v. *McKenzie*, 3 Barb. Ch., 325.—N. Y., 1848. Examined, and criticised, and held, that the decision therein, as also that in *Hoyt* v. *McKenzie*, that the publication of private letters will not be restrained, unless they possessed the character of *literary* compositions, was a departure from established law, and not a binding authority. *Woolsey* v. *Judd*, 4 Duer, 389, 406.—N. Y., 1855.

WHEATON *v.* PETERS, 8 Pet., 591.—Sup. Ct., 1834. Criticised as to the extent of copyright in reports, and how far one person is at liberty to extract the substance of such reports, or publish select cases therefrom, with notes. *Gray* v. *Russell*, 1 Story, 20.—Mass., 1839. Held, that the principle of this case is, that under the copyright laws, a title is not perfected without a strict compliance with the provisions of the statute. *Baker* v. *Taylor*, 2 Blatchf., 84.—N. Y., 1848.

WHITTEMORE *v.* CUTTER, 1 Gall., 429, 478.—Mass., 1813. Approved, that the making a machine, to be an offence, must be with intent to use it for profit, and not for philosophical experiment. *Sawin* v. *Guild*, 1 Gall., 487.—Mass., 1813. Overruled, that counsel fees cannot be allowed as a part of the damages in an action for the infringement of a patent. *Boston Manuf. Co.* v. *Fiske*, 2 Mas., 122.—Mass. 1820. Criticised, as to rule of damages. *Whitney* v. *Emmett*, Bald., 327.—Pa. 1831. Examined, as to use of an invention, which will defeat a patent. *Shaw* v. *Cooper*, 7 Pet., 317.—Sup. Ct., 1833. Approved, that a patent is insusceptible of local subdivision. *Blanchard* v. *Eldridge*, 1 Wall., Jr., 339.—Pa., 1849. Questioned, whether there can be any making of a patented machine without damage. *Byam* v. *Bullard*, 1 Curt., 104.—Mass., 1852.

WICKERSHAM *v.* SINGER, MS.—D. C., 1859. Approved, as to the effect of a withdrawal of an application for a patent, on question of abandonment. *Dederick, Ex parte*, MS.—D. C., 1860. *Raymond, L., Ex parte*, MS.—D. C., 1861.

WILDER *v.* GAYLER, 1 Blatchf., 597.—N. Y., 1850. Criticised and disproved, in so far as it holds that a defendant in a patent suit must plead the general issue with notice, and cannot set up his defence by special pleas. *Day* v. *N. E. Car-Spring Co.*, 3 Blatchf., 181.—N. Y., 1854.

WILSON *v.* BARNUM, 1 Wall., Jr., 342.-Pa., 1849. Remanded, because question certified was one of fact, when only questions of law can be certified. *Wilson* v. *Barnum*, 8 How., 262.—Sup. Ct., 1849.

WILSON *v.* ROSSEAU, 4 How., 646.—Sup. Ct., 1845. Approved, that an extended patent may be reissued. *Gibson* v. *Harris*, 1 Blatchf., 169.—N. Y., 1846. Examined, as to validity of Woodworth's patent. *Van Hook* v. *Pendleton*, 1 Blatchf., 194.—N. Y., 1846. Approved, that an ad

ministrator may take out the renewal of a patent; and that an "acting Commissioner" may issue a patent. *Woodworth* v. *Hall*, 1 Wood. & Min., 254, 397.—Mass., 1846. Considered a leading decision as to rights of assignees under a renewed patent. *Woodworth* v. *Curtis*, 2 Wood. & Min., 528.—Mass., 1847. And approved in respect thereto. *Gibson* v. *Gifford*, 1 Blatchf., 531.—N. Y., 1850. *Woodworth* v. *Cook*, 2 *Ibid.*, 161.—N. Y., 1850. *Bloomer* v. *McQuewan*, 14 How., 549.—Sup. Ct., 1852. Explained, as to the opinions of the dissenting judges, on page 487, *et seq.* *Phelps* v. *Comstock*, 4 McLean, 355.—Ind., 1848. Criticised and held, that the question whether Congress can grant, in an extension, rights to assignees, was not directly raised in the case, but was discussed. *Blanch. Gun-Stock Turn. Co.* v. *Warren*, 1 Blatchf., 276.—Ct., 1848. Approved, as to right to renew or repair a patented machine when worn out. *Wilson* v. *Simpson*, 9 How., 129.—Sup. Ct., 1849. Decision in this case made under the act of 1836, and has no application to extensions under special acts. *Bloomer* v. *Stolley*, 5 McLean, 163.—Ohio, 1850. Considered as sustaining the position, that an inventor may sell his right in an extended patent. *Clum* v. *Brewer*, 2 Curt., 520.—Mass., 1855. Criticised, as to apparent decision therein, that under the act of 1836 the right of assignees in the original patent is limited, under an extension, to the use of the machines in use at the time the extension took place, and held, that such precise question did not arise in the case, and was not necessarily decided in it. *Day* v. *Union Rub. Co.*, 3 Blatchf., 498.—N. Y., 1856. Examined, as to the construction given to the term "renewal." *Potter* v. *Holland*, MS. —Ingersoll, J.; 1858.

Wilson *v.* Sandford, 10 How., 99.—Sup. Ct., 1850. Approved, that contracts as to patented machines are regulated by state laws, not by those of the United States. *Bloomer* v. *McQuewan*, 14 How., 550.—Sup. Ct., 1852. Approved, that a patent, signed by an "acting Commissioner," is good. *York & Maryl. R. R.* v. *Winans*, 17 How., 41.—Sup. Ct., 1854.

Wilson *v.* Simpson, 9 How., 109.—Sup. Ct., 1849. Referred to, as involving the points that an action to restrain the unlawful use of a machine may be instituted in the district where the owner is, except when necessary to proceed against the machine itself, when it should be brought where the machine is located. *Wilson* v. *Sherman*, 1 Blatchf., 541.—N. Y., 1850. Examined, as to the apparent decision, that the right of assignees of an original patent is limited, under a renewal thereof, to the use of the particular machines in use at the time the extended term commenced; and held that such precise question did not necessarily arise in the case. *Day* v. *Union Rub. Co.*, 3 Blatchf., 493.—N. Y., 1856.

Wilson *v.* Turner, 7 Law Rep., 527.—Md., 1845. Affirmed. *Wilson* v. *Turner*, 4 How., 712.—Sup. Ct., 1845.

Winans *v.* Boston & Prov. R. R., 2 Story, 412.—Mass., 1843. Explained, as to the position that a new application is not entitled to a patent. *Hotchkiss* v. *Greenwood*, 11 How., 270., Dis. Opin.—Sup. Ct., 1850.

Winans *v.* Denmead, 15 How., 330.—Sup. Ct., 1855. Approved, and held not to conflict with *O'Reilly* v. *Morse*, 15 How., 62; and *Corning* v. *Burden*, 15 How., 268.—Sup. Ct., 1853. *Singer* v. *Walmsley*, MS.—Md., 1859. Reconciled with *McCormick* v. *Talcott*, 20 How., 402,—1857, as to the right of an original inventor to invoke the doctrine of equivalents. *Ibid.*

Woodworth *v.* Rogers, 3 Wood. & Min.,

135.—Mass., 1847. Approved, as to the principles governing motions for a dissolution of an injunction. *Hussey* v. *Whiteley*, MS.—Ohio, 1861.

Woodworth *v.* Stone, 3 Story, 749.—Mass., 1845. Approved, that the action of the Commissioner in accepting the surrender of a patent and reissuing a new one, is conclusive, unless fraud be shown. *Brooks* v. *Fiske*, 15 How., 228.—Sup. Ct., 1853. Approved, that the action of an "acting Commissioner" will be presumed valid. *Smith* v. *Mercer*, 4 West. Law Jour., 53.—Pa., 1846. Approved, that a patentee cannot, by a surrender of his letters patent, affect the rights of third persons, to whom he had previously conveyed interests, without their consent. *Potter* v. *Holland*, MS.—Ct., 1858.

Woodworth *v.* Wilson, 4 How., 712.—Sup. Ct., 1845. Approved, that an administrator, to whom a renewed patent has been issued, need not produce his letters of administration in any suit he may institute. *Woodworth* v. *Hall*, 1 Wood. & Min., 254.—Mass., 1846. Explained, that the question whether Congress can grant in an extension rights to assignees, was not directly raised in this case, but was discussed. *Blanch. Gun-Stock Turning Co.* v. *Warner*, 1 Blatchf., 276.—Ct., 1846.

Wyeth *v.* Stone, 1 Story, 273.—Mass., 1840. Approved, that a patent may cover a combination, and also include a right to each distinct improvement. *Pitts* v. *Whitman*, 2 Story, 621.—Mass., 1843. Examined, and explained as to above position. *Emerson* v. *Hogg*, 2 Blatchf., 8.—N. Y., 1845. *Hogg* v. *Emerson*, 6 How., 483.—1847. Approved, as to same position. *Hogg* v. *Emerson*, 11 How., 605, 606.—1850.

DIGEST.

ABANDONMENT.

A. Of Copyright or Manuscript.

1. The deposit, by the author, of his work in a public office, as a chart in the Navy Department, does not make such chart a public document which any one may copy. *Blunt* v. *Patten*, 2 Paine, 396.—Thompson, J.; N. Y., 1828.

2. The use of a manuscript, by the author, for the purpose of instruction, is not an abandonment of it to the public. *Bartlett* v. *Crittenden*, 4 McLean, 303. —McLean, J.; Ohio, 1847.

3. Nor does he abandon his right in it by permitting his pupils or friends to take copies thereof. *Ibid.*, 303, 304.

4. The publication of a work without having secured a copyright is a dedication of it to the public; that having been done, any one may republish it. *Bartlett* v. *Crittenden*, 5 McLean, 37. —McLean, J.; Ohio, 1849.

5. The right of property in a manuscript may be transferred or abandoned, the same as any other right of property. *Ibid.*, 41.

6. An acquiescence in the publication of a manuscript, or in the republication of a printed book, authorizes a presumption of assignment or abandonment. *Ibid.*, 41.

7. But a gift of a copy of a manuscript is not a transfer of the right, or an abandonment of it, any more than the gift of a copy of a printed book is a transfer or abandonment of the exclusive right to republish it. *Ibid.*, 41.

8. An author may license the publication of his manuscript. But unless a copyright is secured, the first publication of it will abandon it to the public. *Pulte* v. *Derby*, 5 McLean, 332.—McLean, J.; Ohio, 1852.

9. The publication of an official report, under the direction of Congress, and for the benefit of the public, is a dedication of it, and of what is contained in it, to the public, and any one may reprint it. *Heine* v. *Appletons*, 4 Blatchf., 128.—Ingersoll, J.; N. Y., 1857.

10. Where sketches and drawings were made for the government, and incorporated in such a report, *Held*, that

the artist could have no copyright in them, but that any person could use them. *Ibid*, 128.

11. As regards private letters, the right of publication, as one of literary property, remains for a reasonable length of time (to allow its assertion by publication), in the writer and his personal representatives. After such a period has elapsed, that there ceased to be a probability that such right to publish was treated as a legal right, any one may publish who can obtain copies. *Eyre* v. *Higbee*, 22 How. Pr., 207.—GOULD, J.; N. Y., 1861.

B. OF INVENTION.

1. *Before Patent granted.*

As to what delay in applying for a patent will take away a right thereto, see APPLICATION FOR PATENT, A.

As to what use before application will amount to an abandonment, see PRIOR USE.

1. If an inventor suffers his invention to be used freely and fully by the public, he will be deemed to have made a gift of it to the public, as much as a person who voluntarily opens his land as a highway. *Whittemore* v. *Cutter*, 1 Gall., 482.—STORY, J.; Mass., 1813.

2. If an original inventor do not choose to obtain a patent for his invention, it becomes public property by his abandonment of it. He can maintain no action against any person for using it, nor can any other person obtain a patent for it. *Evans* v. *Eaton*, Pet. C. C., 348, 349.—WASHINGTON, J.; Pa., 1816.

3. No man is to be permitted to lie by for years, and then take out a patent. If he has been practising his invention with a view to improve it, that will not prejudice; but it should always be a question for the jury, what was the intent of the delay of the patent, and whether the allowing the invention to be used without a patent should not be considered an abandonment or present of it to the public? *Morris* v. *Huntington*, 1 Paine, 354.—THOMPSON, J.; N. Y., 1824.

4. If an inventor dedicates his invention to the public, he cannot afterward resume it, or claim an exclusive right in it. It is like the dedication of a public highway, or other public easement. *Mellus* v. *Silsbee*, 4 Mas., 111.—STORY, J.; Mass., 1825.

5. His acts are, however, to be construed liberally; that is, he is not estopped by licensing a few persons to use his invention to ascertain its utility, or by any such acts of peculiar indulgence and use, as may fairly consist with the clear intention to hold the exclusive privilege. *Ibid.*, 111.

6. If the inventor proclaim his intention to all the world, and suffer his invention to go into general and public use, without objection; if he assert no exclusive right for years, with a full knowledge that the public are led by it to a general use, such conduct amounts to strong proof that he waives the exclusive right, and dedicates the invention to the world. *Ibid.*, 111.

7. If an inventor makes his discovery public, looks on, and permits others freely to use it, without objection or assertion of claim to the invention, of which the public might take notice, he abandons the inchoate right to the exclusive use of the invention, to which a patent would have entitled him, had it been applied for before such use; and it

makes no difference that the article so publicly used and afterward patented was made by a particular individual, who did so by the private permission of the inventor. *Pennock* v. *Dialogue*, 4 Wash., 544.—WASHINGTON, J.; Pa., 1825. (Affirmed, 1829, *post* 10.)

8. Though the inventor may not have intended to give the benefit of his discovery to the public, and may have supposed that by giving permission to a particular individual to manufacture the thing, he could not be presumed to have given his invention to the public, it matters not. It is not a question of intention, but of legal inference, resulting from the conduct of the inventor, and affecting the interests of the public. *Ibid.*, 544.

9. If before the patent is taken out, the inventor looks on, and sees his invention going into general use, without objection on his part, the court will treat his conduct as equivalent to an abandonment or transfer of his exclusive right to the public. *Treadwell* v. *Bladen*, 4 Wash., 708.—WASHINGTON, J.; Pa., 1827.

10. An inventor may abandon his invention, and surrender or dedicate it to the public. This inchoate right, thus once gone, cannot afterward be resumed at his pleasure: where gifts are once made to the public in this way they become absolute. *Pennock* v. *Dialogue*, 2 Pet., 16.—STORY, J.; Sup. Ct., 1829.

11. Under the Patent Act of 1793, the voluntary act or acquiescence of an inventor in the public sale and use of his invention before his application for a patent, is an abandonment of his right to a patent, or rather creates a disability to comply with the terms and conditions on which alone he could receive a patent. *Ibid.*, 24.

12. No matter by what means an invention may be communicated to the public before a patent is obtained, any acquiescence in the public use, by the inventor, will be an abandonment of his right. If the right were asserted by him who fraudulently obtained it, perhaps no lapse of time could give it validity. But the public stand in an entirely different relation to the inventor. *Shaw* v. *Cooper*, 7 Pet., 320.—McLEAN, J.; Sup. Ct., 1833.

13. If an individual witness a sale and transfer of property, in which he has an equitable lien or interest, and does not make known his interest, he cannot afterward be permitted to assert it. On this principle it is, that a discoverer abandons his right, if before the obtainment of his patent his discovery goes into public use. But his right would be secured by giving public notice that he was the inventor of the thing used, and that he should apply for a patent. *Ibid.*, 321.

14. The acquiescence of an inventor, however, in the public use of his invention, can in no case be presumed where he has no knowledge of such use. But this knowledge may be presumed from the circumstances of the case. And if the inventor do not, immediately after this notice, assert his right, it is such evidence of acquiescence in the public use as forever afterward to prevent him from asserting it. *Ibid.*, 321.

15. A strict construction of the act, as it regards the public use of an invention before it is patented, is not only required by its letter and spirit, but also by sound policy. The doctrine of presumed acquiescence, where the public use is known, or might be known to the inventor, is the only safe rule

which can be adopted on this subject. *Ibid.*, 321, 322.

16. The question of abandonment does not turn upon the intention of the inventor. Whatever may be his intention, if he suffers his invention to go into public use, through any means whatever, without an immediate assertion of his right, he is not entitled to a patent; nor will a patent obtained under such circumstances protect his right. *Ibid.*, 323.

17. The inventor, and he alone, is competent to abandon his invention to the public, and no use by the public, except with his knowledge and consent, can be deemed an abandonment of his invention. *Pierson* v. *Eagle Screw Co.*, 3 Story, 407.—STORY, J.; R. I., 1844.

18. Neither a stipulation for the sale of an invention before it is completed, nor a sale of such invention during his application for a patent, is an abandonment, or such a use as gives it to the public. The inventor may do this without vitiating his claim. *Sparkman* v. *Higgins*, 1 Blatchf., 209.—BETTS, J.; N. Y., 1846.

19. Whether the sale and manufacture for some few months, before the application for a patent, of an article, as an ornamental button, for the design of which letters patent had been granted, and which design was apparent on the article itself, would amount to an abandonment, is a question of fact to be settled by the jury. *Booth* v. *Garelly*, 1 Blatchf., 249, 250.—NELSON, J.; N. Y., 1847.

20. A right to an invention or discovery, like every other right, may be surrendered or dedicated to the public; and such right, when abandoned, cannot be resumed. *McCay* v. *Burr*, 6 Penn., 153.—GIBSON, Ch. J.; Pa., 1847.

21. But a license, restrained to individuals, is not an abandonment. *Ibid.*, 154.

22. Where experiments as to an invention were imperfect and unsatisfactory, and subsequently the inventor threw aside his temporary model, and wholly neglected for years to follow up his experiments, so as to produce a perfect machine, *Held*, that such acts afforded strong and decisive evidence of an abandonment of the thing as a failure. *Parkhurst* v. *Kinsman*, 1 Blatchf., 494.—NELSON, J.; N. Y., 1849.

23. An inventor may abandon his invention within two years, or at any time before the procurement of the patent. *Pitts* v. *Hall*, 2 Blatchf., 237. —NELSON, J.; N. Y., 1851.

24. The mere use or sale of the invention, however, within the two years, will not alone or of itself work an abandonment. The use or sale must be accompanied by some declarations or acts going to establish an intention on the part of the inventor to give to the public the benefit of the improvement. *Ibid.*, 237.

25. The mere expression of an intention not to take out a patent, or the mere declaration of an intention to dedicate an invention to the public, cannot be regarded as equivalent to an actual dedication. *Ibid.*, 238.

26. Abandonment or dedication is in the nature of a forfeiture of a right, which the law does not favor, and it should be made out beyond all reasonable doubt. *Ibid.*, 238.

27. The question of abandonment must always depend, in a great measure, on the peculiar nature of the subject matter. The mere sale of a peculiar manufacture—as vulcanized rubber—which does not, on its face, disclose the

nature of the compound, or the mode of producing it, is not such an abandonment. *Goodyear* v. *Day*, MS.—GRIER, J.; N. J., 1852.

28. Even under the English laws, the sale in England of manufactured rubber goods imported from abroad, was held not to be an abandonment, or such a use of the thing—as the material itself did not disclose the means of making it—as would invalidate a patent, granted to an original inventor there subsequently to such sale. *Ibid.*

29. The publication of an invention or discovery by a defective specification is not an abandonment.—*Ibid.*

30. If, after an inventor has made an invention, he deliberately abandons it, and dedicates it to the public, no matter for what reason, the dedication cannot be recalled. *Ransom* v. *Mayor*, &c., 1 Fisher, 273.—HALL, J.; N. Y., 1856.

31. An inventor may abandon his invention to the public, either by express declaration or by conduct equally significant with language—such, for instance, as an acquiescence, with full knowledge, in the use of his invention by others. *Kendall* v. *Winsor*, 21 How., 329.—DANIEL, J.; Sup. Ct., 1858.

32. The cases of *Pennock* v. *Dialogue*, 2 Pet., 1; and of *Shaw* v. *Cooper*, 7 Pet., 292; may be regarded as leading cases upon the questions of the abrogation or relinquishment of patent privileges as resulting from avowed intention, from abandonment or neglect, or from use known and assented to. *Ibid.*, 329.

33. If an inventor claims two distinct improvements in a machine, and has made a mistake as to one of the improvements claimed, but is entitled to a patent for the other, he cannot be said to have abandoned either during a litigation as to both. *Adams* v. *Jones*, 1 Fisher, 530.—GRIER, J.; Pa., 1859.

34. The application of the doctrine of abandonment depends upon the circumstances of each case—it implies laches on the part of the original inventor. *Mix* v. *Perkins*, MS. (App. Cas.)—MORSELL, J.; D. C., 1859.

35. A statement in an original patent that a part is old, or a disclaimer of a part, does not necessarily operate as a dedication of such part to the public, or prevent it being claimed in a reissued patent; though it seems it would have that effect if made advisedly, and not by inadvertence, accident, or mistake. *Laidley* v. *James*, MS. (App. Cas.)—MERRICK, J.; D. C., 1860.

2. *After Patent granted.*

1. After an invention has been patented, no disuser of it will amount to an abandonment, so as to deprive the patentee or his assigns of the exclusive right to it for fourteen years. *Gray* v. *James*, Pet. C. C., 403.—WASHINGTON, J.; Pa., 1817.

2. After the right of an inventor is perfected by a patent, no presumption arises against it from a subsequent use by the public. *Shaw* v. *Cooper*, 7 Pet., 321.—MCLEAN, J; Sup. Ct., 1833.

3. After patent obtained, a patentee may abandon or surrender his rights, by overt acts, or express declaration. And if for a series of years he acquiesces without objection in the known public use by others of his invention, or stands by and encourages such use, such conduct will afford a strong presumption of such actual surrender and abandonment. *Wyeth* v. *Stone*, 1 Story, 282.—STORY, J.; Mass., 1840.

4. *A fortiori*, the doctrine will apply to a case, where the patentee has openly encouraged, or silently acquiesced in such use, by the very defendants whom he afterward seeks to prohibit, by injunction, from any further use. *Ibid.*, 282.

5. And it is no answer to such a presumption, that the defendants used the invention in a different branch of trade from that in which the inventor was engaged in using his invention, and that therefore there was no actual interference. *Ibid.*, 283.

6. If a patentee means to surrender his exclusive right in a qualified manner, he should give public notice of the nature and extent of his allowance, so that the public may be on their guard. *Ibid.*, 283.

7. A court of equity will not interfere, in behalf of a patentee, either to grant an injunction, or to give him any relief, in respect to any alleged violation of his patent, if, after having obtained his patent, he has surrendered or dedicated it to the public, or acquiesced for a long period in the public use thereof, without objection—as his own conduct may be considered as having led to such use, or application, or acts of the defendants. *Ibid.*, 282, 284.

8. A citizen patentee cannot lose his right by *non-user*, unless it amounts to evidence of an abandonment of the patent; the question of abandonment is a question of fact for a jury on a trial at law. *Hildreth* v. *Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

9. If a patentee neglects, in his specification, to assert his invention as to a certain part, and omits to claim specifically such part, and suffers his patent so to stand for a number of years, he cannot afterward surrender it, and take a reissue, claiming such part, as the use under the former patent, without any claim, will be a dedication thereof to the public. *Batten* v. *Taggert*, 2 Wall.; Jr., 102.—KANE, J.; Pa., 1851. [Overruled, 1854, *post* 10.]

10. The decision of the court below in this case, as to a dedication of an invention by a description of it in the specification of a former patent, unaccompanied by notice that he was right in it, or desires to secure those rights, is erroneous. By the defects mentioned in the statute, and to remedy which a surrender and reissue is permitted, nothing passes to the public from the specifications and claims, within the scope of the patentee's invention. *Batten* v. *Taggert*, 17 How., 83, 84.—McLEAN, J.; Sup. Ct., 1854.

11. A patentee, subsequent to his patent, may abandon his invention to the public, and waive the exclusive privileges secured to him; and the jury may infer such an abandonment from an acquiescence in the use of his invention by others, a neglect to assert his claims by suit or otherwise, an omission to sell licenses, a neglect to make efforts to realize any advantage from his patent, and similar circumstances. *Ransom* v. *Mayor, &c.*, 1 Fisher, 273.—HALL, J.; N. Y., 1856.

12. An inventor may abandon his right to a patent, as well after patent granted as before, but in the former event it would require a strong case to be made out. *Bell* v. *Daniels*, 1 Fisher, 378.—LEAVITT, J.; Ohio, 1858.

3. *Defence of; who to decide.*

1. The question of dedication is one for the consideration of the jury. *Whit-*

temore v. *Cutter*, 1 Gall., 482.—STORY, J.; Mass., 1813.

2. It should always be a question submitted to the jury, what was the intent of the delay of the patent, and whether the allowing the invention to be used without a patent, should not be considered an abandonment or present of it to the public. *Morris* v. *Huntington*, 1 Paine, 354.—THOMPSON, J.; N. Y., 1824.

3. The question which generally arises at trials is a question of fact, rather than of law, whether the acts or acquiescence of the party furnish in the given case satisfactory proof of an abandonment or dedication of the invention to the public. But when all the facts are given, there does not seem any reason why the court may not state the legal conclusion deducible from them. *Pennock* v. *Dialogue*, 2 Pet., 16.—STORY, J.; Sup. Ct., 1829.

4. If a defendant, in an action for an infringement of a patent, wish to avail himself of the defence of abandonment or acquiescence of the plaintiff in the public use of his invention, he must set forth such defence in his answer, and put it in issue. If the point is not put in issue, any evidence as to it will be irrelevant, and cannot be looked to. *Wyeth* v. *Stone*, 1 Story, 284.—STORY, J.; Mass., 1840.

5. The question of forfeiture or abandonment, is a question of fact for a jury on a trial at law. *Hildreth* v. *Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D C., 1841.

6. Under § 7 of the act of 1836, the question of delay or abandonment is not submitted to the jurisdiction of the commissioner of patents in determining as to the issuing of a patent. *Ibid.* [Qualified, 1858, *post* 13.]

7. When an abandonment is relied on, it should be stated in the plea, and the facts on which the pleader relies, as showing an abandonment. *Root* v. *Ball*, 4 McLean, 179.—MCLEAN, J.; Ohio, 1846.

8. Whether the manufacture and sale of an article, as an ornamental button, for the design of which letters patent had been obtained, for some few months before the application for a patent, would amount to an abandonment, is a question of fact to be settled by a jury. *Booth* v. *Garelly*, 1 Blatchf., 249, 250. —NELSON, J.; New York, 1847.

9. If a party wishes to introduce evidence, in an action of abandonment, there must be the proper allegations to that effect, in the pleadings. *Wilson* v. *Stolley*, 4 McLean, 276.—MCLEAN, J.; Ohio, 1847.

10. It is a question for the jury whether an invention has been abandoned to the public. *Batten* v. *Taggert*, 17 How., 85.—MCLEAN, J.; Sup. Ct., 1854.

11. Under the statute, the commissioner has jurisdiction of the question of abandonment, at least when it grows out of a public use or sale with the applicant's consent. *Hunt* v. *Howe*, MS. (App. Cas.)—MORSELL, J.; D. C., 1855.

12. Whether an inventor has abandoned or surrendered his invention, and whether this is sought to be proved from his declarations or acts, or from a forbearance or neglect to act or speak, is an inquiry or conclusion of *fact* for the jury to decide. *Kendall* v. *Winsor*, 21 How., 331.—DANIEL, J.; Sup. Ct., 1858.

13. The question of abandonment, referred to in *Hildreth* v. *Heath*, and in *Pomeroy* v. *Connison*, and which it was held was not within the jurisdic

tion of the commissioner, in deciding as to the issuing of a patent, is that of delay or general abandonment, and which intention and special circumstances constitute. *Mowry* v. *Barber*, MS. (App. Cas.)—MORSELL, J.; D. C., 1858.

14. But as to the abandonment or statutory disability of an applicant to assert his right to a patent, because of a public use or sale by others, with his knowledge and consent, of the invented machine, for more than two years before application for a patent, the commissioner has jurisdiction. *Ibid.*

15. Same position held in *Ellithorpe* v. *Robertson*, MORSELL, J., 1858; in *Wickersham* v. *Singer*, MERRICK, J., 1859; in *Spear* v. *Stuart*, DUNLOP, J., 1859; and in *Sturtevant* v. *Greenough*, MERRICK, J., 1860.

16. The jurisdiction of the commissioner of patents over the question of abandonment, is clear under section 7, act of 1839, without resort to section 8, act of 1836. *Wickersham* v. *Singer*, MS. (App. Cas.)—MERRICK, J.; D. C., 1859.

17. The question of abandonment, in a suit for an infringement, is a question of fact for a jury, but on an *application* to the commissioner for the issue of a patent, it is his duty to decide all questions, both of law and fact, which go to establish the right, or the *absence of right*, in the applicant to a patent. *Marcy* v. *Trotter*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1860.

4. *Proof of.*

See EVIDENCE, H. 1.

C. OF TRADE-MARKS.

The acquiescence of a manufacturer to the use or imitation of his trade mark may be inferred from his knowledge and silence; but such consent, whether express or implied, may be withdrawn; it is no more than a revocable license. *Amoskeag Manuf. Co.*, v. *Spear*, 2 Sand., S. C., 615.—DUER, J.; N. Y., 1849.

The neglect of a party to carry on his business under its well-known name, for a number of years, does not prevent him from resuming the same, or entitle another to use the name of his business. *Howe* v. *Searing*, 19 How. Pr., 25.—HOFFMAN, J.; N. Y., 1860.

Though a trade-mark may have been used previously, if its use has been so long discontinued as to justify the inference that it had been abandoned, it may be taken up by another dealing in the same article, whose right will be protected if used exclusively by him, and long enough to be recognized as the indicia of his ownership. *Corwin* v. *Daly*, Upton on Trade-Marks, 199.—ROBERTSON, J.; N. Y., 1860.

ABRIDGMENT OF BOOK.

1. The question as to an abridgment is made up of various considerations; whether it is a *bona fide* abridgment, or only an evasion by the omission of unimportant parts; whether it will prejudice or supersede the original; whether it will be adapted to the same class of readers, &c. *Gray* v. *Russell*, 1 Story, 19.—STORY, J.; Mass., 1839.

2. The doctrine that an abridgment is not a piracy of the original copyright must be received with many qualifications. *Ibid.*, 19, 20.

3. A fair and *bona fide* abridgment of an original work is not a piracy of the copyright; but what constitutes a fair and *bona fide* abridgment, is one of the most difficult points, under particular circumstances, that can arise. *Folsom* v. *Marsh*, 2 Story, 106, 107.—STORY, J.; Mass., 1841.

4. A mere selection, or different arrangement of parts of the original work, so as to bring the work into a smaller compass, is not such an abridgment. There must be real, substantial condensation of the materials, and intellectual labor and judgment bestowed thereon. *Ibid.*, 107.

5. If the leading design is truly to abridge a work and cheapen the price, and that by mental labor is faithfully done, it is no ground for a prosecution by the owner of a copyright of the principal work. But it is otherwise if the abridgment or similar work be colorable or a mere substitute. *Webb* v. *Powers*, 2 Wood. & Min., 520.—WOODBURY, J.; Mass., 1847.

6. An abridgment should contain an epitome of the work abridged—the principles in a condensed form, of the original book. *Story's Exrs.* v. *Holcombe*, 4 McLean, 308.—CURIAM, Ohio, 1847.

7. A mere selection, or different arrangement of the parts of the original work, so as to bring it into a smaller compass, is not an abridgment. There must be real, substantial condensation, of the materials, and intellectual labor and judgment bestowed thereon, and not merely the facile use of the scissors, or extracts of the essential parts, constituting the chief value of the original work. *Ibid.*, 311.

8. A fair abridgment of any book is considered a new work, as to write it requires labor and exercise of judgment. It is only new, however, in the sense that the view of the author is given in a condensed form. *Ibid.*, 311.

9. Such a work must not only contain the arrangement of the book abridged, but the ideas must be taken from its pages. It must be in good faith an abridgment, not a treatise interlarded with citations. *Ibid.*, 311.

10. To copy certain passages from a book, omitting others, is in no just sense an abridgment. The judgment is not exercised in condensing the views of the author. This language is copied, not condensed. *Ibid.*, 311.

11. To abridge is to preserve the substance, the essence of the work, in language suited to such purpose; it requires the exercise of the mind; it is not copying. To compile is to copy from various authors into one work. *Ibid.*, 311, 313.

12. Such a work entitles the compiler, under the statute, to a right of property; which right may be compared to that of a patentee, who, by a combination of known mechanical structures, has produced a new result. *Ibid.*, 314.

13. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. *Ibid.*, 314.

14. The former cannot be so extended as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the work cited; the latter must adopt the arrangement of the work abridged. *Ibid.*, 314.

15. The former infringes the copyright, if the matter transcribed, when published, shall impair the value of the original book; a fair abridgment, though it may injure the original, is lawful. *Ibid.*, 314.

16. The abridgment of a work, for which a copyright has been secured, and which has been publicly circulated, is not an infringement of the statutory privilege; but such an abridgment would violate the right of the literary proprietor of a book of which the circulation had been private only. *Keene* v. *Wheatley*, 9 Amer. Law Reg., 82.—CADWALLADER, J.; Pa., 1860.

ACCOUNT OF PROFITS.

See also DAMAGES.

1. If there is a reasonable doubt as to the plaintiff's right, or the validity of the patent, he may first be required to substantiate his right in a court at law, before he can have his remedy for an account. *Ogle* v. *Ege*, 4 Wash., 585.—WASHINGTON, J.; Pa., 1826.

2. Equity will decree a perpetual injunction to restrain the use of another's trade-mark, and will decree an account as to damages, with the costs of suit. *Coats* v. *Holbrook*, 2 Sand. Ch., 595, 596.—SANDFORD, V. Ch.; Ct. Chy., N. Y., 1845.

3. On an injunction bill filed for an infringement of a patent, where there is no dispute as to title, the courts of the United States have power under § 17 of the act of 1836, to refer the case to a master, to take and state an account of the profits which the defendant has made, instead of sending it to a court at law to assess the damages, *Allen* v. *Blunt*, 1 Blatchf., 486, 487.—NELSON, J.; N. Y., 1849.

4. The defendant is regarded as having been in the use and enjoyment of the property of the patentee, and as being bound in equity to account for the profits. *Ibid.*, 487.

5. An owner of an undivided interest in a patent made an agreement with the patentee as to their becoming jointly interested in the manufacture of the patented article, and sharing the profits of such manufacture according to their respective interests; and such agreement was made with a knowledge of the alleged claims of a third person as being the first inventor of the thing patented. To a suit for an injunction, and an account brought by the patentee against such joint owner, *Held*, it was no defence that the patentee was not the first and original inventor, but that such third person was such inventor. *Parkhurst* v. *Kinsman*, 1 Blatchf., 495.—NELSON, J.; New York, 1849. [Affirmed *post* 17.]

6. An order in a suit in equity, requiring the defendant to file a monthly account, on oath, of all "iron safes hereafter manufactured or sold by him," will be sufficiently complied with, by giving their inside dimensions, without stating the prices at which sold, or the names of the purchasers. *Wilder* v. *Gayler*, 1 Blatchf., 511.—NELSON, J.; New York, 1849.

7. A knowledge of the names is not essential to the ascertainment of the manufacture and sale of the article, or of the profits arising therefrom. *Ibid.*, 512.

8. It is sufficient to describe the articles in the account, so that persons in the trade can determine the value or

price of them in the market, with a view to the amount of profits. *Ibid.*, 512.

9. Where an infringement is clear, and the right to an injunction manifest, an injunction will not be stayed, on the defendants' giving security, and rendering a periodical account of their sales, even though the defendant is a person of pecuniary responsibility. *Tracy* v. *Torrey*, 2 Blatchf., 279.—NELSON, J.; N. Y., 1851.

10. A suit demanding a discovery of the extent of an infringement of a patent, and an account of the profits realized therefrom, is a case arising under the patent laws, as well as where an injunction is asked for. *Nevins* v. *Johnson*, 3 Blatchf., 83.—NELSON, BETTS, JJ.; N. Y., 1853.

11. Accordingly, where the plaintiff's patent had expired, and a bill in equity filed by him alleged an infringement of the patent, and prayed for a discovery and an account, but not for an injunction, *Held*, on a demurrer to the bill, that the court had jurisdiction of such a suit. *Ibid.* 83.

12. In a bill filed for an injunction, and for an account of profits which had accrued to the defendant from the use of the machines, which were an infringement upon the plaintiff's patent, the defendant is accountable for such profits as he has actually made, and not for such as "with due diligence and prudence" might have been made. *Livingston* v. *Woodworth*, 15 How., 559; —DANIEL, J.; Sup. Ct., 1853.

13. An account of profits may be decreed to the owner of a copyright, as incidental to an injunction, but it must be prayed for; but it cannot include penalties. *Stevens* v. *Cady*, 2 Curt., 200, 201.—CURTIS, J.; R. I., 1854.

14. An account for profits, may be ordered under the prayer for general relief. *Stevens* v. *Gladding*, 17 How., 455.—CURTIS, J.; Sup. Ct., 1854.

15. The right to an account for profits is incidental to the right to an injunction in copy and patent right cases. *Ibid.*, 455.

16. A decree for an account cannot be had against a workman, as he has nothing to do with the profits. *Sargeant* v. *Larned*, 2 Curt., 349.—CURTIS, J.; Mass., 1855.

17. An agreement made with a patentee to manufacture his patented machines upon certain conditions, and making and selling of such machines under the patentee's title, estops such party, in an action for account brought by the patentee, from alleging the invalidity of the patent. *Kinsman* v. *Parkhurst*, 18 How., 293.—CURTIS, J.; Sup. Ct., 1855.

18. And even if the patent was invalid, it would not have rendered the sales of the machines illegal, so as to release such party from the obligation to account. *Ibid.*, 293.

19. And if such an agreement was void, as against public policy, it would furnish no answer to a claim for an account of profits realized from the business. *Ibid.*, 294.

20. In the American courts, in patent cases, a decree for an account may be made, when an injunction will not be granted. *Sickles* v. *Glou. Manuf. Co.*, 1 Fisher, 225.—GRIER, J.; N. J., 1856.

21. Whenever the subject matter cannot be as well investigated in an action for money had and received, or *indebitatus assumpsit*, a court of equity exercises a sound discretion in decreeing an account. *Ibid.*, 224.

22. Commissions received from the sales of a printed copyright are profits

which must be accounted for by the party selling on commission, on a bill by the proprietor of the copyright. *Stevens* v. *Gladding*, 2 Curt., 608–610.—CURTIS, J.; R. I., 1856.

23. It is common in case of a bill filed for an infringement and motion made for a preliminary injunction, where the question of infringement is not manifest, and enjoining the defendant would produce serious hardship and inconvenience of his business, to withhold the injunction on the defendant's keeping an account, or giving security for damages accruing. *Tatham* v. *Lowber*, 4 Blatchf., 87.—NELSON, J.; N. Y., 1857.

24. An account of profits need not be limited to the time of the commencement of the suit. The practice is to take the account down to the time of the hearing before the master, if the infringement continues to that period, thereby preventing the necessity of expense of a new suit. *Ibid.*, 86.

25. And such account may be so continued though some of the defendants may have ceased to become liable; but in such case their liability should be properly apportioned in making up the decree, and none should be entered for accruing profits against any one after his liability ceased. *Ibid.*, 87.

26. An account may be ordered and other relief granted, though for any reason, as the expiration of the patent, an injunction to restrain its infringement cannot issue. *Imlay* v. *Nor. & Wor. R. R. Co.*, 4 Blatchf., 229.—INGERSOLL, J.; Ct., 1858.

27. Where a patentee has been accustomed to grant licenses to use his invention on the payment of a certain fee, his appropriate remedy for the use of such invention without authority is an action at law; an account is not wanted. *Livingston* v. *Jones*, 2 Fisher, 210.—GRIER, J.; Pa., 1861.

28. An account cannot be required unless where a knowledge of the profits made by the infringer is necessary to a just determination of the controversy. *Ibid.*, 210.

29. Wherever a defendant presents a case showing in fact a *bona fide* issue of law, or a *prima facie* right to continue his manufacture, a preliminary injunction will not be granted, but he may be required to keep an account. *Goodyear* v. *Dunbar*, 1 Fisher, 474.—GRIER, J.; N. J., 1861.

30. Where a defendant was manufacturing under a patent, which was claimed to be an infringement of another and an older patent, the court refused to grant a preliminary injunction, but ordered the defendant to keep an account of all goods manufactured and sold by him. *Ibid.*, 474.

For form of a decree ordering a reference to a master to take and state an account, see *Parkhurst* v. *Kinsman*, 1 Blatchf., 498. (Note.)

ACTIONS.

A. Actions respecting Copyrights and Manuscripts, and Defences to.

See also Courts, A.; Equity, A.; Infringement, A.; Injunction, A.

1. At common law the author of a manuscript may obtain redress against any one who deprives him of it, or endeavors to realize a profit from its publication. *Wheaton* v. *Peters*, 8 Pet., 657.—McLean, J.; Sup. Ct., 1834.

2. Where a wrong has been committed in respect to a literary work, but the bill does not ask an injunction to protect the common law rights of the author, or the violation of any copyright secured, but only asks an account, redress cannot be sought in a court of equity, but the party must proceed at law for damages. *Monk* v. *Harper*, 3 Edw. Ch., 110, 111.—McCoun, V. Ch.; N. Y., 1837.

3. It is of no consequence in what form the works of another are used, whether it be a simple reprint, or by incorporating in some other work. If his copyright is violated, he can maintain an action therefor. *Gray* v. *Russell*, 1 Story, 19.—Story, J.; Mass., 1839.

4. To entitle a party to an action for the infringement of a copyright, it is not necessary that the whole, or a greater part of his work should be taken. If so much is taken as to impair the value of the original, or so that the labors of the original author are substantially appropriated, an action will lie. *Folsom* v. *Marsh*, 2 Story, 115.—Story, J.; Mass., 1841.

5. The entirety of the copyright is the property of the author; and it is no defence that another has appropriated only a part of such property and not the whole. *Ibid.*, 116.

6. If a copyright has been invaded, whether the party knew the work was copyrighted or not, he is liable to the penalty for violation. *Millett* v. *Snowden*, 1 West. Law Jour., 240.—Betts, J.; N. Y., 1843.

7. A defendant may show that the work copyrighted was not original with the author, or that it was an abreviation or alteration, and the jury can decide whether it was calculated to deceive. *Ibid.*, 240.

8. An *action on the case* is the proper form of action to recover damages for a violation of a copyright: *trespass* will not lie. *Atwill* v. *Ferrett*, 2 Blatchf., 47, 48.—Betts, J.; N. Y., 1846.

9. If the similitude between the defendant's work and the one copyrighted by the plaintiff can be supposed to have arisen from accident, or necessarily from the nature of the subject, the defendant is not liable. *Emerson* v. *Davis*, 3 Story, 791.—Story, J.; Mass., 1845.

10. Under the acts of 1790 and 1819, as to patents and copyrights, the owners of copyrights and patents do not have redress or relief in any cases where they could not before have had relief in some court, either of equity or law. *Pierpont* v. *Fowle*, 2 Wood. & Min., 27.—Woodbury, J.; Mass., 1846.

11. These acts merely enabled them to prosecute such claims in the Circuit Court as they legally had done before, but without going to the state tribunals: the public interest required a uniform construction to be placed by one tribunal on all important questions connected with rights so held. *Ibid.*, 27.

12. A book may in one part of it infringe the copyright of another work, and in other parts be no infringement;

in such a case the remedy will not be extended beyond the injury. *Story's Exrs.* v. *Holcombe*, 4 McLean, 315.—McLean, J.; Ohio, 1847.

13. Independently of the statute, the author of a manuscript may obtain redress against one who has surreptitiously gained possession of it. *Bartlett* v. *Crittenden*, 4 McLean, 301.—McLean, J.; Ohio, 1847.

14. At common law an author may maintain an action for the damages which he might sustain by his manuscript being surreptitiously printed by others. *Hoyt* v. *McKenzie*, 3 Barb. Ch., 323.—Walworth, Ch.; N. Y., 1848.

15. In a suit under the copyright acts, the plaintiff must make out a title to sue under his copyright. The court cannot interfere to prevent the use of the title of a work in favor of the plaintiff, upon principles relating to the good-will of trades. *Jollie* v. *Jaques*, 1 Blatchf., 627.—Nelson, J.; N. Y., 1850.

16. A suit arising out of an agreement as to the publication of a manuscript, and to determine the rights of the parties under it, is not a suit under the copyright laws, of which the Circuit Court has jurisdiction, by reason of the subject matter. *Pulte* v. *Derby*, 5 McLean, 336.—McLean, J.; Ohio, 1852.

17. An assignee of the exclusive right of acting and representing a drama in certain places may maintain an action in his own name, even after a representation by him, for an injunction to prevent its being represented by another within such places. *Roberts* v. *Myers*, 13 Mo. Law Rep., 400, 401.—Sprague, J.; Mass., 1860.

18. And such action may be maintained although the author or assignee has only filed his title-page, and has not published the work or play. *Ibid.*, 308, 401. [Contra, *post* 19.]

19. A person who has only adopted measures to secure a copyright for a drama, but who has not fully completed such copyright, has no statutory right of redress for an unauthorized theatrical representation of such drama. *Keene* v. *Wheatley*, 9 Amer. Law Reg., 45.—Cadwallader, J.; Pa., 1860.

20. If a play has never been printed, the literary proprietor may, independently of the statutes, maintain a suit for damages for its unauthorized representation, if such representation has not been preceded by a representation by the proprietor. If the previous performance by the proprietor has been the means of enabling the defendants to bring it out, no action will lie. *Ibid.*, 49, 92.

B. In Respect to Patents.

1. *Right of action, and principles governing.*

See also Courts, B.; Equity, B. 1; Injunction, B.

As to what constitutes Infringement, see Combination, B.; Composition of Matter, C.; Infringement, B.

1. An action of infringement will lie for making a machine fit for use, and with a design to use it for profit, even though there is no actual user, and no actual damage; the law implies damage. *Whittemore* v. *Cutter*, 1 Gall., 431.—Story, J.; Mass., 1813.

2. But the making a patented machine, merely for philosophical experiments, or for the purpose of ascertaining the sufficiency of the machine to produce its described effects, is not an infringement for which an action will lie. *Ibid.*, 431.

3. The recovery of a verdict by the plaintiff in an action for the infringement of a patent, will not prevent him from bringing another action of infringement for a future use of the defendant's machine; every future use is an infringement. *S. C.*, 1 Gall., 484.—STORY, J.,; Mass., 1813.

4. To constitute an offence for which an action will lie, the making of a machine must be with an intent to infringe the patent-right, and deprive the owner of the lawful rewards of his discovery. *Sawin* v. *Guild*, 1 Gall., 486.—STORY, J.; Mass., 1813.

5. A patentee is entitled to recover for a violation of his patent, no matter what private agreement subsists between him and any other one, as to an interest in his invention, unless he has made a legal assignment and transfer of his interest in the invention. *Park* v. *Little*, 3 Wash., 197.—WASHINGTON, J.; Pa., 1813.

6. A subsequent inventor and patentee of a machine, cannot maintain an action against a prior inventor and patentee of the same thing, or oust him of his right. *Woodcock* v. *Parker*, 1 Gall., 439.—STORY, J.; Mass., 1813.

7. An action for infringement is founded on the patent, and the plaintiff can claim no right which is not included in the patent. The patent is the foundation of the action, and the gist of the action is the violation of a right which the patent has granted. And this even though the patent is issued under a special law, and is not as broad as the law under which it is issued—the right is under the patent, and not under the law. *Evans* v. *Eaton*, Pet. C. C., 340, 345.—WASHINGTON, J.; Pa., 1816. [See *post* 9.]

8. If an inventor do not choose to obtain a patent for his invention, it becomes public property; and he can maintain no action against any one for using it. *Ibid.*, 348, 349.

9. In construing a patent, the intention of the parties, who are the government and the patentee, is entitled to great consideration; the act authorzing the issue of the patent, the petition for the issue of the patent, and the specification, may all be resorted to for such intention. *Evans* v. *Eaton*, 3 Wheat., 506, 507.—MARSHALL, Ch. J.; Sup. Ct., 1818.

10. Where a plaintiff claims several distinct and independent improvements in the *same* machine, and procures a patent for them in the aggregate, he is entitled to recover against any person who shall use any one of the improvements so patented, notwithstanding there has been no violation of the other improvements. *Moody* v. *Fiske*, 2 Mas., 115, 118.—STORY, J.; Mass., 1820.

11. Where a declaration goes for the user of a machine during a limited period, a verdict and judgment in such action is no bar to a subsequent action for a user during another and subsequent period. *Earle* v. *Sawyer*, 4 Mas., 14.—STORY, J.; Mass., 1825.

12. Whether a patentee is ever required to give notice to one actually using a machine in violation of his patent, in order to maintain an action against him, even though such machine may have been erected and put in use before the patent issued; *query*. *Ames* v. *Howard*, 1 Sumn., 488.—STORY, J.; Mass., 1833.

13. Without obtaining a patent, a person has no exclusive right or privilege to make and sell the thing invented or discovered by him; without a patent,

the right to make and sell is common to all. *Thompson* v. *Winchester*, 19 Pick., 216, 217.—SHAW, Ch. J.; Mass., 1837.

14. If another person makes such invention, of an inferior quality, and sells it, and by this means brings the thing into disrepute, the inventor can maintain no action, as there is no infringement of his right, nor recover damages, unless the person so making and selling passes off the things sold as made by the plaintiff. *Ibid.*, 217.

15. If a patent is for two distinct machines, conducing to a common end, and either one is used by the defendant, the plaintiff may maintain an action therefor, under the acts of 1836 and 1837. *Wyeth* v. *Stone*, 1 Story, 287.—STORY, J.; Mass., 1840.

16. The act of 1837, § 9, gives to a patentee a right of action for the piratical use of any one of his invented improvements, which is distinctly stated in his patent, although he may have included something of which he was not the original inventor. *Pitts* v. *Whitman*, 2 Story, 621.—STORY, J.; Maine., 1843.

17. A surrender of letters patent renders void all assignments under such patent, so far as those are concerned who assent to such surrender. It is necessary that a prior assignee should have a new assignment, before he can maintain an action for an invasion of the patent. *Gibson* v. *Richards*, Index Pat. Dec., No. 376.—NELSON, J.; N. Y., 1845.

18. In an action at law for a breach of a patent, it is indispensable to establish a breach before the suit was brought. But in equity, a bill will lie for an injunction, if the patent-right is admitted or established, upon well grounded proof of an apprehended intention of the defendant to violate the patent-right. *Woodworth* v. *Stone*, 3 Story, 752.—STORY, J.; Mass., 1845.

19. An attempted purchase from the defendants, of a patented article by an agent of the plaintiff, and for the purpose of entrapping the defendants, is not such a sale as will render them liable. *Sparkman* v. *Higgins*, 2 Blatchf., 30, 31.—BETTS, J.; N. Y., 1846.

20. To entitle a plaintiff to recover in an action for an infringement, the jury must be satisfied that the invention embraced in the plaintiff's patent is new and useful. The patent, however, raises the presumption of the novelty and utility of the plaintiff's invention. *Parker* v. *Stiles*, 5 McLean, 60.—LEAVITT, J.; Ohio, 1849.

21. A contract to use a patented machine, during the continuance of the patent, and to pay therefor a fixed proportion of the value of the fuel saved thereby, will not support an action until the expiration of the patent. *Wash. Alex. &c. Steam Pack. Co.* v. *Sickles*, 10 How., 441.—GRIER, J.; Sup. Ct., 1850.

22. It is an entire contract; but if the defendants had agreed to pay by instalment at the end of certain times, an action would lie for every breach, as occurring. *Ibid.*, 441.

23. Upon the breach of the conditions of a license, the patentee or licenser has a right to avoid the contract and be remitted to his original rights, and prosecute the licensees for an infringement of the patent. *Woodworth* v. *Cook*, 2 Blatchf., 160.—NELSON, J.; N. Y., 1850.

24. An action for an infringement cannot be maintained by an inventor against any one for using his invention before a patent is obtained. *Gayler* v.

Wilder, 10 How., 493—TANEY, Ch. J.; Sup. Ct., 1850.

25. To support an action for a violation of a patent, there must be injury and damage; injury by a violation of the right, and damage, at least nominal, presumed by law to arise from such violation. *Byam* v. *Bullard*, 1 Curt., 103.—CURTIS, J.; Mass., 1852.

26. A sale of the thing patented to an agent of the patentee, employed by him to make the purchase, and on account of the patentee, is not an act from which damage will be presumed, as it must be supposed to have been done for the patentee's benefit, or at least not to have been to his loss. *Ibid.*, 103, 104.

27. After a patent has expired, the court may maintain jurisdiction of a bill filed for its infringement, and for a discovery and account of profits, though no injunction is prayed for.—*Nevins* v. *Johnson*, 3 Blatchf., 83.—NELSON, BETTS, JJ.; N. Y., 1853.

28. No satisfactory reason exists why the part owner of a patent-right cannot, like the part owner of a chattel, have his remedy, by an action on the case against his co-proprietor, for the exclusive appropriation of the joint property, in the same form as though the plaintiff were the sole owner and the defendant a stranger. *Pitts* v. *Hall*, 3 Blatchf., 208.—HALL, J.; N. Y., 1854.

29. In such an action against his co-owner for an infringement of the patent, he can recover his actual damages according to his interest in the patent, without regard to the amount which his co-proprietor has received by means of the infringement. *Ibid.* 208.

30. A patent issued is probable cause for a suit against one who infringes it, unless it is invalid, and *known to be so by the patentee.* *Beach* v. *Wheeler*, 24 Penn., 213, 214.—KNOX, J.; Pa., 1855.

31. If there is an actual infringement, or if the patentee really believed there was his belief being reasonably founded, there was probable cause for the institution of the suit; if there was no infringement, and the patentee had not reasons which would induce a person of ordinary sagacity to believe his right had not been infringed, there would be no probable cause, and from its absence malice may be inferred, unless disproved by other evidence, and the party may be liable for malicious prosecution. *Ibid.*, 215.

32. The approval of an improvement, secured by a patent, by a party who however refuses to pay the price asked for it, furnishes no excuse for using it, but the party so using will be liable in damages.—*Simpson* v. *Mad River R. R.*, 6 McLean, 603, 604.—McLEAN; Ohio, 1855.

33. Where in an action for an infringement of a patent, no plea or answer is put in, the charge in the declaration is considered as admitted. *Parker* v. *Bamker*, 6 McLean, 632.—McLEAN, J.; Ohio, 1855.

34. The infringement of a patent is a *tort;* but the wrongful act not being committed with direct force, the form of action is that description of tort called trespass on the case. *Stein* v. *Goddard*, 1 McAllis., 82.—MCALLISTER, J.; Cal., 1856.

35. If a patentee be an original inventor of a machine, or thing, he has the right to treat as infringers all who make a like invention operating on the same principle, and performing the same functions by analogous means or equivalent combinations, even though the infringing machine may be an im-

provement on the original and patentable as such. *McCormick* v. *Talcott*, 20 How., 405.—GRIER, J.; Sup. Ct., 1857.

36. It is competent for a patentee to embrace two improvements on the same machine in the same patent, and if a person uses either or both of the improvements, he is an infringer. *Morris* v. *Barrett*, 1 Fisher, 463.—LEAVITT, J.; Ohio, 1858.

37. There is no act of Congress limiting the time in which a suit may be brought for an infringement of a patent-right. *Parker* v. *Hallock*, MS.—GRIER, J.; Pa., 1858.

38. By statute, the remedy for an infringement of a patent is an action on the case; but an infringement of a patent is a cause of action at common law, and the party injured may waive the tort and sue in assumpsit on the implied contract for the use of his property. *Shreeve* v. *U. States*, MS.—LORING, J.; Ct. Claims, 1859.

39. There may be a claim for two inventions in the same patent, if they both relate to the same machine or structure; and an action can be sustained for the infringement of either one or the other of these separate inventions, where claimed as separate and distinct in their character. *Lee* v. *Blandy*, 2 Fisher, 92.—MCLEAN, LEAVITT, JJ.; Ohio, 1860.

40. After a patent has been surrendered, an action cannot be maintained for damages for an infringement occurring under the old patent, before the surrender. *Moffit* v. *Garr*, 1 Fisher, 613.—LEAVITT, J.; Ohio, 1860.

41. Where a patentee has been accustomed to grant the use of his invention upon the payment of a license-fee, an action against an infringer is best brought at law, as the price or value of the license is the true measure of the actual damage sustained, and the court may treble the verdict, where the defendant has acted wantonly or vexatiously. *Sanders* v. *Logan*, 2 Fisher, 170.—GRIER, J.; Pa., 1861.

42. A patentee whose invention is only valuable because used by all who pay a license-fee, and who suffers no other wrong than the detention of such fee, needs none of the remedies which it is the duty of the chancellor to give for such protection. *Livingston* v. *Jones*, 2 Fisher, 210.—GRIER, J.; Pa., 1861.

43. A court of law is his proper resort, the only remedy to which he is entitled being a judgment for a given sum of money, with interest; and then he may recover a penalty to the extent of treble damages, if the judge sees fit to inflict it. Pénalties and punitive damages can be recovered only in courts of law. *Ibid.*, 210.

2. Where to be brought and how commenced.

As to the jurisdiction of the Circuit Courts. See COURTS, B. 2.

1. Proceedings by bill in equity, under § 16 act 1836, and § 10 act 1839, against the Commissioner of Patents, to compel him to issue a patent, must be commenced in the Circuit Court of the United States for the District of Columbia, and cannot be brought elsewhere. No tribunal out of the District has jurisdiction over the person of the Commissioner of Patents as such, and the Patent Office. *Prentiss* v. *Ellsworth*, Mir. Pat. Off., 36.—RANDALL, J.; Pa., 1846.

2. Consent of parties cannot confer

jurisdiction, or render effectual the judgment of a tribunal in a matter of which it has not by law any cognizance. *Dudley* v. *Mayhew*, 3 Coms., 12–19.—STRONG, J.; N. Y., 1849.

3. Where, therefore, a bill was filed for an injunction for an infringement of a patent in a state court, and the defendant stipulated not to raise the question of jurisdiction, *Held*, that such consent could not confer jurisdiction, and that the bill must be dismissed on the ground that the state courts had no jurisdiction of actions in patent cases. *Ibid.*, 10–19.

4. Under § 17 of the act of 1836, the Circuit Courts of the United States have not only *original*, but *exclusive* jurisdiction of all actions arising under the patent laws. *Ibid.*, 14.

5. § 11 of the Judiciary Act of 1789, requiring one of the parties, plaintiff or defendant, to be an inhabitant of the state where the suit is brought, does not apply to actions arising under the patent laws. It is only necessary to give jurisdiction in patent cases that the process is served personally upon the defendant in the district where the suit is brought, as provided by the latter clause of § 11 of that act. *Allen* v. *Blunt*, 1 Blatchf., 486.—NELSON, J.; N. Y., 1849.

6. The return of the marshal upon the writ or subpœna should state that the service of such writ or subpœna was made within the district where suit is brought. *Ibid.*, 487.

7. Where an alleged violation of a license was in Vermont, and the suit was brought in New York, *Held*, in a suit brought for the purpose of restraining the unlawful use of the machine, that proceedings were rightly commenced against the party concerned in the infringement, and that the action could, under § 11 of the Judiciary Act of 1789, be brought in the district where the defendant resided, or where he might be found at the time of serving the writ. *Wilson* v. *Sherman*, 1 Blatchf., 541.—NELSON, J.; N. Y., 1850.

8. But where it might become necessary to proceed directly against the machine itself, as in extreme cases of contumacy, or fraudulent contrivance to evade an injunction, the proceedings should be instituted in the district where the machine is located. *Ibid.*, 541.

9. Although the jurisdiction of the Circuit Courts embraces cases both at law and in equity, arising under the patent laws, for infringements of letters-patent, without regard to the citizenship of the parties, or the amount in controversy, the provisions of § 11 of the Judiciary Act of 1789, as to the commencement of suits, applies to these cases as well as to others; hence such a suit cannot be brought in any other district than that whereof the defendant is an inhabitant, or in which he shall be found at the time of serving the writ or process, and whatever the character of such process. *Day* v. *Newark I. R. Co.*, 1 Blatchf., 630–632.—NELSON, J.; N. Y., 1850.

10. The right to attach property, to compel the appearance of persons, can properly be used only in cases in which such persons are amenable to process *in personam*, and in such case also an attachment against his property cannot be issued, except as part of or together with process to be served upon his person. *Ibid.*, 630, 631.

11. In order to give jurisdiction to the Circuit Courts of the United States, the party defendant must be an inhabitant of the district in which the suit is

brought, or he must be found within it at the time of the service of the original process, and whatever may be the nature or character of the process used. *Ibid.*, 631, 632.

12. Where a corporation was created by the laws of New Jersey, and had its place of business in that state, but also had a store in New York, where its goods were sold, and a suit was commenced against it in New York by attachment of its goods, and by service of process on its president, who happened to be in New York, *Held*, that the corporation was not an inhabitant of New York, or found within it at the time of the service of the process, and that the court had no jurisdiction of the action. *Ibid.*, 633.

13. The purchaser of an implement or machine, for use in the ordinary pursuits of life, does not become possessed of a portion of the franchise or monopoly conferred by the patent—he exercises no right conferred by Congress; but when the machine passes into his hands it is no longer within the limits of the monopoly, or under the protection of the acts of Congress; and if his right is infringed he must seek redress in the courts of the state, and according to its laws, and not in the courts of the United States or under the acts of Congress. *Bloomer* v. *Mc Quewan*, 14 How., 549.—TANEY, Ch. J.; Sup. Ct., 1852.

14. A process of attachment, whether direct or foreign, by which the property of a defendant is attached, by virtue of state laws, cannot give the Circuit Court jurisdiction over a person not an inhabitant of, and not found within the district. *Saddler* v. *Hudson*, 2 Curt., 7.—CURTIS, J.; Me., 1854.

15. If a defendant is sued out of his district he must plead his personal privilege. *Teese* v. *Phelps*, 1 McAllis., 17.—McALLISTER, J.; Cal., 1855.

16. Under § 11 of the Judiciary Act of 1789, jurisdiction of the person of a defendant (who is an inhabitant of another state) can only be obtained, in a civil action, by service of process on his person within the district where the suit is instituted. *Chaffee* v. *Hayward*, 20 How., 215.—CATRON, J.; Sup. Ct., 1857.

17. And this provision is not changed by any of the process acts, or by the act of Congress conferring jurisdiction on the Circuit Courts in patent cases, without regard to citizenship. § 11 of the Judiciary Act is not affected by the subsequent process acts, and it applies to *all* civil suits. *Ibid.*, 216.

3. *Parties to.*

See also EQUITY, B. 2.

a. Plaintiffs.

1. Under § 5 of the act 1793, an assignee of a *part* of a patent-right cannot maintain an action for a violation of it. *Tyler* v. *Tuel*, 6 Cra., 327.—CURIAM; Sup. Ct., 1810.

2. But if a patentee has sold a moiety of his invention to another, a joint action lies, under such section 5, by himself and such assignee, for a violation of the patent. The action is brought by those who have the whole patent in themselves, which distinguishes it from the case of *Tyler* v. *Tuel*. *Whittemore* v. *Cutter*, 1 Gall., 430.—STORY, J.; Mass., 1813.

3. The executor or administrator of a joint patentee may maintain an action jointly with the surviving patentee for an infringement. *Ibid.*, 431

4. A patentee cannot maintain an action for an infringement after he has made an assignment of his invention; but the suit must be brought by the assignee. *Herbert* v. *Adams*, 4 Mas., 15.—STORY, J.; Mass., 1825.

5. And it will make no difference that the assignment was made before patent issued, and the patent afterward taken out in the name of the inventor. *Ibid.*, 15.

6. Whether an assignee of part of a patent, circumscribed as to the interest by local limits, can, in his own name, or with the patentee, maintain a suit at law or not, there can exist no doubt but that he may support a suit in equity to enjoin third persons from infringing the patent, and for an account. *Ogle* v. *Eye*, 4 Wash., 584.—WASHINGTON, J.; Pa., 1826.

7. An assignee of a part interest, which is exclusive, in a patent, may, at law or in equity, maintain a suit for infringement, without joining the patentee. *Brooks* v. *Bicknell* 3 McLean, 250.—MCLEAN, J.; Ohio, 1843. (So held in fact, as the suit was by an assignee without joining any other person, but no question raised as to parties. —ED.)

8. An action for a violation of an exclusive right in a patent can only be brought by the owner of such a right. *Washburn* v. *Gould*, 3 Story, 131, 166. —STORY, J.; Mass., 1844.

9. The assignees of an exclusive right in a patent are the proper persons to maintain an action for a violation of such right. *Ibid.*, 131, 167.

10. The grantee of an exclusive right under a patent, though such right may be limited to the use of a certain number of machines within a certain territory or district, has such an exclusive right as will enable him to maintain an action for an infringement of the patent within that district, under § 14 of the act of 1836. *Wilson* v. *Rosseau*, 4 How., 686, 688.—NELSON, J.; Sup. Ct., 1845.

11. An exclusive right of action exists in favor of a sole assignee only in two cases, namely, where he acquires by assignment the whole interest in the patent, or a grant or conveyance of the whole interest within some particular district or territory. *Suydam* v. *Day*, 2 Blatchf., 23.—NELSON, BETTS, JJ.; N. Y., 1846.

12. By § 11 of the act of 1836, taken in connection with § 14 of the same act, an action is given only to such party, composed of one or more persons, as possesses the whole interest. *Ibid.*, 23.

13. Where a party has an interest in only a part of a patent, as a license to use the invention patented, only in the manufacture of a particular kind of goods, he cannot maintain an action for an infringement. *Ibid.*, 23.

14. In an action by an administrator it is not necessary that he should produce his letters of administration. The patent, being renewed to him as administrator, is proof that he had satisfied the officer authorized to grant a renewal, of his being administrator, and it is not competent for the court to go behind that decision. *Woodworth* v. *Hall*, 1 Wood. & Min., 254.—WOODBURY, J.; Mass., 1846.

15. Where a patentee granted an exclusive license to C to use his patent for a specified purpose, as a grant by Blanchard of a license to use his patent for turning irregular forms, for turning lasts, boot-trees, &c., and a third party, E, infringed by turning lasts, *Held*, that such grant to C did not vest any

legal title to the patent in him, and that the action for such infringement was properly brought in the name of the patentee. *Blanchard* v. *Eldridge*, 1 Wall, Jr., 341.—GRIER, J.; Pa., 1849.

16. In an action of infringement founded upon the non-performance of the conditions of a license, the original patentee and licenser are properly joined as parties plaintiff, notwithstanding the whole beneficial interest is in his assignee, inasmuch as he was a party to the agreement or license, and may be interested in the patent and in upholding it. *Woodworth* v. *Cook*, 2 Blatchf., 161.—NELSON, J.; N. Y., 1850.

17. An assignee of an invention, under an assignment made before patent issued, and such patent being also issued in the name of the inventor or assignee, may maintain an action in his own name for an infringement. *Gayler* v. *Wilder*, 10 How., 493, 494.—TANEY, Ch. J.; Sup. Ct., 1850.

18. But to enable an assignee of a sectional interest in a patent to sue in his own name under § 14 of the act of 1836, he must have the exclusive right or entire and unqualified monopoly which the patentee held in the territory specified, excluding the patentee himself as well as others. *Ibid.*, 494.

19. An agreement purporting to grant an exclusive right to make and sell a patented article within a certain territory, but reserving to the patentee the right to manufacture and make and sell the article within such territory, is not such an assignment as will enable the assignee to bring an action in his name, but it should be brought in the name of the patentee. *Ibid.*, 495.

20. A patentee or his assignee, in assigning the use of a patent within a particular district, may reserve the right to sue for infringements. But if he afterward assigns all his right in such district, the owner of the patent may sue. *Bicknell* v. *Todd*, 5 McLean, 240.—MCLEAN, J.; Ohio, 1851.

21. A mere licensee need not be made a party plaintiff in an action of infringement, though he may be benefited by the decree or judgment in the case. *Goodyear* v. *Day*, MS.—GRIER, DICKERSON, JJ.; N. J., 1852.

22. Neither need a party interested as *cestui que trust*, in the profits of the patent, be made a party, when the conveyance to such party reserves to the patentee the whole and sole power of disposal, and consequently the legal title. *Ibid.*

23. Under § 14 act of 1836, an action at law is properly brought in the name of the patentee in behalf of a licensee who is damaged by the infringement. *Goodyear* v. *McBurney*, 3 Blatchf., 33.—NELSON, J.; N. Y., 1853.

24. If to such an action a release from the patentee is set up, the plaintiff may file a replication setting up the license, the bringing of suit for the benefit of the licensee, notice to the defendants of such license, and its recording prior to the release, want of power to give the release, and that it was given without the consent and authority of the licensee. *Ibid.* 33.

25. The assignees of a patent, though their title accrues to them by several deeds, may all join, as the holders of the title, in an action for the recovery of damages for an infringement of the patent. *Stein* v. *Goddard*, 1 McAllis., 84.—MCALLISTER, J.; Cal., 1856.

26. Where a license had been granted to a person to use a patent, and the patentees had covenanted not to license any other persons, nor use the patent

themselves, but all damages recovered for infringement were to belong equally to the patentees and such licensee, *Held*, that an action for an infringement could not be maintained in the name of the licensee alone, but that the patentees were both proper and necessary parties. *North* v. *Jones*, 4 Blatchf., 72.—INGERSOLL, J.; N. Y., 1857.

27. A mere licensee cannot bring an action at law for a violation of his interest or right in a patent. *Potter* v. *Holland*, 4 Blatchf., 412, 413.—INGERSOLL, J.; Ct., 1858.

28. A licensee may bring an action for his own benefit, in the name of the patentee, but the nominal plaintiff can require indemnity for costs. *Goodyear* v. *Bishop*, 4 Blatchf., 439.—NELSON, J.; N. Y., 1860.

29. Where a patentee granted to another the exclusive right to make and sell his patented invention, within a certain territory, for which he was to pay a certain sum for each machine so made and sold, but the patentee reserved the right of sending machines of his own manufacture into such territory, *Held*, that such contract was not an assignment of the patentee's interest in the patent in such territory, but a mere grant or license to make and sell the article therein; and that the patentee could maintain an action in his own name against those infringing, and that such action could not be brought in the name of his grantees. *Hussey* v. *Whiteley*, 2 Fisher, 123.—LEAVITT, J.; Ohio, 1861.

b. Defendants.

See also CORPORATIONS.

1. Whenever any person, previous to a patent, constructs a machine discovered by another, he constructs it subject to the right of that other, and his right to use it is qualified by the paramount right of the inventor to prescribe the conditions on which he shall use it, and he may be held in damages. *Evans* v. *Jordan*, 1 Brock, 252.—MARSHALL, Ch. J.; Va., 1813.

2. The purchase of a manufactured article, made in violation of a patent of a third person, but without any connection on the part of such purchaser with the manufacture, except as a purchaser, will not make the party buying guilty of an infringement of the rights of the patentee, as having used the patented invention. A contract to purchase articles manufactured in violation of a patent, is not of itself an infringement of such patent. *Keplinger* v. *De Young*, 10 Wheat., 365.—WASHINGTON, J.; Sup. Ct., 1825.

3. A mere workman employed by a person other than the patentee to make parts of a patented article, is not liable to an action for damages. *Delano* v. *Scott*, Gilpin, 497, 498.—HOPKINSON, J.; Pa., 1834.

4. The seller of an article is the owner for whom it is sold; not the man or boy in the shop who delivers it to the buyer, and receives the money. *Ibid.*, 498.

5. Whether a person, who acts as the mere agent of another, is responsible in damages for the infringement of a patent, and may be enjoined; *query*. *Boyd* v. *McAlpine*, 3 McLean, 430.—MCLEAN, J.; Ohio, 1844.

6. There are, however, strong reasons why the interest of a principle should, by an action at law, and also by a bill in chancery, be reached through his agent. *Ibid.*, 431.

7. An action for infringement will

lie against the parties making an article which is patented, though such persons are employed by others to do the work. *Bryce* v. *Dorr*, 3 McLean, 583.—McLean, J.; Mich., 1845.

8. The defendants were employed by S., who furnished them a model, to make or cast certain patented articles, *Held* by the court, that the defendants were liable, and that it was not necessary to bring the action against S. *Ibid.*, 583.

9. A purchaser, for his own account, of articles manufactured by a patented machine, though purchased with a full knowledge that they were manufactured in violation of the patent, cannot be enjoined, or held liable in any other way. *Anon.*, 3 West. Law Jour., 144.—N. Y., 1845.

10. An agent selling an article which infringes on the plaintiff's patent, may be joined as a party defendant with the one who manufactures such article, as they are joint trespassers, and are liable to be sued jointly. *Buck* v. *Cobb & Hermance*, 9 Law Rep. O. S., 547.—Conkling, J.; N. Y., 1846.

11. A purchase from the defendants of a patented article, by an agent of the patentee, and for the purpose of entrapping the defendant, is not such a sale as will render them liable. *Sparkman* v. *Higgins*, 2 Blatchf., 30, 31.—Betts, J.; N. Y., 1846.

12. If a machine, as made by the defendant, was not an infraction of the plaintiff's patent, the alteration of it by a third party, will not make the defendant liable; but if the machine, as made by the defendant, was intended by him to operate in such a way as to violate the plaintiff's patent, and has in fact so operated, he is a party to the infringement, notwithstanding the ingenuity with which he may have sought to disguise his wrong. *Knight* v. *Gavit*, Mir. Pat. Off., 133.—Kane, J.; Pa., 1846.

13. An action of infringement cannot be maintained against a mere purchaser of articles manufactured in violation of a patent, after they have been manufactured, unless he is concerned in the manufacture. *Blanch. Gun-Stock Turn. Co.* v. *Jacobs*, 2 Blatchf., 70, 71.—Betts, J.; N. Y., 1847.

14. The directors of a manufacturing corporation, who manage and superintend its business, and under whose direction articles are manufactured which are an infringement of a patent, and the agents who conduct the business of selling such articles, are responsible for such infringement, and may be restrained by injunction. *Goodyear & N. E. Car Spring Co.* v. *Phelps*, 3 Blatchf., 92.—Nelson, J.; N. Y., 1853.

15. S. being an inventor of an improvement in dragoon and pack saddles, made application for a patent therefor before May, 1847. In November, 1847, before such application was acted on, G. made application for a patent for the same invention; but notice of interference was not given. In December, 1847, the secretary of state addressed the Commissioner of Patents, that an early issue of a patent to G. would facilitate a supply of saddles to the government; G.'s application was taken up, and a patent issued Dec. 11, 1847—S.'s application remaining not acted upon, and postponed, *Held*, that the wrong done to S. was not committed by the United States, or by any of its officers, so as to render them pecuniarily responsible therefor. *Thistle* v. *United States*, Devereaux, 130.—Scarburgh, J.; Ct. Claims, 1856.

16. If a person take a license, but neglect for a long time to pay the license price, and when prosecuted, abandon it, or defend upon other grounds, the license will be deemed forfeited, and he will be liable as an infringer. *Bell* v. *McCullough*, 1 Fisher, 381.—LEAVITT, J.; Ohio, 1858.

17. The fact that as between themselves parties are connected together as the stockholders, managers, and servants of a corporation, will not exempt them from being enjoined, or being liable to an action for infringement. *Poppenheusen* v. *Falke*, 4 Blatchf., 494.—SHIPMAN, J.; N. Y., 1861.

4. *Discontinuance of, by whom.*

1. The nominal plaintiff cannot discontinue a suit, which is in reality brought for the benefit of a licensee, but such real plaintiff in interest may have the suit continue for his benefit. *Goodyear* v. *Bishop*, 4 Blatchf., 439.—NELSON, J.; N. Y., 1860.

2. The nominal plaintiff may, however, claim indemnity for costs. *Ibid.*, 439.

3. It will make no difference that the nominal plaintiff has covenanted to sue infringers, upon which covenant he may be liable to his licensees. Such a stipulation does not take away from the licensees the remedy which the law has provided, of proceeding directly against the wrongdoer. *Ibid.*, 439.

5. *Defences to.*

See DEFENCES.

6. *Pleadings in.*

See PLEADING.

C. IN RESPECT TO TRADE-MARKS, AND DEFENCES TO.

As to right of aliens to maintain such actions, see ALIENS, B.

See also COURTS, C.; INFRINGEMENT, C.; INJUNCTIONS, C.

1. To an action for the infringement of a trade-mark, it is wholly immaterial whether the simulated article is or is not of equal goodness and value with the real article. *Taylor* v. *Carpenter*, 11 Paige, 298.—WALWORTH, Chan.; N. Y., 1844.

2. It is no defence to an action for violation of plaintiff's labels and trade-marks, that the defendants have not used all the plaintiff's labels; it is sufficient, if there be a violation, in imitating and using any of such labels. *Taylor* v. *Carpenter*, 3 Story, 462, 463.—STORY, J.; Mass., 1844.

3. Nor is it any excuse that others have used such labels; this rather aggravates than excuses the misconduct, unless done with the consent or acquiescence of the plaintiff. *Ibid.*, 464.

4. It is no excuse for a violation of plaintiff's trade-mark, that the imitated article is as good as the original. *Coats* v. *Holbrook*, 2 Sand. Chy., 595.—SANDFORD, V. Ch.; Ct. Chy., N. Y., 1845.

5. Nor is it any defence to an action for a fraudulent use of such trade-marks, that other persons are engaged in like infringements. *Ibid.*, 596.

6. Nor that the maker of the imitation, or the commission merchant who sells to the jobber, told the purchaser that they were selling an imitation or spurious article. *Ibid.*, 597.

7. Evidence of a usage or custom

in the United States, England, &c., to use and imitate the trade-marks of foreigners with impunity is not a good defence to an action for a wrongful use of a trade-mark: no usage is competent evidence in defence of a wrong. *Taylor* v. *Carpenter*, 2 Wood. & Min., 7.—WOODBURY, J.; Mass., 1846.

8. It might be competent in mere mitigation of damages, so far as regards smart-money, or vindictive damages, if such were permissible. *Ibid.*, 8.

9. A neglect to prosecute infringements of a trade-mark, because one believed he had no rights, or from mere procrastination, is no bar to an action for such infringement, except under the Statute of Limitations, or under some positive statute, like that as to patents, which avoids the right, if the inventor permits the public to use the patent for some time before taking out letters. *Ibid.*, 8.

10. It is no defence to an action for a wrongful use of the plaintiff's trade-mark, that the articles sold as and for his, were not inferior in value to his. *Ibid.*, 20.

11. If the use of a trade-mark by one, in violation of the rights of the original possessor, is for such a length of time and under such circumstances as to indicate a dedication or abandonment of the marks to the public, or a license to use them, the plaintiff cannot recover. *Ibid.*, 20.

12. To enable a party to maintain a bill in equity to restrain the use of trade-marks, he must allege and prove that such use was for the purpose of effecting a false representation, and that the articles were made by those who did not in fact make them. *Amee* v. *King*, 2 Gray, 282.—BIGELOW, J.; Mass., 1854.

13. The fact that a person has discontinued the use of a particular trade-mark for a time, and adopted another, will not deprive him of a right of action against a party selling an article with such discontinued trade-mark. *Lemoine* v. *Gauton*, 2 E. D. Smith Rep., 347.—DALY, J.; N. Y., 1854.

14. Whether the sale of an article, with a forged or counterfeited trade-mark, to the owner of the trade-mark, would be sufficient to give a right of action; *query*. *Ibid.*, 348.

But if so, only nominal damages could be recovered. *Ibid.*, 348.

15. It will not support an action for the violation of a trade-mark that the imitation trade-mark or label has a resemblance to the original; but any imitation is actionable which requires a careful inspection to distinguish its marks and appearances from those of the manufacture imitated. *Merrimack Manuf. Co.* v. *Garner*, 4 E. D. Smith, 391, 392.—DALY, J.; N. Y., 1855.

16. One person has a right to imitate and sell the same style of goods as those manufactured by another; and the latter has no right to complain unless the label used upon the article in imitation would lead purchasers to suppose that they were buying goods actually manufactured by him. *Ibid.*, 392.

17. It is no defence to an action to restrain the use of the plaintiff's trade-mark, that the article upon which it is used is not patented, or that the words on the trade-mark are fictitious. *Stewart* v. *Smithson*, 1 Hilton, 121.—BRADY, J.; N. Y., 1856.

18. The assignee of a trade-mark and of the articles or goods to which it is attached, is entitled to the enjoyment of the exclusive rights thereto, and may maintain an action in his own name for any wrongful use by others of such

trade-mark, to the same extent as the originator thereof. *Walton* v. *Crawley*, 3 Blatchf., 448.—BETTS, J.; N. Y., 1856.

19. The right of a plaintiff to maintain an action for a violation of a trade-mark, does not depend upon the intention of the defendant to appropriate such trade-mark (violate it); it is enough if it is made to appear that he has done so. *Dale* v. *Smithson*, 12 Abb. Pr., 238.—HILTON, J.; N. Y., 1861.

ADDITIONS TO A LITERARY WORK OR MANUSCRIPT, TO WHOM BELONG.

1. Additions to a former manuscript are not independent literary productions, capable of independent proprietorship; but *literary accessions*, whose proprietorship is incidental to that of the principal composition. *Keene* v. *Wheatley*, 9 Amer. Law Reg., 47.—CADWALLADER, J.; Pa., 1860.

2. And even though such additions may not have been made by the proprietor, but by others, provided such persons were in the employ of the proprietor. *Ibid.*, 48.

3. Where A in the general theatrical employment of B was engaged in the office of assisting in the adaptation of a play for representation, and made additions in the course of the performance of his duty, *Held*, that B became the proprietor of such additions, as products of his intellectual exertions in a particular service in his employment. *Ibid*, 49.

4. Where an inventor, in the course of his experimental essays, employs an assistant, who suggests and adapts a subordinate improvement, it is, in law, an incident or part of the employer's main invention. *Ibid.*, 49.

ADMINISTRATORS, RIGHTS AND POWERS OF, AS TO INVENTIONS.

1. An executor or administrator of a joint patentee may maintain an action jointly with the surviving patentee for an infringement. *Whittemore* v. *Cutter*, 1 Gall., 431.—STORY, J.; Mass., 1813.

2. Under the act of 1836, § 18, the Board of Commissioners appointed to grant an extension of a patent may allow such extension to the legal representatives of a patentee, upon their application, in the same manner as though the application had been made in the lifetime of the patentee. *Nyman's Case*, 3 Opin., 446.—GRUNDY, Atty.-Gen.; 1839.

3. An administrator or executor of a deceased patentee may apply for an extension of a patent, and the patent may lawfully issue to him on such application. *Van Hook* v. *Scudder*, MS.—THOMPSON, J.; N. Y., 1843. (Cited in *Brooks* v. *Bicknell*, 3 McLean, 438.)

4. If a patentee is dead, his administrator may apply for and obtain an extension of the patent, under the provisions of the 18th section of the act of 1836. *Brooks* v. *Bicknell*, 3 McLean, 258, 260.—McLEAN, J.; Ohio, 1843.

5. The administrator of a deceased patentee may apply for and obtain a renewal of the patent, originally granted to such patentee. *Brooks* v. *Bicknell*, 3 McLean, 436, 438.—McLEAN, J.; Ohio, 1844.

6. And such an administrator, in whose name a patent has been renewed,

may grant an assignment of an interest therein. *Ibid.*, 441.

7. An extension of a patent may be taken out by an administrator of a deceased patentee. *Washburn* v. *Gould*, 3 Story, 133, 137.—STORY, J.; Mass., 1844.

8. An administrator is competent to apply for and receive a renewal or extension of a patent. *Woodworth* v. *Sherman*, 3 Story, 172.—STORY, J.; Mass., 1844.

9. § 18 of the act of 1836 authorizes the extension of a patent, on the application of the executor or administrator of the deceased patentee; and although the patentee had, during his lifetime, disposed of all his interest in the then existing patent, having at the time of his death no right or title to, or interest in, the original patent. *Wilson* v. *Rosseau*, 4 How., 675–677, —NELSON, J.; Sup. Ct., 1845.

10. And such an extension inures to the benefit of the administrator only in such capacity, and not to assignees and grantees, so as to vest in them any exclusive right whatever. Those, however, who are in the use of the patented article at the time of the renewal, may continue to use such machines or articles. *Ibid.*, 676–684.—(MCLEAN, J., and WOODBURY, J., dissenting, holding that such extension would inure to those assignees who had by express agreement secured an interest in the extension.)

11. An administrator may, under § 18 of the act of 1836, apply for and take an extension of a patent. *Woodworth* v. *Wilson*, 4 How., 716.—NELSON, J.; Sup. Ct., 1845.

12. The renewal of a patent in the name of an administrator is good, as an invention is personal property. *Woodworth* v. *Hall*, 1 Wood. & Min., 254.—WOODBURY, J.; Mass., 1846.

13. It is not necessary, in an action by an administrator, that he should produce his letters of administration. The patent being renewed to him as administrator, is proof that he had satisfied the officer authorized to grant a renewal, of his being administrator, and it is not competent for the court to go behind that decision. *Ibid.*, 254.

14. An administrator of a patentee, residing in one state, may commence an action in the United States Circuit Court of another state, for the recovery of damages for an infringement of a patent, without taking out letters of administration in the latter state. *Smith* v. *Mercer*, 5 Penn. Law Jour., 531.—KANE, J.; Pa., 1846.

15. The same right extends to the grantee or assignee of such administrator. *Ibid.*

16. Administrators of an intestate have no right, as administrators, to carry on the business of manufacturing and selling a patented article, by virtue of a license or agreement held by the intestate, farther than to complete the machines begun by the intestate during his lifetime, and unfinished at his death; but they can sell and transfer such right, and the purchaser would acquire all the rights secured to the intestate during his lifetime. *Pitts* v. *Jameson*, 15 Barb., S. C., 316.—JOHNSON, J.; N. Y., 1853.

17. Under § 10 of the act of 1836, if an inventor die before he has obtained a patent for his invention, no person other than his executor or administrator can apply for a patent for such invention, and the patent must be issued to such persons in trust for the heirs at law or devisees of the inventor. *Stimpson* v.

Rogers, 4 Blatchf., 335–6.—INGERSOLL, J.; Ct., 1859.

18. It need not however be expressed in the patent that it is issued to such executor *in trust for* those entitled to it. It will be sufficient that the patent set forth that it was issued to the grantee, as executor. What the executor does in relation to the property of the devisor, he does in trust for those to whom such property is given by the will. *Ibid.*, 336.

AGENT AND EMPLOYEE.

1. A mere workman, employed by others than the patentee to make parts of a patented article, is not liable to an action for infringement and damages.—*Delano* v. *Scott*, Gilpin, 497, 498.—HOPKINSON, J.; Pa., 1834.

2. The seller of an article is the owner for whom it is sold; not the man or boy in the shop who delivers it to the buyer and receives the money.—*Ibid.*, 498.

3. Whether a person who acts as the mere agent of another, is responsible in damages for the infringement of a patent, and may be enjoined; *query*. *Boyd* v. *McAlpine*, 3 McLean, 430.—MCLEAN, J.; Ohio, 1844.

4. There are, however, strong reasons why the interest of a principal should, by an action at law and also by a bill in chancery, be reached through his agent. *Ibid.*, 431.

5. An action of infringement will lie against the parties making a machine which is patented, though such persons are employed by others to do the work. But if such parties have acted without a knowledge of the plaintiff's right, only nominal damages should be found against them. *Bryce* v. *Dorr*, 3 McLean, 582, 583.—MCLEAN, J.; Mich., 1845.

6. An injunction will be granted as well against an agent, who merely sells the article which infringes a patent, as against the manufacturer, as both are joint trespassers, and they may be sued jointly. *Buck* v. *Cobb & Hermance*, 9 Law Rep., O. S., 547.—CONKLING, J.; N. Y., 1846.

7. An injunction will issue against a person who runs a machine, as well as against those who own it. *Woodworth* v. *Edwards*, 3 Wood. & Min., 133.—WOODBURY, J.; Mass., 1847.

8. An action for an infringement of a patent will lie against the managing directors and agents of an incorporated company, and it is not a good objection that they are not liable for the infringement charged, because they are only stockholders in the company. *Goodyear & N. E. Car Spring Co.* v. *Phelps*, 3 Blatchf., 92.—NELSON, J.; N. Y., 1853.

9. A decree for an account cannot be had against a workman, as he has nothing to do with the profit. *Sargeant* v. *Larned*, 2 Curt., 349.—CURTIS, J.; Mass., 1855.

10. An attachment for a violation of an injunction may issue against the agent and acting officer of the defendant, a foreign corporation, and he is not exempted therefrom on the ground that he is a mere servant of the defendant. —*Sickles* v. *Borden*, 4 Blatchf., 20.—HALL, J.; N. Y., 1857.

11. Where the violation of the injunction was the use of the thing patented, on a steamboat, *Held*, that the engineer was properly made a party to

the proceeding, and that an attachment would issue against him.—*Ibid.*

12. The fact that as between themselves, parties are connected together as the stockholders, managers, and servants of an incorporated company, will not exempt them from being enjoined, or being liable to an action for infringement. *Poppenhausen* v. *Falke*, 4 Blatchf., 494.—SHIPMAN, J.; N. Y., 1861.

AGREEMENTS.

A. AS TO COPYRIGHTS.

1. A contract to reprint a literary work, the copyright to which has been secured by the author, is void, unless it is entered into with the consent of the author, or his assignee. *Nichols* v. *Ruggles*, 3 Day, 158.—Ct., 1808.

5. A printer who executes such a contract with a knowledge of the rights of the author, can recover nothing for his labor. *Ibid.*, 158.

3. Joint owners of a copyright may make a contract between themselves as to the printing and publishing of the work, and neither will be permitted to set up against the other his original rights as a joint owner, in violation of such contract. *Gould* v. *Banks*, 8 Wend., 568.—NELSON, J.; N. Y., 1832.

4. Where an agreement was entered into between two persons, that the one should prepare for press a certain volume, and the other agreed to pay "for the copyright" of said volume the sum of five hundred dollars, *Held*, that such agreement must be construed as having been made with reference to the then existing term of fourteen years, and did not include the second term of fourteen years. *Pierpont* v. *Fowle*, 2 Wood. & Min., 25, 43.—WOODBURY, J.; Mass., 1846.

5. A further agreement between the same parties in respect to other volumes, provided that the copyright of them should be "considered their joint and equal property." *Held* also as to this, that it was to be construed according to the same principle as referring only to the first term. *Ibid.*, 25, 43.

6. If the second term is to be embraced in any agreement, there must be language used more comprehensive than "copyright," showing an intention to treat as to the future interest. *Ibid.*, 45.

7. Where an agreement as to the publication of a manuscript was made with a party, who was authorized to "print as many copies as he could sell," *Held*, that this did not apply to a single edition, but was intended to operate as long as sales could be made. *Pulte* v. *Derby*, 5 McLean, 332, 333.—MCLEAN, J.; Ohio, 1852.

8. And such party is bound to publish as long as there is a demand. *Ibid.*, 335.

9. Where, under such an agreement, the publisher took the copyright in his own name, and with the consent of the author, such copyright is in him only for the purposes of such contract. He has no right to assign it, nor to publish the work except upon the terms of such contract. *Ibid.*, 335.

10. Nor has the author a right to take out a copyright in his own name, or publish the work, in disregard of the contract. *Ibid.*, 335.

B. As to Patents.

See also ASSIGNMENT, C., and LICENSE, A.

1. Where a contract for the sale and purchase of a patent is reduced to writing, it is supposed to embody the understanding of the parties, and cannot be altered or enlarged by parol, or explained except in respect to a latent ambiguity. *Edwards* v. *Richards*, Wright, 597.—LANE, J.; Ohio, 1834.

2. A offered to sell a patent-right to B, who declined to purchase unless C would join with him. A then went to C and agreed with him that he should join with B, and that he, A, would take the notes of each for half the agreed sum; but as soon as the business was closed he would give back to C his note, and pay him for thus inducing B to buy. B was thus induced to buy; but he afterward sold his interest for more than he gave for it. In an action by B against A for the fraud, *Held*, that B had a right to recover against A any damages he might have suffered, by not having C as a joint owner, to aid or assist in making sales of the patent, and that the fact that he had sold his interest for more than he gave for it did not show that he had not sustained damage. *Culver* v. *Webb*, 12 Conn., 441, 443.—WAITE, J.; Ct., 1838.

3. Where in the conditions of a contract for the sale of a patent, it was provided that if certain defects were found to exist in the patent, the contract should be void, and a general clause followed, providing that if there should be *any other defect whatever*, the contract should also be void, *Held*, that this had reference to defects in the patent, and not in the machine itself, affecting its intrinsic value. *Vaughan* v. *Porter*, 16 Verm., 267, 270.—REDFIELD, J.; Vt., 1844.

4. Where it was stipulated between A and B that B should be entitled to use A's patent three days in a week until a given date, and that A would not prosecute any action against B for any former violation, provided B should not use such patent after the specified date, or by any other machine infringe A's right, *Held*, that such proviso, introduced by the plaintiff, and not placing any personal obligation on the defendant, did not operate as an estoppel against B to prevent him showing the truth in regard to the validity of the right of A. *Rich* v. *Hotchkiss*, 16 Conn., 419, 420.—WILLIAMS, Ch. J.; Ct., 1844.

5. If a party has been misled in a contract, and on that ground contends that he is not bound by it, he must repudiate it and claim nothing under it. He cannot claim that part which is favorable, and reject that which operates against him. *Brooks* v. *Stolley*, 3 McLean, 526.—MCLEAN, J.; Ohio, 1845.

6. But if he claim any right under the contract, he must show that he has done every thing on his part equitably required of him, to entitle him to the rights asserted. *Ibid.*, 527.

7. He must take the contract as it is. A court of equity may, for fraud or mistake, direct a contract to be delivered up and cancelled, but cannot alter it. *Ibid.*, 528.

8. Where a party K. entered into an agreement with a patentee P. in respect to the manufacture of the machines patented by P., and P., though an *original* inventor of such machine, was not

the *first* inventor, of which facts however K. was aware at the time of making such agreement, *Held*, that an injunction would issue against K. to restrain him from making and vending such machines in violation of such agreement. *Parkhurst* v. *Kinsman*, 8 N. Y. Leg. Obs., 74.—BETTS, J.; N. Y., 1848.

9. While the exclusive rights of a patentee are specially guarded from intrusion, the contracts which he makes to share them with third persons are interpreted and enforced in the same manner as other legal engagements. *Morse* v. *O'Rielly*, 6 Penn. Law Jour., 501 (2 Whar. Dig., 414), Pa., 1848.

10. Where the purchaser of an interest in a patent had an election under the contract of sale, within a given time, to recede from the purchase, and return the deed taken, or complete it and pay the purchase price, and he failed or neglected to return the deed within such time, although at the time the contract of sale was entered into the patent was actually void because embracing more than the patentee had invented, but during the period of election an act was passed (§ 9 of act of 1837,) rendering such patents valid to the extent of the actual invention of the patentee, *Held*, that the patentee became entitled to the benefit of the act, provided his invention was a material and substantial part of the thing patented and definitely distinguishable from the other parts claimed without right; that it afforded a sufficient consideration for the agreement, which was to be construed the same as if made at the end of the time at which the right to recede was limited. *Hotchkiss* v. *Oliver*, 5 Denio, 319, 320.—MCKISSOCK, J.; N. Y, 1848.

11. W., the patentee of a patent about to expire, sold to G. all his right in the extension thereof, if granted, for a certain territory, except as to two machines, the right to one of which was held by K. under the original patent, and the right to the other was reserved by W. himself. On the same day W. agreed with K., if the patent was extended, to give him an assignment to run his machine during such extension, and W. also sold to K. the right to the machine reserved to himself. K. paid a sum of money down on such agreement, but afterward refused to fulfil such agreement. W. assigned to I. all his interest in such agreement as to such two machines, and afterward G. released to I. all interest, if any, he might have in those machines. I. then gave a license to use the two machines to the defendants, and they put them in use under such license. K. also continued the use of his two machines. G. then filed his bill to restrain the use of the machines by the defendants, under the license from I., the assignee of W. *Held*, that the failure of K. to fulfil his agreement with W. did not annul and cancel such agreement; it was a contract partly executed. *Gibson* v. *Barnard*, 1 Blatchf., 389–392.—NELSON, J.; No. N Y., 1848.

12. *Held*, also, that although a court of equity might decree a surrender of such agreement on terms, until that was done, K. was in the lawful use and enjoyment of the two machines under the extended patent. *Ibid.*, 392.

13. And even if the agreement was annulled, W. could grant to I. only the right to use one machine, as the other was secured to K. by the decision of the Supreme Court in 4 How. *Ibid.*, 392.

14. *Held*, therefore, that the defendants had no right to use the machines under the license from I., and that G. was entitled to an injunction restraining such use. *Ibid.*, 392.

15. B having a patent for "making hooks or brad-headed spikes," brought a suit in his own name against C for infringing such patent. B and C had also each a patent for "making horse-shoes," but B claimed the exclusive right to make such horse-shoes. B and C then, afterward and during the pendency of such suit, entered into an agreement to discontinue such suit, and farther, "that the said parties may each hereafter manufacture and vend spikes of such character and kind as they see fit, notwithstanding their conflicting claims;" and B was to have the sole right to manufacture horse-shoes. *Held*, that such agreement was a license to C to manufacture the hook-headed spike under the patent of B. *Troy Iron and Nail Factory* v. *Corning*, 1 Blatchf., 470, 472.—NELSON, J.; No. N. Y., 1849. [Reversed, *post* 28, 1852.]

16. B having, at the time of the making such agreement, the legal title to the patent, and the suit for the infringement, which was one of the subjects of the settlement, being also in his name, *Held*, that such settlement or agreement bound third parties, who claimed to hold the equitable title at the time of such settlement, and who afterward took the legal title, and that such agreement of settlement was a bar to an action brought by such third parties against C; and particularly as B, at the time of such settlement, was the agent of such third parties, and largely interested with them in their business. *Ibid.*, 474.

17. By an agreement with M., the patentee of the electro-magnetic telegraph, and his associates, O'R., was to construct a line of telegraph "to connect the seaboard line at Philadelphia, or at some other point nearest to Harrisburgh, thence through Harrisburgh to Pittsburgh, and through Wheeling and Cincinnati to St. Louis, *and also to the principal towns on the Lakes.*" *Held*, on a bill filed to restrain the use of M.'s instruments on a line of telegraph from Buffalo to Erie, that the line running through the places named might be considered as a base line, and that the whole of the territory north of that line, extending to the towns on the Lakes, was intended to be included in the grant; and that therefore the defendants ought not to be enjoined. *Smith* v. *Selden*, 1 Blatchf., 476–478.—NELSON, J.; N. Y., 1849.

18. *Held*, also, from looking at such telegraph line on the map, or construing the agreement from its subject matter, that the *lakes* contemplated embraced the lakes Erie, Huron, Michigan, and Superior, but that the line specifically named and the lakes in connection therewith, fairly excluded the lake Ontario. *Ibid.*, 478.

19. The reservation of a right, in such agreement, to M. and his associates "to extend a line from Buffalo to connect with the lake towns at Erie," was not an exclusive right, and therefore not inconsistent with the grant to O'R. *Ibid.*, 479.

20. In the case of a well-founded doubt as to the true construction of the agreement, as to the extent of the grant, the conclusion should be against the parties who have made the grant, as they are chargeable with any obscurity in that respect in the agreement. *Ibid.*, 479.

21 K. purchased an interest in a pat

ent, and agreed with the patentee, upon certain conditions, to give his personal attention to manufacturing of machines under the patent; afterward he made a second agreement with the patentee, whereby he, K., agreed to discontinue such manufacture, and the patentee was to carry it on, rendering to K. a certain proportion of the profits. *Held*, that by virtue of such agreements K. was estopped, in an action brought against him by the patentee for continuing such manufacture, and for an account, from setting up the defence that such patentee was not the original and first inventor of the thing patented. *Parkhurst* v. *Kinsman*, 1 Blatchf., 490, 495.—NELSON, J.; N. Y., 1849. [Affirmed 1855, *post* 41.]

22. *Held*, also, that such agreement was not void as being in restraint of trade, and against the principles of public policy, but was simply an ordinary partnership business arrangement. *Ibid.*, 495, 496. [Affirmed 1855, *post* 43.]

23. Where it is evident that the legal effect of a contract, according to the terms of it, is different from the actual agreement made at the time between the parties, a court of equity would probably, upon a proper application, direct the contract to be reformed by the insertion of a clause to the effect claimed. *Woodworth* v. *Cook*, 2 Blatchf., 158.—NELSON, J.; N. Y., 1850.

24. But such contract cannot be reformed, where rights of a *bona fide* purchaser have intervened, which would or might be seriously prejudiced by allowing such contract to be reformed, or defence set up. *Ibid.*, 159.

25. Where a contract as to the use of a patent, provided for a certain mode of ascertaining the amount of fuel saved by it in steam machinery, evidence having been given of that test, it is competent to confirm it by other tests made by others and in other boats. *Wash. &c. Packet Co.* v. *Sickles*, 10 How., 438.—GRIER, J.; Sup. Ct., 1850.

26. A contract to use a patent machine during the continuance of the patent, and to pay therefor a fixed proportion of the value of the fuel saved thereby, is an entire contract, and will not support an action until the expiration of the patent. It would be otherwise if payments had been agreed to have been made by installments. *Ibid.*, 441.

27. A contract for the sale of a patent right for a given sum, to be paid out of moneys which the purchaser should, at his own cost and risk, collect from persons infringing the rights of the patentee within the territory sold, is void, as amounting to champerty, and the assignment of torts. *Wintermute* v. *Humphrey*, 10 West. Law Jour., 52.—STILWELL, J.; Ohio, 1851.

28. An agreement made between B and C and others, providing for the settlement of various matters; the discontinuance of certain suits, and also as to the manufacture of a certain article, as follows: "that the said parties may each hereafter manufacture and vend spike of such kind and character as they see fit, notwithstanding their conflicting claims to this time," must be construed with reference to the situations of the parties to it; and B having claimed that he had the exclusive right, under his patent, to make such spikes, which right the defendant C was infringing, but the defendant claiming that he did not infringe such patent, but made such spikes by an entirely different method, *Held*, that such agreement did not give C a license to make such spikes after B's patent,

but only a right to make them by the same process or machinery he had been before using. *Troy Iron and Nail Fac.* v. *Corning*, 14 How., 213.—WAYNE, J.; Sup. Ct., 1852.

29. An agreement made between the owner of a patent, securing to the grantee the exclusive right to make, use, and sell to others to be used, the machine patented, within a certain territory, but reserving to the grantor the right to sell, within such territory, machines of his own manufacture, does not operate as an assignment or transfer to the grantee of the right and title secured by the patent, within such territory. *Pitts* v. *Jameson*, 15 Barb., 315.—JOHNSON, J.; N. Y., 1853.

30. It is an agreement in the nature of a license to manufacture and sell, but more than a mere technical license; it is a fixed contract right, vested in the grantee, and assignable by him. *Ibid.*, 315.

31. It is however a chose in action, not in possession, and the grantee and his assigns can retain the right only so long as the business is prosecuted under it. Whenever the business is abandoned, the rights secured by the contract revert to the grantor. Then, but not till then, the grantor can sell rights to third persons to make, sell and use, the patented machine, in such territory without being responsible to the grantee, or his representatives, for damages. *Ibid.*, 316.

32. The reservation by the grantor is also a mere personal privilege, and not transferable to others. *Ibid.*, 316.

33. Upon the death of the grantee, the contract, and the rights under it, go to his admininistrators as assets. *Ibid.*, 316.

34. The granting a new license by the grantor, to another person, is no bar to an action on such contract to recover the amount agreed to be paid for machines manufactured under such contract, but may be available by way of recoupment of damages. *Ibid.*, 317.

35. G. made an agreement with B., as follows: "In consideration of one dollar, I engage to grant to B. license to manufacture under my patents and improvements, india-rubber hose, in general, except that made of pure gum." "In the event of the right of said hose being disposed of, said B. is to receive one-half the bonus obtained therefor, it being optional with him to retain, if he prefers it instead, a half-right to manufacture." *Held*, that such agreement embraced a reissued patent; and that B. obtained an immediate right to manufacture, and not merely an obligation for a future right; and that B. could recover of G. one-half of any sales made by G. of the right to make such hose, and that B. became entitled to such moiety immediately upon any such disposal. *McBurney* v. *Goodyear*, 11 Cush., 570, 572.—MERRICK, J.; Mass., 1853.

36. Where by an agreement between S. and L., there was sold by S. to L., the half of a certain machine for making lead, and the one-half of the patent to be obtained therefor, and L was to pay $4,000—$1,500 in a note at fifteen months, and $2,500 in bonds and mortgages; and the agreement was upon the conditions, that if no patent should be obtained for the machine, and, if a certain suit pending against S. and others, as to the right to use said machine, should be determined against S., then the bargain and sale should be null and void. L. was to pay the expenses of obtaining the patent, and it

was to issue in his name, but no time was specified in which it was to be obtained, *Held*, that neither of the conditions mentioned were conditions precedent to the right to the money intended to be secured by the said note. *Selden* v. *Prinyle*, 17 Barb., 468.—WELLES, J.; N. Y., 1854.

37. And though an application for a patent was pending at the time of the making such agreement, and afterward a new application was made, upon which a patent was issued to L., *Held*, that it was to be presumed that the patent issued was the one contemplated by the agreement. *Ibid.*, 469.

38. A stipulation in a patent . .it provided a decree should be entered .r the plaintiffs unless the machine used .. the defendant was constructed before the date of the application of plaintiffs for his patent, *Held*, that the time when such machine was so "constructed," meant when it was substantially complete in its operative parts, and that it was not necessary that it should be doing work. *Troy Iron & Nail Fac.* v. *Odiorne*, 17 How., 73.—CATRON, J.; Sup. Ct., 1854.

39. An agreement made by a patentee to assign his patent gives no authority to the grantee to grant licenses to use such patent. The patent must first be assigned to him. *Day* v. *Hartshorn*, MS.—PITMAN, J.; R. I., 1854.

40. To enable a party to justify a right or act done under an agreement which required the performance of certain conditions on his part, he must show a performance on his part of such conditions precedent. *Ibid.*

41. An agreement made with a patentee to manufacture his patented machines upon certain conditions, and making and selling such machines under the patentee's title, estops such party, in an action for account brought by the patentee, from alleging the invalidity of the patent. *Kinsman* v. *Parkhurst*, 18 How., 293.—CURTIS, J.; Sup. Ct., 1855.

42. And even if the patent was invalid, it would not have rendered the sales of the machines illegal, so as to release such party from the obligation to account. *Ibid.*, 293.

43. Nor is such agreement, because stipulating that under certain circumstances one party shall cease their manufacture of such machines void, as being in restraint of trade—as such clause is but a provision for the prosecution of the business in a particular mode, and not for its restraint. *Ibid.*, 293.

44. If, however, such a contract was void as against public policy, it would furnish no answer to a claim for an account of profits realized by prosecuting the business. *Ibid.*, 294.

45. An agreement made between a patentee, who is about to apply for a renewal of his patent with another, that in case of renewal he will convey to him such renewed patent in consideration of a certain sum, is valid, and if the patent is renewed, such agreement conveys to the assignee an equitable interest or title to the entire interest of the assignor, which can be converted into a legal title, by paying or offering to pay the agreed consideration. *Hartshorn* v. *Day*, 19 How., 220.—NELSON, J.; Sup. Ct., 1856.

46. An agreement made between a patentee and a third person, as trustee, that the latter should hold the patent and have the control thereof, for the benefit of those who had a right to use the same, without the written consent

of such trustee, transfers the entire interest and ownership, legal and equitable, of the patentee in the patent to such trustee for the benefit of those interested. *Ibid.*, 220.

47. A neglect or omission to pay to such patentee an annuity, provided for in and stipulated by such agreement to be paid by the trustee to the patentee, will not rescind the contract, or remit to the patentee the interest conveyed. The right to such annuity rests in covenant, for a breach of which an action at law will lie. *Ibid.*, 222.

48. A mutual and reciprocal covenant of an agreement respecting a patent having been broken by one party, he cannot obtain the aid of a court of equity to restrain the other covenanter from its violation. *Clum* v. *Brewer*, 11 Mo. Law Rep., 391.—CURTIS, J.; Mass., 1856.

49. Otherwise, where the covenants are independent, or only collaterally connected, though in the same instrument, or where the breach is of such a nature that it may be fully repaired, and one of the conditions precedent for obtaining relief may be such reparation. *Ibid.*, 392.

50. Where the covenant was, by the owners of a patent, that no right to use the invention should be conveyed without the assent and concurrence of all those interested, *Held*, that a party, who had been guilty of a breach thereof, though through a misapprehension of the construction of the agreement, could not maintain a bill for an injunction to restrain the other covenanter from a similar violation. *Ibid.*, 392.

51. A contract for the purchase of a patent may be rescinded for false and fraudulent representations constituting an inducement to it, and whether the party making them knew them to be false or not. *Gatling* v. *Newall*, 9 Ind., 576.—PERKINS, J.; Ind., 1857.

52. But such representation must be as to a fact or facts, and go to a material issue, and must be one on which the party to whom it is made has a right to, and does rely. *Ibid.*, 576.

53. A party, however, who would rescind a contract on the ground of fraud, must offer to do so within a reasonable time after the fraud is discovered. *Ibid.*, 577.

54. Where certain terms are used in a grant, which have a well-known general meaning, then, in the interpretation of such grant, such well-known general meaning must be given to the terms used, unless it appear that some other or different meaning was intended by them. *Day* v. *Cary*, 4 Blatchf., 273.—INGERSOLL, J.; N. Y., 1859.

55. Deeds must speak for themselves, when able to speak clearly and understandingly. But in giving an interpretation to a particular clause of a deed, we must look to every part of it, in order to ascertain whether such interpretation is the true one. *Ibid.*, 276.

56. Though the construction and interpretation of written instruments is for the court, it will nevertheless bring to its aid the testimony of witnesses to explain terms of art, and make itself acquainted with the material with which the contracts deal, and with the circumstances under which they were made; but neither the testimony of witnesses in general, nor of professors, experts, or mechanics, can be received to prove to the court what is the proper or legal construction of any instrument or writing. *Day* v. *Stellman*, 1 Fisher, 491.—GILES, J.; Md., 1859.

ALIENS.

A. RIGHTS AND LIABILITIES OF, IN RESPECT TO PATENTS.

See also PATENTS, K.

1. Previous to the act of 1800, the authority given by law to grant patents, was confined to citizens of the United States. *Anon.*, 1 Opin., 110.—LINCOLN, Atty. Gen.; 1802.

2. Under the act of 1800, a foreigner, though having resided within the United States for more than two years, could not have a patent for an invention put into operation by him in another country, before he came here. *Duplat's case*, 1 Opin., 332.—WIRT, Atty. Gen.; 1820.

3. As to the rights of a patentee to surrender a defective patent and take out a new one, there is no difference between a citizen and alien. *Shaw* v. *Cooper*, 7 Pet., 315.—MCLEAN, J.; Sup. Ct.; 1833.

4. By the provisions of the patent acts (1793 and 1800), citizens and aliens, as to patent-rights, are placed substantially on the same ground. In either case, if the invention was known or used by the public before it was patented, the patent is void. In both cases the right must be tested by the same rule. *Ibid.*, 316.

5. An alien patentee must put and continue on sale to the public, within eighteen months from the date of the patent, the invention or discovery for which the patent issued. *Hildreth* v. *Heath*, MS. (App. Cas.), CRANCH, Ch. J.; D. C., 1841.

6. If a foreign patentee, or his assignees, do not put their invention on sale within eighteen months after the same is obtained, as required by § 15 of the act of 1836, the patent will be void. *Tatham* v. *Loring*, 5 N. Y. Leg. Obs., 208.—STORY, J.; Mass., 1845.

7. The assignee takes only the right of the foreign inventor, and no more, and is subject to the requirements of the alien clause in § 15 of the act of 1836. *Ibid.*, 208.

8. The alien clause in § 15 of the act of 1836, applies only to alien patentees, and not to American patentees who become such as assignees of alien inventors under § 6 of the act of 1837. *Tatham* v. *Lowber*, 2 Blatchf., 51.—NELSON, J.; N. Y., 1847.

9. Under § 15 of the act of 1836, it is not essential that an alien patentee, or his assignee, should take active means for the purpose of putting the patented invention in the market and forcing a sale, within eighteen months after the date of the patent, but only that he should be ready at all times to sell at a fair price, when a reasonable offer is made. *Tatham* v. *Le Roy*, MS. —NELSON, J.; N. Y., 1849.

10. It is a question for the jury to determine, whether the invention was so put and continued on sale. *Ibid.*

11. A patent obtained by an alien upon an oath, ignorantly or inadvertently made, that he is a citizen of the United States, is void, and not voidably only. *Mini's Assignee* v. *Adams*, 3 Wall, Jr.—GRIER, J.; Pa., 1861.

B. RIGHTS OF, AS TO INFRINGEMENT OF TRADE-MARKS.

1. The fact that the complainant, in

a suit in equity for an injunction to restrain the fraudulent use of a trade-mark, is a subject of another government, does not alter the rights of the parties, or deprive the complainant of the right to the interposition of court. So far as the subject matter of the suit is concerned, there is no difference between citizens and aliens. *Taylor* v. *Carpenter*, 11 Paige, 296.—WALWORTH, Chan.; N. Y., 1844.

2. In an action for a violation of a trade-mark, it makes no difference that the complainants are aliens; in the courts of the United States alien friends are entitled to the same protection in their rights as citizens. *Taylor* v. *Carpenter*, 3 Story, 463.—STORY, J.; Mass., 1844.

3. The fact that the party complaining of a wrongful use of his trade-marks is an alien, or subject of a foreign government, does not alter his rights, *Coates* v. *Holbrook*, 2 Sand. Ch., 595, 596, 598.—SANDFORD, V. Chan.; N. Y., 1845.

4. Aliens can invoke the jurisdiction of a court of chancery to protect them in the use and possession of their trade-marks, as well as citizens; the courts will never recognize a different rule of right and justice between any class of suitors. *Taylor* v. *Carpenter*, 2 Sand. Ch., 614.—LOTT, Sena.; N. Y., 1846.

5. An alien friend can bring in our courts any action for the violation of his trade-marks, which a citizen can. *Taylor* v. *Carpenter*, 2 Wood. & Min., 9.—WOODBURY, J.; Mass., 1846.

6. And is entitled to recover to the extent of his damages by the loss of sales and the profits made by those using them. *Ibid.*, 9, 15.

7. Being a resident abroad makes no difference in his right, or the jurisdiction of our courts, if the subject matter of the action arises here. *Ibid.*, 17.

8. And he is entitled to this extent, though the articles sold as and for his were not inferior in quality to his. *Ibid.*, 21.

9. As to the right to bring an action for the wrongful or fraudulent use of a trade-mark, there is no difference between a citizen or alien. *Coffeen* v. *Brunton*, 4 McLean Rep., 520.—MCLEAN, J.; Ind., 1849.

AMBIGUITY IN PATENTS.

As to how invention should be set forth, see also COMPOSITION OF MATTER, B.; IMPROVEMENT, B.; MACHINE, and SPECIFICATION, B.

1. If the description mixes up the old and the new, and does not distinctly ascertain for which in particular, the patent is claimed, it is void. *Lowell* v. *Lewis*, 1 Mas., 188.—STORY, J.; Mass., 1817.

2. What is claimed as new, must appear with reasonable certainty: it is not left to minute inferences and conjectures, as to what was previously known or unknown: the question is, not what was before known but what the patentee claims *as new*. *Ibid.*, 188.

3. If the terms of a patent are so obscure or doubtful that the court cannot say what is the particular improvement which the patentee claims, and to what it is limited, the patent is void for ambiguity. *Barrett* v. *Hall*, 1 Mas., 476.—STORY, J.; Mass., 1818.

4. A general statement that the patented article is in all respects, without

stating what these are, an improvement on an old article, is no specification at all. *Ibid.*, 479.

5. The specification must describe in full, clear, and exact terms, what the improvements are, or the patentee cannot recover for an infringement. *Evans* v. *Hettick*, 3 Wash., 425.—WASHINGTON, J.; Pa., 1818.

6. Where the construction of the patent and specification, as to the subject of the grant, are doubtful, the affidavits, if more precise, may be resorted to, to explain the ambiguity. This is particularly proper to restrain general expressions in the specification. *Pettibone* v. *Deringer*, 4 Wash., 217.—WASHINGTON, J.; Pa., 1818.

7. Thus, when the patent recited the applicant to be the inventor of an improvement in boring muskets by a twisted screw-auger, and the specification described the manner of making the auger, its form, and how to be used, and the affidavit confined the invention to the improvement in *making augers* for boring musket-barrels, *Held*, that the patent extended only to the *auger*, and not to the method of using it. *Ibid.*, 217, 218.

8. A specification which mixes up the new and the old, but does not explain what is the nature or limits of the invention claimed, cannot be sustained. *Evans* v. *Eaton*, 7 Wheat., 434.—STORY, J.; Sup. Ct., 1822.

9. The invention cannot be made out and shown at the trial, or be established by comparing the invention specified in the patent with former ones in use. *Ibid.*, 434, 435.

10. Where the specification does not describe the invention so as to show in what respect the plaintiff's invention or improvement differs from what had been known or used before, the patent is void. *Langdon* v. *De Groot*, 1 Paine, 207.—LIVINGSTON, J.; N. Y., 1822.

11. The specification described the invention "that it essentially consists in attaching the packet to the steamboat with ropes, chains, or spars, so as to communicate the power of the wave from the towing vessel to vessels taken in tow, and kept always at convenient distance, the manner of applying the power varying in some measure with the circumstances, *Held*, that the description of the invention, if any there was, was too vague and uncertain, and bad. *Sullivan* v. *Redfield*, 1 Paine, 450, 451.—THOMPSON, J.; N. Y., 1825.

12. A description, though in some respects obscure, imperfect, or not so intelligible as to fully answer the objects of the law, is good if it enables the court to specify the improvement or invention patented, from the fact of the patent and accompanying papers. *Whitney* v. *Emmett*, Bald., 315.—BALDWIN, J.; Pa., 1831.

13. The patentee must specify his invention clearly and explicitly; any ambiguity affectedly introduced into the specification, or any thing done to mislead the public, will make it void. *Ibid.*, 319.

14. As to the specification nothing is left to construction as to its requisites or purposes, both being so clearly defined by the statute, and in such a manner as to leave no discretion in the courts to presume what was intended, or to alter, add, or diminish. *Ibid.*, 320.

15. If the specification is wholly ambiguous and uncertain, so loosely defined, and so inaccurately expressed, that the court cannot upon fair interpreta-

tion of the words, and without vague conjecture of intention, gather what it is, the patent is void for such defect. *Ames* v. *Howard*, 1 Sumn., 485.—STORY, J.; Mass., 1833.

16. But if the court can clearly see, by a reasonable use of the means of interpretation of the language used, taking the whole in connection, what is the nature and extent of the claim, then the plaintiff is entitled to the benefits of it, however imperfectly and inartificially he may have expressed himself. *Ibid.*, 485.

17. If there be any ambiguity or uncertainty in any part of the specification; yet, if taking the whole together, the court can perceive the exact nature and extent of the claim made by the inventor, it is bound to adopt that interpretation, and to give it full effect. *Ryan* v. *Goodwin*, 3 Sumn., 520.—STORY, J.; Mass., 1839.

18. Where a patent is obtained for parts of a machine, involved with other parts which may have been used before, it is essential that the *new* parts should be so distinctly pointed out that the claim may not cover any parts that are old. *Blake* v. *Sperry*, 2 N. Y. Leg. Obs., 255.—JUDSON, J.; Ct., 1843.

19. Whether a patent is void for uncertainty or ambiguity in the description, is a matter of fact to be decided upon the evidence of experts. *Washburn* v. *Gould*, 3 Story, 138.—STORY, J.; Mass., 1844.

20. If the meaning of a patent cannot be ascertained satisfactorily upon the face of the specification, the law declares it insufficient for ambiguity and uncertainty. *Emerson* v. *Hogg*, 2 Blatchf., 6.—BETTS, J.; N. Y., 1845.

21. If the specification is so uncertain as to whether a particular thing is claimed as a part of a new combination, or as a new invention, as to be unintelligible, it is void, but may be surrendered and amended. *Hovey* v. *Stevens*, 1 Wood. & Min., 302.—WOODBURY, J.; Mass., 1846.

22. The patentee in the description of his invention is not to be confined to technical language, but may make use of that which is in popular use, and better understood by all. The fewer technical terms used the better, if the subject is intelligible without them. *Hovey* v. *Stevens*, 3 Wood. & Min., 28.—WOODBURY, J.; Mass., 1846.

23. If the description is so uncertain and obscure as to what was meant, and what is in fact the novelty, that it cannot be determined whether the improvement consists in the combination of the whole, or of all the parts, or only of some of them, and of which—or of an invention of some, and if so, of what—the uncertainty will be fatal, and the patentee will be under the necessity of making a new specification, setting forth his claim with greater certainty, accuracy, and clearness, and disclaiming all not new. *Ibid.*, 30–32.

24. The degree of clearness and freedom from ambiguity required in the specification, under the act of 1793, is to "distinguish the invention from things before known, and to enable any person skilled in the art or science to make and use the same." This is necessary to enable the Commissioner of Patents to judge whether the matter claimed is new or too broad—and to enable the courts, when the patent is afterward contested, to form a like judgment—and also to enable the public to understand what the patent is, and refrain from its use, unless licensed

Hogg v. *Emerson*, 6 How., 484.—Woodbury, J.; Sup. Ct., 1847.

25. But the patentee need not describe particularly, and disclaim all the old parts, and that is especially unnecessary when such disclaimer is manifestly in substance the result of his claiming as new only the portions which he does describe specially. *Ibid.*, 485.

26. If the invention is not described with reasonable certainty and precision, the patentee can claim nothing under his patent. *Parker* v. *Stiles*, 5 McLean, 54.—Leavitt, J.; Ohio, 1849.

27. Patents should be construed liberally to support the claims of meritorious inventors. But there should not be such a liberality of construction, which is injurious to the public, and permits the inventor to couch his specification in such ambiguous terms that its claims may be expanded or contracted to suit the exigency. *Parker* v. *Sears*, 1 Fisher, 100.—Grier, J.; Pa., 1850.

28. Where in an improvement in the construction of cars for railroads, the most essential feature of which consisted in the location of the two sets of trucks relatively to each other—as remotely from each other as can be conveniently done for the support of the carriage—and in the near proximity of the two axles of each truck to each other—as near as possible to each other, and prevent their contact with each other, *Held*, that the specification was sufficiently definite without specifying in feet and inches the exact distance from the ends of the car body at which it would be best to arrange the trucks, or the exact distance between the two axles. *Winans* v. *Schenec. & Troy R. R. Co.*, 2 Blatchf., 295, 297.—Nelson, J.; N. Y., 1851.

29. If any thing is included in a patent which is not new, the patent is void. If what is new be mixed up with what is old, the patent is no protection for either. *Holliday* v. *Rheem*, 18 Penn., 469.—Black, Ch. J.; Pa., 1852.

30. The specification of an invention for the use of anthracite coal, with a blast, in the common glass furnace, omitted to set forth the peculiar mode of regulating the blast, so as to produce a *diffused* and not a *concentrated* heat, in which consisted the great advantage of the invention. *Held*, that under § 6 of the act of 1836, it was too vague to warrant a patent. *Yearsley* v. *Brookfield*, MS. (App. Cas.)—Morsell, J.; D. C., 1853.

AMOUNT IN CONTROVERSY.

1. In cases arising under the patent laws, the jurisdiction of the Circuit Courts does not depend upon the citizenship of the parties to the action, or the amount in dispute, but upon the subject matter. *Allen* v. *Blunt*, 1 Blatchf., 486.—Nelson, J.; N. Y., 1849.

2. Under § 17 of the act of 1836, a writ of error or an appeal may lie to the Supreme Court, under an order of the court, although the judgment is under the sum of $2,000. *Foote* v. *Silsby*, 1 Blatchf., 544. Nelson, J.; N. Y. 1850.

3. The jurisdiction of the Circuit Court embraces all cases, both at law and in equity, arising under the patent laws for infringement of letters patent, without regard to the citizenship of the parties, or the amount in controversy. *Day* v. *Newark I. R. Co.*, 1 Blatchf., 630.—Nelson, J.; N. Y., 1850

4. Where a bill is filed to enforce a specific performance of a contract in relation to a patent, the Supreme Court has no appellate jurisdiction, unless the matter in controversy exceeds the value of two thousand dollars. *Brown* v. *Shannon*, 20 How., 56, 57.—TANEY, Ch. J.; Sup. Ct., 1857.

5. The court may, however, lawfully exercise its jurisdiction, when a far less amount is in dispute, if a party is proceeding in law or equity for the infringement of a patent-right to which he claims to be entitled. *Ibid.*, 56.

6. The amount of the penalty in a bond taken on an injunction in the court below, cannot be referred to, to give jurisdiction. *Ibid.*, 58.

ANALOGOUS USE.

See DOUBLE USE; "NEW APPLICATION OR USE."

ANALYSIS.

1. Analysis is the only mode by which the human judgment can rest upon absolute certainty. There are but few questions which may be decided by the power of analysis, chemically or mathematically. But where this is done satisfactorily, truth is attained. *Allen* v. *Hunter*, 6 McLean, 312. MCLEAN, J.; Ohio, 1855.

2. The testimony of a chemist, who has analyzed the ingredients of a composition of matter, as to the nature of such composition, is not matter of opinion, but evidence of a fact demonstrated. *Ibid.*, 312.

ANSWER.

See EQUITY, B. 5.

APPEALS.

IN PATENT CASES.

A. TO THE SUPREME COURT.

See also WRIT OF ERROR.

1. Under § 17 of the act of 1836, if a writ of error is allowed by the court, in cases where the amount in dispute does not reach $2,000, and in such as are deemed "reasonable," it must bring up the whole case for consideration, and the court below cannot determine that only particular points shall be taken up. *Hogg* v. *Emerson*, 6 How., 477, 478. —WOODBURY, J.; Sup. Ct., 1847.

2. The word "reasonable" applies to the cases, rather than to any discrimination between the different points in the cases. *Ibid.*, 478.

3. An appeal lies only from a final decree of the court below. A decree for a perpetual injunction, in a patent case, and a reference to a master to report the damage sustained by the plaintiff is not a final decree within the practice

of the court, so that an appeal will lie. *Barnard* v. *Gibson*, 7 How., 657, 658.—McLean, J.; Sup. Ct., 1848.

4. Under § 17 of the act of 1836, an appeal or writ of error lies to the Supreme Court, under an order of the court, although the judgment is under the amount of $2,000. *Foote* v. *Silsby*, 1 Blatchf., 544.—Nelson, J.; N. Y., 1850.

5. The last clause of § 17 of the act of 1836, providing for appeals and writs of error in all other cases "in which the court shall deem reasonable," does not apply to a suit in equity to set aside an assignment of a patent. *Wilson* v. *Sandford*, 10 How., 101, 102.—Taney, Ch. J.; Sup. Ct., 1850.

6. The right of appeal is confined to the cases mentioned in the first part of the section, "to actions, suits, controversies and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries," and was intended to secure uniformity of decision in the construction of the acts of Congress in relation to patents. *Ibid.*, 101.

7. The law gives a party aggrieved an appeal from a final decree of an inferior court. But it does not give a party who is not aggrieved, an appeal from a decree in his favor, because the judge has given no reasons, or insufficient ones for the judgment admitted to be correct. *Corning* v. *Troy Iron and Nail Fac.*, 15 How., 465.—Grier, J.; Sup. Ct., 1853.

8. Where a complainant in a patent suit had a decree in his favor, but not to the extent prayed for in his bill, and the respondent appealed, *Held*, if the complainant desired a more favorable decree, he must enter a cross appeal, that when the decree comes before the appellate court, he may be heard. *Ibid.*, 466.

9. A second appeal lies only when the court below, in carrying out the mandate of the Supreme Court, is alleged to have committed an error. But on an appeal from a mandate, nothing is before the court but the proceedings subsequent to the mandate. *Ibid.*, 466.

10. The defendant, in a suit in equity, took two grounds of defence; the Circuit Court decided against him on one, and dismissed the bill on the other; on appeal to the Supreme Court, the decree was reversed, and the cause remanded. *Held*, that the defendant could not then appeal from the decision of the Circuit Court on the ground originally decided against him. *Ibid.*, 466.

11. An objection to the joinder of an assignor with an assignee, as complainant in a bill, comes too late on appeal. *Livingston* v. *Woodworth*, 15 How., 557.—Daniel, J.; Sup. Ct., 1853.

12. The discretionary power as to granting appeals and writs of error in patent cases, vested in the Circuit Courts by § 17 of the act of 1836, is confined to cases which involve the construction of the patent laws, and the rights of patentees under them; and does not justify the allowance of a writ of error, merely to review a question of costs. *Sizer* v. *Many*, 16 How., 103.—Taney, Ch. J.; Sup. Ct., 1853.

13. A motion to allow an answer to be filed in a patent case made after the bill has been taken *pro confesso*, is addressed to the discretion of the court; and for a refusal to grant such leave, an appeal does not lie to the Supreme Court. *Dean* v. *Mason*, 20 How., 204.—McLean, J.; Sup. Ct., 1857

B. To Justices' Circuit Court, District Columbia.

1. *What is; when lies and when not; when lost.*

1. Whether a second rejection of an application, by the Commissioner, after an appeal to the justices of the Circuit Court, for reasons untouched by the decision of the judge, would be the subject of appeal; *query*. *Arnold* v. *Bishop*, MS. (App. Cas.)—Cranch, Ch. J.; D. C., 1841.

2. The object of giving an appeal is to correct the error of the Commissioner in *refusing* to grant the patent applied for. His error in *granting* a patent is corrected by the ordinary tribunals of the country, and needs no special tribunal for such purpose. *Pomeroy* v. *Connison*, MS. (App. Cas.)—Cranch, Ch. J.; D. C., 1842.

3. An appeal is given to a disappointed applicant, because otherwise the decision of the Commissioner would be conclusive against him. It is not given to the patentee, because the decision is not only not conclusive as to him, but does not in any manner affect his legal or equitable rights. *Ibid.*

4. Under the patent laws no appeal can be taken from the decision of the Commissioner of Patents, unless the application for a patent is rejected by him. In no case can an appeal be taken to the granting of a patent. A *patentee* has no right of appeal from the decision of the Commissioner of Patents granting a patent to another person. *Ibid.*

5. This decision approved and followed in *Whipple* v. *Renton*, Morsell, J., 1854; *Hopkins* v. *Barnum*, Morsell, J., 1854; *Kingsley* v. *Harriet*, Morsell, J., 1854; and in *Drake* v. *Cunningham*, Morsell, J., 1855. [But see *post* 18.]

6. Where the decision of the Commissioner of Patents neither affirms nor denies the right of an applicant to the patent (which he claims), upon the merits of the supposed invention, it is not such a decision as is the subject of appeal under § 11 of the act of 1836. *Janney*, *Ex parte*, MS. (App. Cas.)—Cranch, Ch. J.; D. C., 1847.

7. Therefore the refusal of the Commissioner to revise and revoke a decision of one of his predecessors in office rejecting an application for a patent, is not a ground of appeal. *Ibid.*

8. A party desiring an appeal in such a case should appeal from the decision refusing his application for a patent. *Ibid.*

9. There is no limitation of time as to the appeal from decisions of the Commissioner. *Ibid.*

10. Nothing preliminary to the issuing of a patent is a valid ground of appeal, unless made so by the law authorizing appeals. *Wade* v. *Matthews*, MS. (App. Cas.)—Cranch, Ch. J.; D. C., 1850.

11. Questions as to the practicability and usefulness of an invention, and the reducing of it to practice, are matters within the discretion of the Commissioner, and are not made the subjects of appeal. *Ibid.*

12. The filing of the "reasons of appeal" is essentially the appeal itself. *Greenough* v. *Clarke*, MS. (App. Cas.)—Morsell, J.; D. C., 1853.

13. Where the reasons of appeal are not filed within the time prescribed by the Commissioner of Patents, the right of appeal is lost. The Commissioner may, however, enlarge the time to file such reasons. *Ibid.*